



**OAKLAND CITY COUNCIL**  
**ORDINANCE NO. 13509 C.M.S.**

AN ORDINANCE (1) AMENDING THE OAKLAND PLANNING CODE TO ADOPT A NEW SECTION 17.153 REGULATING THE DEMOLITION, CONVERSION AND REHABILITATION OF RESIDENTIAL HOTELS AND MAKE RELATED AND CONFORMING AMENDMENTS TO OTHER PLANNING CODE SECTIONS, AND (2) DETERMINING THAT THE ACTIONS AUTHORIZED BY THIS ORDINANCE WERE BOTH THE SUBJECT OF ADEQUATE PREVIOUS ANALYSIS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT ("CEQA") AND ARE EXEMPT FROM CEQA PURSUANT TO CEQA GUIDELINES SECTIONS 15061(b)(3) AND 15183

**WHEREAS**, there is a severe shortage of affordable rental housing in the City of Oakland and this shortage affects most severely the elderly, the disabled and very low and extremely low income persons; and

**WHEREAS**, many of the elderly, disabled, and very low and extremely low income persons reside in Residential Hotel Units; and

**WHEREAS**, the City of Oakland is experiencing a severe housing affordability crisis that requires immediate emergency action by the City government; and

**WHEREAS**, Residential Hotel Units are a critical element of Oakland's housing inventory because the units have specific characteristics that make them uniquely affordable to people who have few if any alternative housing options; and

**WHEREAS**, Residential Hotels are often housing of last resort for the poor, especially in areas with extremely high costs of housing such as Oakland; and

**WHEREAS**, the housing affordability crisis continues to overwhelm Oakland residents and threatens the public health, safety and/or welfare of our citizenry; and

**WHEREAS**, a number of economic forces, including the dearth of hotels and the high cost of new construction in Oakland, create incentives for developers to purchase Residential Hotels and repurpose them for non-residential uses, such as boutique hotels, or reconfigure them for other residential uses that result in the displacement of existing tenants or the removal of rental units

from the market; and

**WHEREAS**, the loss of Residential Hotels in Oakland would exacerbate the already overwhelming burden on public and non-profit agencies that provide protective, social, health, psychological, nutritional, and other important and necessary services to the tenant population of such hotels; and

**WHEREAS**, the City Council has determined that Residential Hotels are an essential component of the City's supply of naturally occurring affordable housing (NOAH) as they are a flexible and easily accessible form of housing that provides low, very low, and extremely low income residents the ability to remain in Oakland and to avoid homelessness; and

**WHEREAS**, the City of Oakland Housing and Community Development Department prepared a report in September of 2015 which states that from 1985 through 2015, the City lost approximately 799 Residential Hotel units in Downtown Oakland, and many more units are at-risk of being lost or are already lost to the supply of NOAH units; and

**WHEREAS**, the California State Legislature has recognized the need for retaining Residential Hotels to provide housing for low, very low, and extremely low-income individuals in legislation, and in justifying such legislation:

*The Legislature finds and declares that the need for decent housing among individuals of very low and low income is great, and that residential hotels are often the only form of housing affordable to these individuals. Many residential hotels are in poor condition and in need of rehabilitation, and many are being demolished or converted to other uses. California Health and Safety Code § 50519(a); and*

**WHEREAS**, Residential Hotel Units are endangered housing resources and must be protected; and

**WHEREAS**, the unrestricted demolition, conversion or rehabilitation of Residential Hotels exacerbates the housing crisis by making such units unaffordable to low, very low, and extremely low income Oakland residents, and may result in the displacement of Oakland residents from their homes and communities; and

**WHEREAS**, it is in the public interest that conversion and loss of residential Hotel Units be regulated and mitigated, and that remedies be provided where conversion occurs, in order to protect the resident tenants and to conserve the limited housing resources; and

**WHEREAS**, based on the previous findings, the City finds that there is a current and immediate threat to the public health, safety, and/or welfare associated with the Demolition and Conversion of Residential Hotel Units; and

**WHEREAS**, on October 4, 2016, the City Council adopted Resolution No. 86408 C.M.S., which directed the City Planning Commission to initiate action to amend the Oakland Planning Code to preserve the supply of Residential Hotels within six months of the Resolution's passage; and

**WHEREAS**, Resolution No. 86408 C.M.S. directed the City Administrator to return with an informational report detailing the options available to the City for preserving the use of Residential Hotels to provide housing for extremely low, very low and low-income residents, including options for City purchase or lease of Residential Hotels; and

**WHEREAS**, Resolution No. 86408 C.M.S. also called for the City to immediately initiate action to amend Section 17.102.030(B) of the Oakland Planning Code in order to increase the relocation assistance amount to be equivalent to relocation assistance amounts adopted by the City Council for evictions authorized by the Ellis Act, California Government Code Section 7060 *et seq*, and any other amendments necessary to protect the tenants of Residential Hotels; and

**WHEREAS**, Government Code Section 65858 authorizes Charter Cities such as Oakland to adopt urgency interim ordinances prohibiting uses that may be in conflict with a contemplated general plan, specific plan or zoning proposal that the City is studying in order to protect the public health, safety or welfare; and

**WHEREAS**, in recognition of the housing emergency caused by the loss of Residential Hotel Units, on December 13, 2016, following notice pursuant to Government Code Section 65090 and public hearing, the City Council, under the authority of Government Code Section 65858, adopted Ordinance No. 13410 C.M.S., an interim moratorium temporarily prohibiting the rehabilitation, reconfiguration, conversion or demolition of Residential Hotel Units that results in the displacement of tenants to prevent the removal of such units as housing for extremely low, very low and low-income Oakland residents, except where such rehabilitation, reconfiguration, or conversion results in the creation of long-term assisted housing affordable to low, very low, and extremely low income persons; and

**WHEREAS**, the interim moratorium was enacted pursuant to Government Code Section 65858 by an affirmative eight votes of the Council and was intended to be in effect while the City Council deliberated comprehensive and permanent amendments to the Oakland Planning Code and the Oakland Municipal Code; and

