



EXHIBIT D: FINDINGS OF FACT

**GP-21-06; RZ-21-07; U-21-08; DR-21-09; E-21-10
37660 Timber Street
Alameda County Assessor's Parcel Number 92A-2125-10-2**

Amendments to General Plan Map (NMC §17.38.060)

A. Reasons for recommendation of the general plan map and text amendment.

The project site was identified in the 2013 Newark General Plan for medium density residential development and RM: Residential Medium Density zoning is currently approved. This site is a part of the Cedar Boulevard Industrial to Residential Conversion area. The project site also is identified as Site G and a housing opportunity site in the City of Newark Housing Element Update 2015 as part of the Regional Housing Needs Assessment (RHNA). However, the existing RM zoning would only allow a maximum of 22 units for the 0.99-acre site, or 39 units if the State Density Bonus was invoked in accordance with [California Government Code \(CGC\) §65915-65918](#). Under the existing density limits, it is likely that a project on the subject site would not be able to maximize its full development potential. In addition, the location and current land values in the area support a more intense form of development with a concrete parking podium and floors of residential above.

Furthermore, over the last five years, the state legislature has passed a number of additional laws to encourage the construction of high-density affordable housing. The City's General Plan identifies that ABAG allocated a combined 497 Very Low Income (VLI) and Low Income (LI) housing units to Newark in the current (5th) RHNA cycle for the seven-year period from 2015-2023. The latest (2020) Annual Progress Report published by the California Department of Housing and Community Development shows that Newark has permitted 0 VLI or LI housing units during this period to date.¹ The 79 units proposed in the high-density development would substantially contribute toward meeting the City's RHNA in the VLI and LI categories.

Moreover, the state legislature enacted SB 35 in 2017, which incentivizes jurisdictions to meet their VLI and LI allocations. If the jurisdiction makes insufficient progress towards their RHNA, it will be subject to the streamlined ministerial approval process. Newark is currently subject to streamlining for developments with at least 50-percent affordability, but the approval of the General Plan amendment would enable Newark to add 79 units of VLI/LI housing and fulfill 16-percent of its RHNA obligation with this project.

B. Findings related to supporting the recommendation.

The request for the General Plan amendment aligns with the spirit and intent of the 2013

¹ In reviewing past annual progress reports (APR), it has come to staff's attention that the City of Newark reported 77 VLI multi-family units (37433 Willow Street), now known as Newark Station Senior Apartments, in its 2017 APR. However, this information is not reflected in the current records with the California Department of Housing and Community Development or the Governor's Office of Planning and Research. Staff will work with the respective entities to correct the reporting data.

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Newark General Plan and current Housing Element. Additionally, the General Plan amendment would help support the goals of state legislation, particularly in recent years, and address the increasing need for affordable housing.

- C. The relationship of the general plan map and text amendment to other adopted plans by the City.

The proposed amendment does not have a direct relationship to any other plan adopted by the City. However, as noted above, the proposed amendment will contribute towards providing the 497 VLI and LI housing units identified in the 5th Cycle Housing Element Update. Furthermore, as noted in the City's Housing Element, land with allowable density of 30 units or more is assumed to accommodate VLI and LI housing units. Under the current land-use designation and zoning, the site allows a maximum density of 22 units.

Amendments to Zoning Map (NMC §17.39.080)

- A. The amendment is consistent with the general plan.

The zoning amendment is necessary to fully achieve the development potential of the site and ensure a financially viable project. The zoning amendment will allow the project to proceed as a senior affordable housing development, which will address the significant need for this type of affordable housing, as identified in the General Plan: “with the increasing elderly population there is an increased need for senior housing, especially affordable senior housing” (5th Cycle Housing Element p. H-39). The General Plan also notes that “the primary need is not larger units, but more affordable units so that people do not need to double up” (5th Cycle Housing Element p. H-21). The zoning amendment will allow for the provision of additional affordable units with reasonable sized units.

- B. Any change in district boundaries is necessary to achieve the balance of land uses desired by the city, consistent with the general plan, and to increase the inventory of land within a given zoning district.

Much of the area currently zoned for RH: High Density Residential has already been developed. As such, there are limited opportunities for growth of this building typology (Housing Element, p. H-66). The neighboring lot to the west, which sits at the corner of Central Avenue and Timber Street is designated as Neighborhood Commercial and is developed with a retail center. Given the immediate adjacency to the commercial use and close proximity to a major arterial, the project site is a sensible location to increase the inventory of High Density Residential. In addition, the development of this site as high-density affordable housing will also fulfill the general plan's goals of providing more affordable units for seniors.

