

## Planning Commission Staff Report

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April 11, 2012  
Item 6.a.

- SUBJECT:** P12-0054 (Conditional Use Permit)
- APPLICANT:** Leon Yuan/Academic Center of Volitation
- PROPERTY OWNER:** Dick Oppenheimer
- PURPOSE:** Application for a Conditional Use Permit to operate a State-registered heritage school for Kindergarten through 8<sup>th</sup> Grade students.
- LOCATION:** 5200 Franklin Drive, Ste. 110
- GENERAL PLAN:** Business Park (Industrial/Commercial and Office)
- ZONING:** PUD-I/C-O (Planned Unit Development - Industrial/Commercial-Office) District.
- EXHIBITS:**
- A. Draft Conditions of Approval
  - B. Written Narrative, Floor Plan, and Site Plans, dated "Received March 22, 2012"
  - C. PUD Minor Modification Approval Letter
  - D. Academic Center of Volitation's Current On-Line Registration as a Heritage School with California Department of Education
  - E. Sections 33195 and 44327 of the California Education Code, and Sections 1596.70 and 1596.90 of the California Health and Safety Code
  - F. Public Comments
  - G. Location and Noticing Maps

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### BACKGROUND

Academic Center of Volitation, currently located in Dublin, is proposing to relocate its facility to Pleasanton within the existing building at 5200 Franklin Drive. The subject site is located within a Planned Unit Development (PUD) – Industrial/Commercial-Office zoning district. The applicant submitted for a Minor Modification to the PUD in order to establish State-registered heritage schools as a conditionally permitted use for concurrent processing with the Conditional Use Permit. This modification has been

administratively approved by the Planning Manager and will become effective on April 25, 2012, unless appealed (the approval letter is attached to this report as Exhibit C).

### Heritage School

Section 33195.4 of the California Education Code (CEC) defines “heritage school” as a school that serves children who are at least (4) years and nine (9) months of age and no older than 18 years of age, and who also attend a public or private full-time day school, and does all of the following:

- (a) Specifies regular hours of operation.
- (b) Offers education or academic tutoring, or both, in a foreign language.
- (c) Offers education on the culture, traditions, or history of a country other than the United States.
- (d) Offers culturally enriching activities, including, but not limited to, art, dance, games, or singing, based on the culture or customs of a country other than the United States.
- (e) Maintains membership in a State or national cultural or language association.
- (f) Complies with relevant local government regulations, where applicable.
- (g) Does not operate out of a residential home.
- (h) Complies with the requirements of California Education Code Section 33195 and maintains in its possession a copy of the registration form electronically filed with the Superintendent. The heritage school shall make this form available upon request, including to the State Department of Social Services, to verify exemption from child care licensure.

Section 33195.6.(e) states that a heritage school, as defined in Section 33195.4, shall *not* be subject to licensure by the State Department of Social Services as a child day care center pursuant to Chapter 3.4 (commencing with Section 1596.70) or Chapter 3.5 (commencing with Section 1596.90) of Division 2 of the Health and Safety Code. Section 44237 still requires criminal record information for persons associated with the school.<sup>1</sup>

Sections 33195 and 44237 of the California Education Code, and Sections 1596.70 and 1596.90 of the Health and Safety Code are attached as Exhibit E.

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<sup>1</sup> Per California Department of Education (CDE), Heritage Schools are self-certified in terms of background checks, health and safety training, etc. CDE requires that these documents be kept by the director of the heritage school and be available upon request. This has been reinforced by Condition of Approval No. 6.

In addition, the State requires heritage schools to register annually online with the California Department of Education in order to exempt them from licensure by the State Department of Social Services as a child day care center. The Academic Center of Volitation's 2012 registration can be verified via CDE's website: <http://www3.cde.ca.gov/hsrs/search.aspx> , and a copy is attached as Exhibit D.

## SITE DESCRIPTION

Academic Center of Volitation (ACV), a heritage school, is proposed to be located within an office and light- industrial development. The subject building is located in a seven-lot Planned Unit Development to the west of the Hopyard Road and Stoneridge Drive intersection. Surrounding land uses include office and light industrial uses to the north, east, west, and the Clorox campus across Franklin Drive to the south. Residential uses are located a minimum of 1,800 feet to the south of the subject property. Please refer to the vicinity map below.



