Chapter 17.102

GENERAL REGULATIONS APPLICABLE TO ALL OR SEVERAL ZONES

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~~**17.102.030 Special regulations for designated landmarks.**~~

~~A. Designation. In any zone, the City Council may designate as a landmark any facility, portion thereof, or group of facilities which has special character, interest, or value of any of the types referred to in 17.07.030P. The designating ordinance for each landmark shall include a description of the characteristics of the landmark which justify its designation and a clear description of the particular features that should be preserved. Each ordinance shall also include the location and boundaries of a landmark site, which shall be the lot, or other appropriate immediate setting, containing the landmark. Designation of each landmark and landmark site shall be pursuant to the rezoning and law change procedure in Chapter 17.144.~~

~~B. Design Review for Construction, Alteration, Demolition, or Removal. Within any designated landmark site, no building, Sign, or other facility shall be constructed or established, or altered or painted a new color in such a manner as to affect exterior appearance and no structure, portion thereof, or other landmark shall be demolished or removed, unless such proposal shall have been approved pursuant to the design review procedure in Chapter 17.136 and the applicable provisions of this section. Furthermore, for a publicly owned landmark, the designating ordinance may require such approval of proposed changes in major interior architectural features. However, in any case, after notice to the Director of City Planning, demolition or removal shall be permitted without such approval upon a determination by the Inspectional Services Department, the Housing Conservation Division, their respective appeals boards, or the City Council that immediate demolition is necessary to protect the public health or safety, or after expiration of the periods of postponement referred to in subsection D of this section.~~

~~C. Design Review Criteria. Design review approval pursuant to subsection B of this section may be granted only upon determination that the proposal conforms to the general design review criteria set forth in the design review procedure in Chapter 17.136 and to the criteria set forth in subdivisions 1, 2 and 3 or to one or both of the criteria set forth in subdivision 3:~~

~~1. That the proposal will not adversely affect the exterior features of the designated landmark nor, when subject to control as specified in the designating ordinance for a publicly owned landmark, its major interior architectural features;~~

~~2. That the proposal will not adversely affect the special character, interest, or value of the landmark and its site, as viewed both in themselves and in their setting;~~

~~3. That the proposal conforms with the Design Guidelines for Landmarks and Preservation Districts as adopted by the City Planning Commission and, as applicable for certain federally related projects, with the Secretary of the Interior's Standards for the Treatment of Historic Properties;~~

~~4. If the proposal does not conform to the criteria set forth in subdivisions 1, 2 and 3:~~

~~a. That the designated landmark or portion thereof is in such condition that it is not architecturally feasible to preserve or restore it, or~~

~~b. That, considering the economic feasibility of alternatives to the proposal, and balancing the interest of the public in protecting the designated landmark or portion thereof, and the interest of the owner of the landmark site in the utilization thereof, approval is required by considerations of equity.~~

~~D. Postponement of Demolition or Removal. If an application for approval of demolition or removal of a facility, pursuant to subsections B and C of this section, is denied, the issuance of a permit for demolition or removal shall be deferred for a period of one hundred twenty (120) days, said period to commence upon the initial denial by the reviewing officer or body. However, if demolition or removal of the facility has also been postponed pursuant to Section 17.102.060, the initial period of postponement under this subsection D shall be reduced by the length of the period imposed pursuant to Section 17.102.060. During the period of postponement, the Director of City Planning or the City Planning Commission, with the advice and assistance of the Landmarks Preservation Advisory Board, shall explore all means by which, with the agreement of the owner or through eminent domain, the affected facility may be preserved or restored. The reviewing officer or body from whose decision the denial of the application became final may, after holding a public hearing, extend said period for not more than one hundred twenty (120) additional days; provided, however, that the decision to so extend said period shall be made not earlier than ninety (90) days nor later than thirty (30) days prior to the expiration of the initial one hundred twenty (120) day period. Notice of the hearing shall be given by posting notices thereof within three hundred (300) feet of the property involved. Notice of the hearing shall also be given by mail or delivery to the applicant, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than ten days prior to the date set for the hearing. Such extension shall be made only upon evidence that substantial progress has been made toward securing the preservation or restoration of the facility. In the event that the applicant shall have failed to exhaust all appeals under Sections 17.136.080 and 17.136.090 from the denial of the application, the decision to extend said period shall be appealable under the provisions of Sections 17.136.080 and 17.136.090 to those bodies to whom appeal had not been taken from the initial denial of the application.~~

~~E. Duty to Keep in Good Repair. Except as otherwise authorized under subsections B and C of this section, the owner, lessee, or other person in actual charge of each designated landmark shall keep in good repair all of the exterior portions thereof, all of the interior portions thereof when subject to control as specified in the designating ordinance, and all interior portions thereof the maintenance of which is necessary to prevent deterioration and decay of any exterior portion. (Ord. 12513 Attach. A (part), 2003; Ord. 12237 § 4 (part), 2000; prior planning code § 7002)~~

~~17.102.030~~

~~17.102.050 Revocation of unused prior zoning approvals after one year.~~

~~Unless a specific termination date has been prescribed in the granting thereof, all conditional use permits, variances, and other special zoning approvals granted prior to the effective date of the zoning regulations shall become void one year after said effective date unless the privileges granted by such approval have been exercised before the end of such period by the beginning of actual construction or alteration of, or other change in, the authorized facilities or actual commencement of the authorized activities. (Prior planning code § 7004)~~

~~17.102.060 Study list--Postponement of demolition.~~

~~The issuance of a demolition permit for any structure or portion thereof may be postponed by the Director of City Planning for not to exceed sixty (60) days from the date of application for such permit.~~

~~The Director may do so upon determination that the structure or portion thereof is on a study list of facilities under serious study by the Landmarks Preservation Advisory Board, the City Planning Commission, or the Director, for possible landmark designation under Section 17.102.030 or for other appropriate action to preserve it. During the period of postponement the Board, the Commission, or the Director shall explore means for preserving or restoring the structure or portion thereof. However, demolition may not be postponed under this section if, after notice to the Director of City Planning, the Inspectional Services Department, the Housing Conservation Division, their respective appeals boards, or the City Council determines that immediate demolition is necessary to protect the public health or safety. Any determination made by the Director of City Planning under this section may be appealed pursuant to the administrative appeal procedure in Chapter 17.132. (Prior planning code § 7005)~~

17.102.090 Conditional use permit for shared access facilities.

A. Use Permit Required. A shared access facility shall be allowed only upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134.

B. Use Permit Criteria. A conditional use permit under this section may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134 and to all of the following additional use permit criteria:

1. Compliance with Guidelines. Each shared access facility proposal shall be in compliance with the City Planning Commission guidelines for development and evaluation of shared access facilities.

2. Public Safety. The width of a shared access facility shall be adequate to ensure unimpeded emergency and nonemergency ingress and egress at all times. Additionally, the shared access facility shall conform to city standards for roadway layout and design.

3. Aesthetics. A shared access facility shall be designed to provide the environmentally superior alternative to other approaches for the development of the property and shall be designed to be visually compatible with its surroundings, as set forth in the City Planning Commission guidelines; necessary retaining walls shall not be of excessive height and shall not be visibly obtrusive, as such are defined in the City Planning Commission guidelines.

4. On-Going Owner Responsibility. Applicants for a shared access facility ~~, at the time of application to the city,~~shall submit, for approval, an agreement for access facility maintenance, parking restrictions, and landscape maintenance. Upon staff approval, the proposed agreement shall be recorded by the applicant within thirty (30) days with the Alameda County Recorder. In addition, applicants for a shared access facility shall provide documentation of continuing liability insurance coverage. Documentation of insurance coverage shall include the written undertaking of each insurer to give the city thirty (30) days' prior written notice of cancellation, termination, or material change of such insurance coverage.

5. Certification. Prior to construction, applicants for a shared access facility shall retain a California registered professional civil engineer to certify, upon completion, that the access facility was constructed in accordance with the approved plans and construction standards. This requirement may be modified or waived at the discretion of the Director of Public Works, based on the topography or geotechnical considerations. An applicant may also be required to show assurance of performance bonding for grading and other associated improvements. In addition, prior to the installation of landscaping, an applicant shall retain a landscape architect or other qualified individual to certify, upon completion, that landscaping was installed in accordance with the approved landscape plan. (Prior planning code § 7010)

17.102.210 Special regulations applying to Convenience Markets, Fast-Food Restaurants, certain establishments selling alcoholic beverages, providing mechanical or electronic games, and Transport and Warehousing Storage of abandoned, dismantled or inoperable vehicles, machinery, equipment, and of construction, grading, and demolition materials and Scrap Operation.

A. Use Permit Criteria for Convenience Markets, Fast-Food Restaurants, and Establishments Selling Alcoholic Beverages. A conditional use permit for any conditionally permitted Convenience Market, Fast-Food Restaurant, or Alcoholic Beverage Sales Commercial Activity may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134, to any and all applicable use permit criteria set forth in the particular individual zone regulations, and to all of the following use permit criteria:

1. That the proposal will not contribute to undue proliferation of such uses in an area where additional ones would be undesirable, with consideration to be given to the area's function and character, problems of crime and loitering, and traffic problems and capacity;

2. That the proposal will not adversely affect adjacent or nearby churches, temples, or synagogues; public, parochial, or private elementary, junior high, or high schools; public parks or recreation centers; or public or parochial playgrounds;

3. That the proposal will not interfere with the movement of people along an important pedestrian street;

4. That the proposed development will be of an architectural and visual quality and character which harmonizes with, or where appropriate enhances, the surrounding area;

5. That the design will avoid unduly large or obtrusive Signs, bleak unlandscaped parking areas, and an overall garish impression;

6. That adequate litter receptacles will be provided where appropriate;

7. That where the proposed use is in close proximity to residential uses, and especially to bedroom windows, it will be limited in hours of operation, or designed or operated, so as to avoid disruption of residents' sleep between the hours of ten p.m. and seven a.m. The same criteria shall apply to all conditional use permits required by subsection B of this section for sale of alcoholic beverages at full-service restaurants.

8. That proposals for new Fast-Food Restaurants must substantially comply with the provisions of the Oakland City Planning Commission "Fast-Food Restaurant--Guidelines for Development and Evaluation" (OCPD 100-18).

B. Special Restrictions on Establishments Selling Alcoholic Beverages.

1. No Alcoholic Beverage Sales Commercial Activity shall be located closer than one thousand (1,000) feet to any other Alcoholic Beverage Sales Commercial Activity, except:

a. On-sale retail licenses located in the central district (defined as within the boundaries of I-980 and Brush street to the west; 27th Street to the north; Harrison Street/Lake Merritt and the Lake Merritt Channel to the east; and the Estuary to the south); or

b. If the activity is in conjunction with a Full-Service Restaurant; or

c. Establishments with twenty-five (25) or more full time equivalent (FTE) employees and a total floor area of twenty thousand (20,000) square feet or more.

2. Alcoholic Beverage Sales Activities in conjunction with a Full Service Restaurant and located within any of the following areas applied to a depth of two hundred (200) feet on each side of the identified streets and portions of streets, as measured perpendicularly from the right-of-way line thereof: E. 14th Street; Foothill Boulevard; MacArthur Boulevard and West MacArthur Boulevard; that portion of San Pablo Avenue lying north of 16th Street; that portion of Edes Avenue lying between Clara Street and Bergedo Drive, shall require a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134.

3. In addition to the criteria prescribed elsewhere in the zoning regulations, a land use permit for an Alcoholic Beverage Sales Activity located within an Alcoholic Beverage Sales license

overconcentrated area shall be granted and a finding of Public Convenience or Necessity made only if the proposal conforms to all of the following three criteria:

a. That a community need for the project is clearly demonstrated. To demonstrate community need, the applicant shall document in writing, specifically how the project would serve an unmet or underserved need or population within the overall Oakland community or the community in which the project is located, and how the proposed project would enhance physical accessibility to needed goods or services that the project would provide, including, but not limited to alcohol; and

b. That the overall project will have a positive influence on the quality of life for the community in which it is located, providing economic benefits that outweigh anticipated negative impacts, and that will not result in a significant increase in calls for police service; and

c. That alcohol sales are typically a part of this type of business in the City of Oakland (for example and not by way of limitation, alcohol sales in a laundromat would not meet this criteria).

4. In addition to the above criteria, projects outside the Central Business District and Hegenberg Corridor shall meet all of the following criteria to make a finding of Public Convenience or Necessity, with the exception of those projects that will result in twenty-five (25) or more full time equivalent (FTE) employees and will result in a total floor area of twenty thousand (20,000) square feet or more.

a. The proposed project is not within one thousand (1,000) feet of another alcohol outlet (except full service restaurants), school, licensed day care center, public park or playground, churches, senior citizen facilities, and licensed alcohol or drug treatment facilities; and

b. Police department calls for service within the "beat" where the project is located do not exceed by twenty (20) percent, the average of calls for police service in police beats citywide during the preceding twelve (12) months.

C. Special Restrictions on Provision of Mechanical or Electronic Games in Certain Cases. The following regulations shall apply to the provision of pinball machines, video game devices, or other mechanical or electronic games, as defined in the Oakland Municipal Code, within any kind of place of business where the games can be played or operated by the public or by customers; provided, however, that these regulations shall not apply to the provision of a total of fewer than three mechanical or electronic games in any single place of business, except where the games provide the main or primary source of income for the proprietor; and further provided that these regulations shall not apply to the provision of any number of such games in any pool or billiard room or bowling alley for which a permit is required pursuant to Chapter 5.02 of the municipal code and from which persons under eighteen (18) are barred at all times by the owner or operator, nor in any premises which are licensed by the State Department of Alcoholic Beverage Control for on-sale consumption of alcoholic beverages and which do not lawfully allow minors:

1. It shall not be located in any residential zone nor in the M-10, S-1, S-2, or S-3 zone.

2. It is not permitted except upon the granting of a conditional use permit in any commercial zone other than the C-60 zone.

3. It shall not be located:

a. Within three hundred (300) feet from any lot in a residential zone; nor

b. Within one thousand (1,000) feet from the nearest regular entrance to or exit from any public playground or public, parochial, or private elementary, junior high, or high school.

These distances shall be measured horizontally in the most direct pedestrian route along or across any street or streets, alleys, or paths, or private ways described in Section 17.106.020, leading to the closest regular entrance to the actual space devoted to said games.

D. Special Restrictions Applying to Fast-Food Restaurants.

1. No Fast-Food Restaurant Commercial Activity shall be located within a one thousand (1,000) foot radius of an existing or approved Fast-Food Restaurant, as measured from the center of the front property line of the proposed site, except in the central business district (defined as within the boundaries of I-980 and Brush Street to the west; 27th Street to the North; Harrison Street/Lake Merritt

and the Lake Merritt Channel to the east; and the Estuary to the south), within the main building of Shopping Center Facilities, and in the C-36 boulevard service commercial zone.

2. Fast-Food Restaurants with Drive-Through Facilities shall not be located within five hundred (500) feet of a public or private elementary school, park, or playground, measured perpendicularly from the street right-of-way.

3. Access. Ingress and egress to Fast-Food Facilities shall be limited to commercial arterial streets rather than residential streets. No direct access shall be provided to adjacent residential streets which are less than thirty-two (32) feet in pavement width. Exceptions to either of the requirements may be obtained where the City Traffic Engineer determines that compliance would deteriorate local circulation or jeopardize the public safety. Any such determination shall be stated in writing and shall be supported with findings. Driveway locations and widths and entrances and exits to Fast-Food Facilities shall be subject to the approval of the City Traffic Engineer.

4. Trash and Litter. Disposable containers, wrappers and napkins utilized by Fast-Food Restaurants shall be imprinted with the restaurant name or logo.

~~5. Special Requirements Regarding Permit Revocation for Fast-Food Restaurants. See Section 17.134.100.~~

5~~6~~. Vacated/Abandoned Fast-Food Facilities. The project sponsor of a proposed Fast-Food Facility shall be required to obtain a performance bond, or other security acceptable to the City Attorney, to cover the cost of securing and maintaining the facility and site if it is abandoned or vacated within a prescribed high-risk period. As used in this code, the words "abandoned" or "vacated" shall mean a facility that has not been operational for a period of thirty (30) consecutive days, except where nonoperation is the result of maintenance or renovation activity pursuant to valid city permits. The defined period of coverage is four years following the obtaining of an occupancy permit. The bond may be renewed annually, and proof of renewal shall be forwarded to the Director of City Planning. The bond amount shall be determined by the city's Risk Manager and shall be adequate to defray expenses associated with the requirements outlined below. Monitoring and enforcement of the requirements set forth in this section shall be the responsibility of the Housing Manager of the Department of Housing Conservation, pursuant to Chapter 8.24 of the Oakland Municipal Code and those sections of the Oakland Housing Code which are applicable.