- C. The amendment will promote the growth of the city in an orderly manner and to promote and protect the public health, safety, peace, comfort and general welfare.

This site is a part of the Cedar Boulevard Industrial to Residential Conversion area. The project site also is identified as Site G and a housing opportunity site in the City of Newark

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Housing Element Update 2015 as part of the Regional Housing Needs Assessment (RHNA). The amendment from medium density to high density residential is a logical and sensible change to fully achieve additional development potential at the project site and allow for residential affordable housing development at the site. Accordingly, the incremental change will promote orderly growth and allow the development to provide additional affordable housing units. These units will provide stable and secure homes to vulnerable populations of seniors who are currently facing high housing costs and the risk of homelessness in the face of the COVID-19 pandemic. Therefore, the amendment will protect public health, safety, and the general welfare of the community.

Conditional Use Permit (NMC §17.35.060)

- A. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this title [NMC Title 17] and all other titles of the Municipal Code.

The proposed use of this development is multi-unit residential development, and the specific use will be affordable multi-family housing for seniors. Pursuant to [NMC §17.07.020, Land-Use Regulations](#), the proposed use is allowed within both the RM: Residential Medium Density and RH: Residential High Density zoning districts.

- B. The proposed use is consistent with the general plan and any applicable specific plan.

The project site was identified in the 2013 Newark General Plan for medium density residential development. This site is a part of the Cedar Boulevard Industrial to Residential Conversion area. The project site also is identified as Site G and a housing opportunity site in the City of Newark Housing Element Update 2015 as part of the Regional Housing Needs Assessment (RHNA). The project applicant is seeking a general plan amendment to change the designation to high density residential development. The proposed use of a multi-unit residential development is consistent with both the medium-density and high-density general plan land-use designations. Furthermore, the proposed general plan amendment aligns with the 5th Cycle Housing Element of the General Plan, which notes “with the increasing elderly population there is an increased need for senior housing, especially affordable senior housing.”

The proposed use is not part of a specific plan area.

- C. The proposed use will not be adverse to the public health, safety, or general welfare of the community, nor detrimental to surrounding properties or improvements.

The proposed use is consistent with the City's desire to support the neighborhood's transition from light industrial to a pedestrian-oriented residential neighborhood. The use will also benefit the adjacent retail center by expanding its customer base, and therefore not be detrimental to surrounding properties. Additionally, the project's high-quality design and landscaping improves the pedestrian environment and experience at this location. Resident services and on-site programming will connect residents to community resources and promote public health. High quality property management by a local non-profit will ensure that the development contributes to the safety of the community and remains a prominent asset for the

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City for the years to come. The proposed affordable housing units will provide stable and secure homes to vulnerable populations of seniors who are currently facing high housing costs and the risk of homelessness in the face of the COVID-19 pandemic. Therefore, the use will protect, and not be adverse to, public health, safety, and the general welfare of the community.

The proposed use will not have an adverse impact on the surrounding industrial uses.

- D. Tax revenue generated by the development will exceed the City's cost of the service demand as a result of the development or a compelling community benefit will be provided.

The Project will provide the community benefit of long-term, deed-restricted affordable housing for seniors at a range of income levels. Affordable housing is a vital component of equitable and sustainable growth and contributes to the diversity of housing available in the city. Therefore, the Project will provide a compelling community benefit.

- E. The proposed use complies with any design or development standards applicable to the zoning district or the use in question unless waived or modified pursuant to the provisions of this title [NMC Title 17].

Generally, the proposed use complies with all design and development standards, except those where [CGC §65915-65918 \(Density Bonus Law\)](#) and the provisions of [NMC Chapter 17.19](#) are invoked. The project's density and parking ratio meet the parameters allowed through the NMC and the Density Bonus Law and incentives/concessions/waivers rather than the baselines in the NMC.

[Government Code §65915\(d\)\(2\)\(D\)](#) grants four incentives or concessions for 100-percent affordable projects. In addition, [Government Code §65915\(e\)\(1\)](#) grants the waiver or reduction of an unlimited number of development standards that would have the effect of physically precluding the construction of the development with the density bonus and incentives/concessions requested. The Project includes the following incentives/concessions and waivers.