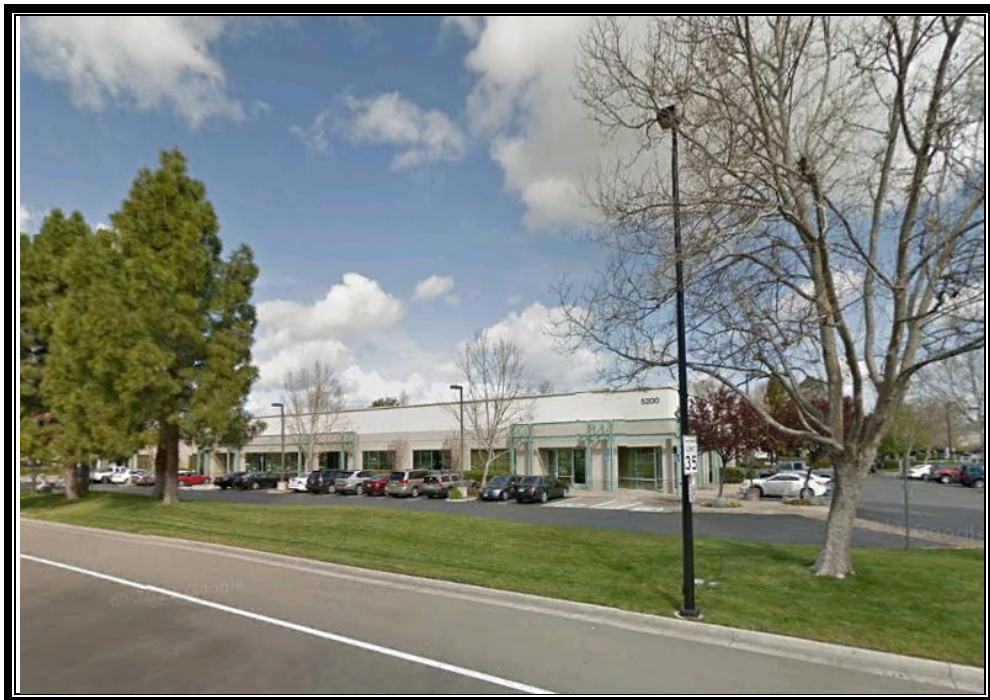
Vicinity Map

The subject site is an approximately 2.68-acre parcel at the northwest corner of Franklin Drive and Johnson Drive. The site has 136 on-site parking spaces (include five parking stalls marked for persons with disabilities) and contains a one-story, multiple-tenant building. The building is approximately 34,200 square feet in area. Currently, there are three other tenants in the building; all are office uses.

The proposed heritage school would occupy an existing tenant suite, approximately 5,569 square feet in floor area. The main pedestrian entrance to the building faces Franklin Drive. Two driveways, one off of Franklin Drive and another off of Johnson Drive, provide access to the site. Parking surrounds the building on all sides. Please see the site aerial map below.



Site Plan



Subject Building



## PROJECT DESCRIPTION

### Cultural and Academic Programs:

ACV provides a variety of self-described enrichment and academic programs in Chinese language, English writing, math, Gifted & Talented Education (GATE) program preparation, and Standardized Testing and Reporting (STAR) testing preparation. The details of some of the programs, as described by ACV, are as follows:

*“Primary Chinese I:* This course introduces the concept that knowing 100 basic Chinese characters can help learners to conquer these learning difficulties. Even though there are about 3000 frequently used characters, children need only learn 100 basic characters at first. After which the E-pen software accompanying this series of textbooks can be used to assist children in typing on the computer. In this way, learning Chinese will not be so hard anymore.

*Math Olympiad:* This course provides small classes for 7-10 years old students who like math and willing to take challenge. We will teach them various problem solving strategies and develop their critical thinking skills. By applying learned strategies to Math Olympiad problems, we hope to develop their mathematical flexibility in solving problems as well as a love of Math.

*Writing Class:* Our writing courses cover every aspect of entry level writing, from how to get started all the way to getting your writing published. It's fit for every skill level of writer and our professional instructors are dedicated to helping students achieve student's writing goals.