**WHEREAS**, on January 17, 2017, pursuant to Government Code 65858, the City Council extended the moratorium initially enacted under Ordinance No. 13410 C.M.S. for twenty-two (22) months and fifteen (15) days, following additional notice, and under Ordinance No. 13415 C.M.S., the moratorium thus was extended until December 11, 2018, or whenever permanent regulations are adopted, whichever occurs first; and

**WHEREAS**, since the extension of the moratorium, City staff has conducted extensive research and community outreach in developing the proposed Oakland Planning Code amendments, including convening several stakeholder working groups, resident focus groups, interviews, and a Residential Hotel ownership meeting; and

**WHEREAS**, Article XI, Section 5 of the California Constitution provides that the City, as a home rule charter city, has the power to make and enforce all ordinances and regulations in

respect to municipal affairs, and Article XI, Section 7, empowers the City to enact measures that protect the health, safety, and/or welfare of its residents; and

**WHEREAS**, Section 106 of the Oakland City Charter provides that the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs; and

**WHEREAS**, the current moratorium as extended under Ordinance No. 13415 will expire on December 11, 2018; now, therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1. Recitals.** The City Council finds and determines the forgoing recitals to be true and correct and are an integral part of the Council's decision, and hereby makes them a part of this Ordinance.

**Section 2. Amendment of the Oakland Planning Code.** Title 17 of the Oakland Planning Code is hereby amended, as detailed in *Exhibit A*, attached hereto and incorporated as set forth fully herein, to (1) revise Section 17.102.230 to remove references to Rooming Units and (2) adopt a new Planning Code Section 17.153 defining and regulating the demolition, conversion and rehabilitation of Residential Hotels, Residential Hotel Units and associated communal facilities and establishing an associated Registry process; outlining exemptions from the Residential Hotel regulations; and describing procedures for appeal; and (3) make related and conforming revisions to other sections of the Oakland Planning Code.

**Section 3. Conforming Changes.** The City Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), including omnibus cross-referencing conforming changes through-out the Planning Code, prior to formal publication of the Amendments in the Oakland Planning Code.

**Section 4. Applicability.** This Ordinance shall not apply to (a) a project for which a building/construction related permit was issued before the effective date of this Ordinance and has not yet expired or; (b) a project for which a complete building permit application—an application for a building permit that is submitted after all necessary planning and zoning permits and approvals under Title 17 of the Oakland Planning Code are issued for the project and that contains all the application submittal materials required on the City's submittal checklist – was submitted and if the building permit is issued within one year of submittal of the complete building permit application; and if the associated Residential Hotel Moratorium Exception/Exemption Request was also granted by the City.

**Section 6. Authority.** This Ordinance serves the public interest and is necessary to protect the health, safety and/or general welfare of the citizens of Oakland, and is enacted pursuant to the City of Oakland's general police powers, Sections 106 and 213 of the Charter of the City of Oakland, and Article XI, Sections 5 and 7 of the California Constitution.

**Section 7. Record of Proceedings.** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is

based, are respectively: (a) Planning and Building Department –Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, One Frank H. Ogawa Plaza, 1st Floor, Oakland California.

**Section 8. California Environmental Quality Act.** The City Council finds that the potential environmental effects of the actions authorized by this ordinance fall within the scope of a number of previously adopted California Environmental Quality Act (CEQA) documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Wood Street EIR (2005); Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); The Redevelopment Area EIRs: West Oakland (2003), Central City East (2003), and Coliseum (1995); the 199 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively, "Previous CEQA Documents"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. The proposed amendments to the Planning Code would not result in any significant effect that has not already been analyzed in the Previous CEQA Documents, and there will be no significant environmental effects caused by the change that have not already been analyzed in the Previous CEQA Documents. As a result, none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 are present in that: (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the Previous CEQA Documents due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3).

As a separate and independent basis, the City Council further determines that the actions authorized by this Ordinance are (1) not a project as defined by Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(4), as it is a municipal code revision that does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment; and (2) are exempt from CEQA pursuant to (i) CEQA Guidelines Sections 15061(b)(3), which exempts projects when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; and (ii) 15183, which exempts projects consistent with General Plan and Zoning.

**Section 9. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**Section 10. Effective Date.** This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 04 2018

**PASSED BY THE FOLLOWING VOTE:**

AYES- ~~XXXXX~~ CAMPBELL WASHINGTON, GALLO, ~~XXXXXXXXXX~~, GUILLEN, KALB, KAPLAN,  
AND PRESIDENT REID 7

NOES- 0

ABSENT- 0

ABSTENTION- 0

Excused- Brooks + McElhaney = 2

ATTEST: LaTonda Simmons  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

DATE OF ATTESTATION: 12/18/2018

## NOTICE & DIGEST

**AN ORDINANCE (1) AMENDING THE OAKLAND PLANNING CODE TO ADOPT A NEW SECTION 17.153 REGULATING THE DEMOLITION, CONVERSION AND REHABILITATION OF RESIDENTIAL HOTELS AND MAKE RELATED AND CONFORMING AMENDMENTS TO OTHER PLANNING CODE SECTIONS, AND (2) DETERMINING THAT THE ACTIONS AUTHORIZED BY THIS ORDINANCE WERE BOTH THE SUBJECT OF ADEQUATE PREVIOUS ANALYSIS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (“CEQA”) AND ARE EXEMPT FROM CEQA PURSUANT TO CEQA GUIDELINES SECTIONS 15061(B)(3) AND 15183**

This ordinance makes Planning Code amendments regulating Residential Hotels, including (1) revisions to Section 17.102.230 to remove references to Rooming Units and (2) creating a new Planning Code Chapter 17.153 that defines Residential Hotels and an associated Registry process; restricts conversion, demolition and rehabilitation of Residential Hotels or Residential Hotel Units and associated communal facilities; outlines exemptions from the Residential Hotel regulations; and describes procedures for appeal; and (3) related and conforming revisions to other sections of the Oakland Planning Code.

# EXHIBIT A: Proposed Planning Code Amendments

All changes are illustrated as underline for additions and ~~strikeout~~ for deletions.