<i>Development Standard</i>	<i>Incentive/Concession</i>	<i>Waiver</i>
<i>Maximum Lot Coverage</i>		✓
<i>Minimum Landscape Area</i>		✓
<i>Minimum Open Space</i>		✓
<i>Minimum Parking Requirement</i>	✓	
<i>Minimum Setbacks: Front, Side and Rear Yard</i>	✓	

The proposed project meets all other design and development standards in the Zoning Code.

- F. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity.

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The Project is compatible with existing and future land uses in the vicinity. This site is a part of the Cedar Boulevard Industrial to Residential Conversion area. The area is transitioning from light industrial uses to residential uses, which will complement the residential use proposed. The operating activity of the site as senior housing will result in fewer vehicle trips, will shift these trips to off-peak times, and will result in reduced Vehicle Miles Travelled (VMT). The addition of housing with additional units will also help support the retail center that is immediately adjacent to the project site.

- G. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

This site is physically suitable for the proposed use. The site is just under an acre in size with a regular, trapezoidal shape, which provides an ideal footprint for a project of this scale and the size of the site suitably accommodates the massing of the structure. The existing overhead electrical infrastructure will be replaced with a pad-mounted transformer that is of adequate size to serve the building and the overhead wires will be undergrounded. The Project will also install a private storm sewer line to connect to the City's system. To satisfy the Alameda County Fire Department's requirements (i.e., fire apparatus access road), the Project proposes a 10-foot, instead of the required 15-foot, front-yard setback at the south elevation. The reduced setback at the front yard would create a more intimate experience between the building and pedestrian, and thereby foster a lively and inviting streetscape.

Design Review (NMC §17.34.060)

- A. The overall design of the project including its scale, massing, site plan, exterior design, and landscaping will enhance the appearance and features of the project site and surrounding natural and built environment.

The overall design makes a sincere effort to minimize the impact of the project density on the neighborhood. The siting of the building will provide direct lobby access to activate the street frontage and to contribute to the evolution of Timber Street from auto-oriented industrial use to pedestrian-friendly residential use. The addition of landscaping along the frontage and around the building will enrich the site and surrounding environment with needed greenery.

The building height is reduced by one story along Timber Street to minimize the perceived bulk of the building from the sidewalk. The massing at the front elevation, along the Timber Street frontage, is articulated to seamlessly respond to the typical townhouse rhythm expressed in recent developments elsewhere in the Cedar Boulevard-Timber Street area.

The ground floor of the building will include amenity spaces and a parking podium that supports the residential floors above. The amenity spaces and lobby will be located on the Timber Street frontage to provide eyes on the street and help establish a residential character to this light industrial area. The residential courtyard located above the parking podium will be sited to ensure ample sunlight for resident gardening and the building has been designed to buffer the courtyard from the noise of I-880 freeway to the north.

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- B. The project design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, and the general community.

As a residential building, the consistent articulation of the façade appropriately evokes a townhouse pattern and reflects the townhouse development across the street. This design clearly designates the building as a residential use and reinforces the residential pattern for future development on Timber Street.

The entrance lobby, management offices, and amenity spaces are located on the ground floor along the Timber Street frontage. This location provides a convenient entry point for occupants and visitors as well as street activation and visual interest for pedestrians passing the site. These spaces will also conceal the parking podium from the public's view.

The upper floors are shaped in a "C" shape configuration above the podium deck with residential units primarily fronting the street or courtyard space. This provides optimal views for occupants. The "C" shape will also partially enclose the courtyard and block freeway noise and views, which will provide an attractive and comfortable environment for users of the courtyard. The courtyard is oriented to the southeast to take advantage of morning sunlight and provide significant space for resident garden beds.

The project design also minimizes the impacts of exterior adjacencies on occupants. The primary design mitigation is to place a single-loaded corridor along I-880 with apartments fronting onto the courtyard. This configuration will protect the residential units from pollution and freeway noise, while resulting in a larger shared open space at the courtyard. The highway-facing façade includes dynamic articulation to provide an interesting view evocative of the movement of the highway.

- C. Project details, materials, signage and landscaping, are internally consistent, fully integrated with one another, and used in a manner that is visually consistent with the proposed architectural design.

The building exterior will be expressed with high quality materials such as fiber cement panels and metal awnings that are characteristic of multi-family residential developments. The street-facing ground floor façade contains large amounts of glazing to activate the street. Residents of the development will also enjoy large windows with street and courtyard views. The windows on the south and west facades will provide solar shades to ensure thermal comfort of the occupants, and to provide an architectural accent to punctuate the façades.