*GATE Prep:* This course provides practice tests for the gifted program entry exams that offer similar questions and formats to the actual test. These practice tests are invaluable tools for your child to score their best - and get into the best programs.

*Test Prep:* This course is custom-designed to California's reading, writing, and math tests prep and help students to improve reading, writing, and math skills for each grade level. Students will get hundreds of practice questions modeled after the test, on-the-spot strategies for tackling different types of questions, and three practice tests and a final test for measuring success in each subject.”

### Student Enrollment and Class Size

As proposed, ACV would have an enrollment of 80 students and there would be up to 40 students on site at one time. Currently, there are 56 students enrolled in ACV and there are a maximum of 23 students in one session. Based on their current practice in Dublin, 1<sup>st</sup> through 6<sup>th</sup> graders are dropped off at the facility to attend Chinese classes at 3:40 p.m. Then, after a 15-minute break, the same students attend their grade-level academic sessions. After the classes, they will remain on site for homework until being picked-up at 6 p.m. The following table shows the proposed enrollment and schedule:

Class Session	Class Time* (p.m.)	Grades	Current Number of Students	Proposed Maximum Number of Students
Session 1	1:40-2:25	K	5	40
Session 2	2:40-3:25	K	5	40
Session 3	3:40-4:25	1 <sup>st</sup> through 6 <sup>th</sup>	23	40
Session 4	4:40-5:40			
	5:40-6:00	Homework		
	6:00-6:15	Pick up		

\* A 15-minute break is provided between sessions.

ACV does not provide transportation services. All students would be picked up/dropped off by parents/guardians. A sample of the student's sign-in/out form is included in Exhibit B.<sup>2</sup>

#### Hours of Operation:

As students enrolled in the proposed heritage school are also full-time students at a public or private school, the proposed heritage school would be open from 1:40 p.m. to 6:00 p.m. Monday through Friday for the academic programs. Administrative staff hours would be from 8:00 a.m. until 7:00 p.m., Monday through Friday. ACV would operate the same schedule during school breaks (i.e. winter, summer, and spring breaks). The facility will be closed on weekends. Please refer to the specific class schedules in Exhibit B.

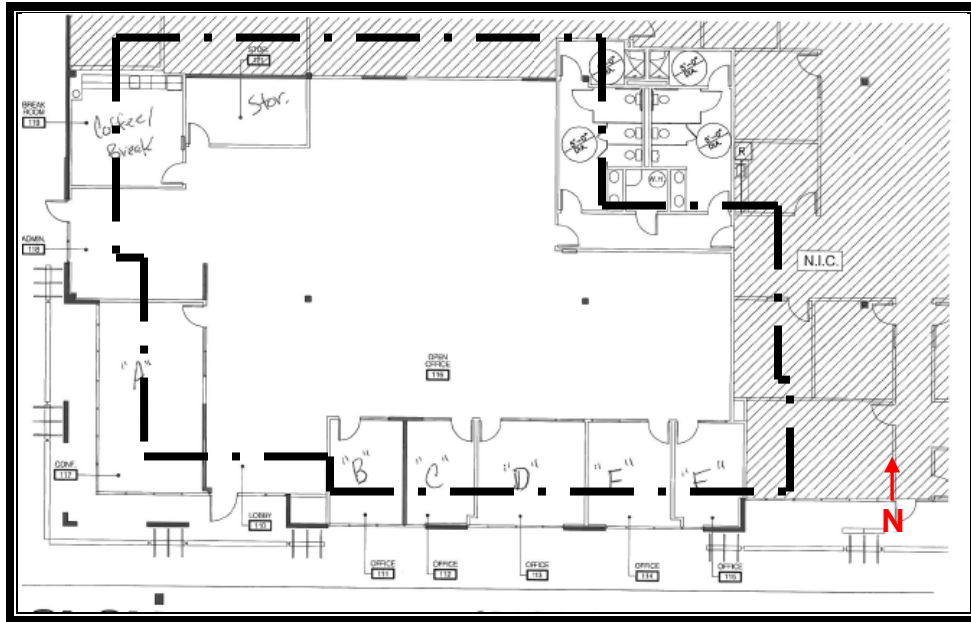
There would be up to eight teachers/administrative staff on site during business hours.