If a Fast-Food Facility has been vacated or abandoned for more than thirty (30) consecutive days, the project sponsor shall be required to comply with the following requirements, pursuant to the relevant cited city, county and state codes:

a. Enclose the property with a security fence and secure the facility;

b. Post signs indicating that vehicular parking and storage are prohibited on the site (10.16.070 O.T.C. and 22658 C.V.C), and that violators will be cited, and vehicles towed at the owner's expense, and that it is unlawful to litter or dump waste on the site (Sections 374b.5 C.P.C. and 374b C.P.C.). All signs shall conform to the limitations on signs for the specific zone and shall be weatherproof and of appropriate size and standard design for the particular function;

c. Install and maintain security lighting as appropriate and required by the Oakland Police Department;

d. Keep the site free of handbills, posters and graffiti and clear of litter and debris pursuant to Section 8.38.160 of the O.M.C.;

e. Maintain existing landscaping and keep the site free of overgrown vegetation.

E. Special Restrictions on Transport and Warehousing storage of abandoned, dismantled or inoperable vehicles, machinery, equipment and of construction, grading and demolition materials, and Scrap Operation (these provisions would not apply to the storage or parking of operable recreational vehicles, operable automobiles, public parking facilities, or parking for active establishments, e.g., auto dealerships).

(Ord. 12241 § 3 (part), 2000; Ord. 12224 § 5, 2000; Ord. 11958 § 9, 1996; amended during 1997 codification; Ord. 11831 §§ 3, 4, 1995; prior planning code § 7023)

17.102.335 Standards for Sidewalk Cafes.

A. Procedures for Construction of Sidewalk Cafe Facilities.

1. Not withstanding any design review requirement of the particular zone, Sidewalk Cafes that have a maximum of five tables and no more than fifteen (15) chairs and/or will not have any permanent structures in the public right of way, are allowed by right subject to the standards required in subsection B of this section.

2. Sidewalk Cafes that have more than five tables/fifteen (15) chairs and/or have a permanent structure in the public right of way are subject to small project design review in Section 17.136.030. ~~020.~~

B. Standards for Sidewalk Cafes.

1. Sidewalk Cafes shall not encroach upon any public right-of-way unless a minimum of six and one-half feet of unobstructed improved sidewalk remains available for pedestrian purposes. The minimum distance shall be measured from the portion of the Sidewalk Cafe encroachment which is nearest to any obstruction within the sidewalk area. For purposes of the minimum clear path, parking meters, traffic signs, trees and all similar obstacles shall constitute obstruction.

2. Operators/owners of Sidewalk Cafes shall obtain an encroachment permit from the city's Building Services Division, and shall comply with all requirements imposed by other affected departments. The encroachment permit shall include language that a waste receptacle be placed outside, all garbage/litter associated with Sidewalk Cafes must be removed within twenty-four (24) hours, and a requirement to obtain liability insurance. The city shall be named as an additional insured and the amount of the insurance shall be determined by the city's Risk Manager.

3. The operators/owners of Sidewalk Cafes shall defend, indemnify, and hold harmless the City of Oakland its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the City Planning Department, Planning Commission, or City Council. The city shall promptly notify the applicant of any claim, action or proceeding and the city shall cooperate fully in such defense. The city may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding.

4. The operator/owners of Sidewalk Cafes shall continually bus tables and provide a final cleanup at the end of the business day that will include litter pickup one hundred (100) feet in each direction from the site.

(Ord. 12224 § 6, 2000)

17.102.360 Secondary Units.

A. Development Standards. The following regulations shall apply to the construction, establishment, or alteration of Secondary Units wherever permitted or conditionally permitted, as specified in each individual zone:

1. Other Uses on Property. A Secondary Unit shall only be permitted on a lot that contains only one other primary dwelling unit. A Secondary Unit may be approved and constructed at the same time or after the approval and construction of the primary dwelling unit.

2. Sale of Unit. A Secondary Unit shall not be sold separately from the primary dwelling on the same lot.

3. Owner Occupancy. The legal owner shall occupy either the primary dwelling or the Secondary Unit. Prior to issuance of a building permit for a Secondary Unit, the applicant shall record as a deed restriction in the Alameda County Recorder's Office, notice of this requirement, in a form prescribed by the Director of City Planning.

4. Maximum Permitted Floor Area. The floor area of a Secondary Unit shall not exceed nine hundred (900) ~~six hundred fifty (650)~~ square feet or fifty (50) percent of the floor area of the primary dwelling, whichever is less, except that Secondary Units of up to five hundred (500) square feet in floor area are permitted regardless of the size of the primary dwelling. ~~This floor area limitation may be~~

~~exceeded, up to a maximum of one thousand two hundred (1,200) square feet, upon the granting of a conditional use permit, pursuant to the conditional use permit procedure in Chapter 17.134.~~

5. Fire Flow and Water Pressure. A Secondary Unit may be permitted only if the fire flow and water pressure in the adjoining street meets the minimum requirements as determined by the Fire Marshal.

6~~F~~. Emergency Access -- multiple vehicular outlets. A Secondary Unit may be permitted only on a lot which has frontage on a through street, or a dead-end street that has a total length of less than three hundred (300) feet. For the purposes of this subsection, the total length of a dead-end street shall be the distance from the intersection with the nearest through street to the farthest opposite end of the street right-of-way, or private access easement (as defined by Section 16.32.010 of the Oakland Municipal Code) if the private access easement is connected to said dead-end street.

7~~6~~. Emergency Access -- minimum pavement width. A Secondary Unit may be permitted only if all streets connecting the lot to the nearest arterial street (as designated by the City of Oakland General Plan Land Use and Transportation Element) have a minimum pavement width of at least twenty-four (24) feet. The minimum pavement width limitation may be reduced to a minimum of twenty (20) feet, upon the granting of a conditional use permit, pursuant to the criteria in subsection B of this section, and the conditional use permit procedure in Chapter 17.134.

8. Public Sanitary Sewer. A Secondary Unit may be permitted only if it is served by a public sanitary sewer.

9. Architectural Compatibility. The Secondary Unit shall be clearly subordinate to the primary dwelling unit in size and location. Also, the architectural design and materials of a Secondary Unit shall match or be visually compatible with that of the primary dwelling, including the architectural style, siding material, roof shape, roofing material, trim material and design, window types, window trim, and window sill detail.

10. Compliance with Building and Fire Codes. All Secondary Units shall comply with all other code and permit requirements imposed by all other affected departments, including but not limited to fire separation, sound separation, egress, utility access, and the requirement for a building permit.

11. Review procedure. An application for a Secondary Unit of up to five hundred (500) square feet shall be granted ministerial approval as specified in Section 17.136.025 upon confirmation of compliance with all applicable zoning regulations, including but not limited to, all provisions in this Section. The five hundred (500) square-foot floor area threshold for a Secondary Unit may only be exceeded, up to a maximum of nine hundred (900) square feet or fifty (50) percent of the floor area of the primary dwelling, whichever is less, upon the granting of small project design review, pursuant to the small project design review procedure in Section 17.136.030.

~~11. Upon receipt of an application for a secondary unit made pursuant to this section seeking ministerial approval of said application, notice of the application shall be sent to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved. All such notices shall be given not less than ten days prior to the date that the Director of City Planning acts on the application. Failure of any person to receive such notice shall not affect the validity of action taken on the application by City staff.~~

B. Use permit criteria for Secondary Units accessed via narrow streets. A conditional use permit for a Secondary Unit accessed from the nearest arterial street via a street with a minimum pavement width of between twenty (20) and twenty-four (24) feet may only be granted upon determination that the proposal conforms to the general use permit criteria set forth in the general use permit procedure in Chapter 17.134 and to all of the following additional use permit criteria:

1. That there is adequate emergency access to the lot as determined by the Fire Marshall.

2. That the portions of the street that have a pavement width of less than twenty-four (24) feet are not located on a dead-end street.

3. That if on-street parking is permitted on portions of the street that have a pavement width of less than twenty-four (24) feet, that there exist a level and hard surface shoulders with a combined additional width of at least eight (8) feet.

4. That if on-street parking is prohibited on portions of the street that have a pavement width of less than twenty-four (24) feet, that the restricted parking areas are clearly marked with official city installed no-parking signs and/or red curbs, pursuant to the provisions of the Oakland Traffic Code (Title 10 of the Oakland Municipal Code).
(Ord. 12555 § 5, 2003; Ord. 12501 § 73, 2003: Ord. 12199 § 7, 2000)

17.102.390 Parking accommodation requirements for One- and Two-Family Residential Facilities.

The provisions of this section apply to lots containing One-Family Dwelling Residential Facilities, One-Family Dwelling Residential Facilities with Secondary Unit Residential Facilities, and Two-Family Dwelling Residential Facilities. Exceptions to the provisions of this section may be approved pursuant to the regular design review procedure in Chapter 17.136.

A. Required Garage, Carport or Uncovered Parking Location to the Side or Rear of a Residence in Certain Cases. Garages, carports or any uncovered required parking spaces shall be located to the rear or side of any ~~principal~~primary Residential Facility and at a minimum of twenty-five (25) feet from the front lot line if:

1. At least sixty (60) percent of the buildings in the immediate context have garages, carports and uncovered required parking located at a depth of at least twenty-five (25) feet from the front lot line; and

2. On the lot being developed, the difference in elevation of existing grade between the midpoint of the front lot line and the farthest opposite point of the lot depth does not exceed a gradient of twenty (20) percent.

The immediate context shall consist of the five closest lots on each side of the project site plus the ten (10) closest lots on the opposite side of the street (see Illustration I-4b); however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any approval of any required garage, carport, or uncovered parking space. Lots with a front lot line width of less than thirty-five (35) feet are exempt from this subsection if the garage, carport or uncovered parking space dimensions facing the front lot line equal less than fifty (50) percent of the building elevation facing the front lot line.

B. Garage or Carport Recessed from Front of Residence in Certain Cases. (See Illustration I-8a) When an attached or detached garage or carport is not subject to subsection A of this section and is located on lots with a street-to-setback gradient of twenty (20) percent or less and where the face of the ~~principal~~primary Residential Facility, including projections at least eight feet in height and five feet in width, such as covered porches and bay windows, is within twenty-five (25) feet of the front lot line, at least one of the following requirements shall apply:

1. The front of the garage or carport shall be set back a minimum of five feet from such face; or

2. If the garage or carport is located below living space, either:

a. The front of the garage or carport shall be set back at least eighteen (18) inches from the upper level living space; or

b. The garage door shall be recessed at least six inches from the surrounding exterior wall surfaces.

C. Maximum Widths of Garages and Carports. Garages and carports shall have a maximum width of twenty-two (22) feet if the front of the garage or carport is located within thirty (30) feet of a street line and shall have a maximum width of thirty (30) feet if located elsewhere. In addition, all attached garages and carports shall have a maximum width not to exceed fifty (50) percent of the total width of the primary Residential Facility if the front of the garage or carport is located within thirty (30) feet of a street line.

D. Parking Restricted to Garages, Carports, Uncovered Required Parking Spaces or Driveways. Parking on a lot containing ~~principal~~primary Residential Facilities may take place only in

garages, carports, uncovered required parking spaces, or approved driveways. ~~Multiple vehicles parked in driveways shall be parked only in tandem.~~ (Ord. 12376 (part), 2001)

17.102.400 Special design requirements for lots that contain Residential Facilities and no Nonresidential Facilities.

The provisions of this section apply to lots containing Residential Facilities and no Nonresidential Facilities.

A. Limitations on Paving in Street-Fronting Yards. Paved surfaces within required street-fronting yards, and any unimproved rights-of-way of adjacent streets, shall be limited to the following:

1. All lots other than corner lots and through lots: fifty (50) percent maximum paved surface;

2. Corner lots: thirty (30) percent maximum paved surface; and

3. Through lots: twenty-five (25) percent maximum paved surface.

Exceptions: The maximum percentages of paved surfaces specified in this subsection A may be exceeded within unimproved rights-of-way in the following cases upon issuance of a private construction of public improvements (P-job) permit or if undertaken directly by the city or by a private contractor under contract to the city:

a. Roadway construction or widening up to a maximum roadway width of twenty-eight (28) feet;

b. Sidewalk construction or widening up to a maximum sidewalk width of six feet; and

c. Any work pursuant to an approved final map, parcel map or final development plan pursuant to a planned unit development permit.

For purposes of this subsection A, an unimproved right of way is the portion of a street or alley right-of-way that is not paved.

The provisions of this section apply to lots containing Residential Facilities and no Nonresidential Facilities.

B. Screening of Utility Meters. All utility meters shall either be located within a box set within a building, located on a non-street facing elevation, or screened with vegetation.

C. Screening of Trash Containers. All trash containers shall be located in a storage area that is screened from the street and adjacent properties by a wall, fence, or dense landscaping with a minimum height of four feet.

D. Restrictions on exterior security bars and related devices. Exterior security bars and grills are not permitted on windows, doors, or porch enclosures, that are located on a street-facing elevation of ~~principal~~primary Residential Facilities unless the Director of City Planning determines that the proposed bars or grills are consistent with the architectural style of the building. Removal of such bars or grills shall be a condition of the granting of all conditional use permits, variances, design reviews and other special zoning approvals involving changes to the elevation on which the bars or grills are located unless the bars or grills have been shown to be architecturally consistent with the architectural style of the building.

E. Retaining Walls.

1. No retaining wall shall exceed six (6) feet in height, except in the following cases:

a. ~~that on lots with an upslope street-to-setback gradient of twenty (20) percent or more,~~ rRetaining walls flanking driveways that are nineteen (19) feet or less in width on lots with an upslope, street-to-setback gradient of twenty (20) percent or more may exceed six feet in height if both of the following provisos are met:

i. The garage floor is at the highest possible elevation based on the maximum driveway upslopes permitted by Section 17.116.260A; and

~~Either of the following apply:~~

ii. The top of the retaining wall is no higher than necessary to retain the existing grade at the top of the wall.; ~~if maintaining such existing grade would avoid removing one or more protected trees as defined in the tree preservation ordinance (Chapter 12.36 of the Oakland Municipal Code); or~~

~~ii. The finished grade at the top of the wall has a minimum 1:1 upslope that extends away perpendicularly from the wall for a distance of at least ten (10) feet or to a lot line, whichever is less. (See illustration I-8b).~~

b. Retaining walls not flanking driveways may also exceed six feet in height upon the granting of small project design review, pursuant to the small project design review procedure in Section 17.136.030 and if both of the following provisos are met:

i. The top of the retaining wall is no higher than necessary to retain the existing grade at the top of the wall, and

ii. The retaining wall is located behind buildings, other permanent structures, or existing grade in such a manner as to visually screen the wall from adjacent lots, and from the street, alley, or private way providing access to the subject lot. Whenever buildings or other permanent structures on the subject lot block most, but not all, visibility of the retaining wall, dense landscaping shall be installed and maintained to screen the remaining views of the wall from adjacent lots, and from the street, alley, or private way providing access to the subject lot.

2. Multiple retaining walls shall be separated by a distance of at least four feet between the exposed faces of each wall.

3. Retaining walls visible from the street or adjacent lots shall be surfaced with a decorative material, treatment or finish, ~~have architecturally treated surfaces,~~ such as stained or stuccoed ~~decorative~~ concrete, ~~or~~ decorative concrete block, wood, stone or masonry, or other decorative material, treatment or finish approved by the Director of City Planning. ~~if any portion of the wall is visible from the street.~~ For purposes of this section, "visible from the street or adjacent lots" refers to any portion of a ~~the~~ wall that is not located behind buildings, other permanent structures, or existing grade in such a manner as to visually screen the wall from adjacent lots, and from the street, alley, or private way providing access to the subject lot. ~~at a higher level than and within thirty (30) feet of the edge of the pavement of a street, alley or private way described in Section 17.106.020, except for any portions of the wall behind buildings or other structures located between the wall and the edge of the pavement and which block visibility of the wall from the street, alley or private way.~~ (Ord. 12533 § 3 (part), 2003; Ord. 12406 (part), 2002: Ord. 12376 (part), 2001)

Chapter 17.104

GENERAL LIMITATIONS ON SIGNS

Sections:

17.104.020 General limitations on signs--Commercial and industrial zones.
17.104.030 General limitations on signs--S-1, S-2, S-3 and S-15 zones.
17.104.040 Limitations on Signs within one thousand feet of rapid transit routes.
17.104.050 Amortization of Advertising Signs in residential zones.

17.104.020 General limitations on signs--Commercial and industrial zones.

The following limitations shall apply to the specified signs in all commercial and industrial zones, except as otherwise provided herein, and are in addition to the limitations, if any, prescribed for signs in the applicable individual zone regulations and development control maps:

A. Design Review. No business, civic, or residential sign shall be constructed or established, or altered in ~~such a manner as to affect~~ exterior appearance, unless plans for the ~~such~~ proposal ~~shall~~ have been approved to pursuant to the ~~tire~~ design review procedure in Chapter 17.136.