The Project's color palette will complement the natural, earthy hues of the retail center to the west, but it will not replicate it so as to distinguish the buildings and provide visual interest. The pattern of materials and colors is repeated throughout the building to maintain consistency. Signage identifying the building and announcing its address will be located at the corner of the building that houses the entrance, ensuring easy wayfinding. A consistent planting palette of native, drought-tolerant shrubs and trees will connect the areas of landscaping along the frontage to landscaping along the driveway and in the second-level

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courtyard.

- D. The design of streetscapes, including street trees, lighting, and pedestrian furniture, is consistent with the intended character of the area.

The streetscape design will enhance the pedestrian experience along Timber Street. The project will provide streetscape improvements including a relatively wide sidewalk with regularly spaced street trees and a 10-foot building setback. The setback area will contain a bioretention area for sustainable stormwater management as well as a ring of native flowering shrubs. Furnishings such as bicycle racks and compatible street light fixtures will enhance the function and experience of the street frontage. Additional trees and plantings will soften the building frontage along Timber Street and extend back along the driveway for the length of the site. The overhead utility lines will also be undergrounded along the project's frontages. These streetscape improvements adhere to the City's streetscape standards.

- E. Parking areas are designed and developed to buffer surrounding land uses; compliment pedestrian-oriented development; enhance the environmental quality of the site, including minimizing stormwater run-off and the heat-island effect; and achieve a safe, efficient, and harmonious development.

The parking garage will be located at the rear of the site, allowing the more engaging ground-floor uses to activate the street and for the garage to serve as a buffer to the I-880 freeway to the north. The entrance to the parking garage is located halfway down the building's driveway, which will improve sightlines of drivers and pedestrians at the sidewalk and result in a safer design.

The Project will feature bioretention planters above the parking podiums to capture stormwater and permeable pavers to mitigate stormwater run-off. The heat island effect will be mitigated by a large courtyard on top of the parking podium structure, which will contain trees and shrubs to provide shading.

- F. Lighting and lighting fixtures are designed to complement buildings, be of appropriate scale, provide adequate light over walkways and parking areas to create a sense of pedestrian safety, and avoid creating glare.

The design proposes pedestrian-scale pole-mounted fixtures around the site to comfortably light the sidewalk, driveway, and courtyard. These light pole fixtures will include full-cutoff reflectors to mitigate light pollution. The exterior of the building will also be lit by appropriately sized wall-mounted fixtures to ensure safety around the entire site.

- G. Landscaping is designed to be compatible with and enhance the architectural character and features of the buildings on site and help relate the building to the surrounding landscape.

The second-floor courtyard will be thoughtfully programmed to ensure it provides amenities ideally suited to the senior residents. An outdoor courtyard and garden space will provide a gathering area outside of the community room with tables, chairs, and bench seating with an

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arbor to provide shade. This space will connect to a central plaza with flexible space that can support a variety of activities and programming. The sunniest part of the courtyard will be dedicated to three rows of trough planters, which will allow residents to grow herb and vegetable gardens. Trees will be planted in large containers to create privacy and shade for the residents. The plant palette consists of low maintenance, drought-resistant plants and will provide attractive year-round interest. The same palette will be repeated in the landscaping around the building's exterior to tie the spaces together.

California Environmental Quality Act (CEQA)

An Initial Study (IS) for the Project in accordance with the California Environmental Quality Act (CEQA) was conducted. The IS examined the nature and extent of potentially significant adverse effects on the environment that could occur if the Project is approved and implemented. The IS has been reviewed, and based upon substantial evidence in the record, the City has found that all potentially significant effects of the Project, as identified in the IS, can and will be avoided or mitigated to a less than significant level by project revisions or other requirements imposed on the Project. Based on the review and pursuant to [CEQA Guidelines §15070](#), a Mitigated Negative Declaration (MND) for the Project has been prepared.

The IS/MND was available for public review from September 1, 2021 through September 21, 2021 on the City's [website](#) and City Hall. Additionally, on August 31, 2021, the City provided a Notice of Intent (NOI) to adopt a mitigated negative declaration to the public and the Alameda County Clerk. Furthermore, the NOI was also mailed to property owners within a 500-foot radius of the project site.

In connection with the adoption of the IS/MND, the record supports findings in accordance with [CEQA Guidelines §15070, et seq.](#) that:

- 1) The IS/MND reflects the independent judgment and analysis of the City, as lead agency under CEQA; and
- 2) Based upon the information contained in the IS/MND, any comments received thereon, and the whole record before the City, there is no fair argument nor substantial evidence that the Project will have a significant effect on the environment.