#### Facility Layout:

The proposed heritage school would have six classrooms (labeled A-F), one coffee break room, and storage area. The open area in the middle of the tenant space would be used by students to mingle before and between classes. This area may be used as additional instruction area when the facility reaches its student capacity per session. Common restrooms are located outside the tenant spaces.<sup>3</sup>

<sup>2</sup> Condition of Approval No. 8 also requires a parent or guardian to sign-in/out each child aged 12 years and younger.

<sup>3</sup> Condition of Approval No. 9 requires staff to escort children aged 12 and younger to and from the bathroom.



Floor Plan

## **ANALYSIS**

Conditional uses are uses which, by their nature, require special consideration so that they may be located properly with respect to the objectives of the Municipal Code and their effects on surrounding properties. In order to achieve these purposes, the Planning Commission is empowered to approve, conditionally approve, or deny applications for use permits.

## Land Use

The subject site has a General Plan designation of Business Park (Industrial, Commercial, and Office) and is zoned Planned Unit Development – Industrial/Commercial–Office (PUD-I/C-O) District. In order to allow heritage schools as a conditionally permitted use, the applicant filed for a minor modification to the PUD in conjunction with this conditional use permit. When the approval of the PUD minor modification becomes effective, the proposed use would be consistent with the PUD regulations.

When the proposed use is educational, instructional, recreational, or daycare, staff evaluates how that use integrates into surrounding uses. In staff's evaluation, this use is compatible with the surrounding uses. In the past, the Planning Commission has granted Conditional Use Permits for educational facilities in business parks (i.e., Hacienda Business Park). To staff's knowledge, those uses did not create any safety concerns or impacts within those areas or to adjacent uses.

The proposed use would be located in a building where the adjacent tenants are primarily office uses. Given the nature of the academic facility, it is unlikely that the operation of the proposed use would adversely impact the surrounding businesses. The proposed heritage school would require the younger students be signed in and out by parents. It is unlikely that the students would congregate in the common hallway and/or outside the building between sessions and impact the operation of the other businesses within the same building. Staff believes that the subject location is appropriate and does not expect that the proposed use would create adverse impacts on the surrounding businesses.

### Parking

There are a total of 136 parking spaces located on the subject property for the one-story multiple-tenant building of approximately 34,200 square feet. The subject site yields a parking ratio of one space per 251 square feet of building area. The proposed heritage school would occupy an existing tenant space of approximately 5,569 square feet; thus, 22 parking spaces would be theoretically allocated to the subject tenant space. However, there are no assigned parking spaces in this development.

Per section 18.88.030 (E) (*Schedule of off-street parking space requirements*) of the Pleasanton Municipal Code (PMC), this type of use would require one parking space for each employee, including teachers and administrators, and one space for each four students in Grade 10 or above. The student parking requirement, one space for each four students, is not applicable since the children are below Grade 10. With eight teachers and administrative staff on site, eight parking spaces would be required for the proposed use. The "allocated" 22 parking spaces would meet the eight parking space demand from teachers and administrative staff.

Staff notes that section 18.88.030 of the PMC does not address parking demand during drop-off/pick-up times, which would be the most impacted time from a parking standpoint. Staff believes that there would be adequate parking for drop-off as parents are parked in the spaces for only a short period of time while they walk the child into and out of the building. Staff does not anticipate parking shortage during pickup time at 6:00 p.m. as other tenants in the same building have already left. Furthermore, the demand for parking would also be reduced as some of the students are expected to carpool to and from the facility. Therefore, staff believes that the parking should be sufficient to accommodate the proposed use. However, should parking problems occur, staff has included a condition of approval which allows the Director of Community Development to refer the use permit back to the Planning Commission for possible mitigation measures (Condition No. 15).

### Traffic and Circulation

Located at the northwest corner of Franklin Drive and Johnson Drive, the subject site has two entrances to the site, one from each street. The corner location provides convenient vehicle access to enter/exit the site.



The City Traffic Engineer has reviewed the proposal and determined that the anticipated traffic from the heritage school would not require a traffic study to evaluate traffic and circulation. The Traffic Engineer has further determined that as the operation of the heritage school is outside the PM traffic peak hours, no traffic fees would be required.