B. Permitted Aggregate Sign Area.

1. C-5, C-10, C-20, C-25, C-27, C-28, C-30, C-3l, C-35, C-40, C-45, C-5l, C-52, C-55 and C-60 Zones. The maximum aggregate area of display surface of all business, civic, and residential signs on any one lot shall be one square foot for each one foot of lot ~~building~~ frontage in the case of an interior lot, or 0.5 square feet for each one foot of lot ~~building~~ frontage in the case of a corner lot. The aggregate shall include only one face of a double-faced sign. ~~In no cases can t~~The total amount of aggregate sign area shall not exceed two hundred (200) square feet on any one property. Exceptions to the total amount of aggregate sign area normally allowed on any one property may be approved pursuant to the regulations in Subsection B(3) below and to the small project design review procedure in Chapter 17.136.

2. M-l0, M-20, M-30 and M-40 Zones. The maximum aggregate area of display surface of all business, civic and residential signs on any one lot shall be one square foot for each one foot of lot frontage in the case of an interior lot, or 0.5 square feet for each one foot of lot frontage in the case of a corner lot. The aggregate shall include only one face of a double-faced sign. ~~In no cases can t~~The total amount of aggregate sign area shall not exceed three hundred (300) square feet on any one property. Exceptions to the total amount of aggregate sign area normally allowed on any one property may be approved pursuant to the regulations in Subsection B(3) below and the small project design review procedure in Chapter 17.136.

3. Exception to Aggregate Sign Area Limits. In cases in which the maximum aggregate sign area for a property is already being utilized by a portion of the existing tenant spaces in a multi-tenant building or complex, the following exception to the maximum aggregate sign area may be approved pursuant to the small project design review procedure in Chapter 17.136:

a. Twenty (20) square feet of sign area for each tenant space in the multi-tenant building or complex without existing signage on site.

C. Maximum Height.

1. Attached Signs. The maximum height of any sign that is attached to a building may not exceed the height of the building wall that it is attached to.

2. Freestanding Signs. The maximum height of any freestanding sign in the C-5, C-10, C-20, C-25, C-27, C-28, C-3l, C-36, C-45, C-51, C-52, C-55, C-60 and M-l0 Zones is ten (10) feet. The maximum height of any -freestanding sign in the C-30, C-35, C-40, M-20, M-30 and M-40 zones is twenty (20) feet.

D. Limitations on Signs within Required Minimum Yards.

1. No business, realty, or development sign shall be located within a required minimum yard.

E. Special Limitations near Boundaries of Residential Zones. (See illustration I-10.) The following special limitations shall apply to the indicated signs within the specified distances from any boundary of a residential zone. For the purposes of this subsection, a Sign shall be deemed to face a zone boundary if the angle between the face of its display surface and said boundary is less than ninety (90) degrees; and a sign shall be considered visible from a zone boundary if it may be seen from any point located along such boundary within the following indicated distances from the sign and at a height equal to or less than that of the sign.

1. Within twenty-five (25) feet from any boundary of a residential zone, no business sign shall face said boundary if it is visible therefrom.

F. Development Signs. In all commercial and industrial zones except the C-60, M-30 and M-40 zones, the maximum aggregate area of display surface of all development signs on any one lot shall be either seventy-five (75) square feet or one square foot for each two feet of street line abutting the lot, whichever is greater. However, a greater area of display surface may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134.

G. Realty Signs. In all commercial and industrial zones except the C-60, M-30, and M-40 zones, the maximum aggregate area of display surface of all Realty Signs on any one lot shall be one square foot for each two feet of street line abutting the lot; provided that such area shall not exceed twenty-five (25) square feet along any consecutive fifty (50) feet of street line; and farther provided that a sign with a display surface of twelve (12) square feet or less shall be permitted for each lot, or for each building or other rentable unit thereon.

H. Signs Within One thousand (1,000) Feet of Rapid Transit Routes. Signs within one thousand (1,000) feet of the centerline of rapid transit routes shall be subject to the applicable limitations set forth in Sections 17.104.040 and 17.114.150.

I. Permitted Projection over Sidewalk. An awning, canopy, marquee, or single sign that is attached perpendicularly to the ~~-~~face of a building may project up to two-thirds (66.7%) ~~seventy-five (75) percent~~ of the distance from the lot line to the curb, but can not extend more than seven feet from the face of building or ~~cannot be~~ closer than two feet to the curb. ~~in any case. All portions of~~ aAny awning, canopy, marquee, or single sign that is ~~are~~ attached perpendicularly to the face of a building shall provide eight (8) feet minimum clearance above a sidewalk for framed or rigid portions, and seven (7) feet minimum clearance for any unframed valance.~~shall be a minimum of ten (10) feet above the sidewalk.~~

J. Temporary Business Signs.

1. Size Allowed. Temporary signs are allowed in addition to permanent signs. The size of the temporary signs may not exceed the allowed square footage for permanent signs.

2. Allowed Time Limits.

a. Grand Opening Signs. Temporary signs for the purpose of grand openings of a new business can be in place for a maximum of thirty (30) days. The installation date of the sign shall be placed on the sign to verify compliance with this regulation.

b. Special Event Signs. Temporary signs for the purpose of special events may be placed on site a maximum of four times per calendar year and a maximum of five consecutive days per event.

3. Placement of Signs.

a. Signs are allowed on private property only. Signs shall not he placed in public rights-of-way or at off-site locations.

b. Signs must be affixed to a permanent structure.

4. Temporary signs shall not be illuminated.

5. Durable Materials Required. Signs shall be constructed of durable, rigid material suitable to the~~-~~ir location and purpose. Only interior window signs may he made of nonrigid (e.g.~~-~~ paper) material.

6. Removal of Signs. Temporary signs and their components shall be promptly removed at the expiration of the time limits set forth above.

K. Window Signs. Window signs shall not take up more than twenty-five (25) percent of any one window. Window signs shall count against the total allowable aggregate sign area for the

property as measured in Section 17.104.020(B). Interior signs which are located eighteen (18) inches or more from behind the window face shall be exempt from these regulations.

L. Clear Sight Restrictions. A triangular area measuring fifteen (15) feet from the intersection along each street line shall be kept free of all freestanding signs. A triangular area measuring ten (10) feet from the intersection of a driveway and a street line shall be kept free of all freestanding signs. (Ord. 12606 Att. A (part), 2004: prior planning code § 7041)

17.104.030 General limitations on signs--S-1, S-2, S-3 and S-15 zones.

The following limitations shall apply to the specified signs in the S-1, S-2, S-3 and S-15 zones, and are in addition to the limitations, if any, prescribed for signs in the applicable individual zone regulations or development control maps:

A. Design Review. No business. civic, or residential sign shall be ~~he~~ constructed or established, or altered in ~~such a manner as to affect~~ exterior appearance, unless plans for the ~~such~~ proposal ~~shall~~ have been approved pursuant to the design review procedure in Chapter 17.136.

B. Permitted Aggregate Sign Area. S-1, S-2, S-3 and S-15 Zones. The maximum aggregate area of display surface of all business, civic, and residential signs on any one lot shall be one square foot for each one foot of lot ~~building~~ frontage in the case of an interior lot, or 0.5 square feet for each one foot of lot ~~building~~ frontage in the case of a corner lot. The aggregate shall include only one face of a double-faced sign. ~~In no cases can t~~The total amount of aggregate sign area shall not exceed two hundred (200) square feet on any one property. Exceptions to the total amount of aggregate sign area normally allowed on any one property may be approved pursuant to the regulations in Subsection B(1) below and to the small project design review procedure in Chapter 17.136.

1. Exception to Aggregate Sign Area Limits. In cases in which the maximum aggregate sign area for a property is already being utilized by a portion of the existing tenant spaces in a multi-tenant building or complex, the following exception to the maximum aggregate sign area may be approved pursuant to the small project design review procedure in Chapter 17.136:

a. Twenty (20) square feet of sign area for each tenant space in the multi-tenant building or complex without existing signage on site.

C. Maximum Height.

1. Attached Signs. The maximum height of any sign that is attached to a building may not exceed the height of the building wall that it is attached to.

2. Freestanding Signs. The maximum height of any freestanding sign in the S-1, S-2, S-3 and S-15 Zones is ten (10) feet.

D. Special Limitations Near Boundaries of Residential Zones. Signs shall be subject to the same special limitations along or near boundaries of residential zones as are set forth in Section 17.104.020(E).

E. Special, Development, and Realty Signs. All special, development, and realty signs shall be subject to the same limitations as are set forth in subsections (C), (D) and (F) of Section 17.104.010 for such signs in residential zones.

F. Signs within One Thousand (1,000) Feet of Rapid Transit Routes. Signs within one thousand (1,000) feet of the centerline of rapid transit routes shall be subject to the applicable limitations set forth in Sections 17.104.040 and 17.114.150. (Ord. 12606 Att. A (part), 2004: prior planning code § 7042)

17.104.040 Limitations on Signs within one thousand feet of rapid transit routes.

The following limitations shall apply in all zones, within one thousand (1,000) feet of the centerline of every rapid transit route, after the date of official determination thereof and except where the route is underground. The distance shall be measured perpendicularly from said centerline, i.e., at right angles to said centerline. These provisions shall not prohibit a sign identifying an on-premises business or naming the product manufactured thereon, except to the extent of requiring design review approval.

A. Design Review for Certain New or Altered Signs the Advertising Material of Which Is Primarily Viewable from the Transit Route.

1. No sign, the advertising material of which is or has become primarily viewable by the passengers on the transit route, shall be constructed, established, reoriented, changed as to illumination, or otherwise altered or painted a new color, unless plans for such Sign ~~shall~~ have been approved pursuant to the regular design review procedure in Chapter 17.136.

2. The Director of City Planning shall determine which signs are or have become primarily viewable by the passengers on the transit route, subject to appeal pursuant to the administrative appeal procedure in Chapter 17.132.

B. Removal of Nonconforming Existing Signs. See Section 17.14.150. (Ord. 12606 Att. A (part), 2004: prior planning code § 7046)

17.104.050 Amortization of Advertising Signs in residential zones.

C. Administrative Appeal Procedure.

1. Appeal Period. Within ninety (90) days of receipt of a notice of amortization, an appeal may be filed by any interested party with the Director of City Planning challenging the city's determination. The Director of City Planning will forward the appeal to the City Administrator~~Manager~~ for final determination.

2. Grounds for Appeal. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the city or where the city's determinations are not supported by the evidence in the record. The burden is on the appellant to provide sufficient evidence and arguments to overturn the initial city determinations. The minimum information to be included in an appeal is:

a. Identification of specific billboard under appeal;

b. Specific determination of the city being challenged;

c. Current photograph of billboard;

d. Legal and factual documentation to support the challenge, including, without limitation, building permits (if available) and repair/improvement records.

The city may request additional information as it deems reasonably necessary to complete the review.

3. Failure to Timely Appeal. Failure to timely file an appeal will waive any rights to further challenge the city's determination contained in the notice of amortization.

4. Appeal Fee. Established per master fee schedule. Appellants shall be allowed to file one appeal and pay one appeal fee where the City ~~Manager~~Administrator determines that similar issues are raised and the payment of multiple fees would be unreasonable.

5. Notification of Completeness. The city will notify appellant within forty-five (45) business days of appeal submittal whether the appeal application is deemed complete. City failure to notify appellant within said time period will deem the application complete. This does not preclude the city from requesting additional information after the application has been deemed complete.

6. Written Determination. The city will provide appellant with a written decision within ninety (90) days of receipt of a complete appeal application, unless an extension is agreed to by the appellant. Request by the city for additional information after the application has been deemed complete will not modify the timing of the ninety (90) day period during which the written determination is being made, provided that the appellant responds in a timely manner to the city request. Failure of the city to timely issue a written decision shall result in granting of the appeal.

7. Decision Final. The written decision of the City Administrator ~~Manager~~ is final and not administratively appealable. (Ord. 12146 §§ 3, 4, 1999; Ord. 12073 § 7, 1998)

Chapter 17.108

GENERAL HEIGHT, YARD, AND COURT REGULATIONS

Sections:

17.108.140 Fences, dense hedges, barrier, and similar freestanding walls

17.108.140 Fences, dense hedges, barrier, and similar freestanding walls

A. Compliance with Oakland Traffic Code. Notwithstanding other provisions of the Oakland Planning Code, all fences, dense hedges, barrier and similar freestanding walls shall comply with the applicable provisions of Chapter 10.60 of the Oakland Traffic Code, entitled "Vision Obscurements at Intersections".

B. Residential zones and Residential Facilities. The provisions of this section apply to all properties located in residential zones, and to all properties located in any zone containing Residential Facilities, ~~and no Nonresidential Facilities.~~

1. Height. In the locations specified below, the height of any fence, dense hedge, or barrier or similar freestanding wall, but excluding retaining walls, shall not exceed the following (see Illustration I-15a):

a. In any minimum front yard, or any minimum side yard on the street side of a corner lot: 42 inches, except that six (6) feet is permitted in the following cases:

i. In the portions of street side yards located within the greater of the following distances, from the rear lot line:

a) 35 feet from the rear lot line.

b) the distance between the rear lot line and a line that is perpendicular to the street side lot line and that extends to the rearmost enclosed portion of the ~~principal~~primary building on the lot; or

ii. Upon the granting of small project design review ~~a conditional use permit~~ pursuant to the small project design review ~~conditional use permit~~ procedure in Chapter 17.136.~~17.134.~~

b. In any minimum rear yard if within 10 feet of a street line that abuts the lot: six (6) feet.

c. In any other minimum yard or court: eight (8) feet; and

d. One entry gateway, trellis or other entry structure may be permitted in the required front setback area of each lot provided the maximum height or width of the facility does not exceed 10 feet;

2. Materials. The following materials are restricted in constructing or rebuilding walls or fences:

a. Barbed wire or razor wire is not allowed to be used in fences.

b. Chain link fencing is permitted in the following locations only if it does not exceed 42 inches in height;

i. Street-fronting yards; or

ii. Interior side yards if closer to the front lot line than the front wall of the ~~principal~~primary Residential Facility.

c. Plain concrete blocks are not allowed as a fencing material unless capped and finished with stucco or other material approved by the Director of City Planning.

C. Commercial zones and in the S-1, S-2, S-3, and S-15 Zones. The provisions of this subsection apply to fences, dense hedges, barrier and similar freestanding walls, but excluding retaining walls, located within all commercial zones and in the S-1, S-2, S-3, and S-15 zones.

1. Height:

a. The height of any fence, dense hedge, barrier or similar freestanding wall located within 10 feet of any abutting property located in a residential zone shall not exceed eight (8) feet. A fence higher than eight (8) feet but no more than 10 feet may only be permitted in these locations upon the granting of small project design review ~~a conditional use permit~~ pursuant to the small project design review ~~conditional use permit~~ procedure in Chapter 17.136. ~~17.134.~~

b. The maximum height of any fence, dense hedge, barrier, or similar freestanding wall elsewhere on a lot shall be 10 feet.

2. Restricted materials. In any location visible from the adjacent public right of way, no barbed wire or razor wire shall be permitted as part of or attached to fences or walls.

a. Exceptions: Fences enclosing the following activities shall be exempted from the above limitation on barbed wire and razor wire where the Director of City Planning determines that trespassing could present a public safety hazard and/or disruption of public utility, transportation, or communication services:

i. Public utility installations, including but not limited to electrical substations and gas substations

ii. Rights of way and transit routes

D. Manufacturing zones. The provisions of this subsection apply to fences, dense hedges, barrier and similar freestanding walls located within all manufacturing zoning districts.

1. Height:

a. The maximum height of any fence, dense hedge, barrier or similar freestanding wall located within 10 feet of any abutting property located within a residential zone shall be eight (8) feet. A fence higher than eight feet but no more than 10 feet may only be permitted in these locations upon the granting of small project design review ~~a conditional use permit~~ pursuant to the small project design review ~~conditional use permit~~ procedure in Chapter 17.136.~~17.134.~~

(Ord. 12553 § 3 (part), 2003)

Chapter 17.112

HOME OCCUPATION REGULATIONS

Sections:

17.112.010 Title, purpose, and applicability.
17.112.020 Definition of home occupation.
17.112.030 Exclusions.
17.112.040 Requirements.
17.112.050 Required approval.
~~**17.112.060 Revocation.**~~

~~**17.112.060 Revocation.**~~

~~In the event of a failure to comply with these regulations, the Director of City Planning may, after holding a public hearing, revoke his or her certificate of approval of a home occupation. Notice of the hearing shall be given by posting notices thereof within three hundred (300) feet of the property involved. Notice of the hearing shall also be given by mail or delivery to the certificate holder, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than ten days prior to the date set for the hearing. Such revocation may be appealed pursuant to the administrative appeal procedure in Chapter 17.132. (Ord. 12237 § 4 (part), 2000: prior planning code § 7305)~~

Chapter 17.114

NONCONFORMING USES

Sections:

17.114.060 Nonconforming activity--Damage or destruction.
17.114.080 Nonconforming activity--Allowed alterations and extensions.

17.114.060 Nonconforming activity--Damage or destruction.

A. General. Except as noted in subsection B of this section, the facilities accommodating or serving any nonconforming activity are damaged or destroyed to the extent of not more than seventy-five (75) percent of their current replacement cost as estimated by the Building Inspector, they may be restored to their prior condition and occupancy. If such damage or destruction exceeds seventy-five (75) percent of said cost, the facilities may not thereafter be restored to accommodate or serve any nonconforming activity, except that for a Residential Activity such restoration may be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134.