EXHIBIT E: CONDITIONS OF APPROVAL

**GP-21-06; RZ-21-07; U-21-08; DR-21-09; E-21-10
37660 Timber Street
Alameda County Assessor's Parcel Number 92A-2125-10-2**

Planning Division

- a. All project conditions of approval shall be printed in on the building-permit plans.
- b. All conditions of approval for this project, as approved by the City Council, shall be posted at the site and distributed to construction personnel.
- c. Prior to issuance of a building permit, the applicant shall remit all outstanding fees on record for the requested entitlements and regulatory approvals.
- d. The City and applicant shall enter into an affordable housing regulatory agreement and declaration of restrictive covenants, in a form acceptable to the City Attorney, that shall be recorded prior to issuance of a building permit. The agreement shall include all requirements related to the density bonus and as required by [NMC §17.19.060](#).
- e. Prior to issuance of the Final Planning Inspection, the applicant shall submit to the Community Development Director a displacement study in support of Eden Housing's Measure A1 Bond application to the County of Alameda for a City of Newark live/work preference and to demonstrate that this preference is needed as a result of displacement threats occurring within the community.
- f. As applicable, the project shall be subject to the environmental mitigation measures as described in the Project's Initial Study and Mitigated Negative Declaration, dated August 2021.
- g. The applicant shall provide a high-efficiency particulate filtration systems in the project's ventilation systems to reduce the level of harmful pollutants (i.e., PM2.5) to below the thresholds. This could be achieved with measures as recommended on pages 32-33 of the "Timber Street Senior Apartments Air Quality & Green House Gas Emission Assessment, Newark, California," dated April 19, 2021, Revised June 7, 2021, Illingworth and Rodkin, Inc.
- h. Prior to issuance of a building permit, the applicant shall submit "Will Serve" letters, or equivalent documents, demonstrating approval from the project's respective service/utility providers (Union Sanitary District; Alameda County Water District; Republic Services; etc.).
- i. All proposed changes from approved exhibits shall be submitted to the Community Development Director who shall decide if they warrant Planning Commission and City Council review and, if so decided, said changes shall be submitted for the Commission's and Council's review and decision. The developer shall pay the prevailing fee for each additional separate submittal of development exhibits requiring Planning Commission and/or City Council review and approval.

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- j. Measures to respond to and track complaints pertaining to construction noise shall include:
 - 1) A procedure and phone numbers for notifying the City of Newark Building Inspection Division and Newark Police Department (during regular construction hours and off-hours); and
 - 2) A sign posted on-site pertaining to the permitted construction days and hours and complaint procedures and who to notify in the event of a problem. The sign shall also include a listing of both the City and construction contractor's telephone numbers (during regular construction hours and off-hours).
- k. During project construction, if historic, archeological or Native American materials or artifacts are identified, work within a 50-foot radius of such find shall cease and the City shall retain the services of a qualified archeologist and/or paleontologist to assess the significance of the find. If such find is determined to be significant by the archeologist and/or paleontologist, a resource protection plan conforming to [CEQA Guidelines §15064.5](#) shall be prepared by the archeologist and/or paleontologist and approved by the Community Development Director. The plan may include, but would not be limited to, removal of resources or similar actions. Project work may be resumed in compliance with such plan. If human remains are encountered, the County Coroner shall be contacted immediately, and the provisions of State law carried out.
- l. Construction site trailers and buildings located on-site shall be used for office and storage purposes only and shall not be used for living or sleeping quarters. Any vehicle or portable building brought on site during construction shall remain graffiti free.
- m. All lighting shall be directed on-site so as not to create glare off-site, as required by the Community Development Director.
- n. Air-conditioning units shall not be placed in front or street side yard and if placed in any other location that makes it visible to public view, shall be properly screened with solid material.
- o. The site and its improvements shall be maintained in a neat and presentable condition, to the satisfaction of the Community Development Director. This shall include, but not be limited to, repainting surfaces damaged by graffiti and site clean-up.
- p. The units shall not be used as short-term rentals.
- q. There shall be no outdoor vending machines other than for the sale of newspapers.
- r. There shall be no outdoor storage except Christmas trees, of any materials for sale, display, inventory or advertisement without the review and approval of the Planning Commission and City Council.
- s. The drive aisles shall not be used by delivery trucks between the hours of 9:00 p.m. and 7:00 a.m. No delivery truck or van shall be left overnight on any portion of the site.
- t. Parking lot cleaning with sweeping or vacuum equipment shall not be permitted between 7:00 p.m. and 7:00 a.m.