### Noise

The Pleasanton Municipal Code states that a proposed conditional use must be in accord with the objectives of the Zoning Ordinance. One of those objectives is to “promote the stability of existing land uses that conform with the General Plan and to protect them from inharmonious influences and harmful intrusions.” As proposed, the instructional programs would be held indoors with doors and windows closed during business hours. No music would be played inside the tenant space. As such, staff believes that noise from inside the facility would not negatively impact the adjacent tenants or surrounding uses. A recommended condition of approval (Condition No.4) requires that the exterior windows and doors remain closed when not being used for ingress/egress purposes and that the applicant inform all students not to loiter or make loud noises outside the building before or after classes. Staff has included a condition (Condition No.5) that the applicant inform patrons that the location is in a business park and is subject to noise, odors, etc.

### Tenant Improvements

According to building permit records, a permit has been issued for tenant improvements of the subject tenant space to be used as “spec office”. Building and Safety Division does not have additional requirements in terms of tenant improvements prior to this tenant space being used for a heritage school.

## **FINDINGS**

The Planning Commission must make the following findings prior to granting the use permit:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinances and the purpose of the district in which the site is located.**

Objectives of the zoning ordinance include: fostering a harmonious, convenient, workable relationship among land uses; protecting existing land use from inharmonious influences and harmful intrusions; and insuring that public and private lands ultimately are used for the purposes which are most appropriate and beneficial to the City as a whole. As conditioned, staff feels the proposed heritage school would be consistent with these objectives. There are tutoring facilities and schools in business parks that have been found to be compatible with the surrounding businesses. Staff believes that the proposed heritage school should also be compatible.

The subject site is zoned PUD-I/C-O District and generally has the characteristics of the City's I-P (Industrial Park) District. One purpose of the Industrial Park District is to provide locations for uses that can operate in proximity to light manufacturing, commercial, and personal services uses with minimum adverse impact. Staff believes the proposed use, as conditioned, will be compatible with the adjacent industrial park and office uses. The applicant will also be required to mitigate any future nuisances which may occur as a result of the proposed use. In summary, staff believes this finding can be made.

**B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.**

Staff believes that there would be adequate parking on site to meet project demand. The proposed/required break-time between class sessions would minimize parking congestion during drop-off and pick-up times which will help alleviate parking and traffic concerns. In addition, all activities would be held indoors. It is unlikely that noise from classroom instruction would be disruptive to the surrounding uses. Further, the proposed conditions of approval will ensure that the facility will not operate in a manner that is detrimental to the public health, safety, or welfare or be materially injurious to the properties or improvements in the vicinity. Therefore, staff believes that this finding may be made.

**C. That the proposed conditional use will comply with each of the applicable provisions of the Municipal Code which apply to Conditional Uses.**

Staff finds that, as conditioned, the proposed use will comply with all provisions and requirements of the City's zoning ordinance and the approved PUD development. As with any conditional use permit, the use permit may be revoked if the conditions are not met. Therefore, the proposed use will comply with the provisions of the Zoning Ordinance. Staff believes this finding can be made with the proposed conditions of approval.

**PUBLIC NOTICE**

Notice of this application was sent to surrounding property owners and tenants within 1,000 feet of the site. Staff has provided the location and noticing maps as Exhibit G for the Commission's reference.

Staff has received an email from Ping Zheng (Exhibit F), indicating that there are enough academic tutoring facilities currently in the surrounding area.

## **ENVIRONMENTAL ASSESSMENT**

This project is categorically exempt from environmental review pursuant to the California Environmental Quality Act Guidelines, Section 15301, Existing Facilities, Class 1. Therefore, no environmental document accompanies this report.

## **CONCLUSION**

Staff believes that the required use permit findings for the project can be met if the project is approved as conditioned. Conditions of approval have been included which will ensure that the safety and general welfare of the surrounding area is maintained. Staff is of the opinion that the proposed heritage school would provide a service to the community and that the proposed location is appropriate.

## **STAFF RECOMMENDATION**

Staff recommends that the Planning Commission approve P12-0054 by taking the following actions:

1. Make the required conditional use findings as described in the staff report; and,
2. Approve P12-0054 subject to the conditions listed in Exhibit A.

