

DATE: December 12, 2019

TO: City Council
City Manager
Community Development Director

FROM: Steve Marshall, Zoning Administrator

SUBJECT: Zoning Administrator's Hearing of December 12, 2019

NEW ITEM:

**BIOTETHER SCIENCES, INC., RESEARCH AND DEVELOPMENT
CEQA CATEGORICALLY EXEMPT: SECTION 15301
P2019-091; USE PERMIT APN 140-341-16;
100 PROFESSIONAL CENTER DRIVE, SUITE 311 (BLDG. 300)**

BioTether Sciences, Inc. ("Applicant"), is requesting a use permit to allow for their biotechnological, chemical, and pharmaceutical research and development (R&D) company to operate within an existing 1,755 square foot suite at 100 Professional Center Drive, Suite 311 (Bldg. 300). There are no proposed exterior or interior modifications proposed as a part of this use permit application.

PRESENT

Dr. Erik Foehr, Applicant
Robert N. Foehr, Property Owner
Vivek Damodaran, Planner II

PUBLIC HEARING

Zoning Administrator Marshall opened the public hearing.

Zoning Administrator Marshall confirmed that Dr. Foehr had received the staff report and reviewed the conditions of approval.

Dr. Foehr confirmed receiving the staff report and conveyed to staff that he did not have any concerns regarding the recommended conditions of approval.

Zoning Administrator Marshall advised Dr. Foehr that staff had received an updated memo from the Novato Fire Protection District (NFPD) with amended conditions of approval. Dr. Foehr reviewed the conditions and acknowledged that he had no concerns with the revisions made by NFPD.

Zoning Administrator Marshall opened the public comment period.

No members of the public attended the hearing and the public comment period was closed.

Zoning Administrator Marshall noted staff had not received any written correspondence in response to the application.

Zoning Administrator Marshall stated he was approving the use permit based on the findings in the staff report and applying the recommended conditions of approval with the amendments submitted by NFPD.

Zoning Administrator Marshall noted there is an appeal period of ten (10) calendar days.

The public hearing was adjourned.

FINDINGS

1. CEQA Finding

The Applicant's request for a use permit allowing BioTether Sciences, Inc., a biotechnological, chemical, and pharmaceutical research and development company, to operate within an existing building suite is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) and the City of Novato Environmental Review Guidelines pursuant to CEQA Guidelines Section 15301, Existing Facilities. CEQA Guidelines Section 15301 exempts projects consisting of the operation of private facilities that involve negligible or no expansion. Biotechnological, chemical, and pharmaceutical research and development is an allowed use at 100 Professional Center Drive, Suite 311 (Bldg. 300) with approval of a use permit. This proposal involves a change in use of an existing tenant space and does not require any building expansion.

2. Use Permit Findings

In accordance with 19.42.050.E of the Novato Municipal Code, the Novato Zoning Administrator made the following findings as supported by the facts discussed in the staff report.

- a. The proposed use is consistent with the General Plan and any applicable specific plan;
- b. The proposed use is allowed with a use permit within the applicable zoning district and complies with all applicable provisions of this Zoning Ordinance and any relevant Master Plan and/or Precise Development Plan;
- c. The establishment, maintenance or operation of the use will not, under the circumstances of the particular case, be detrimental to the health, safety, or general welfare of the persons residing or working in the neighborhood of the proposed use;

- d. The use, as described and conditionally approved, will not be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City; and
- e. The location, size, design, and operating characteristics of the proposed use are compatible with the existing and future land uses in the vicinity.

ACTION TAKEN

In accordance with Section 19.42.050.E of the Novato Municipal Code, the Zoning Administrator hereby grants a use permit to BioTether Sciences, Inc., for the use of Suite 311 at 100 Professional Center Drive (APN 140-341-16) as a location for a biotechnological, chemical, and pharmaceutical research and development subject to the conditions of approval specified below, as modified to incorporate revised conditions of approval requested by the Novato Fire Protection District in its memo dated December 10, 2019.

CONDITIONS OF APPROVAL

The following conditions of approval shall be met to the satisfaction of the *Zoning Administrator*:

1. This Use Permit approval shall expire two (2) years from the date of approval unless the activity authorized therein has commenced operation.
2. The approval granted herein shall not become effective until all appropriate fees billed by the City of Novato to the application account are paid in full in accordance with the City's Cost Base Fee System. Failure to pay said fees may result in the City withholding issuance of related building permits, certificate of occupancy, and recordation of final maps or other entitlements.
3. A Sign Permit shall be obtained through the Planning Division prior to the installation of any exterior building signage, subject to the review and approval of the Community Development Director.
4. Any hazardous waste associated with this business shall be appropriately stored and disposed of in accordance with any applicable regulatory agency standards.