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- u. All exterior utility pipes and meters shall be painted to match and/or complement the color of the adjoining building surface, as approved by the Community Development Director.
- v. Prior to issuance of a sign permit, all signs, other than those referring to construction, sale or future use of this site, shall be submitted to the Community Development Director for review and approval.
- w. Prior to their installation, mailbox locations and designs shall be approved by the Community Development Director and Newark Postmaster, in that order. The mailbox compartments of centralized mailboxes shall identify the individual dwelling units with permanent, easily legible lettering.
- x. Prior to the issuance of a building permit, a screening design shall be submitted to and approved by the Community Development Director. Roof equipment shall not be visible from public streets. All equipment shall be fully screened within the context of the building's architecture, as approved by the Community Development Director. Said screening design shall be maintained to the satisfaction of the Community Development Director. The building owner shall paint the roof equipment and the inside of its screening wall within the context of the building's color scheme and maintain the painted areas to the Community Development Director's satisfaction.
- y. Prior to the issuance of a building permit, any proposed fence details shall be submitted for the review and approval of the Community Development Director.
- z. Prior to the issuance of a building permit, details of the outdoor recreational amenities shall be submitted to the Community Development Director for review and approval.
- aa. Prior to the issuance of a building permit, the location and screening design for garbage, refuse, and recycling collection areas for the project shall be submitted for the review and approval of Republic Services and the Community Development Director, in that order. The approved garbage, refuse and recycling areas shall be provided prior to the issuance of a Certificate of Occupancy, as required by the Community Development Director. No refuse, garbage or recycling shall be stored outdoors except within the approved trash and recycling enclosures.
- bb. Prior to the issuance of a building permit, the applicant shall pay all applicable development impact fees in effect at the time and the Community Development Maintenance Fee.
- cc. Prior to final inspection and utility release for each unit, the applicant shall pre-wire each unit for satellite and cable television connections, as required by the Community Development Director. The exterior connections for the pre-wire shall be made to the roof and not on the side elevation walls of the units.

Engineering Division

- dd. An encroachment permit is required for work proposed within Timber Street. During the building permit plan review process, the applicant shall submit an Encroachment Permit application and documents. The encroachment permit shall be issued prior to or concurrently with the building permit issuance. Timber Street improvements include, but

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are not limited to, removal and replacement of existing curb, gutter, sidewalk, and driveway, installation of landscaping and irrigation, removal of two existing joint poles and undergrounding of existing overhead facilities along the project frontage, installation of a new street light and pole, and a 2” full street pavement grind and overlay along the project frontage.

- ee. The applicant shall dedicate a 6’ Public Utility Easement (PUE) and 10’ Landscape Easement (LE) along the project frontage. A legal plat and description prepared by a California-licensed Surveyor for the PUE and LE dedication shall be provided for review and approval prior to building permit issuance.
- ff. The provided Preliminary Stormwater Treatment Plan is approved in concept only. Final approval is subject to the applicant providing the necessary plans, details, and calculations that demonstrate the plan complies with the Municipal Regional Stormwater NPDES Permit (MRP), Order R2-2015-0049, revised November 19, 2015, issued to the City of Newark by the Regional Water Quality Control Board, San Francisco Bay Region.
- gg. The permeable pavers proposed for stormwater treatment shall meet the design and sizing requirements of Pervious Pavement of the C.3 Stormwater Technical Guidance. The permeable paver design shall be reviewed and approved by the project geotech engineer to ensure that the section is adequate for traffic loading proposed for the project (i.e. garbage trucks, fire truck, and vehicles).
- hh. All stormwater treatment measures are subject to review and approval by the Alameda County Mosquito Abatement District. The developer shall modify the grading and drainage and stormwater treatment design as necessary to satisfy any imposed requirements from the District.
- ii. The entire site shall be equipped with full trash capture devices approved by the Regional Water Quality Control Board – San Francisco Bay Region, for 100% trash capture at all on-site and adjoining off-site storm drain inlets. All on-site trash capture devices shall be permanently maintained by the property owner. Acceptable off-site trash capture devices can be found on the City’s website at <https://www.newark.org/departments/public-works/engineering-division/stormwater-program>.
- jj. The property owner shall enter into a Stormwater Treatment Measures Maintenance Agreement, which will be recorded against the property. The applicant’s project engineer shall provide all required exhibits associated with the agreement. The executed Stormwater Treatment Measures Maintenance Agreement shall be submitted prior to the issuance of the building permit and recorded prior to the issuance of the building occupancy.
- kk. Hydrology and hydraulic calculations shall be submitted for review and approval by the City Engineer prior to the issuance of any building permits for the project. The calculations shall show that the City and County freeboard requirements will be satisfied.
- ll. All new utilities including, but not limited to, electric, telephone and cable television services shall be provided underground for the project. Pad mounted electrical transformers shall be screened properly from the public right-of-way.