Staff Planner: Jenny Soo, Associate Planner, 925.931.5615, [jsoo@cityofpleasantonca.gov](mailto:jsoo@cityofpleasantonca.gov)

## EXHIBIT A

### DRAFT CONDITIONS OF APPROVAL

P12-0054

5200 Franklin Drive, Ste. 110

Academic Center of Volitation (a State-registered heritage school)

#### PROJECT SPECIFIC CONDITIONS

##### Planning Division

1. This Conditional Use Permit shall be null and void unless Case No. PUD-80-16-15M is approved by the City to allow heritage schools as a conditionally permitted use at the subject location.
2. The proposed Academic Center of Volitation (a State-registered heritage school) shall maintain its heritage school registration with California Department of Education during its operation. Failure to maintain the heritage school registration with California Department of Education may result in this application being reviewed by the Director of Community Development for possible future action by the Planning Commission.
3. If additional hours of operation, number of children or staff, or activities beyond what is stated in the applicant's written narrative, dated "Received March 22, 2012", on file with the Planning Division, are desired, prior City review and approval is required. The Director of Community Development may approve the modification or refer the matter to the Planning Commission if judged to be substantial.
4. The exterior windows and doors of the business and the doors to the common hallway shall remain closed when not being used for ingress/egress purposes. The applicant shall inform all students not to loiter or make loud noises outside the suite and building before or after classes.
5. The applicant shall inform all patrons that the facility is located in a business park and may be subject to noise, odors, etc.
6. Prior to an individual working and/or providing services at the facility, said persons shall complete and pass a criminal background check. The applicant shall submit a letter to the Planning Division stating that all persons at the facility have satisfied this condition.
7. Prior to an individual working and/or providing services at the facility, the applicant shall require said persons to undergo and pass first-aid and CPR training. The applicant shall ensure that these certifications are current at all

times. The applicant shall submit a letter to the Planning Division stating that all persons at the facility have satisfied this condition.

8. Children 12 years and younger shall be signed in/out of the subject school by a parent and/or legal guardian.
9. Children 12 years and younger shall be escorted to and from restrooms by school staff.
10. Prior to issuance of a business license, the applicant shall prepare and submit a disaster plan to the Planning Division and shall ensure it is in place for the facility/patrons.
11. At no time shall balloons, banners, pennants, or other attention-getting devices be utilized on the site except as allowed by Section 18.96.060K of the Pleasanton Municipal Code for a grand opening.

## **STANDARD CONDITIONS**

### **Community Development Department**

12. The applicant shall pay all fees to which the use may be subject to prior to issuance of permits. The type and amount of the fees shall be those in effect at the time the permit is issued.
13. To the extent permitted by law, the project applicant shall defend (with counsel reasonable acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

### **Planning Division**

14. The proposed use shall be in substantial conformance to Exhibit B, dated "Received March 22, 2012," on file with the Planning Division, except as modified by these conditions. Minor changes to the plans or operation may be allowed subject to the approval of the Director of Community Development.
15. If the operation of this use results in conflicts pertaining to parking, noise, traffic/circulation, or other factors, at the discretion of the Director of Community Development, this conditional use permit may be submitted to the Planning Commission for their subsequent review at a public hearing.

16. This conditional use permit approval will lapse one year from the effective date of approval unless Academic Center of Volitation receives a business license within that time.
17. Academic Center of Volitation shall maintain the area surrounding the building in a clean and orderly manner at all times.
18. This approval does not include approval of any signage for Academic Center of Volitation. If signs are desired, Academic Center of Volitation shall submit a sign proposal to the City for review and approval prior to sign installation.
19. Changes to the exterior of the building shall not be made without prior approval from the Planning Division.

## **CODE REQUIREMENTS**

*Applicants/Developers are responsible for complying with all applicable Federal, State, and City codes and regulations regardless of whether or not the requirements are part of this list. The following items are provided for the purpose of highlighting key requirements.*

### **Fire**

20. Portable fire extinguisher(s) shall be provided and installed in accordance with the 2007 California Fire Code and Fire Code Standard #10-1. Minimum approved size for all portable fire extinguishers shall be 2A 10B:C.

{end}