B. Nonconforming Residential Activities Within the Adams Point Rezoning Area. In the area generally bounded by Grand Avenue, Lake Merritt, the MacArthur Freeway (I-580), Kempton Avenue, and Fairmount Avenue, if the facilities accommodating or serving any nonconforming residential activity are damaged or destroyed to the extent of not more than seventy-five (75) percent of their current replacement costs as estimated by the Building Inspector, they may be restored to their prior condition and occupancy. If such damage or destruction exceeds seventy-five (75) percent of said costs, the facility may thereafter be restored to accommodate or serve any residential nonconforming activity, provided all of the following conditions are met:

1. That documentation is provided which substantiates that such damage or destruction occurred involuntarily with respect to the owner of said unit(s);

2. That no expansion of the previous floor area occurs;

3.a. That if the project involves or results in one or two dwelling units on a lot, no Residential Facility shall be constructed or established, unless plans for the proposal have been approved pursuant to the ~~special residential~~ design review procedure in Chapter ~~17.146.~~ 17.136. ~~This requirement shall not apply to any Residential Facility whose proposed plans must be approved pursuant to the conditional use permit procedure in Chapter 17.134, the design review procedure in Chapter 17.136, the planned unit development procedure in Chapter 17.140, or the site development and design review procedure in Chapter 17.142. This requirement also shall not apply to any facility containing both residential and nonresidential activities;~~

b. That if the project involves or results in three or more dwelling units on a lot, no Residential Facility shall be constructed or established, unless plans for the proposal ~~shall~~ have been approved pursuant to the design review procedure in Chapter 17.136, ~~and upon determination that the proposal conforms to the design review criteria for high density housing as adopted by the City Council. This requirement shall not apply to any facility containing both residential and nonresidential activities unless, the floor space devoted to residential activities constitutes seventy-five percent of the total floor space in the facility;~~

4. That a building permit is obtained and the nonconforming structure(s) is replaced in compliance with the building code;

5. That a building permit is sought and obtained no later than two years after the date of the facility's destruction and construction pursuant thereto is diligently pursued to completion.

If all of the preceding requirements are not met, the replacement facility must comply with all applicable zoning code provisions in effect on the date of such replacement. (Ord. 11861 § 7, 1996: prior planning code § 7421)

17.114.080 Nonconforming activity--Allowed alterations and extensions.

A. Nonresidential Activity Nonconforming Because It Is Not a Permitted Activity. Except as otherwise provided in Section 17.114.060, a nonresidential activity which is nonconforming wholly or partly because it is not itself a permitted activity where it is located may be extended, and the facilities accommodating or serving such activity may be altered or otherwise changed, subject to the requirements normally applying to uses where the activity is located and subject to the following provisions and exceptions:

1. Except as otherwise provided in subsection (A)(3) of this section, the floor area and overall outside dimensions of any building, or portion thereof, devoted to such activity shall not be increased; no open parking, loading, sales, display, service, production, or storage area accommodating or serving such activity shall be relocated or increased in size; and no such building or open area shall be wholly reconstructed. However, in the case of an establishment classified as an Alcoholic Beverage Sales Commercial Activity, the total floor area, open areas, or outside building dimensions occupied by the establishment may be increased as long as the amount of space actually devoted to the sale of alcoholic beverages is not increased by more than twenty (20) percent of that already existing.

2. In the case of an establishment classified as an Alcoholic Beverage Sales Commercial Activity, the percentage of actual floor area devoted to the sale of alcoholic beverages shall not be increased by more than twenty (20) percent of that already existing, except upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134.

3. New, wholly reconstructed, enlarged, or relocated structures or open areas devoted to off-street parking or loading serving such activity may be provided wherever Automotive Fee Parking Commercial Activities are permitted or, upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134, wherever Automotive Fee Parking Commercial Activities are conditionally permitted. In residential zones, such facilities for off-street parking may be provided in the situations, and subject to the conditions, prescribed in Section 17.102.100.

4. New Signs may be provided for such activity, but the aggregate area of display surface of all Signs serving such activity shall not be increased. All Signs shall be subject to the limitations, other than aggregate area of display surface, normally applying to Signs where they are located.

5. During any five-year period, beginning on or after the effective date of the zoning regulations or of any subsequent rezoning or other amendment thereto which makes such activity thus nonconforming, the aggregate cost of all alterations for which a building or sign permit is required, and which are intended for any activity subject to this subsection, shall not exceed twenty-five (25) percent of the replacement cost, as estimated by the ~~Inspectional~~Building Services Department, of the facilities accommodating or serving such activity at the beginning of said period. However, the cost of alterations ordered by any governmental agency or permitted by Section 17.114.060 shall be exempt from said maximum cost.

6. No facility accommodating a nonconforming Automotive Servicing or Automotive Repair and Cleaning Commercial Activity shall be altered in ~~or painted a new color in such a manner as to affect~~ exterior appearance, unless plans for the ~~such a~~ proposal ~~shall~~ have been approved pursuant to the design review procedure in Chapter 17.136.

7. A nonconforming Automotive Servicing or Automotive Repair and Cleaning Commercial Activity in the HBX-1 zone may be extended, and the facilities accommodating or serving such activity may be altered or otherwise changed upon the granting of a conditional use permit (see Chapter 17.134) and approval pursuant to the regular design review procedure in ~~(see~~ Chapter 17.136~~)~~. This conditional use permit and design review approval may be granted only upon determination that the proposal is adequately buffered from the street and surrounding residential activities through landscaping and fencing.

B. Residential Activity Nonconforming Because It Is Not a Permitted Activity. Except as otherwise provided in Section 17.114.060, a Residential Activity which is nonconforming wholly or partly because it is not itself a permitted activity where it is located may be extended, and the facilities

accommodating or serving such activity may be altered or otherwise changed, subject to the following provisions:

1. The number of living units shall not be increased.

2. The amount of added or wholly reconstructed floor area devoted to such activity shall not exceed in the aggregate twenty (20) percent of that already existing on the affected lot. If a new or wholly reconstructed floor area is developed, usable open space shall be provided for all living units on the lot in the amount required therefor in the R-60 zone.

3. Existing usable open space shall not be reduced below, or if already less than shall not be reduced further below, the usable open space requirements applying in the R-60 zone.

4. All alterations and other changes shall conform to, or not further conflict with, the minimum yard and court and maximum height requirements and the limitations on Signs generally applying in the R-50 zone, as well as to the requirements generally applying to uses where the activity is actually located.

C. Activity Nonconforming for Other Reasons. Except as otherwise provided in Section 17.114.060, any activity which is itself a permitted activity where it is located and which is nonconforming only as to off-street parking or loading requirements, performance standards, or other requirements applying to activities may be extended, and the facilities accommodating or serving such activity may be altered or otherwise changed, in any way which does not result in a greater degree of nonconformity with respect to such requirements and which conforms to the requirements normally applying to uses where the activity is located. (Ord. 12240 § 8, 2000; prior planning code § 7423)

Chapter 17.116

OFF-STREET PARKING AND LOADING REQUIREMENTS

Sections:

17.116.210 Driveways and maneuvering aisles for parking.
17.116.240 Tandem spaces and berths.

17.116.210 Driveways and maneuvering aisles for parking.

Where necessary, maneuvering aisles and driveways shall be provided of such design and arrangement as to provide adequate ingress to and egress from all required parking spaces. (See also Sections 17.94.070, 17.94.080, 17.116.240, 17.116.250, and 17.116.260.) Except within the S-12 residential parking combining zone, where the provisions of Section 17.94.080 shall apply, and for shared access facilities, where the provisions of Section 17.102.090 shall apply, an onsite driveway serving any required off-street parking area shall have a minimum width of nine feet. Driveways serving Residential Facilities with one or two living units on one lot shall be not more than nineteen (19) feet in width with a curb cut no more than nineteen (19) feet in width, and shall be limited to one driveway and one driveway curb cut per lot frontage. Driveways serving one lot or serving any of several adjacent lots under the same ownership shall be separated edge-to-edge by at least twenty-five (25) feet; where curbs exist, the separation shall be by at least twenty-five (25) feet of full vertical curb. Driveways serving adjacent lots under different ownership shall be separated edge-to-edge by at least ten feet; where curbs exist, the separation shall be by at least ten feet of full vertical curb.

A. *Maneuvering Aisle Width.* Except for activities occupying One-Family, Two-Family, or Multifamily Residential Facilities located within the S-12 residential parking combining zone, where the provisions of Section 17.94.070 shall apply, maneuvering aisles necessary for access into and out of required parking spaces shall have the following minimum widths, whether serving regular or compact parking spaces (see illustration I-21):

1~~A~~. Where parking is parallel: twelve (12) feet;

2~~B~~. Where parking is at an angle of forty-five (45) degrees or less: twelve (12) feet;

3~~C~~. Where parking is at an angle of sixty (60) degrees or less but more than forty-five (45) degrees: sixteen (16) feet;

4~~D~~. Where parking is at an angle of ninety (90) degrees or less but more than sixty (60) degrees: twenty-four (24) feet.

(Ord. 12376 § 3 (part), 2001: prior planning code § 7540)

17.116.240 Tandem spaces and berths.

(See illustration I-21.) A vehicle shall not have to cross another loading berth, or a parking space, in order to gain access to any required loading berth. On any lot containing three or more required off-street parking spaces, or containing required spaces for two or more residential living units, a vehicle shall not have to cross another parking space, or a loading berth, in order to gain access to a required parking space, except that:

A. In the S-11 zone, with the provision of three or more required parking spaces for a given dwelling unit, at least fifty (50) percent of the vehicles shall not have to cross another parking space in order to gain access to a required parking space.

B. In the S-12 zone, tandem parking may be permitted for One-Family Dwelling, One-Family Dwelling with Secondary Unit, Two-Family Dwelling, and Multi-family Dwelling Residential Facilities under the provisions of Section 17.94.060.

C. In the R-1, R-10, R-20, R-30, R-35, R-36, and R-40 zones, except when combined with the S-11 or S-12 zones, tandem parking may be permitted for one of the required spaces on a lot containing a One-Family Dwelling with Secondary Unit Residential Facility if the floor area of the Secondary Unit does not exceed five hundred (500) square feet.

D. In any zone, tandem parking may be permitted for nonresidential activities upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134 and upon determination that such proposal conforms to either or both of the following use permit criteria:

1. That a full-time parking attendant supervises the parking arrangements at all times when the activities served are in active operation;

2. That there are a total of ten or fewer parking spaces on a lot, or within a separate parking area or areas on a lot, which spaces are provided solely for employees.

E. Tandem parking spaces may be provided for Residential Care Residential Activities pursuant to the provisions of Section 17.116.060B.

(Ord. 12501 § 79, 2003: Ord. 12199 § 8 (part), 2000; Ord. 12138 § 4 (part), 1999; prior planning code § 7543)

Chapter 17.124

LANDSCAPING AND SCREENING STANDARDS

Sections:

17.124.020 Required landscape plan for new residential units and certain additions to Residential Facilities.

17.124.020 Required landscape plan for new residential units and certain additions to Residential Facilities.

Submittal and approval of a landscape plan for the entire site is required for the establishment of a new residential unit, excluding secondary units of five hundred (500) square feet or less, and for additions to Residential Facilities of over five hundred (500) square feet. ~~or on upper stories or attics.~~ The landscape plan and the plant materials installed pursuant to the plan shall conform with all provisions of this chapter, including the following:. ~~The area encompassed by the landscape plan is limited to street-fronting yards and any abutting unimproved rights of way of improved streets or alleys, except that the following shall apply:~~

A. Landscape plans for projects involving grading, rear walls on downslope lots requiring conformity with the screening requirements in Section 17.124.040, or vegetation management prescriptions in the S-11 zone shall show proposed landscape treatments for all graded areas, rear wall treatments, and vegetation management prescriptions.; ~~and~~

~~B. Landscape plans for projects resulting in two or more living units, excluding secondary units, shall show the proposed landscape treatment for the entire site.~~

B~~C~~. Within the portions of Oakland northeast of the line formed by State Highway 13 and continued southerly by Interstate 580, south of its intersection with State Highway 13, all plant materials on submitted landscape plans shall be fire resistant and, to the satisfaction of the Director of City Planning, a substantial portion of the planted area shown on submitted landscape plans shall be drought tolerant plant materials. The City Planning Department shall maintain lists of plant materials considered fire resistant and drought tolerant.

C~~D~~. All landscape plans shall show proposed methods of irrigation. The methods shall ensure adequate irrigation of all plant materials for at least one growing season. (Ord. 12376 § 3 (part), 2001)

Chapter 17.130

ADMINISTRATIVE PROCEDURES GENERALLY

Sections:

17.130.050 Presentation of written and documentary evidence.
17.130.060 Obligation of applicant to defend, indemnify, and hold harmless the City of Oakland.

17.130.050 Presentation of written and documentary evidence.

Whenever, pursuant to the Oakland Planning Code, an appeal or matter of original jurisdiction, for which a hearing is required, is pending before the City Council, or City Planning Commission, or the Commission's Residential Appeals Committee, any interested party, while the hearing is open, may submit written and/or documentary evidence to the City Council, the Commission, or the Committee, whichever is applicable, for its consideration. (Ord. 12376 § 3 (part), 2001: Ord. 11828 § 1, 1995: prior ~~planing~~planning code § 9004)

17.130.060 Obligation of applicant to defend, indemnify, and hold harmless the City of Oakland.

A. The applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any claim, action, or proceeding (including legal costs and attorneys' fees) against the City to attack, set aside, void or annul, an approval by the City relating to a development-related application or subdivision. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate fully in such defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

B. Within ten (10) calendar days of the filing of any claim, action, or proceeding to attack, set aside, void or annul, an approval by the City of a development-related application or subdivision, the applicant shall execute a Letter of Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter Agreement shall survive termination, extinguishment or invalidation of the approval.

Chapter 17.132

ADMINISTRATIVE APPEAL PROCEDURE

17.132.020 Appeal.
17.132.030 Procedure for consideration.
17.132.040 Appeal to Council on transit line sign controls.

17.132.020 Appeal.

Within ten calendar days after the date of any administrative determination or interpretation made by the Director of City Planning under the zoning regulations, an appeal from said decision may be taken to the City Planning Commission by any interested party. ~~An appeal may be taken to the City Planning Commission by any interested party, from any administrative determination or interpretation made by the Director of City Planning under the zoning regulations.~~ In the case of appeals involving one- or two-unit Residential Facilities, ~~and no Nonresidential Facilities,~~ the appeal shall be considered by the Commission's Residential Appeals Committee. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department and shall be accompanied by such a fee as specified in the City fee schedule. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director or wherein his or her decision is not supported by the evidence in the record. The appeal shall be accompanied by such information as may be required to facilitate review. Upon receipt of the appeal, the Secretary of the City Planning Commission shall set the date for consideration thereof and, not less than seventeen (17) ~~ten~~ days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. (Ord. 12376 § 3 (part), 2001: prior planning code § 9101)

17.132.030 Procedure for consideration.

In its review of an administrative appeal, the City Planning Commission or, if applicable, the Commission's Residential Appeals Committee shall consider the purpose and intent, as well as the letter, of the pertinent provisions, and shall affirm, modify, or reverse the Director's determination or interpretation. ~~Should a decision not be rendered by the Commission or Committee within sixty (60) days after filing, the Director's determination or interpretation shall be deemed reversed in favor of the appellant. However, said time may be extended by agreement between the Director of City Planning, or the Commission or Committee and the appellant.~~ The decision of the Commission or Committee shall be final immediately, except as otherwise provided in Section 17.132.040. (Ord. 12376 § 3 (part), 2001: prior planning code § 9102)

17.132.040 Appeal to Council on transit line sign controls.

Within ten calendar days after the date of a decision by the City Planning Commission on an administrative appeal involving the provisions of Sections 17.104.040 or 17.114.150, an appeal from said decision may be taken to the City Council by any interested party. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Commission and shall be filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Council shall set the date for consideration thereof. After setting the hearing date, the Council, prior to hearing the appeal, may refer the matter back to the Planning Commission for further consideration and advice. Appeals referred to the Planning Commission shall be considered by the Commission at its next available meeting. Any such referral shall be only for the purpose of issue clarification and advice. In all cases, the City Council shall retain jurisdiction and, after

receiving the advice of the Planning Commission, shall hold a hearing on and decide the appeal. The City Clerk shall notify the Secretary of the City Planning Commission of the receipt of said appeal and of the date set for consideration thereof; and said Secretary shall, not less than seventeen (17) ~~ten~~ days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Council shall review the purpose and intent, as well as the letter, of the pertinent provisions, and shall affirm, modify, or reverse the Commission's decision. The decision of the Council shall be final. (Prior planning code § 9103)

Chapter 17.134

CONDITIONAL USE PERMIT PROCEDURE

Sections:

17.134.020 Definition of major and minor conditional use permits.
17.134.040 Procedures for consideration.
17.134.050 General use permit criteria.
17.134.060 Appeal to Planning Commission--Minor conditional use permits.
17.134.070 Appeal to Council--Major conditional use permits.
17.134.080 Adherence to approved plans.
~~**17.134.090 Revocation.**~~
~~**17.134.100 Regulations governing permit revocation for Fast-Food Restaurants.**~~
~~**17.134.130 Reconsideration by the Planning Commission of decisions on secondary units.**~~

17.134.020 Definition of major and minor conditional use permits.

A. Major Conditional Use Permit. A major conditional use permit is one that involves any of the following:

1. Thresholds. Any project that meets any of the following size thresholds:

a. The actual project site (including only portions of the lot actually affected by the project) exceeds one acre;

b. Nonresidential ~~except in the R-80, R-90, C-51, C-55, S-2, or S-15 zones:~~ projects involving twenty-five thousand (25,000) square feet or more of floor area~~;~~, except in the R-80, R-90, C-51, C-55, S-2, or S-15 zones;

c. Residential~~, except in the S-11 zone:~~ projects requiring a conditional use permit for density resulting in a total number of dwelling units as follows:

i. Two or more dwelling units in the ~~R-10, R-20, R-30, or~~ R-35 zone, except in the case of a Secondary Unit,

ii. Three or more dwelling units in the R-36 or R-40 zone,

iii. Seven or more dwelling units in the R-50 ~~, R-60, R-70, R-80, or R-90~~ zone.

d. Residential projects requiring a conditional use permit to exceed the basic or permitted density resulting in 7 or more dwelling units in the R-60, R-70, R-80, or R-90 zone.