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- mm. Prior to the issuance of any building or grading permits, the developer shall enter into a Landscape Maintenance Agreement with the City of Newark. The Agreement shall cover all landscaped areas contiguous to the site's public street frontage and all visible on-site landscaping. All landscape maintenance on-site and along the project frontage shall be the responsibility of the property owner. Landscape maintenance of these areas by the City under the terms of the Agreement would occur only in the event that City Council deems the owner's maintenance to be inadequate. Any project perimeter walls and adjoining landscape areas shall be included in a dedicated landscape easement to guarantee adequate maintenance of the walls. Any work other than routine maintenance, including but not necessarily limited to, tree removal, tree pruning, or changes to the approved planting palette shall be approved in advance by the City Engineer. All tree pruning shall be performed by or under the direction of a certified arborist.

The developer shall retain a licensed landscape architect to prepare working drawings for both off-site and on-site landscape plans in accordance with City of Newark requirements, the approved Conceptual Landscape Plan, and the State of California Model Water Efficient Landscape Ordinance. The associated Landscape Documentation Package must be approved by the City Engineer prior to the issuance of a building permit.

- nn. The applicant shall install 20 feet of red curb on either side of the project driveway on Timber Street and not place plants, trees, and structures that would impede a vehicle's sight distance within this red curb zone. The red curb shall be installed by the applicant and maintained by the property owner. The Landscape Maintenance Agreement exhibit shall include the red curbs to be maintained by the property owner.

Alameda County Fire Department

- oo. Standpipe in the garage shall be centrally located.

General Conditions

- pp. The developer hereby agrees to defend, indemnify, and save harmless the City of Newark, its Council, boards, commissions, officers, employees and agents, from and against any and all claims, suits, actions, liability, loss, damage, expense, cost (including, without limitation, attorneys' fees, costs and fees of litigation) of every nature, kind or description, which may be brought by a third party against, or suffered or sustained by, the City of Newark, its Council, boards, commissions, officers, employees or agents to challenge or void the permit granted herein or any California Environmental Quality Act determinations related thereto.
- qq. The Conditions of Project Approval set forth herein may include certain fees, dedication requirements, reservation requirements and other exactions. Pursuant to [Government Code §66020\(d\)\(1\)](#), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and other exactions. The developer is hereby further notified that the 90-day approval period in which the developer may protest these fees, dedications, reservations and other exactions, pursuant to Government Code §66020(a), has begun. If the developer fails to file a protest within this

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90-day period complying with all of the requirements of §66020, the developer will be legally barred from later challenging such exactions.



EXHIBIT F: ORDINANCE

**GP-21-06; RZ-21-07; U-21-08; DR-21-09; E-21-10
37660 Timber Street
Alameda County Assessor's Parcel Number 92A-2125-10-2**

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING THE ZONING MAP FROM RM: RESIDENTIAL MEDIUM DENSITY TO RH: RESIDENTIAL HIGH DENSITY FOR THE PROPERTY LOCATED AT 37660 TIMBER STREET (APN 92A-2125-10-2)

WHEREAS, Timber Street Investors L.P. [a.k.a. Eden Housing] (the "Applicant"), has filed with the City of Newark an application for a General Plan Amendment, an amendment to the Zoning Map, a Conditional Use Permit, and Design Review to construct a 79-unit affordable housing development for seniors at 37660 Timber Street (APN 92A-2125-10-2) (the "Property") (the "Project"); and

WHEREAS, the Property has a General Plan Land-Use designation of Medium Density Residential and is currently zoned RM: Medium Density Residential; and

WHEREAS, the Applicant seeks an amendment to the Zoning Map for the Property from RM: Residential Medium Density to RH: Residential High Density to establish consistency with the amendment to the general plan map and text from Medium Density Residential to High Density Residential; and