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## Title 17 PLANNING

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### Chapters:

- Chapter 17.138 - DEVELOPMENT AGREEMENT PROCEDURE
- Chapter 17.140 - PLANNED UNIT DEVELOPMENT PROCEDURE
- Chapter 17.142 - MINI-LOT AND PLANNED UNIT DEVELOPMENT REGULATIONS
- Chapter 17.144 - REZONING AND LAW CHANGE PROCEDURE
- Chapter 17.148 - VARIANCE PROCEDURE
- Chapter 17.150 - FEE SCHEDULE
- Chapter 17.152 - ENFORCEMENT
- Chapter 17.153 - DEMOLITION, CONVERSION AND REHABILITATION OF RESIDENTIAL HOTELS
- Chapter 17.154 - ZONING MAPS
- Chapter 17.155 - SPECIAL REGULATIONS APPLYING TO MINING AND QUARRYING EXTRACTIVE ACTIVITIES
- Chapter 17.156 - DEEMED APPROVED ALCOHOLIC BEVERAGE SALE REGULATIONS
- Chapter 17.157 - DEEMED APPROVED HOTEL AND ROOMING HOUSE REGULATIONS
- Chapter 17.158 - ENVIRONMENTAL REVIEW REGULATIONS

## Chapter 17.10 USE CLASSIFICATIONS

### Sections:

#### Article II - Activity Types

Part 1 - Residential Activity Types

Part 3 - Commercial Activity Types

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#### Article II Activity Types

##### Part 1 Residential Activity Types

17.10.110 Permanent Residential Activities.

17.10.118 Emergency Shelter Residential Activities.

17.10.120 Semi-Transient Residential Activities.

17.10.125 Bed and Breakfast Residential Activities.

##### **17.10.110 Permanent Residential Activities.**

Permanent Residential Activities include the occupancy of living accommodations on a ~~weekly~~thirty (30) days or longer basis, with none of the living units under the same ownership or management on the same lot being occupied on a shorter basis; but exclude institutional living arrangements other than state-licensed Residential Care Facilities for six (6) or fewer residents. However, such state-licensed Residential Care Facilities shall be subject to the three hundred (300) foot separation requirement in Section 17.103.010.B. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

##### **17.10.118 Emergency Shelter Residential Activities.**

Emergency Shelter Residential Activities include the provision of short term housing, ~~partly on a less-than-weekly basis and partly for a longer period,~~ with or without a fee, to individuals and families who are homeless and who may require special services. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

##### **17.10.120 Semi-Transient Residential Activities.**

Semi-Transient Residential Activities include the occupancy of living accommodations partly on a ~~weekly~~thirty (30) days or longer basis and partly for a shorter time period, but with less than thirty percent (30%) of the living units under the same ownership or management on the same lot being occupied on a ~~less-than-weekly~~thirty (30) day basis; but exclude institutional living arrangements involving the provision of a special kind of care or forced residence, such as in nursing homes, orphanages, asylums, and prisons. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

##### **17.10.125 Bed and Breakfast Residential Activities.**

The provision of lodging services to transient guests on a ~~less-than-weekly~~thirty (30) day basis, other than in the case of activities classified by Section 17.10.440 Transient Habitation Commercial Activities or by another Residential Activity (Sections 17.10.100 through 17.10.120), that have each of the following characteristics:

- A. The activity occupies a One-Family Dwelling Residential Facility, One-Family Dwelling with Secondary Unit Residential Facility, or a Two-Family Dwelling Residential Facility;
- B. The activity allows no more than twelve (12) adult paying guests at any time and contains no more than six (6) guest units;
- C. The activity is located in a facility that is owner occupied;
- ~~D. The activity is located in a facility on a property with an existing or contingency historic rating of "A", "B", "C", or "D", or is a Landmark according to the City of Oakland Office of Historic Preservation;~~
- E. The facility includes incidental eating and drinking services for lodgers only that are provided from a single kitchen per Bed and Breakfast establishment.

This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

### **Part 3 Commercial Activity Types**

17.10.440 Transient Habitation Commercial Activities.

#### **17.10.440 Transient Habitation Commercial Activities.**

Transient Habitation Commercial Activities include the provision of lodging services to transient guests on a less-than-weekly~~ly~~thirty (30) day basis, other than in the case of activities classified by Section 17.10.120 Semi-Transient Residential Activities or Section 17.10.125 Bed and Breakfast Residential Activities. Examples include hotels and motels. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

## **Chapter 17.54 C-40 COMMUNITY THOROUGHFARE COMMERCIAL ZONE REGULATIONS**

### **Sections:**

17.54.010 Title, purpose, and applicability.

17.54.040 Required design review process.

17.54.050 Permitted activities.

~~17.54.060 Conditionally permitted activities.~~

17.54.070 Permitted facilities.

17.54.080 Conditionally permitted facilities.

17.54.090 Special regulations applying to certain activities.

17.54.095 Reserved.

~~17.54.100 Special regulations applying to the demolition of a facility containing rooming units or to the conversion of a living conversion of a dwelling unit to a Nonresidential Activity.~~

**17.54.100 Special regulations applying to the demolition of a facility containing rooming units or to the conversion of a living conversion of a dwelling unit to a Nonresidential Activity.**

See Section 17.102.230.

## **Chapter 17.56 C-45 COMMUNITY SHOPPING COMMERCIAL ZONE REGULATIONS**

### **Sections:**

17.56.010 Title, purpose, and applicability.

17.56.040 Required design review process.

17.56.050 Permitted activities.

17.56.060 Conditionally permitted activities.

17.56.070 Permitted facilities.

17.56.080 Conditionally permitted facilities.

17.56.090 Restriction on accessory parking and loading within 75 feet of front lot line.

17.56.095 Special regulations regarding extensive agriculture.

17.56.100 Special regulations applying to Fast-Food Restaurants, Convenience Markets, and certain establishments selling alcoholic beverages.

17.56.105 Reserved.

~~17.56.110 Special regulations applying to the demolition of a facility containing rooming units or to the conversion of a living conversion of a dwelling unit to a Nonresidential Activity.~~

**17.56.110 Special regulations applying to the demolition of a facility containing rooming units or to the conversion of a living conversion of a dwelling unit to a Nonresidential Activity.**

See Section 17.102.230.