The following conditions of approval shall be met to the satisfaction of the *Novato Building Division*:

5. Any tenant improvements are subject to a building permit. Tenant improvements will be reviewed to ensure that the proposed occupancy is consistent for the building construction type, and the adjacent occupancies.

The following conditions of approval shall be met to the satisfaction of the *North Marin Water District (NMWD)*:

6. The project must conform to NMWD Regulation 15 (Mandatory Water Conservation Measures). Occupancy approval shall not be granted until compliance with water conservation measures, as applicable can be verified. For the full scope of the required water conservation measures for both indoor fixtures/appliances and landscaping refer to NMWD Regulation 15, Section (e.) and (f.) at www.nmwd.com Please contact the NMWD Water Conservation

Coordinator at (415) 761-8933 if you have any questions regarding clarification of the required water conservation measures or plans submittal requirements.

7. An above-ground, reduced pressure principle (RPP) backflow prevention device at the meter is required in accordance with NMWD Regulation 6 and the California Department of Health Regulations (Title 17). An inspection report (device testing) must be completed and returned to the NMWD prior to the commencement of business activities. Please be advised that the device is required to be tested annually, including temporary shut off to the water service to complete the test. Please contact the NMWD Cross Connection Control Technician at (415) 761-8914 if you have questions about these requirements.

The following conditions of approval shall be met to the satisfaction of the *Novato Sanitary District (NSD)*. Please contact the NSD at (415) 892-1694 if you have questions about these requirements:

8. Any modifications to the structure's plumbing will require a submittal to the NSD for possible additional sewer connection fees.
9. The project will need to apply for a Non-Domestic Use Permit due to the proposed conversion of use.

The following conditions of approval shall be met to the satisfaction of the *Novato Fire Protection District (NFPD)*. Please contact the NFPD at (415) 878-2690 if you have questions about these requirements:

10. Hazardous Materials Management Plan and Chemical Inventory Statement shall be submitted to the Fire Marshal for review. This review shall be for the purpose of determining code requirements pursuant to the California Fire Code.
11. Portable fire extinguishers shall be installed and maintained in accordance with California Fire Code Chapter 9.
12. Provide Code Analysis including but not limited to: Occupancy classification, Height, Area, Type of Construction, Area or Occupancy Separations, Additional Fire Protection, Storage, Use and Distribution of any Hazardous Materials. Analysis to be based on the currently adopted California Building Code (CBC) and California Fire Code (CFC) in conformance with local ordinance and standards and nationally recognized standards for fire protection. Additional comments and conditions will be provided by the Fire District based on this analysis.
13. "No parking fire lane" curbs and signs shall be installed in accordance with NFPD Standard 204, as required by the Fire Marshal. Fire lanes shall be updated as necessary.
14. "Knox" key access shall be installed at the premises conforming to NFPD Standard 202.

Indemnity and Time Limitations

- a. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, attorneys and employees from any claim, action, or proceeding brought against the City or its agents, officers, attorneys, or employees, to attack set aside, void or annul the City's decision to approve the application and associated environmental determination at issue herein. This indemnification shall include damages or fees awarded against the City, if any, cost of suit,

attorney's fees, and other costs and expenses incurred in connection with such action whether incurred by the applicant, the City, and/or parties initiating or bringing such action.

- b. The applicant shall defend, indemnify and hold harmless the City, its agents, officers, employees, and attorneys for all costs incurred in additional investigation (such as the environmental determination at issue herein or any subsequently required Environmental Document), if made necessary by said legal action and if the applicant desires to pursue securing such approvals, after initiation of such litigation, which are conditioned on the approval of such documents, in a form and under conditions approved by the City Attorney.
- c. The applicant indemnifies the City for all the City's costs, fees, and damages which the City incurs in enforcing the above indemnification provisions.
- d. Unless a shorter period applies, the time within which judicial review of this decision must be sought is governed by California Code of Civil Procedure, Section 1094.6.
- e. The Conditions of Project Approval set forth herein include certain fees, dedication requirements, reservation requirements, and other exactions. Pursuant to Government Code Section 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 applicant is hereby further notified that the 90-day approval period in which you may protest these fees, dedications, reservations, and other exactions, pursuant to Government Code Section 66020(a), has begun. If the applicant fails to file a protest within this 90-day period complying with all of the requirements of Section 66020, the applicant will be legally barred from later challenging such exactions.

FURTHER ACTION

No further action on the application will be taken unless an appeal is filed in writing within ten (10) calendar days, along with the required filing fee.