WHEREAS, the applicant is concurrently requesting approval of Design Review and a Conditional Use Permit for the Project; and

WHEREAS, pursuant to and in accordance with the provisions of the California Environmental Quality Act ([Public Resources Code §21000 et seq.](#); herein referred to as "CEQA"), the State of California Guidelines for the Implementation of the California Environmental Quality Act (commencing with §15000 of [Title 14 of the California Code of Regulations](#); herein referred to as the "[CEQA Guidelines](#)"), the City is the "lead agency" for the preparation and consideration of environmental documents for the Project; and

WHEREAS, pursuant to CEQA Section 21080(c)(2), CEQA Guidelines Section 15070 and [NMC §17.31.050](#), an Initial Study/Mitigated Negative Declaration ("IS/MND") was prepared for the Project. The IS/MND analyzed the requested entitlements, regulatory approvals, and operation of the Project itself, to determine if these actions would result in significant impacts to the environment; and

WHEREAS, the IS/MND did not identify any significant environmental impacts arising from the requested entitlements, regulatory approvals, and operation of the Project itself that could not be mitigated to a less than significant level; and the City reviewed the IS/MND, and based

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upon substantial evidence in the record, determined that all potentially significant effects of the project can and will be avoided or mitigated to a less than significant level by project revisions or other requirements imposed on the project; and

WHEREAS, pursuant to [Newark Municipal Code \(“NMC”\) §17.31.060](#), the Planning Commission held a duly noticed public hearing on the Project at which time all interested parties had an opportunity to be heard at 7:30 p.m. on September 28, 2021 utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic and the Planning Commission recommended [Approval/Denial](#) of the Project and recommended [Approval/Denial](#) of the MND by a vote of [X-X](#); and

WHEREAS, pursuant to [NMC §17.31.060](#), a public hearing notice was published in the Tri City Voice on [Enter Date](#) and mailed as required, and the City Council held a duly noticed public hearing at which time all interested parties had an opportunity to be heard on the Project at 7:00 p.m. on [Enter Date](#).

NOW, THEREFORE, the City Council of the City of Newark does ordain as follows:

Section 1: That the foregoing recitals are true and correct and hereby made part of this Ordinance.

Section 2: The City Council of the City of Newark does hereby find and declare that the Initial Study/Mitigated Negative Declaration (IS/MND), for the requested zoning map amendment and related entitlements and regulatory approvals, embodied in this ordinance has been completed in compliance with the California Environmental Quality Act ([California Public Resources Code §21000 – 21178](#)). The IS/MND was presented to the Planning Commission, which, at a hearing before the public on September 28, 2021, reviewed and considered the information contained in the IS/MND prior to making a recommendation to the City Council regarding the Project and its associated development entitlements. The City Council does hereby further find and determine, on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the Project and its associated actions will not have a significant effect upon the environment and that the IS/MND reflects the lead agency’s independent judgment and analysis as the Lead Agency; and

Section 3: Pursuant to [NMC §17.39.070](#) and [NMC §17.39.080](#) of Title 17 (Zoning) of the NMC, the City Council of the City of Newark does hereby find that the zoning map amendment embodied in this ordinance is consistent with the General Plan, necessary to achieve the balance of land uses desired by the City, and to increase the inventory of land within a given zoning district, and promotes the growth of the City in an orderly manner and promotes and protects the public health, safety, peace, comfort, and general welfare of the residents of the City of Newark.

Section 4: The City Council hereby approves the Zoning Map Amendment as identified in “[Exhibit A](#)”, attached hereto and incorporated herein by reference.

Section 5: If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or

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unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Newark hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof is declared invalid or unenforceable.

Section 6: Effective Date. This ordinance shall take effect thirty (30) days from the date of its passage. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in The Tri-City Voice, a newspaper of general circulation published and printed in the County of Alameda and circulated in the City of Newark.

The foregoing ordinance was introduced and read before the City Council of the City of Newark by Council Member **Enter Name** at the regular meeting of the City Council of the City of Newark held on **Enter Date**.

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This ordinance was read at the regular meeting of the City Council held Enter Date. Council Member Enter Name moved that it be adopted and passed, which motion was duly seconded, and said ordinance was passed and adopted.

AYES:

NOES:

ABSENT:

SECONDED:

APPROVED:

ATTEST:

Mayor

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A: ZONING MAP CHANGE

Figure 1. Existing Zoning Designation.



Figure 2. Proposed Zoning Designation.