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**Chapter 17.74 S-1 MEDICAL CENTER COMMERCIAL ZONE REGULATIONS**

**Sections:**

17.74.010 Title, purpose, and applicability.

17.74.020 Required design review process.

17.74.030 Permitted activities.

17.74.040 Conditionally permitted activities.

17.74.050 Permitted facilities.

17.74.060 Conditionally permitted facilities.

17.74.070 Special regulations applying to certain Commercial Activities.

17.74.075 Special regulations applying to Extensive Agriculture.

17.74.080 Special regulations applying to the demolition of a facility containing rooming units or to the conversion of a living conversion of a dwelling unit to a Nonresidential Activity.

**17.74.080 Special regulations applying to the demolition of a facility containing rooming units or to the conversion of a living conversion of a dwelling unit to a Nonresidential Activity.**

See Section 17.102.230.

**Chapter 17.76 S-2 CIVIC CENTER COMMERCIAL ZONE REGULATIONS**

**Sections:**

17.76.010 Title, purpose, and applicability.

17.76.040 Required design review process.

17.76.050 Permitted activities.

17.76.060 Conditionally permitted activities.

17.76.070 Permitted facilities.

17.76.080 Conditionally permitted facilities.

17.76.090 Special regulations applying to certain Commercial Activities.

17.76.095 Special regulations applying to Extensive Agriculture.

17.76.100 Special regulations applying to the demolition of a facility containing rooming units or to the conversion of a living conversion of a dwelling unit to a Nonresidential Activity.

**17.76.100 Special regulations applying to the demolition of a facility containing rooming units or to the conversion of a living conversion of a dwelling unit to a Nonresidential Activity.**

See Section 17.102.230.

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**Chapter 17.78 S-3 RESEARCH CENTER COMMERCIAL ZONE REGULATIONS**

**Sections:**

17.78.010 Title, purpose, and applicability.

17.78.020 Required design review process.

17.78.030 Permitted activities.

17.78.040 Conditionally permitted activities.

17.78.050 Permitted facilities.

17.78.060 Conditionally permitted facilities.

17.78.065 Special regulations applying to Extensive Agriculture.

17.78.070 Special regulations applying to the demolition of a facility containing rooming units or to the conversion of a living conversion of a dwelling unit to a Nonresidential Activity.

**17.78.070 Special regulations applying to the demolition of a facility containing rooming units or to the conversion of a living conversion of a dwelling unit to a Nonresidential Activity.**

See Section 17.102.230.

## Chapter 17.102 REGULATIONS APPLICABLE TO CERTAIN ACTIVITIES AND FACILITIES

### Sections:

~~17.102.230 Demolition of a facility containing rooming units or to the Conversion of a living dwelling unit to a Nonresidential Activity—Nonresidential Zones.~~

~~17.102.230 —Demolition of a facility containing rooming units or the Conversion of a living dwelling unit to a Nonresidential Activity—Nonresidential Zones.~~

- A. ~~Conditional Use Permit Requirement. The demolition of a facility containing, or intended to contain, rooming units, or the conversion of a living dwelling unit, other than those considered Residential Hotel Units which are subject to the provisions of Chapter 17.153, from its present or last previous use by a Permanent Residential Activity, or a Semi-Transient Residential Activity, or a Transient Habitation Commercial Activity to its use by a Nonresidential Activity other than Transient Habitation Commercial is only permitted in a Nonresidential Zone upon the granting of a conditional use permit Conditional Use Permit pursuant to the conditional use permit Conditional Use Permit procedure in Chapter 17.134. The only exception exception to this requirement are conversions in the HBX Zones, and units in a One-Family or Two-Family Residential Facility. Such permit may be granted only upon determination that the proposed demolition or conversion conforms to the general use permit criteria set forth in the conditional use permit Conditional Use Permit procedure and to at least one of the following additional use permit criteria:~~
- ~~1. That the facility proposed for demolition or the living The dwelling unit proposed for conversion is unoccupied and is, or is situated in, a residential building that has been found, determined, and declared to be substandard or unsafe pursuant to Subsection 15.08.350.(B) of the Oakland Municipal Code; or~~
  - ~~2. That a replacement rental unit, comparable equivalent in affordability and type to each unit proposed for demolition or conversion, will be added to the City's housing supply prior to the proposed demolition or conversion taking place; or~~
  - ~~3. That the benefits to the City resulting from the proposed demolition or conversion will outweigh the loss of a unit from the City's housing supply; or~~
  - ~~4. That the conversion will be an integral part of a rehabilitation project involving both Residential and Nonresidential Activities, and that the rehabilitation project would not be economically feasible unless some Nonresidential Activity were permitted within it.~~
- B. ~~Tenant Assistance. Upon the granting of a conditional use permit Conditional Use Permit for the demolition of a facility containing rooming units or for the conversion of a living dwelling unit to a Nonresidential Activity, the actual demolition or conversion cannot take place until the following have occurred:~~
- ~~1. If a dwelling unit is to be converted, the Any tenant has been given a one hundred twenty (120) day written notice of the conversion. If a rooming unit is to be demolished or converted, the tenant, if a permanent tenant, has been given a seventy-five (75) day written notice of the demolition or conversion. All such~~

written notices shall comply with the legal requirements for service by mail.