~~(In the S-11 zone, see Section 17.142.030);~~

~~d~~e. Large Scale Developments. Any development which is located in the R-80, R-90, C-51, C-55, S-2, or S-15 zone and results in ~~involves~~ more than one hundred thousand (100,000) square feet of new floor area, or a new building, or portion thereof, of more than one hundred twenty (120) feet in height.

2. Uses. Any project that involves any of the following activity or facility types except where the proposal involves only accessory parking, the resumption of a discontinued nonconforming activity, or an addition to an existing activity which does not increase the existing floor area by more than twenty (20) percent:

a. Activities:

i. Residential Care Residential,

ii. Service Enriched Housing Residential,

iii. Transitional Housing Residential,

iv. Emergency Shelter Residential,

v. Extensive Impact Civic,

vi. Convenience Market Commercial,

vii. Fast-food Restaurant Commercial,

viii. Alcoholic Beverage Sales Commercial or sale of alcoholic beverages at any full-service restaurant in a location described by Section 17.102.210(B),

ix. Heavy Manufacturing,

x. Small Scale Transfer and Storage Hazardous Waste Management,

xi. Industrial Transfer/Storage Hazardous Waste Management,

xii. Mining and Quarrying Extractive;

b. Facilities:

i. Drive-Through,

ii. Advertising Sign, except when the facility meets the requirements of Section 17.11.090.

iii. Special Health Care Civic Activities.

3. Special Situations. Any project that involves any of the following situations:

a. Any project that requires development of an Environmental Impact Report;

b. Any Commercial or Manufacturing Activity, or portion thereof, which is located in any residential zone and occupies more than one thousand five hundred (1,500) square feet of floor area, except where the proposal involves only the resumption of a nonconforming activity;

c. Off-Street Parking Facilities in the C-40, C-51, C-52 and S-2 zones serving fifty (50) or more vehicles;

d. Transient Habitation Commercial Activities in the C-40 and C-45 zones;

e. Monopole Telecommunications Facilities in, or within three hundred (300) feet of the boundary of, any residential zone;

f. Any project in the OS zone listed as requiring a major conditional use permit in Chapter 17.11;

~~g. Continuation of an illegal use that existed in a facility in the S-14 zone prior to the Oakland Hills fire;~~

g~~h~~. Any electroplating activity as defined in Section 17.09.040 subject to the provisions of Section 17.102.340;

h~~i~~. Any conditional use permit application referred by the Director of City Planning to the City Planning Commission for decision pursuant to Section 17.134.040(B)(1);~~.~~

i~~j~~. Any T~~t~~elecommunications F~~f~~acility in or within one hundred (100) feet of the boundary of any residential zone;~~.~~

j~~k~~. Any T~~t~~elecommunications F~~f~~acility whose antennas and equipment are not fully concealed from view within three hundred (300) feet of the boundary of residential zones R-1 through R-60 inclusive.

B. Minor Conditional Use Permit. A minor conditional use permit is a conditional use permit which does not involve any of the purposes listed in subsection A of this section.

(Ord. 12501 § 80, 2003: Ord. 12450 § 19, 2002; Ord. 12350 § 3 (part), 2001; Ord. 12272 § 4 (part), 2000; Ord. 12237 § 4, 2000; Ord. 12234 § 4, 2000; Ord. 12224 § 7, 2000; Ord. 12205 § 4 (part), 2000; Ord. 12199 § 9 (part), 2000; Ord. 12138 § 4 (part), 1999; Ord. 12078 § 5 (part), 1998; Ord. 12072 § 12, 1998; Ord. 12016 § 2 (part), 1997; Ord. 11904 § 5.91, 1996; Ord. 11892 § 21, 1996; Ord. 11539 § 2, 1993; prior planning code § 9201)

17.134.040 Procedures for consideration.

A. Major Conditional Use Permits.

1. In All Zones ~~Except the S-11 Zone~~. An application for a major conditional use permit shall be considered by the City Planning Commission which shall hold a public hearing on the application. Notice of the hearing shall be given by posting an enlarged notices ~~thereof on within three hundred (300) feet of~~ the premises of the subject property involved in the application. Notice of the hearing shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) ~~ten~~ days prior to the date set for the hearing. The Commission shall determine whether the proposal conforms to the general use permit criteria set forth in Section 17.134.050 and to

other applicable use permit criteria, and may grant or deny the application for the proposed conditional use permit or require such changes or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The determination of the Commission shall become final ten calendar days after the date of decision unless appealed to the City Council in accordance with Section 17.134.070. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal.

~~2. In the S-11 Zone. The procedure for consideration of major conditional use permits in the S-11 zone shall be as set forth in the site development and design review procedure in Chapter 17.142.~~

23. Alcoholic Beverage Sales Activities in Alcoholic Beverage Sales License Overconcentrated Areas. In addition to following the provisions of subsection (A)(1) of this section, the City Planning Commission shall also determine whether the proposal conforms to the criteria for findings of "Public Convenience and Necessity" set forth in Section 17.102.210(B)(3).

34. In the OS Zone. Applications for conditional use permits in the OS zone shall be subject to the special use permit review procedure for the OS zone established in Chapter 17.135.

B. Minor Conditional Use Permits.

1. In All Zones ~~Except the S-11 Zone~~. An application for a minor conditional use permit shall be considered by the Director of City Planning. However, the Director may, at his or her discretion, refer the application to the City Planning Commission for decision rather than acting on it himself or herself. In this case, the application shall be processed as a major conditional use permit pursuant to subsection A of this section. At his or her discretion, an administrative hearing may be held. Notice shall be given by posting an enlarged notices ~~thereof~~ on ~~within three hundred (300) feet of~~ premises of the subject property involved in the application; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) ~~ten~~ days prior to the date set for the hearing, if such is to be held, or, if not, for decision on the application by the Director. The Director shall determine whether the proposal conforms to the general use permit criteria set forth in Section 17.134.050 and to other applicable use permit criteria, and may grant or deny the application for the proposed conditional use permit or require such changes in the proposed use or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to said criteria. The determination of the Director of City Planning shall become final ten calendar days after the date of decision unless appealed to the City Planning Commission in accordance with Section 17.134.060. In those cases which are referred to the Commission by the Planning Director, the decision of the Commission shall become final ten days after the date of decision unless appealed to the City Council in accordance with Section 17.134.070. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal.

~~2. In the S-11 Zone. The procedure for consideration of minor conditional use permits in the S-11 zone shall be as set forth in the site development and design review procedure in Chapter 17.142.~~

23. In the OS Zone. Applications for conditional use permits in the OS zone shall be subject to the special use permit review procedure for the OS zone established in Chapter 17.135.

~~C. Period of Consideration. Should a decision not be rendered pursuant to subsection A or B of this section within sixty (60) days after filing, the application shall be deemed approved except when, pursuant to the California Environmental Quality Act, an environmental document is required prior to decision, in which case should a decision not be rendered within sixty (60) days after final action on the environmental document, the application shall be deemed approved. In any case, however, the date by which a decision must be rendered may be extended by agreement between the Director of City Planning or the City Planning Commission and the applicant.~~

C~~D~~. Alternative Notification Procedures. If the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement the procedures set

forth in subsections A and B of this section. (Ord. 12237 § 4 (part), 2000; Ord. 12073 § 5 (part), 1998; Ord. 11904 §§ 5.92, 5.93, 1996; Ord. 11831 § 5, 1995; prior planning code § 9203)

17.134.050 General use permit criteria.

Except as different criteria are prescribed elsewhere in the zoning regulations, a conditional use permit shall be granted only if the proposal conforms to all of the following general use permit criteria, as well as to any and all other applicable use permit criteria:

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;

B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant;

C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region;

D. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.136.050~~070~~;

E. For proposals involving a One- or Two-Family Residential Facility: If the conditional use permit concerns a regulation governing maximum height, minimum yards, or maximum lot coverage or building length along side lot lines, the proposal also conforms with at least one of the following criteria:

1. The proposal when viewed in its entirety will not adversely impact abutting residences to the side, rear, or directly across the street with respect to solar access, view blockage and privacy to a degree greater than that which would be possible if the residence were built according to the applicable regulation, and, for conditional use permits that allow height increases, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height; or

2. At least sixty (60) percent of the lots in the immediate context are already developed and the proposal would not exceed the corresponding as-built condition on these lots, and, for conditional use permits that allow height increases, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height. The immediate context shall consist of the five closest lots on each side of the project site plus the ten closest lots on the opposite side of the street (see illustration I-4b); however, the Director of City Planning may make an alternative determination of immediate context based on specific site conditions. Such determination shall be in writing and included as part of any decision on any conditional use permit.

F. That the proposal conforms in all significant respects with the Oakland ~~Comprehensive~~General Plan and with any other applicable plan or development control map which has been adopted by the City Council. (Ord. 12376 § 3 (part), 2001: prior planning code § 9204)

17.134.060 Appeal to Planning Commission--Minor conditional use permits.

Within ten calendar days after the date of a decision by the Director of City Planning on an application for a minor conditional use permit, an appeal from said decision may be taken to the City Planning Commission by the applicant or any other interested party. In the case of appeals involving one- or two-unit Residential Facilities~~ and no Nonresidential Facilities~~, the appeal shall be considered by the Commission's Residential Appeals Committee. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director or wherein his or her decision is not supported by the evidence in the

record. Upon receipt of the appeal, the Secretary of the City Planning Commission shall set the date for consideration thereof; which in the case of applications limited to one- or two-unit Residential Facilities, shall be the date of the Committee's next regularly scheduled meeting following the thirtieth day after the appeal is filed. Not less than seventeen (17) ~~ten~~ days prior to the date of the Commission's or Committee's consideration of the appeal, the Secretary shall give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Commission or, if applicable, the Committee shall determine whether the proposal conforms to the general use permit criteria set forth in Section 17.134.050 and to any other applicable use permit criteria, and may grant or deny a permit or require such changes in the proposed use or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The decision of the Commission or, if applicable, the Committee shall be final. (Ord. 12376 § 3 (part), 2001: prior planning code § 9205)

17.134.070 Appeal to Council--Major conditional use permits.

A. With the exceptions of appeal for adult entertainment activities, ~~appeals in the S-14 zone, and appeal of decisions on secondary units,~~ appeals to the City Council shall be governed by the following:

Within ten calendar days after the date of a decision by the City Planning Commission on an application for a major conditional use permit, ~~or on revocation of any use permit in accordance with Section 17.134.090,~~ an appeal from said decision may be taken to the City Council by the applicant, the permit holder, or any other interested party. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Commission and shall be filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Council shall set the date for consideration thereof. After setting the hearing date, the Council, prior to hearing the appeal, may refer the matter back to the Planning Commission for further consideration and advice. Appeals referred to the Planning Commission shall be considered by the Commission at its next available meeting. Any such referral shall be only for the purpose of issue clarification and advice. In all cases, the City Council shall retain jurisdiction and, after receiving the advice of the Planning Commission, shall hold a hearing on and decide the appeal. The City Clerk shall notify the Secretary of the City Planning Commission of the receipt of said appeal and of the date set for consideration thereof; and said Secretary shall, not less than seventeen (17) ~~ten~~ days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Council shall determine whether the proposed use conforms to the applicable use permit criteria, and may grant or deny a permit or require such changes in the proposed use or impose such reasonable conditions of approval as are, in its judgment, necessary to ensure conformity to said criteria. The decision of the City Council shall be made by resolution and shall be final. The City Council shall vote on the appeal within thirty (30) days after its first hearing of the appeal. If the Council is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of the Council thereafter until decided.

B. Appeals to the City Council relating to adult entertainment activities shall be governed by the following:

Within ten calendar days after the date of a decision by the City Planning Commission on an application for a major conditional use permit, ~~or on revocation of any use permit in accordance with~~

~~Section 17.134.090~~, an appeal from said decision may be taken to the City Council by the applicant, the permit holder, or any other interested party. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Commission and shall be filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Council shall set the date for consideration thereof. The City Clerk shall notify the Secretary of the City Planning Commission of the receipt of said appeal and of the date set for consideration thereof; and said Secretary shall, not less than seventeen (17) ~~ten~~ days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the council shall determine whether the proposed use conforms to the applicable special use permit criteria, and shall grant the permit if it determines that all the said criteria are present or require such chances in the proposed use or impose such reasonable conditions of approval as are, in its judgment, necessary to ensure conformity to said criteria. The decision of the City Council shall be made by resolution and shall be final. The City Council shall vote on the appeal within thirty (30) days after its first hearing of the appeal. If the Council is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of the Council thereafter until decided. In any event, however, the City Council must decide the appeal within sixty (60) days of the appeal being filed.

~~C. Planning Commission decisions on secondary units shall not be appealable to the City Council, however, any interested party may request the Planning Commission to reconsider a decision on a secondary unit pursuant to Section 17.134.130. Such a request must be made in order to constitute the exhaustion of administrative remedies prior to the filing of litigation.~~ (Ord. 12199 § 9 (part), 2000; prior planning code § 9206)

17.134.080 Adherence to approved plans.

A conditional use permit shall be subject to the plans and other conditions upon the basis of which it was granted. Unless a different termination date is prescribed, the permit shall terminate two ~~one~~ years from the effective date of its granting unless, within such period, all necessary permits for ~~actual~~ construction or alteration have been issued, or ~~actual commencement of~~ the authorized activities have commenced in the case of a permit not involving construction or alteration, ~~, has begun under necessary permits within such period~~. However, such period of time may be extended by the original reviewing officer or body, upon application filed at any time before said period has expired. Expiration of any necessary building permit for the project may invalidate the conditional use permit approval if said extension period has also expired. (Prior planning code § 9207)

~~**17.134.090 Revocation.**~~

~~In the event of a violation of any of the provisions of the zoning regulations, or in the event of a failure to comply with any prescribed condition of approval, the City Planning Commission may, after holding a public hearing, revoke any conditional use permit. Notice of the hearing shall be given by posting notices thereof within three hundred (300) feet of the property involved. Notice of the hearing shall also be given by mail or delivery to the permit holder, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than ten days prior to the date set for the hearing. The determination of the Commission shall become final ten calendar days after the date of decision unless appealed to the City Council in accordance with Section 17.134.070. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. (Ord. 12237 § 4 (part), 2000: prior planning code § 9208)~~

~~**17.134.100 Regulations governing permit revocation for Fast-Food Restaurants.**~~

~~Violations by Fast-Food Restaurants of conditions of approval related to hours of operation, and/or noise, trash and litter, lighting, or loitering shall be grounds for reopening the use permit hearings and, after notice and hearing conducted by the Planning Commission, for adding conditions to control the violations/complaint or for revoking the permit. This remedy shall be in addition to any other remedy available to the city under this code, or in law or in equity. (Prior planning code § 9208.1)~~

~~**17.134.130 Reconsideration by the Planning Commission of decisions on secondary units.**~~

~~Reconsideration of decisions on secondary units may be requested by the applicant or any interested party within ten calendar days after the date of a decision by the City Planning Commission on an application for a secondary unit. Any such request for reconsideration shall be processed in accordance with the Rules and Regulations for Procedures of the Oakland City Planning Commission as adopted by the Planning Commission and as may be amended in the future. (Ord. 12199 § 9 (part), 2000)~~

Chapter 17.135

SPECIAL USE PERMIT REVIEW PROCEDURE FOR THE OS ZONE

Sections:

17.135.030 Procedure for consideration.
17.135.060 No net loss tracking.

17.135.030 Procedure for consideration.

No change in use or improvement, as defined in Section 17.09.050, shall occur on land designated OS unless the following process has been followed:

A. Pre-development Neighborhood Meeting. At the discretion of the Director of Parks, Recreation, and Cultural Affairs, a neighborhood meeting may be convened in the vicinity of the park or open space land affected by the proposed change in use or improvement. If such a meeting is held, notice shall be given by posting an enlarged notice ~~it shall be noticed via posting~~ on the premises of the park or open space land, ~~and~~ At the discretion of the Director, the meeting notice may also be posted on utility poles within three hundred (300) feet of such park or open space land. Notices shall also be mailed to neighborhood organizations and individuals who have expressed an interest in the subject park or project area.