2. ~~If a dwelling unit is to be converted, the tenant has been provided with a relocation allowance equal to one (1) month's rent or five hundred dollars (\$500.00), whichever is greater. If a rooming unit is to be demolished or converted, the~~The ~~owner of the building containing the dwelling unit to be demolished or converted has referred the tenant (if a permanent tenant) to a comparable to an equivalent, available unit; if and equivalent unit is not available or if a comparable unit is~~the tenant chooses not available, the permanent to live in the equivalent dwelling unit, ~~the tenant has been provided with a relocation allowance, as specified in Sections 8.22.450 and 8.22.820 of the Oakland Municipal Code, including any additional payments for~~tenant has been provided with a relocation allowance equal to one (1) month's rent or five hundred dollars (\$500.00), whichever is greater.~~households that contain members who qualify as lower income, elderly, disabled and/or minor children, as set forth in Oakland Municipal Code Sections 8.22.450(B) and 8.22.820.~~
3. The Director of City Planning has been provided with proof that the above actions have been taken. ~~(As used in this Section, a permanent tenant of a rooming unit is defined as a tenant maintaining occupancy for six (6) months or more at a hotel or motel where the innkeeper does not retain a right of access and control of the unit and where the hotel or motel does not provide or offer all of the following services to all of the residents: safe deposit boxes for personal property; central telephone service; central dining; maid, mail, room, and recreational service; and occupancy for periods of less than seven (7) days.)~~

## Chapter 17.134 CONDITIONAL USE PERMIT PROCEDURE

### 17.134.020 Definition of Mmajor and Mminor Cconditional Uuse Ppermits.

A. **Major Conditional Use Permit.** A Conditional Use Permit (CUP) is considered a Major Conditional Use Permit if it involves any of the following:

3. **Special Situations.** Any project requiring a Cconditional Uuse Ppermit that involves any of the following situations:
  - a. A project requiring development of an Environmental Impact Report (EIR);
  - b. A single establishment containing a Commercial or Industrial Activity, or portion thereof, which is located in any Residential Zone and occupies more than five thousand (5,000) 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, CBD-P, CBD-C, CBD-X, S-2, and D-LM Zones serving fifty (50) or more vehicles;
  - d. Monopole Telecommunications Facilities in, or within three hundred (300) feet of the boundary of, any Residential or HBX Zone;
  - e. A project in the OS Zone listed as requiring a Mmajor Cconditional Uuse Ppermit in Chapter 17.11;
  - f. An Electroplating Activity as defined in Section 17.09.040 subject to the provisions of Section 17.102.340;
  - g. A Telecommunications Facility in or within one hundred (100) feet of the boundary of any Residential Zone, HBX Zone, or the D-CE-3 or D-CE-4 Zone;
  - h. A Telecommunications Facility whose antennas and equipment are not fully concealed from view within three hundred (300) feet of the boundary of the RH, RD, RM, RU-1, or RU-2 Zones, HBX Zones, or the D-CE-3 or D-CE-4 Zone;
  - i. A project requiring a Conditional Use Permit as set forth under Section 17.153.050 for any demolition or conversion of Residential Hotel Units or a Residential Hotel.

**Chapter 17.153 DEMOLITION, CONVERSION AND REHABILITATION REGULATIONS FOR RESIDENTIAL HOTELS**

**Sections:**

17.153.010 Title, purpose and findings

17.153.020 Definitions

17.153.030 Status determination

17.153.040 Restrictions

17.153.050 Conditional Use Permit requirement

17.153.060 Exceptions to restrictions and the Conditional Use Permit requirement

17.153.070 Waivers determination and appeals process

17.153.080 Administrative regulations

17.153.090 Conflicting provisions

**17.153.010 Title, purpose and findings**

**A. Title.** The provisions of this Chapter shall be known as the Demolition, Conversion and Rehabilitation Regulations for Residential Hotels.

**B. Purpose.** The purpose of this Chapter is to benefit the general public by minimizing the adverse impact on the housing supply and on displaced very low and extremely low income, elderly, and disabled persons, which results from the loss of Residential Hotel Units as a naturally occurring affordable housing option. This is to be accomplished by establishing a process for identifying and preparing a registry of known existing Residential Hotel Units, and by regulating the demolition, conversion and rehabilitation of Residential Hotel Units.

**C. Findings.** The City Council finds that:

1. The City of Oakland is experiencing a severe housing affordability crisis that requires immediate emergency action by the City government.
2. Residential Hotels are often housing of last resort for the poor, especially in areas with extremely high costs of housing such as Oakland.
3. The housing affordability crisis continues to overwhelm Oakland residents and threatens the public health, safety and/or welfare of our citizenry.
4. A number of economic forces, including the dearth of hotels and the high cost of new construction in Oakland, create incentives for developers to purchase Residential Hotels and repurpose them for non-residential uses, such as boutique hotels, or

reconfigure them for other residential uses that result in the displacement of existing tenants or the removal of rental units from the market.

5. The loss of Residential Hotels in Oakland would exacerbate the already overwhelming burden on public and non-profit agencies that provide protective, social, health, psychological, nutritional, and other important and necessary services to the tenant population of such hotels.
6. The City Council has determined that Residential Hotels are an essential component of the City's supply of Naturally Occurring Affordable Housing (NOAH) as they are a flexible and easily accessible form of housing that provides very low, and extremely low-income residents the ability to remain in Oakland and to avoid homelessness.
7. The City of Oakland Housing and Community Development Department prepared a report in September of 2015 which states that from 1985 through 2015, the City lost approximately 799 Residential Hotel units in Downtown Oakland, and many more units are at-risk of being lost or are already lost to the supply of NOAH units.
8. The California State Legislature has recognized the need for retaining Residential Hotels to provide housing for low, very low, and extremely low-income individuals in legislation, and in justifying such legislation:

*The Legislature finds and declares that the need for decent housing among individuals of very low and low income is great, and that residential hotels are often the only form of housing affordable to these individuals. Many residential hotels are in poor condition and in need of rehabilitation, and many are being demolished or converted to other uses. California Health and Safety Code § 50519(a)*
9. The unrestricted demolition, conversion or rehabilitation of Residential Hotels exacerbates the housing crisis by making such units unaffordable to low, very low, and extremely low-income Oakland residents, and may result in the displacement of Oakland residents from their homes and communities.
10. Based on the previous findings, the City finds that there is a current and immediate threat to the public health, safety, and/or welfare associated with the Demolition, Conversion and Rehabilitation of Residential Hotels.
11. It is in the public interest that the conversion, demolition and amenity rehabilitation of residential hotel units be regulated and mitigated. Furthermore, in order to protect the resident tenants and to conserve limited housing resources, remedies must be provided where conversion or demolition occurs.
12. Projects that transform an existing Residential Hotel or rebuild Residential Hotel Units as new deed-restricted affordable housing would provide stable housing for the populations most severely impacted by the loss of Residential Hotel units, and serve an over-riding public benefit, as long as they minimize unit loss and are deed-restricted to extremely low and very low income households.
13. Residential Hotel buildings that have been continuously vacant for 10 years or more may constitute a public health and safety hazard; and may require additional amenities in order to bring those Residential Hotel units back into the housing stock.

### **17.153.020 Definitions**

The following terms, whenever used in this Chapter, shall be construed as defined herein. Words and phrases not defined herein shall be construed as defined in Chapter 17.09 of the Oakland Planning Code or in the Oakland Municipal Code.

**“Affordable Housing Organization”** means a religious, hospital, scientific, or charitable fund, foundation, limited liability company, or corporation, including a limited partnership in which the managing general partner is an eligible nonprofit corporation or eligible limited liability company, or a veterans' organization, as described by California Revenue and Taxation Code Section 214, subsection (g).

**“Affordable Housing Project”** means a property used primarily for housing and related facilities, owned or operated by an affordable housing organization where, pursuant to legally binding restrictions, all of the units, except for resident manager units, are restricted as affordable housing at an affordable rent or affordable housing cost, as those terms are defined in California Health & Safety Code Section 50053 and 50052.5, to occupancy by extremely low, very low, low, and/or moderate-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106.

**“Commercial Hotel”** means a hotel that operates as a Commercial Activity, as defined in Section 17.10.260, which provides lodging to guests that is not used or is not intended to be used as a primary residence.

**“Commercial Hotel Unit”** means a Rooming Unit or Efficiency Unit, as defined in Section 17.09.040 of the Oakland Planning Code, that operates within a Commercial Hotel or has been granted a Conditional Use Permit for Conversion, as set forth in Section 17.153.050.

**“Conversion”** means any action that converts one or more existing Residential Hotel Units to a Commercial Hotel Unit, or converts the Residential Hotel to a Commercial Activity or another Residential Activity, as those terms are defined in Chapter 17.10 of the Oakland Planning Code, regardless of whether substantial improvements have been made to such units.

**“Demolition”** means any action that eliminates an existing Residential Hotel Unit, including but not limited to complete or partial demolition of a Residential Hotel unit, combining two or more existing Residential Hotel Units to make a larger new unit, or any other action that eliminates one or more existing Residential Hotel Unit.

**“Director”** means the Director of the Planning and Building Department, or the designee of the Director of the Planning and Building Department, or the designee of the City Administrator.

**“Owner”** means an owner of record of a Residential Hotel, or an entity or individual with a long-term lease or some form of equitable interest in a Residential Hotel.

**“Rehabilitation, Amenity”** means any action that reduces the size of Residential Hotel Units or eliminates or reduces the size of private or communal amenities in a Residential Hotel or Residential Hotel unit, such as bathrooms, kitchens, elevators or laundry through complete or partial removal of those facilities, including reduction in the number of toilets or sinks in a bathroom. It also means any action that adds a kitchen or kitchenette to a Rooming Unit within an existing Residential Hotel.

**“Residential Hotel”** is defined in accordance with California Health and Safety Code Section 50519, and means any building built before 1960 containing six (6) or more Rooming Units, as defined in Section 17.09.040, intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests,

which is also the primary residence of those guests, and where the entrances to the individual units are generally accessed via a shared lobby area. See also the process for Status Determination in Section 17.153.030. Any building or units that are constructed to satisfy the requirements of Section 17.153.050(A) shall be subject to the provisions of this Chapter.

“Residential Hotel Unit” means a Rooming Unit or Efficiency Dwelling Unit, as those terms are defined in Section 17.09.040 of the Oakland Planning Code, intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests, and are located within a Residential Hotel. Any unit that is constructed to satisfy the requirements of Section 17.153.050(A) shall be subject to the provisions of this Chapter.

### **17.153.030 Residential Hotel Status determination**

This Section sets forth the process to establish the status of facilities preliminarily determined by the city to be Residential Hotels and Residential Hotel Units, and therefore subject to the regulations in this Chapter.

**A. Notification by City.** Within thirty (30) days of the adoption of this ordinance, the Planning and Building Department shall notify by mail the property owners preliminarily determined by the City to be operating a Residential Hotel subject to the provisions of this Chapter. The City shall include in its notification a summary of this Chapter and instructions to Each property owner notified of such shall be required to file an Initial Usage Report or Statement of Exemption, as described in Section 17.153.030(B) below. All filings shall be accompanied by supporting evidence. Buildings that do not meet the definition of a Residential Hotel as set forth in Section 17.153.020 may be considered for an Exemption, as stated in Section 17.153.030(B)(2) below. If the owner or operator intends to file a Statement of Exemption, they must file it with the Planning and Building Department within ninety (90) calendar days of the mailing date of the notice; otherwise, the owner or operator shall file an Initial Usage Report within one hundred eighty (180) calendar days. All filings shall be accompanied by supporting evidence. However, upon application by an owner or operator and upon showing a good cause, the Director may grant an extension of time not to exceed thirty (30) days for filing either the Statement of Exemption or the Initial Usage Report.

**B. Filing for status determination.** All properties notified by the Planning and Building Department of their preliminary Residential Hotel status must file an Initial Usage Report or a Statement of Exemption to determine the legal status of the subject property as of December 13, 2016.

**1. Initial Usage Report.** The Initial Usage Report shall be filed by the owner or operators within one hundred eighty (180) calendar days after the City mails notification pursuant to Section 17.153.030(A). Upon application by an owner or operator and upon showing a good cause, the Director may grant an extension of time not to exceed thirty (30) days for filing the Initial Usage Report. The Initial Usage Report shall be accompanied by evidence, such as a certified copy of the Residential Hotel’s tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, to confirm the following required information:

- a. Floor plans showing all the legal units, communal facilities such as bathrooms, kitchens, laundry facilities or other shared amenities, as well as any ground floor commercial space and lobby area, as of December 13, 2016.
- b. The floor plans shall also indicate the legal number and location of private bathrooms, and the number and location of communal bathrooms, including shower, toilet and sink facilities, as of December 13, 2016.