B. Administrative Project Review. Once preliminary community feedback has been received and considered, the project sponsor shall submit a request to the Director of City Planning, including a project description and cost estimate. The Director shall coordinate preliminary review of the project with the project's operating department and any other City department or agency likely to be interested or involved in the execution, operation, or maintenance of the project. These requirements shall include, but are not limited to, formal CEQA review of the proposed change in use or improvement. A written summary of comments shall be prepared prior to the scheduling of the public hearing.

C. Public Hearing. A public hearing shall be required for any change in use or improvement and shall be conducted and heard by the City Planning Commission and/or the Parks and Recreation Advisory Commission, as provided by subdivisions 1 and 2 of this subsection.

1. Major Conditional Use Permits.

a. An application for a major conditional use permit, as required by Sections 17.11.060 and 17.11.090, shall be considered first by the Parks and Recreation Advisory Commission (PRAC) and second by the City Planning Commission. Each commission shall conduct a public hearing on the application. Notice of the PRAC hearing shall follow the procedure outlined at Section 17.135.030(C)(2). Notice of the City Planning Commission hearing shall be given by posting ~~notices within three hundred (300) feet of the property involved in the application; a substantially~~ an enlarged notice ~~shall also be posted~~ on the premises of the subject property. At the discretion of the Director, notice of the public hearing may also be provided on utility poles within three hundred (300) feet of such park or open space land. Notice of each hearing shall also be given by mail or delivery to all persons owning real property in the city of Oakland within three hundred (300) feet of the property involved; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) ~~ten~~ days prior to the date set for the hearing. Notice shall also be provided to those community or neighborhood groups included in the Planning Department database that are within the service area radius of the impacted park. Additional outreach shall be provided through press releases and other notification as warranted by the size and location of the project.

b. The PRAC shall schedule its public hearing within forty-five (45) days after receiving the application for consideration. The PRAC shall make a recommendation to the Planning Commission at the conclusion of the hearing. In the event the PRAC has not acted on the application within forty-five (45) days, the project shall automatically be forwarded to the City Planning Commission.

c. The City Planning Commission shall determine whether the proposal conforms to the use permit criteria set forth in Section 17.11.110 and to other applicable criteria, and shall make a recommendation to grant or deny the application, or recommend such changes or impose such conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The determination of the Commission shall become final within ten calendar days after the date of the decision unless appealed to the City Council in accordance with Section 17.134.070.

2. Minor Conditional Use Permits.

a. An application for a minor conditional use permit, as required by Sections 17.11.060 and 17.11.090, shall be considered by the Parks and Recreation Advisory Commission prior to a final decision by the Director of City Planning. The Parks and Recreation Advisory Commission shall hold a noticed public hearing on the application and shall make a recommendation to grant or deny the application, or recommend such changes or conditions of approval as are in its judgment necessary. Notice of the public hearing shall be provided by posting an enlarged notice on the premises of the park or open space land. ~~and~~ At the discretion of the Director, notice of the public hearing may also be provided on utility poles within three hundred (300) feet of such park or open space land. Notices shall also be mailed to neighborhood organizations and individuals who have expressed an interest in the subject park or project area.

b. The Director of City Planning shall determine whether the proposal conforms to the special use permit criteria set forth in Section 17.11.110 and to other applicable criteria and shall grant, deny, or conditionally grant the permit. The determination of the Director of City Planning shall become final within ten calendar days after the date of the decision unless appealed to the City Planning Commission in accordance with Section 17.134.060. If no action is taken by the Director of City Planning within thirty (30) days of the Parks and Recreation Advisory Commission's recommendation, the project shall be deemed approved.

D. Appeals. Any interested party may appeal a decision of the Director of City Planning or a decision of the City Planning Commission in accordance with the provisions outlined in the conditional use permit procedure at Sections 17.134.060 and 17.134.070. In the event the last date of appeal falls on a weekend or holiday, the next date such offices are open for business shall be the last date of appeal. (Ord. 12237 § 4 (part), 2000; Ord. 12078 § 4 (part), 1998)

17.135.060 No net loss tracking.

A. Beginning on the effective date of the OS zone regulations, the Oakland City ~~Manager~~Administrator's Office shall establish an open space tracking system. The tracking system shall be maintained in a publicly accessible format and shall be updated on a continuous basis as additions and subtractions are made to the city's park system. Beginning on the effective date of these regulations, all enclosed facilities in urban parks which exceed one hundred (100) square feet shall be tracked and recorded as "subtractions" from a baseline figure of zero. All acquisition of parkland or creation of new useable public open space shall be tracked and recorded as "additions." Only land which is improved or intended for improvement to urban park standards may be counted as "additions"; acquisition of Resource Conservation Area land is excluded. The city shall strongly encourage actions which result in a net gain of open space; in other words, a condition where the "additions" of open space in the tracking system exceed the "subtractions" resulting from new buildings and structure coverage.

B. Unless overriding considerations exist, approval of any increase in structure coverage within the OS zone shall be contingent on a finding that there has been no net loss of urban parkland from the time of the baseline date. If this finding cannot be made, approval shall be conditioned upon provision of replacement open space of comparable value and of an area equal to or greater than the space covered which shall be made available concurrently. Land within the jurisdiction of the Port of Oakland is exempt from this requirement and shall be excluded from this calculation. (Ord. 12078 § 4 (part), 1998)

Chapter 17.136

DESIGN REVIEW PROCEDURE

Sections:

17.136.010 Title, purpose, and applicability.
17.136.020 Application.
~~**17.136.020 Definition of regular and small project design review.**~~
17.136.025 Exemptions from design review.
~~**17.136.030 Application.**~~
17.136.030 Small project design review.
17.136.035 Small project design review criteria.
17.136.040 Regular design review.
17.136.050 Regular design review criteria.
17.136.060~~040~~ Review by Landmarks Board in certain cases.
17.136.070 Special regulations for designated landmarks.
17.136.075 Postponement of demolition.
~~**17.136.050 Procedure for consideration--Small project design review.**~~
~~**17.136.060 Procedures for consideration--Regular design review.**~~
~~**17.136.070 Design review criteria.**~~
17.136.080 Appeal to Planning Commission--Regular design review.
17.136.090 Appeal to City Council--Regular design review.
17.136.100 Adherence to approved plans.
~~**17.136.110 Revocation.**~~
17.136.120 Design review related to conditional use permit, planned unit development, variance, or subdivision.
17.136.130 Limitation on resubmission--Small project design review.

17.136.020 Application.

A. Application for design review. Application for design review shall be made by the owner of the affected property, or his or her authorized agent, on a form prescribed by the City Planning Department and shall be filed with such Department. The application shall be accompanied by such information as may be required to allow applicable criteria to be applied to the proposal, and by the fee prescribed in the city master fee schedule. Such information may include, but is not limited to, site and building plans, elevations, and relationships to adjacent properties. (Ord. 11892 § 22, 1996; Ord. 11816 § 2 (part), 1995: prior planning code § 9302)

17.136.025 Exemptions from Design Review.

A. Applicability. A proposal will be exempt from design review if it meets each of the provisions set forth below. All such determinations are final and not appealable:

1. The proposal is limited to one or more of the types of work listed as exempt from design review in Section 17.136.025B;

2. The proposal does not require a conditional use permit or variance, pursuant to the zoning regulations of Title 17 of the Oakland Planning code;

3. The proposal is determined exempt from the California Environmental Quality Act (CEQA);

4. All exterior treatments visually match the existing or historical design of the building; and

5. The proposal will not have a significant effect on the property's character-defining elements. "Character-defining elements" are those features of design, materials, workmanship, setting,

location, and association that identify a property as representative of its period and contribute to its visual distinction or historical significance.

~~The following changes to existing nonresidential buildings are exempt from design review:~~

B. Definition. The following types of work are exempt from design review, pursuant to all provisions in Section 17.136.025A:

1. Additions or Alterations.

a. Projects not requiring a building permit, except if otherwise specified below;

b. Repair or replacement of existing building components in a manner that visually matches the existing or historical design of the building;

c. Secondary Units of five hundred (500) square feet or less on a lot with only one existing or proposed primary dwelling unit, pursuant to all regulations in Section 17.102.360;

d. Floor area additions within the existing building envelope not involving the creation of a dwelling unit;

e. Cumulative additions over a three (3) year period not involving the creation of a dwelling unit that are outside the existing building envelope and equal no more than ten percent (10%) of the total floor area or footprint on site;

f. For Commercial, Civic, or Industrial Facilities and the Non-residential Portions of Mixed-Use Development Projects, any addition or alteration on a roof that does not project above the existing parapet walls;

g. Any addition or alteration not otherwise exempt which is used as a loading dock, recycling area, utility area, or similar open structure addition that is no higher than six (6) feet above finished grade, less than five hundred (500) square feet in floor area or footprint, and is visually screened from neighboring properties; such exemptions shall only permitted where the proposal conforms with all Buffering regulations in Chapter 17.110 and all Performance Standards in Chapter 17.120;

h. Areas of porch, deck or balcony with a surface that is less than thirty (30) inches above finished grade.

2. Signs.

a~~1~~. A change of sign face copy or new sign face within an existing Advertisement Sign or a change of sign face copy within Business or Civic Sign structures so long as the structure and framework of the sign remain unchanged and the new sign face duplicates the colors of the original or, in the case of an internally illuminated sign, the letter copy is light in color and the background is dark; or

b. Installation, alteration or removal of Realty Signs, Development Signs, holiday decorations, displays behind a display window and, except as otherwise provided in Section 17.114.120C, for mere changes of copy, including cutouts, on Signs which customarily involve periodic changes of copy.

3. Other Projects.

a. Sidewalk Cafes that have a maximum of five tables and no more than fifteen (15) chairs and/or do not have any permanent structures in the public right of way, pursuant to Section 17.102.335.

~~2. Any alteration or addition of floor area less than ten percent (10%) of existing floor area or footprint area determined by the Director of City Planning to be visible from the street or from other public areas. An alteration or addition will normally be considered "not visible from the street or from other public areas" if it meets at least one of the following criteria:~~

~~i) The alteration or addition does not affect any street face or public face of a building or is otherwise located outside the Critical Design Area defined as the area within forty (40) feet of any street line, public path, park or other public area (see illustration I-30);~~

~~3. Any alteration or addition not normally exempt which is used as a loading dock, recycling area, utility area, porch, deck or similar open structure addition that is no higher than six (6) feet above finished grade, less than five hundred (500) square feet in floor or footprint area, and has no significant visual or noise impact to neighboring properties. Exemptions only permitted where the proposal conforms with all Buffering requirements in Chapter 17.110 and all Performance Standards in Chapter 17.120.~~

~~4. The alteration or addition is on a roof and does not project above the parapet walls.~~ (Ord. 12417 § 1, 2002)

17.136.030~~20~~ Small Project Design Review. ~~Definition of regular and small project design review.~~

A. Applicability. "Small Project Design Review" shall apply to proposals that do not qualify for an exemption from design review as set forth in Section 17.136.025, or require Regular Design Review as either determined by the Director of City Planning or as set forth in Section 17.136.040. "Small Project Design Review" proposals shall meet all of the following provisions:

1. The proposal is limited to one or more of the types of work listed as a "Small Project" in Section 17.136.030B;

2. The proposal does not require a conditional use permit or variance, pursuant to the zoning regulations of Title 17 of the Oakland Planning code;

3. The proposal is determined exempt from the California Environmental Quality Act (CEQA). and

4. The proposal will not have a significant effect on the property's character-defining elements. "Character-defining elements" are those features of design, materials, workmanship, setting, location, and association that identify a property as representative of its period and contribute to its visual distinction or historical significance.

~~Small Project Design Review. "Small project design review" means design review for existing commercial, civic, or industrial facilities, and the nonresidential portions of mixed use development projects, which are determined exempt from the California Environmental Quality Act; do not require any other permit, variance or other approval pursuant to the zoning regulations of Title 17 of the Oakland Planning code;~~

B. Definition of "Small Project". Small Projects are limited to one or more of the following types of work:

1. Additions or Alterations.

a. Repair or replacement of existing building components in a manner that is compatible with, but not necessarily identical to, the property's existing or historical design;

b. Cumulative additions over a three (3) year period not involving the creation of a dwelling unit that are outside the existing building envelope and equal more than ten percent (10%) of the total floor area or footprint on site, but do not exceed one thousand (1000) square feet or one hundred percent (100%) of the total floor area or footprint on site, whichever is less;

c. Secondary units of more than five hundred (500) square feet in floor area, but not exceeding nine hundred (900) square feet or fifty percent (50%) of the floor area of the primary dwelling, whichever is less, pursuant to all regulations in Section 17.102.360;

d. For commercial, civic, or industrial facilities and the non-residential portions of mixed-use development projects, changes to storefronts or street-fronting facades that involve either: (i) replacement or construction of doors, windows; bulkheads and nonstructural wall infill, or (ii) restoration of documented historic fabric.

2. Fences.

a. For Residential Zones and Residential Facilities, fences exceeding 42 inches in height in the front yard and street-side yards, but not exceeding six (6) feet in height, pursuant to Section 17.108.140;

b. For Commercial Zones, Manufacturing Zones, and S-1, S-2, S-3, and S-15 Zones, fences exceeding eight (8) feet in height within ten (10) feet of any abutting property in a residential zone, but not exceeding ten (10) feet in height, pursuant to Section 17.108.140.

3. Signs.

~~a.1.~~ New or modified Signs, excluding Advertising Signs; and Signs extending above the roofline~~; and multi-tenant freestanding signs~~;

b.~~2.~~ New or modified awnings;

c.~~3.~~ Color changes to ~~buildings,~~ Signs, awnings or other similar facilities;

d. Installation of flags or banners having any permanent structure within the public right of way, pursuant to the same regulations for sidewalk cafes in Section 17.102.335B;

e. Exceptions to aggregate Sign area limits, pursuant to Sections 17.104.020(B)(3) and 17.104.030(B)(1).

4. Alterations to Existing Telecommunications Facilities, pursuant to all regulations in Chapter 17.128.

a. At an existing Micro Facility, the addition of new or replacement antennas resulting in no more than six (6) antennas that are concealed from view, consistent with the definition of "Micro" Facility in Section 17.10.870;

b. At an existing Mini Facility, the addition of new or replacement antennas resulting in no more than twelve (12) antennas that are concealed from view, consistent with the definition of "Mini" Facility in Section 17.10.880;

c. Repair or replacement of existing equipment cabinets that are concealed from view;

d. Repair or replacement of existing equipment ancillary to the transmissions and reception of voice and data via radio frequencies. Such equipment may include, but is not limited to, cable, conduit, and connectors.

5. Other Projects.

a. Retaining walls not flanking a driveway exceeding six (6) feet in height, if all provisions in Section 17.102.400 are met;

b. Sidewalk Cafes that have more than five tables/fifteen (15) chairs and/or have a permanent structure in the public right of way, pursuant to Section 17.102.335.

~~4. Changes to storefronts or ground floor facades (provided they do not involve properties determined to be historic resources as defined by the California Environmental Quality Act (CEQA Guidelines Section 15064.5A) including but not limited to properties on the Local Register of Historic Resources (LRHR) as defined in the Historic Preservation Element of the Oakland General Plan) and are limited to either:~~

~~i) Replacement or construction of doors, windows; bulkheads and nonstructural wall infill; or~~

~~ii) Restoration of documented historic fabric; or~~

~~iii) Installation or replacement of security grilles or gates;~~

~~5. Changes to previously altered doors and windows that restore the doors and windows to their original or historic design;~~

~~6. Installation of flags or banners having any permanent structure within the public right of way, subject to 17.102.335B.~~

~~7. Fences.~~

C. Procedures for Consideration -- Small Project Design Review. The Director of City Planning may, at his or her discretion, consider an application for small project design review according to the following Three-Track process, or if additional consideration is required, determine that the proposal shall be reviewed according to the regular design review procedure in Section 17.136.040:

1. Track One Procedure - Small Project Design Review Proposals Not Involving a Local Register Property, or an Upper-Story Addition to a One or Two Unit Primary Dwelling Unit of More than 250 Square Feet in Floor Area:

a. The Director of City Planning, or his or her designee, shall determine whether the proposal meets the requirements for small project design review as set forth in this section.

b. Decision by the Director of City Planning. The Director, or his or her designee, may approve or disapprove a Track One proposal determined eligible for small project design review and may require such changes therein or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to the applicable small project design review criteria in Section 17.136.035.

c. The decision by the Director, or his or her designee, shall be final immediately and not appealable.