**2. Statement of Exemption.** If the owner or operation intends to file a Statement of Exemption, the owner must file with the Planning and Building Department within ninety (90) calendar days of the mailing date of the notice. Upon application by an owner or operator and upon showing a good cause, the Director may grant an extension of time not to exceed thirty (30) days for filing the Statement of Exemption. The Statement of Exemption shall be accompanied by evidence, such as a certified copy of the property's tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, floor plans, or any other evidence necessary to prove the property does not meet the afore-mentioned definition of Residential Hotel or that individual units do not meet the definition of a Residential Hotel Unit, as set forth in Section 17.153.020. The owner has the burden of proving by a preponderance of the evidence that the Residential Hotel is exempt from the provisions of this article.

**C. Insufficient Filing.** If the Director determines that additional information is needed to make a determination, the Director shall request the additional information in writing. The owner shall furnish the requested information within thirty (30) calendar days upon receipt of the written request. If the requested information is not furnished, the Director will issue the Certificate of Status confirming that the building is a Residential Hotel that is composed entirely of individual Residential Hotel Units.

**D. Failure to File Statement of Exemption or Initial Usage Report.** If a presumed Residential Hotel that is sent notice of their preliminary Residential Hotel status and of a requirement to file a Statement of Exemption or Initial Usage Report, does not submit one within the time set forth in Section 17.153.030(B), the Director shall mail a second notice to the owner of record by registered or certified mail stating that the owner has ten (10) calendar days to submit the Initial Usage Report or Statement of Exemption. If these are not filed within ten (10) calendar days, the Director will issue the Certificate of Status, confirming that the building is a Residential Hotel that is composed entirely of individual Residential Hotel Units.

**E. Certificate of Status.** The Director shall review the Initial Usage Report or Statement of Exemption and evidence submitted. Within 120 days of receipt of a complete Statement of Exemption or Initial Usage Report, supported by evidence, the Director shall certify the information provided in the Initial Usage Report or certify an Exemption. If the property is deemed a Residential Hotel, the Certificate of Status, including a graphic floor plan, shall be posted permanently in the lobby or entranceway of the Residential Hotel.

**F. Appeal of Certificate of Status or Exemption.** An owner or operator, or any interested party, may appeal the Certificate of Status or Exemption issued by the Director within ten (10) calendar days of the mailing of the Certificate of Status or Statement of Exemption, provided that there was no challenge pursuant to the provisions of Section 17.153.070 below, pursuant to the administrative appeal procedures set forth in Chapter 17.132. The Director's determination on the Certificate of Status or Exemption shall be final if a timely appeal is not filed.

#### **17.153.040 Restrictions**

Except as set forth in Section 17.153.060, and notwithstanding Section 17.153.050, the following actions shall be prohibited:

- A. Any Amenity Rehabilitation of Residential Hotel Units or a Residential Hotel; or
- B. Conversion or Demolition of a Residential Hotel Unit or a Residential Hotel, if there have been any adjudicated cases evidencing tenant harassment or illegal evictions during the immediately preceding five (5) years.

#### **17.153.050 Conditional Use Permit requirements**

Except as set forth in Section 17.153.060 and notwithstanding whether the requirements of Section 17.153.030 have been met, any Demolition or Conversion of Residential Hotel Units or a Residential Hotel, shall only be permitted upon the granting of a Conditional Use Permit pursuant to the Conditional Use Permit procedure in Chapter 17.134. The City shall not approve a Demolition or Conversion of Residential Hotel Units or a Residential Hotel unless the application conforms to the general use permit criteria described in Chapter 17.134 and, prior to the Demolition or Conversion, the Residential Hotel owner satisfies the following additional conditions:

- A. Add to the City's housing supply replacement Residential Hotel rental units that are affordable to extremely low or very low income households, as those terms are defined in California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106 – although in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%) of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and equivalent in number, size, services and facilities offered to each unit proposed for Demolition or Conversion, and within two (2) miles of the subject facility, that must obtain a certificate of occupancy for such new Residential Hotel units prior to the proposed Demolition or Conversion taking place; and

B. Whenever a Residential Hotel Unit is to be converted or demolished, and will result in tenant displacement, the Residential Hotel Owner shall:

1. Provide the tenant(s) a one hundred twenty (120) day written notice of the Conversion or Demolition. All such written notices shall comply with the legal requirements for service by mail; and
2. Submit a list of the names of any tenants residing in the Residential Hotel, and any tenants who have moved, been removed, or evicted during the preceding 180 calendar days and the reasons for the move, removal, or eviction.
3. Refer the tenant(s) to an equivalent unit if available; and if an equivalent unit is not available or if the tenant(s) chooses not to live in the equivalent unit, then provide the tenant(s) with a relocation allowance, as specified for studio units in Sections 8.22.450 and 8.22.820 of the Oakland Municipal Code, including any additional payments for tenant households that contain members who qualify as lower income, elderly, disabled and/or minor children, as set forth in Oakland Municipal Code Sections 8.22.450(B) and 8.22.820; and
4. Satisfy the requirements of any other tenant relocation programs, such as those set forth in Oakland Municipal Code Chapter 15.60 related to code enforcement cases; and
5. Offer any displaced tenant a first right of refusal to rent the replacement units built to satisfy requirements in Section 17.153.050(A).