2. Track Two Procedure - Small Project Design Review Proposals Involving a Local Register Property:

a. The Director of City Planning, in concert with the City of Oakland's Historic Preservation staff, shall determine whether a proposed addition or alteration involving a Local Register Property will have a significant effect on the property's character-defining elements. "Character-defining elements" are those features of design, materials, workmanship, setting, location, and association that identify a property as representative of its period and contribute to its visual distinction or historical significance. Any proposed addition or alteration determined to have a significant effect on a Local Register Property's character-defining elements shall be reviewed instead according to the regular design review procedure in Section 17.136.040. Any proposed addition involving an upper-story addition to a one or two unit primary dwelling unit of more than 250 square feet in floor area that is determined eligible for small project design review and to not have a significant effect on the property's character-defining elements shall be reviewed according to the Track Three procedure in Section 17.136.030(C)(3).

b. Decision by the Director of City Planning. The Director, or his or her designee, may approve or disapprove a Track Two proposal determined eligible for small project design review and may require such changes therein or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to the applicable small project design review criteria in Section 17.136.035.

c. The decision by the Director, or his or her designee, shall be final immediately and not appealable.

3. Track Three Procedure - Small Project Design Review Proposals Involving an Upper-Story Addition to a One or Two Unit Primary Dwelling Unit of More than 250 Square Feet in Floor Area; or an over eight (8) foot increase in the height of a building in the HBX-1, HBX-2, and HBX-3 zones, not including allowed projections above the height limits listed in 17.108.030:

a. The Director of City Planning, or his or her designee, shall determine whether the proposal meets the requirements for small project design review as set forth in this section.

b. At the time of small project design review application, the owner of the affected property, or his or her authorized agent, shall obtain from the City Planning Department, a list of names and mailing addresses of all persons shown on the last available equalized assessment roll as owning the City of Oakland lot or lots adjacent to the project site and directly across the street abutting the project site; a notice poster to install on the project site; and a "Notice to Neighboring Property Owners" form which includes the project description and contact information.

c. Prior to the subject application being deemed complete, the applicant shall install the notice poster provided at the time of application at a location on the project site that is clearly visible from the street, alley, or private way providing access to the subject lot; and provide by certified mail or delivery to all persons shown on the last available equalized assessment roll as owning the City of Oakland lot or lots adjacent to the project site and directly across the street abutting the project site, a copy of the completed project notice form, as well as a set of reduced plans (consisting of at least a site plan and building elevations that show all proposed exterior work).

d. All required posting of the site and notification of adjacent and across the street property owners shall be completed by the project applicant not less than ten (10) days prior to the earliest date for final decision on the application. During the required noticing period, the Planning Department shall receive and consider comments from any interested party, as well as accept requests for a meeting with City Planning staff.

e. Decision by the Director of City Planning. Prior to final decision, City Planning staff shall hold a meeting with interested parties whenever such a meeting request is received in writing by the Planning Department during the small project design review comment period. Following any meeting with interested parties, the Director, or his or her designee, may approve or disapprove a Track Three proposal determined eligible for small project design review and may require such changes therein or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to the applicable small project design review criteria in Section 17.136.035.

f. The decision by the Director, or his or her designee, shall be final immediately and not appealable.

17.136.035 Small Project Design Review Criteria.

A Small project design review approval shall be granted for proposals that conform to each of the applicable criteria set forth in subdivisions 1, 2, and 3 below, and if also applicable, to the criteria in subdivision 4 below:

1. That for commercial, civic, or industrial facilities and the nonresidential portions of Mixed Use Development projects, the proposed design conforms with the adopted Small Project Design Guidelines, as may be amended;

2. That for Residential Facilities with one or two primary dwelling units and the residential portions of Mixed Use Development projects with one or two primary dwelling units, the proposed design conforms with the adopted checklist criteria for facilities with 1-2 primary dwelling units, as may be amended;

3. That for Residential Facilities with three or more dwelling units and the residential portions of Mixed Use Development projects with three or more dwelling units, the proposed design conforms with the adopted checklist criteria for facilities with three or more dwelling units, as may be amended;

4. That for Local Register Properties and Potential Designated Historic Properties, the proposed design will not substantially impair the visual, architectural, or historic value of the affected site or facility.

17.136.040 Regular Design Review.

A. Applicability. "Regular design review" shall apply to proposals that require design review pursuant to the zoning regulations of Title 17 of the Oakland Planning Code, but do not qualify for a design review exemption as set forth in Section 17.136.025 or small project design review as set forth in Section 17.136.030. Projects requiring regular design review include, but are not limited to, the following types of work:

1. Any proposal involving one or more of the facility, activity, building, structure, or development types that require design review pursuant to the zoning regulations of Title 17 of the Oakland Planning Code, but does not qualify for a design review exemption as set forth in Section 17.136.025, or small project design review as set forth in Section 17.136.030;

2. Construction or alteration of structures requiring a conditional use permit or variance, pursuant to the zoning regulations of Title 17 of the Oakland Planning Code;

3. New construction of one or two dwelling units, other than a secondary unit;

4. New construction of three or more dwelling units, or adding units to a property for a total of three or more dwelling units on site;

5. New construction of principal facilities in the HBX zone;

6. The creation of any new HBX 'work/live' unit or HBX 'live/work' unit (see Sections 17.65.160 and 17.65.170). This requirement shall apply for both: a) conversions of existing facilities to contain either of these unit types, and b) the construction of new buildings that contain either of these unit types;

7. Cumulative additions over a three (3) year period not involving the creation of a dwelling unit that are outside the existing building envelope and exceed one thousand (1000) square feet or one hundred percent (100%) of the total floor area or footprint on site, whichever is less;

8. Exceptions to the parking accommodation requirements for one- and two-family Residential Facilities in Section 17.102.390;

9. Advertising Signs, and Signs extending above the roofline;

10. Proposals for new or modified Telecommunications Facilities, pursuant to Chapter 17.128, but excluding those alterations to existing Telecommunications Facilities listed as a Small Project in Section 17.136.030(B).

B. Pre-Application Review --Regular Design Review. Prior to application for regular design review, any applicant or his or her representative seeking early project feedback may submit for a pre-application review of the proposal by a representative of the City Planning Department. For projects of a larger scale or involving a significant policy issue, the Director of City Planning may, at his or her discretion, request that an applicant or his or her representative submit for a pre-application review of the proposal. During a pre-application review, the city representative will provide information about applicable design review criteria and pertinent procedures, including the opportunity for advice from outside design professionals. Where appropriate the city representative may also informally discuss possible design solutions, point out potential neighborhood concerns, and mention local organizations which the applicant is encouraged to contact before finalizing the proposal.

C. Procedure for Consideration of Regular Design Review Proposals which Involve or Result in a One- or Two-Unit Residential Facility--Decisions Not Ultimately Appealable to City Council.

1. Decision by the Director of City Planning or the City Planning Commission. An application for regular design review shall be considered by the Director of City Planning. The Director may, at his or her discretion, refer the application to the City Planning Commission for decision rather than acting on it himself or herself. However, if the project requires an Environmental Impact Report, or results in twenty-five thousand (25,000) square feet of new floor area and is located in any zone other than the R-80, R-90, C-51, C-55, S-2, or S-15 zones, the Director of City Planning shall refer the application to the City Planning Commission for an initial decision rather than acting on it himself or herself.

2. Notification Procedures. Notice shall be given by posting an enlarged notice at a location on the project site that is clearly visible from the street, alley, or private way providing access to the subject lot. Notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the project site; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date set, as the case may be, for decision on the application by the Director, or prior to the date set for a hearing before the Commission, if such is to be held. During the required noticing period, the planning department shall receive and consider comments from any interested party.

3. The Director or the applicant may seek the advice of outside design professionals. The Director shall determine whether the proposal conforms to the applicable design review criteria, and may approve or disapprove the proposal or require such changes therein or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to said criteria.

4. Finality of Decision. A determination by the Director shall become final ten calendar days after the date of initial decision unless appealed to the City Planning Commission or the Commission's Residential Appeals Committee in accordance with Section 17.136.080. In the event that the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. In those cases which are referred to the Commission by the Director, the initial decision of the Commission shall become final ten days after the date of decision.

D. Procedure for Consideration of Regular Design Review Proposals which do not Involve or Result in a One- or Two-Unit Residential Facility--Decisions Ultimately Appealable to City Council.

1. Decision by the Director of City Planning or the City Planning Commission. An application for regular design review shall be considered by the Director of City Planning. The Director may, at his or her discretion, refer the application to the City Planning Commission for an initial decision rather than acting on it himself or herself. However, if the project requires an Environmental Impact Report, or results in twenty-five thousand (25,000) square feet of new floor area and is located in any zone other than the R-80, R-90, C-51, C-55, S-2, or S-15 zones, the Director of City Planning shall refer the application to the City Planning Commission for an initial decision rather than acting on it himself or herself.

2. Notification Procedures. Notice shall be given by posting an enlarged notice at a location on the project site that is clearly visible from the street, alley, or private way providing access to the subject lot. Notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the project site; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date set, as the case may be, for decision on the application by the Director, or prior to the date set for a hearing before the Commission, if such is to be held. During the required noticing period, the planning department shall receive and consider comments from any interested party.

3. The Director or the Commission may seek the advice of outside design professionals. The Director or the Commission, as the case may be, shall determine whether the proposal conforms to the applicable design review criteria, and may approve or disapprove the proposal or require such changes therein or impose such reasonable conditions of approval as are in his or her or its judgment necessary to ensure conformity to said criteria.

4. Finality of Decision. A determination by the Director shall become final ten days after the date of initial decision unless appealed to the City Planning Commission in accordance with Section 17.136.080. In those cases which are referred to the Commission by the Director, the initial decision of the Commission shall become final ten days after the date of decision unless appealed to the City Council in accordance with Section 17.136.090. In the event that the last day of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal.

E. Alternative Notification Procedures. If the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement the procedures set forth in subsections C and D of this section.

(Ord. 12376 § 3 (part), 2001: Ord. 12237 § 4 (part), 2000; Ord. 11816 § 2 (part), 1995: prior planning code § 9305)

~~(Ord. 12533 § 3 (part); Ord. 12417 § 1 (part), 2002; Ord. 12376 § 3 (part), 2001: Ord. 12224 § 8, 2000; Ord. 11816 § 2 (part), 1995: prior planning code § 9301)~~

17.136.050 Regular design review criteria.

Regular design review approval may be granted only if the proposal conforms to all of the following general design review criteria, as well as to any and all other applicable design review criteria:

A. For Residential Facilities.

1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures;

2. That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics;

3. That the proposed design will be sensitive to the topography and landscape;

4. That, if situated on a hill, the design and massing of the proposed building relates to the grade of the hill;

5. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

B. For Nonresidential Facilities and Signs.

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design

which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

C. For Local Register Properties that are not Landmarks or located in the S-7 or S-20 zone:

1. That for additions or alterations,

a. The proposal will not substantially impair the visual, architectural, or historic value of the affected site or facility. Consideration shall be given to design, form, scale, materials, texture, lighting, detailing and ornamentation, landscaping, Signs, and any other relevant design element or effect, and, where applicable, the relation of the above to the original design of the affected facility.

2. That for demolition or removal,

a. The affected structure or portion thereof is not considered irreplaceable in terms of its visual, cultural, or educational value to the area or community; or

b. The structure or portion thereof is in such condition that it is not architecturally feasible to preserve or restore it, or

c. Considering the economic feasibility of preserving or restoring the structure or portion thereof, and balancing the interest of the public in such preservation or restoration and the interest of the owner of the property in the utilization thereof, approval is required by considerations of equity.

D. For Potential Designated Historic Properties that are not Local Register Properties:

1. That for additions or alterations,

a. The design matches or is compatible with, but not necessarily identical to, the property's existing or historical design; or

b. The proposed design comprehensively modifies and is at least equal in quality to the existing design and is compatible with the character of the neighborhood; or

c. The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

2. That for demolition or removal,

a. The design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or

b. The public benefits of the proposed project outweigh the benefit of retaining the original structure ; or

c. The existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

E. For Retaining Walls,

1. That the retaining wall is consistent with the overall building and site design and respects the natural landscape and topography of the site and surrounding areas;

2. That the retaining wall is responsive to human scale, avoiding large, blank, uninterrupted or undesigned vertical surfaces;

3. That the retaining wall respects the natural topography, avoiding obvious scars on the land;

4. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

(Ord. 12376 § 3 (part), 2001: Ord. 11816 § 2 (part), 1995; prior planning code § 9306)

~~**17.136.030 Application.**~~

~~A. Pre-Application Conference for Certain Projects Regular Design Review. Prior to application for regular design review of any proposal which involves or results in three or more new dwelling units on a lot in the R-40, R-60, R-70, R-80, R-90, C-25, C-30, C-35, C-36, C-40, C-51, C-52, C-55, S-2, or S-15 zones, the applicant or his or her representative shall have a conference with a representative of the City Planning Department. This conference should take place before or at an early stage in the design process. At the conference the city representative shall provide information about applicable design review criteria and pertinent procedures, including the opportunity for advice from outside design professionals. Where appropriate the city representative may also informally discuss possible design solutions, point out potential neighborhood concerns, and mention local organizations which the applicant is encouraged to contact before finalizing the proposal.~~

~~B. Application for Design Review. Application for design review shall be made by the owner of the affected property, or his or her authorized agent, on a form prescribed by the City Planning Department and shall be filed with such Department. The application shall be accompanied by such information as may be required to allow applicable criteria to be applied to the proposal, and by the fee prescribed in the fee schedule in Chapter 17.150. Such information may include, but is not limited to, site and building plans, elevations, and relationships to adjacent properties. (Ord. 11892 § 22, 1996; Ord. 11816 § 2 (part), 1995: prior planning code § 9302)~~

17.136.060040 Review by Landmarks Board in certain cases.

A. Whenever an application is for regular design review in the S-7 zone, or on a designated landmark site, the Director of City Planning shall refer the proposal to the Landmarks Preservation Advisory Board for its recommendations.

B. Whenever an application is for regular design review in the S-20 zone, and the Director of City Planning determines that a proposed addition or alteration will have a significant effect on the property's character-defining elements that are visible from a street or other public area, the Director may, at his or her discretion, refer the project to the Landmarks Preservation Advisory Board for its recommendations. "Character-defining elements" are those features of design, materials, workmanship, setting, location, and association that identify a property as representative of its period and contribute to its visual distinction or historical significance. An addition or alteration is normally considered "visible from a street or other public area" if it affects a street face or public face of the facility or is otherwise located within the "critical design area," defined as the area within forty (40) feet of any street line, public alley, public path, park or other public area. ~~the Director may, at his or her discretion, refer the application to the Board for its recommendations.~~ (Ord. 11816 § 2 (part), 1995: prior planning code § 9303)

17.136.070 Special regulations for designated landmarks.

A. Designation. In any zone, the City Council may designate as a landmark any facility, portion thereof, or group of facilities which has special character, interest, or value of any of the types referred to in 17.07.030P. The designating ordinance for each landmark shall include a description of the characteristics of the landmark which justify its designation and a clear description of the particular features that should be preserved. Each ordinance shall also include the location and boundaries of a landmark site, which shall be the lot, or other appropriate immediate setting, containing the landmark. Designation of each landmark and landmark site shall be pursuant to the rezoning and law change procedure in Chapter 17.144.

B. Design Review for Construction or Alteration. Except for projects that are exempt from design review as set forth in Section 17.136.025, no Building Facility, Mixed Use Development, Telecommunications Facility, Sign, or other associated structure on any designated landmark site shall be constructed or established, or altered in such a manner as to affect exterior appearance unless plans for the proposal have been approved pursuant to the design review procedure in this chapter and the applicable provisions of this section. Furthermore, for a publicly owned landmark, the designating ordinance may require such approval of proposed changes to major interior architectural features.

C. Design Review for Demolition or Removal. Within any designated landmark site, no Building Facility, portion thereof, or other landmark shall be demolished or removed, unless plans for the proposal have been approved pursuant to the regular design review procedure in Section 17.136.040 and the applicable provisions of this section. However, in any case, after notice to the Director of City Planning, demolition or removal shall be permitted without such approval upon a determination by the Building Services Department, the Housing Conservation Division, their respective appeals boards, or the City Council that immediate demolition is necessary to protect the public health or safety, or after expiration of the periods of postponement referred to in subsection E of this section.