C. Provide the Director with proof that the above actions have been taken.

#### **17.153.060 Exceptions to the restrictions and Conditional Use Permit requirements**

Upon the granting of a written determination by the Director, the following are not subject to the restrictions set forth in Section 17.153.040 nor do they require the granting of a Conditional Use Permit as set forth in Section 17.153.050; all other local, state, federal requirements set forth in other Chapters of Title 17 shall still apply; and the requirements shall still apply:

A. Any rehabilitation of an existing Residential Hotel that is or will become an Affordable Housing Project as defined in Section 17.153.020, and complies with the following additional criteria below. An Affordable Housing Project that is exempt from the provisions of this Chapter shall lose its exempt status and become subject to the provisions of this Chapter when it ceases to be an Affordable Housing Project or meet the additional criteria below:

1. The units are restricted to occupancy by extremely low and/or very low-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106. However, in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to

amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%) of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and

2. The Project shall have an executed written agreement with the City or other public agency setting forth the number, type, location, approximate size and construction schedule of all units, restricting the occupancy and rent or sale price of such units, and setting forth other terms and conditions as required for ensuring compliance with the requirements of this Section. Said agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the Project for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the Affordable Housing units would be infeasible without said subordination; and
3. The executed written agreement with the City or other public agency shall extend for at least another twenty-five (25) years beyond the date of application for an Exception; and
4. The proposed actions minimize the reduction in number of units by only allowing new unit types to be Rooming Units, Efficiency Units or one-bedroom units; and
5. For a Residential Hotel that will be subject to new restrictions on occupancy and affordability, the executed written agreement with the City or other public agency shall require that the new rental units remain affordable for at least fifty-five (55) years.

- B. Any Residential Hotel that is converted to a Transitional Housing Activity, as defined in Oakland Municipal Code 17.10.116 and per State of California Government Code 65582.
- C. Any Residential Hotel that has been completely vacant and unoccupied continuously for more than ten (10) years, as demonstrated by the applicant, is not subject to restrictions on Amenity Rehabilitation; but these properties remain subject to restrictions on Conversion and Demolition; or
- D. Any Amenity Rehabilitation, which: (1) is determined by the Chief Building Official to be necessary to address imminent health and safety threats, as long as that imminent health and safety threat was not caused by any voluntary action of the owner of said facility; and (2) does not result in temporary displacement of any tenant for more than sixty (60) days or permanent displacement of any tenant; or

- E. Any Demolition, which is determined by the Chief Building Official to be necessary to meet life safety standards, provided that (1) it involves the minimum amount of Demolition necessary to meet life safety standards; and (2) the condition of the Residential Hotel or Residential Hotel Unit, which necessitates the life safety upgrades, was not caused by any voluntary action of the owner of said facility; or
- F. A proposed project that will involve Demolition or Conversion of existing Residential Hotel Units and create or retain at the property a number of units equal to the number of Residential Hotel units in the existing property as Affordable Housing and complies with the following additional criteria below. A project that has Affordable Housing units that is exempt from the provisions of this Chapter shall lose its exempt status and become subject to the provisions of this Chapter when it ceases to have Affordable Housing units or meet the additional criteria below.
1. The affordable units are restricted to occupancy by extremely low and/or very low-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106. However, in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%) of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and
  2. The Project shall have an executed written agreement with the City or other public agency setting forth the number, type, location, approximate size and construction schedule of all units, restricting the occupancy and rent or sale price of such units, and setting forth other terms and conditions as required for ensuring compliance with the requirements of this Section. Said agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the Project for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the Affordable Housing units would be infeasible without said subordination; and
  3. The executed written agreement with the City or other public agency shall require that the new rental units remain affordable for at least fifty-five (55) years.

**17.153.070 Waiver determination and appeals process**

A. Waiver determinations may be granted by the Director to the restrictions set forth in Section 17.153.040 or the Conditional Use Permit requirements set forth in Section 17.153.050 on the following grounds:

1. The requirements of this Chapter have been incorrectly applied; or
2. Application of the requirements of this Chapter is unlawful under and/or conflict with federal, state, or local law and/or regulation, including constituting an unlawful taking of property without just compensation.

B. Applications for waiver determinations. Applications for waiver determinations must be made no later than the date of application for a building or planning permit on a form provided by the City, and shall include payment of fees as established in the Master Fee Schedule. The Applicant has the burden of proving by a preponderance of the evidence the applicability and elements of this Section. The Applicant must submit full information in support of their submittal as requested by the Director. Failure to raise each and every issue that is contested in the application and provide appropriate supporting evidence will be grounds to deny the application and will also preclude the Applicant from raising such issues in court. Failure to submit such an application shall preclude such person from challenging the Residential Hotel regulations in court. The Director may require, at the expense of the Applicant, review of the submitted materials by a third party.

C. The Director shall mail the Applicant a written determination on the application for a waiver.

D. If an applicant for a waiver determination set forth in Section 17.153.070(A) that has been denied seeks to challenge the written determination of the Director, the Appellant must appeal to the City Planning Commission, and such appeal must be filed within ten (10) calendar days of the date from which the Director's written determination was issued and by 4:00 p.m. Appeals must be on the form provided by the City of Oakland and must state specifically wherein it is claimed there was error or abuse of discretion by the Director or wherein the decision is not supported by substantial evidence, and must include payment in accordance with the City of Oakland Master Fee Schedule. Failure to make a timely appeal will preclude an Appellant from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all arguments and evidence in the record which supports the basis for the appeal. Failure to do so will preclude an Appellant from raising such issues during the appeal and/or in court.

#### **17.153.080 Sale of Residential Hotel.**

Before selling or otherwise transferring ownership of a Residential Hotel, the owner shall meet the following requirements:

- A. Provide to the Director by first class mail at least 90 days' notice of the proposed offering for sale or transfer of the property; and
- B. Allow the City or its authorized representative or representatives 90 days following the date of notice to tender an offer to purchase the property; and

C. Upon receiving any such offer, engage in good-faith negotiations, during the remaining portion of the 90-day period towards a purchase and sale agreement with the City or a non-profit or affordable housing organization identified by the City.

**17.153.090 Administrative regulations.**

The Director is hereby authorized to adopt administrative regulations consistent with this Chapter as needed to implement this Chapter, subject to the review and approval of the Office of the City Attorney, and to develop all related forms and/or other materials and take other steps as needed to implement this Chapter, and make such interpretations of this Chapter as he or she may consider necessary to achieve the purposes of this Chapter.

**17.153.100 Conflicting provisions.**

Where a conflict exists between the requirements in this Chapter and applicable requirements contained in other Chapters of this Code, the applicable requirements of this Chapter shall prevail.