D. Regular Design Review Criteria. Proposals involving designated landmarks that require regular design review approval may be granted only upon determination that the proposal conforms to the regular design review criteria set forth in Section 17.136.050 and to the additional criteria set forth in subdivisions 1, 2 and 3 or to one or both of the criteria set forth in subdivision 4:

1. That the proposal will not adversely affect the exterior features of the designated landmark nor, when subject to control as specified in the designating ordinance for a publicly owned landmark, its major interior architectural features;

2. That the proposal will not adversely affect the special character, interest, or value of the landmark and its site, as viewed both in themselves and in their setting;

3. That the proposal conforms with the Design Guidelines for Landmarks and Preservation Districts as adopted by the City Planning Commission and, as applicable for certain federally related projects, with the Secretary of the Interior's Standards for the Treatment of Historic Properties;

4. If the proposal does not conform to the criteria set forth in subdivisions 1, 2 and 3:

i. That the designated landmark or portion thereof is in such condition that it is not architecturally feasible to preserve or restore it, or

ii. That, considering the economic feasibility of alternatives to the proposal, and balancing the interest of the public in protecting the designated landmark or portion thereof, and the interest of the owner of the landmark site in the utilization thereof, approval is required by considerations of equity.

E. Postponement of Demolition or Removal. If an application for approval of demolition or removal of a facility, pursuant to subsections C and D of this section, is denied, the issuance of a permit for demolition or removal shall be deferred for a period of one hundred twenty (120) days, said period to commence upon the initial denial by the reviewing officer or body. During the period of postponement, the Director of City Planning or the City Planning Commission, with the advice and assistance of the Landmarks Preservation Advisory Board, shall explore all means by which, with the agreement of the owner or through eminent domain, the affected facility may be preserved or restored. The reviewing officer or body from whose decision the denial of the application became final may, after holding a public hearing, extend said period for not more than additional one hundred twenty (120) days; provided, however, that the decision to so extend said period shall be made not earlier than ninety (90) days, nor later than thirty (30) days prior to the expiration of the initial one hundred twenty (120) day period. Notice of the hearing shall be given by posting an enlarged notice on the premises of the subject property involved. Notice of the hearing shall also be given by mail or delivery to the applicant, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing. Such extension shall be made only upon evidence that substantial progress has been made toward securing the preservation or restoration of the facility. In the event that the applicant shall have failed to exhaust all appeals under Sections 17.136.080 and 17.136.090 from the denial of the application, the decision to extend said period shall be appealable under the provisions of Sections 17.136.080 and 17.136.090 to those bodies to whom appeal had not been taken from the initial denial of the application.

F. Duty to Keep in Good Repair. Except as otherwise authorized under subsections B and C of this section, the owner, lessee, or other person in actual charge of each designated landmark shall keep in good repair all of the exterior portions thereof, all of the interior portions thereof when subject to control as specified in the designating ordinance, and all interior portions thereof the maintenance of

which is necessary to prevent deterioration and decay of any exterior portion. (Ord. 12513 Attach. A (part), 2003; Ord. 12237 § 4 (part), 2000; prior planning code § 7002)

17.136.075 Postponement of demolition.

Except for postponement periods as otherwise specified for structures in the S-7 zone (Chapter 17.84), for structures in the S-20 zone (Chapter 17.101), and for Designated Landmarks (Section 17.136.070), the issuance of a demolition permit for any structure or portion thereof may be postponed by the Director of City Planning for a period not to exceed one hundred twenty (120) days from the date of application for such permit. The Director may do so upon determination that the structure or portion thereof is listed as a Local Register Property, or is on a study list of facilities under serious study by the Landmarks Preservation Advisory Board, the City Planning Commission, or the Director, for possible landmark designation under Section 17.136.070 or for other appropriate action to preserve it. During the period of postponement the Board, the Commission, or the Director shall explore means for preserving or restoring the structure or portion thereof. However, demolition may not be postponed under this section if, after notice to the Director of City Planning, the Building Services Department, the Housing Conservation Division, their respective appeals boards, or the City Council determines that immediate demolition is necessary to protect the public health or safety. Any determination made by the Director of City Planning under this section may be appealed pursuant to the administrative appeal procedure in Chapter 17.132. (Prior planning code § 7005)

~~**17.136.050 Procedure for consideration--Small project design review.**~~

~~A. Decision by the Director of City Planning. An application for small project design review shall be considered by the Director of City Planning. The Director shall determine whether the proposal conforms to the applicable design review criteria. The Director may approve or disapprove the proposal and may require such changes therein or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to said criteria. The Director's decision shall be in writing, and shall be final immediately. If the Director's decision involves a property in the S-7 zone or on a designated landmark site, a copy of the decision shall be forwarded to the Landmarks Preservation Advisory Board.~~

~~B. Period of Consideration. Should a decision not be rendered pursuant to subsection A of this section within five working days after filing a complete application, the application shall be deemed approved. However, the date by which a decision must be rendered may be extended by agreement between the Director of City Planning and the applicant. (Ord. 11816 § 2 (part), 1995: prior planning code § 9304)~~

~~**17.136.060 Procedures for consideration--Regular design review.**~~

~~A. Proposals in General Design Review Zones and Miscellaneous Cases Decisions Ultimately Appealable to City Council. (This procedure shall apply if regular design review is required under any provision of the zoning regulations other than, or in addition to Section 17.22.030, 17.24.030, 17.26.030, 17.28.030, 17.30.030, 17.32.030, 17.40.030, 17.50.030, 17.52.020, 17.54.030, 17.56.030, 17.58.020, 17.60.030, 17.62.020, 17.76.030 or 17.101B.40.) An application for regular design review shall be considered by the Director of City Planning. The Director may, at his or her discretion, refer the application to the City Planning Commission for decision rather than acting on it himself or herself. However, if the project requires development of an Environmental Impact Report, or involves twenty-five thousand (25,000) square feet of floor area and is located in any zone other than the R-80, R-90, C-51, C-55, S-2, or S-15 zones, the Director of City Planning shall refer the application to the City Planning Commission for decision rather than acting on it himself or herself. At his or her discretion, an administrative hearing may be held. Notice shall be given by posting notices thereof within three hundred (300) feet of the property involved in the application; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved. All such notices shall be given not less than ten days~~

~~prior to the date set for the hearing, if such is to be held, or, if not, for decision on the application by the Director or the Commission, as the case may be.~~

~~The Director or the Commission may seek the advice of outside design professionals. The Director or the Commission, as the case may be, shall determine whether the proposal conforms to the applicable design review criteria, and may approve or disapprove the proposal or require such changes therein or impose such reasonable conditions of approval as are in his or her or its judgement necessary to ensure conformity to said criteria.~~

~~A determination by the Director shall become final ten days after the date of decision unless appealed to the City Planning Commission in accordance with Section 17.136.100. In those cases, which are referred to the Commission by the Director, the decision of the Commission shall become final ten days after the date of decision unless appealed to the City Council in accordance with Section 17.136.090. In the event that the last day of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal.~~

~~B. Proposals Requiring Regular Design Review Only Because Project Involves or Results in Three or More Units or Creates a One or Two Unit Residential Facility Over 3,500 Square Feet in Floor Area in the S-18 Zone. Decisions Not Ultimately Appealable to City Council. (This procedure shall apply if regular design review is required under any provision of the zoning regulations other than, or in addition to, Section 17.22.030, 17.24.030, 17.26.030, 17.28.030, 17.30.030, 17.32.030, 17.40.030, 17.46.030, 17.50.030, 17.52.020, 17.54.030, 17.56.030, 17.58.020, 17.60.030, 17.62.020, 17.76.030 or 17.101B.40.) An application for regular design review shall be considered by the Director of City Planning. The Director may, at his or her discretion, refer the application to the City Planning Commission for decision rather than acting on it himself or herself. However, if the project requires development of an Environmental Impact Report or involves twenty-five thousand (25,000) square feet of floor area or twenty-five (25) or more dwelling units and is located in any zone other than the R-80, R-90, C-51, C-55, S-2, or S-15 zones, the Director shall refer the application to the Commission for decision rather than acting on it himself or herself. If the Director refers the application to the Commission for decision, it shall be processed pursuant to subsection A of this section. At his or her discretion, an administrative hearing may be held. Notice shall be given by posting notices thereof within three hundred (300) feet of the property involved in the application; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved. All such notices shall be given not less than ten days prior to the date set the hearing, if such is to be held, or, if not, for decision on the application by the Director.~~

~~The Director or the applicant may seek the advice of outside design professionals. The Director shall determine whether the proposal conforms to the applicable design review criteria, and may approve or disapprove the proposal or require such changes therein or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to said criteria. A determination by the Director shall become final ten calendar days after the date of decision unless appealed to the City Planning Commission in accordance with Section 17.136.100. In the event that last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal.~~

~~C. Period of Consideration. Should a decision not be rendered pursuant to subsection A or B of this section within sixty (60) days after filing, the application shall be deemed approved except when, pursuant to the California Environmental Quality Act, an environmental document is required prior to decision, in which case should a decision not be rendered within sixty (60) days after final action on the environmental document, the application shall be deemed approved. In any case, however, the date by which a decision must be rendered may be extended by agreement between the Director of City Planning or the City Planning Commission and the applicant.~~

~~D. Alternative Notification Procedures. If the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement the procedures set~~

~~forth in subsections A and B of this section. (Ord. 12376 § 3 (part), 2001: Ord. 12237 § 4 (part), 2000; Ord. 11816 § 2 (part), 1995: prior planning code § 9305)~~

~~**17.136.070 Design review criteria.**~~

~~Except as different criteria are prescribed elsewhere in the zoning regulations, design review approval may be granted only if the proposal conforms to all of the following criteria, as well as to any and all other applicable design review criteria:~~

~~A. For Residential Facilities.~~

~~1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures;~~

~~2. That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics;~~

~~3. That the proposed design will be sensitive to the topography and landscape;~~

~~4. That, if situated on a hill, the design and massing of the proposed building relates to the grade of the hill;~~

~~5. That the proposed design conforms in all significant respects with the Oakland Comprehensive Plan and with any applicable district plan or development control map which has been adopted by the City Council.~~

~~B. For Nonresidential Facilities and Signs.~~

~~1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.102.030;~~

~~2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;~~

~~3. That the proposed design conforms in all significant respects with the Oakland Comprehensive Plan and with any applicable district plan or development control map which has been adopted by the City Council.~~

~~C. For Retaining Walls.~~

~~1. That the retaining wall is consistent with the overall building and site design and respects the natural landscape and topography of the site and surrounding areas;~~

~~2. That the retaining wall is responsive to human scale, avoiding large, blank, uninterrupted or undesigned vertical surfaces;~~

~~3. That the retaining wall respects the natural topography, avoiding obvious scars on the land.~~

~~(Ord. 12376 § 3 (part), 2001: Ord. 11816 § 2 (part), 1995: prior planning code § 9306)~~

17.136.080 Appeal to Planning Commission--Regular design review.

Within ten calendar days after the date of a decision by the Director of City Planning on an application for regular design review, an appeal from said decision may be taken to the City Planning Commission by the applicant, the Landmarks Preservation Advisory Board, or any other interested party. In the case of appeals involving one- or two-unit Residential Facilities, ~~and no Nonresidential Facilities,~~ the appeal shall be considered by the Commission's Residential Appeals Committee. In the event the last day of appeal falls on a weekend or holiday when city offices are closed, the next date offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director or wherein his or her decision is not supported by the evidence in the record. Upon receipt of such appeal, the Secretary of the City Planning

Commission shall set the time for consideration thereof.; ~~which in the case of applications limited to one or two unit Residential Facilities, shall be the date of the Committee's next regularly scheduled meeting following the thirtieth day after the appeal is filed.~~ Not less than seventeen (17) ~~ten~~ days prior to the date of the Commission's or Committee's consideration of the appeal, the Secretary shall give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Commission or, if applicable, the Committee shall determine whether the proposal conforms to the applicable design review criteria, and may approve or disapprove the proposal or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The Commission or, if applicable, the Committee or the applicant may seek the advice of outside design professionals. If the proposal is being considered under the procedure specified in Section 17.136.040(D) ~~17.136.060A~~ or also requires a major variance, the decision of the *Commission or, if applicable, the Committee shall become final ten calendar days after the date of* decision unless appealed to the City Council in accordance with Section 17.136.090. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. If it is being considered under the procedure specified in Section 17.136.040(C) ~~17.136.060B~~ and does not also require a major variance, the decision of the Commission or, if applicable, the Committee shall be final immediately. (Ord. 12376 § 3 (part), 2001: Ord. 11816 § 2 (part), 1995: prior planning code § 9307)

17.136.090 Appeal to City Council--Regular design review.

Within ten calendar days after the date of a decision by the City Planning Commission on an application for regular design review under the procedure specified in Section 17.136.040(D),~~17.136.060A,~~ or where the proposal also requires a major variance, ~~or on revocation of any regular design review approval in accordance with Section 17.136.110,~~ an appeal from said decision may be taken to the City Council by the applicant, the Landmarks Preservation Advisory Board, or any other interested party. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. No such appeal is allowable under the procedure specified in Section 17.136.040(C) ~~17.136.060B~~ unless the proposal also requires a major variance. Such appeal shall be made on a form prescribed by the Commission and shall be filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Council shall set the date for consideration thereof. After setting the hearing date, the Council, prior to hearing the appeal, may refer the matter back to the Planning Commission for further consideration and advice. Appeals referred to the Planning Commission shall be considered by the Commission at its next available meeting. Any such referral shall be only for the purpose of issue clarification and advice. In all cases, the City Council shall retain jurisdiction and, after receiving the advice of the Planning Commission, shall hold a hearing on and decide the appeal.

The City Clerk shall notify the Secretary of the City Planning Commission of the receipt of said appeal and of the date set for consideration thereof; and said Secretary shall, not less than seventeen (17) ~~ten~~ days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Council shall determine whether the proposal conforms to the applicable design review criteria, and may approve or disapprove the proposal or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria.

The decision of the City Council shall be made by resolution and shall be final. The City Council shall vote on the appeal within thirty (30) days after its first hearing of the appeal. If the Council is unable to decide the appeal at that meeting, it shall appear for a vote on each regular meeting of the Council thereafter until decided. (Ord. 11816 § 2 (part), 1995: prior planning code § 9308)

17.136.100 Adherence to approved plans.

A design review approval shall be subject to the plans and other conditions upon the basis of which it was granted. Unless a different termination date is prescribed, the approval shall terminate two years ~~one year~~ from the effective date of its granting unless ~~actual construction, alteration, painting, demolition, or removal, as the case may be, has begun under~~ all necessary permits for construction, alteration, painting, demolition, or removal, as the case may be, have been issued within such period. However, such period of time may be extended by the original reviewing officer or body, upon application filed at any time before said period has expired. Expiration of any necessary building permit for the project may invalidate the design review approval if said extension period has also expired. (Ord. 11816 § 2 (part), 1995; prior planning code § 9309)

~~**17.136.110 Revocation.**~~

~~In the event of a violation of any of the provisions of the zoning regulations, or in the event of a failure to comply with any prescribed condition of approval, the City Planning Commission may, after holding a public hearing, revoke any design review approval. Notice of the hearing shall be given by posting notices thereof within three hundred (300) feet of the property involved. Notice of the hearing shall also be given by mail or delivery to the holder of the design review approval, to all parties who have commented on the initial application, and to other interested parties as deemed appropriate. All such notices shall be given not less than ten days prior to the date set for the hearing. The determination of the Commission shall become final ten calendar days after the date of decision unless appealed to the City Council in accordance with Section 17.136.090. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. (Ord. 12237 § 4 (part), 2000: Ord. 11816 § 2 (part), 1995: prior planning code § 9310)~~

17.136.120 Design review related to conditional use permit, planned unit development, variance, or subdivision.

Whenever design review approval is required for a proposal also requiring a conditional use permit, or planned unit development permit or variance, the application for design review shall be included in the application to said permit and shall be processed and considered as part of same; provided that decisions on the design review aspects of a proposal also requiring a minor conditional use permit or minor variance shall still be appealable within ten calendar days after the date of decision to the City Planning Commission or City Council to the extent such appeal would otherwise be allowed under Sections 17.136.080 and 17.136.090. In the event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. However, in any case the provisions of Sections 17.136.020 ~~17.136.030A~~ and 17.136.060~~17.136.040~~ shall still apply; and the reviewing officer or body shall, in considering the design review aspects of the proposal, determine whether it conforms to all the applicable design review criteria. Whenever design review approval is required for a proposal also requiring subdivision approval, the application for design review approval may be submitted with the tentative map or tentative parcel map required by the Oakland Municipal Code, but shall nonetheless be subject to all the separate procedure and criteria pertaining to design review. (Ord. 12376 § 3 (part), 2001: Ord. 11816 § 2 (part), 1995: prior planning code § 9311)

17.136.130 Limitation on resubmission--Small project design review.

Whenever an application for small project design review has been denied by the Director of City Planning, no small project design review application for essentially the same proposal affecting the same

property, or any portion thereof, shall be filed within one year after the date of denial; provided, however, that such proposal may be resubmitted as an application for regular design review.

The limitation of this section on resubmitting an application for small project design review shall not apply in instances where the applicant can show, on the face of any subsequent application, changed circumstances sufficient to justify reconsideration of denial of the original application for small project design review. Applications pursuant to this section shall be considered by the Director of City Planning. A determination by the Director shall become final ten calendar days after the date of decision unless appealed to the City Planning Commission. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Any such decision by the Planning Commission shall be final. (Ord. 11816 § 2 (part), 1995: prior planning code § 9312)