

**Exhibit 2:  
AFFORDABLE HOUSING OVERLAY AND HOUSING SITES OVERLAY**

The Oakland Planning Code (Title 17 of the Oakland Municipal Code) is proposed to be amended as follows. Additions are shown in underline. Amendments made in response to community feedback are shown in underline and ~~strike through~~.

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**Chapter 17.95 S-13 AFFORDABLE HOUSING COMBINING ZONE REGULATIONS**

**Sections:**

17.95.010 Title, Purpose and Applicability.

17.95.020 Affordability Requirements

17.95.030 Definitions

17.95.040 Zones with which the S-13 Zone may be combined.

17.95.050 Exemptions from the S-13 Zone.

17.95.060 Required Design Review Process.

17.95.070 Property Development standards.

17.95.080 Additional Incentives.

**17.95.010 Title, Purpose and Applicability.**

The provisions of this Chapter shall be known as the S-13 Affordable Housing Combining Zone Regulations. The Affordable Housing Combining (S-13) Zone is intended to create and preserve affordable housing restricted for extremely low, very low, low, and/or moderate-income households, (as defined in California Government Health and Safety Code Sections 50093, 50105, and 50106, ~~50052.5~~ and in Oakland Planning Code Section ~~17.107.020~~ 17.09.040). These regulations shall apply in the S-13 Zone and are supplementary to the regulations applying in the zones with which the S-13 Zone is combined. Where conflict between the standards set forth in the S-13 Zone and the underlying zoning district exists, the provisions in this chapter shall govern for qualifying developments.

The S-13 Zone is an optional program and applicants not opting to use the S-13 Zone provisions shall not be subjected to the standards set forth in this chapter. The provisions in this Chapter are distinguished from, and are mutually exclusive of, other development bonuses available pursuant to Chapter 17.107 - Density Bonus and Incentive Procedure. Developers may apply to utilize either the provisions under Chapter 17.107 or this chapter, but not both. Also, the provisions in this chapter cannot be combined with any local zoning incentive program.

The purpose of the S-13 Zone is to allow a bonus height for eligible affordable housing projects, as well as relaxation of other listed development standards for applicable zones and an elimination of any maximum residential density standards. One hundred percent (100%) affordable housing projects in the S-13 Zone shall be permitted by-right if it meets all the standards set forth in this chapter in place of the requirements otherwise applicable in the base zones. Any development not meeting all of the standards set forth in the S-13 Zone shall be subject to the requirements otherwise applicable in the underlying zoning district.

### **17.95.020 Affordability Thresholds**

By-right approval under the S-13 Zone shall only apply to one hundred percent (100%) affordable housing projects restricted to extremely low, very low, low, and/or moderate-income households, (as defined in California Government Health and Safety Code Sections 50093, 50105, and 50106, 50052.5 and in Oakland Planning Code Section 17.09.040 and 17.107.020).

Projects proposing to utilize the provisions in this chapter on a parcel less than fifteen thousand (15,000) square feet must provide affordable housing units that meet the following criteria:

- (A) At least twenty percent (20%) of the housing units are restricted to very low-income or lower income households; and
- (B) At least twenty percent (20%) of the housing units are restricted to moderate-income households.

### **17.95.030 Definitions.**

The following definitions shall apply to this chapter only:

**By Right Approval.** "By Right Approval" shall mean a ministerial approval process in which all of the following apply:

- (A) The City shall not require a Conditional Use Permit, Planned Unit Development permit, or other discretionary permit of any kind. The project will not require a discretionary permit and thus will not be subject to review under the California Environmental Quality Act.
- (B) The City shall not exercise any subjective judgment in deciding whether and how to carry out or approve the project and shall apply property development standards and objective design review standards applicable to the underlying zoning designation and this S-13 Combining Zone only. The City shall maintain a list of publicly available applicable objective design review standards that may be amended from time to time.
- (C) The project shall not be subject to a public hearing of any type, and there shall be no right of appeal. However, an applicant may request at its sole discretion review before the Design Review Committee of the Planning Commission.
- (D) The City shall not impose any notice requirements on the project.
- (E) The project shall be subject to any applicable City of Oakland standard conditions of approval, which shall be identified along with the decision letter issued for the project.
- (F) The project must demonstrate consistency with the Oakland Equitable Climate Action Plan (ECAP) through completion of an ECAP Consistency Checklist submitted concurrently with the development application.

**Incentive.** "Incentive" has the same meaning as provided in California Government Code Section 65915 and shall mean a reduction in site development standards, or a modification to a requirement of the Oakland Planning Code so long as the requested reduction or modification both exceeds the minimum building standards approved by the California Building Standards Commission that would otherwise be required and results in identifiable and actual cost reductions to provide for affordable rent or affordable housing costs. Incentives do not include

the provision of direct financial incentives for the housing development, including the provision of City-owned land or the waiver of fees or dedication requirements, the modification of any City of Oakland Standard Conditions of Approval, or modification of any mitigation measures required by the California Environmental Quality Act.

#### **17.95.040 Zones with which the S-13 Zone may be combined.**

The S-13 Zone may be combined with any residential or commercial zone, except S-9 as shown on the city zoning map.

#### **17.95.050 Exemptions from the S-13 Zone.**

The following sites are exempt from the S-13 Zone and these regulations do not apply to them are not eligible for the approval process or relaxation of development standards described in this chapter:

- A. Parcels in the S-9 Fire Safety Protection Combining Zone; and
- B. Parcels with Designated City, State, and Federal Historic Landmarks.

Parcels in Historic Districts that are designated Areas of Primary Importance (API) as of the adoption date of the 2023-2031 Housing Element (January 31, 2023) remain eligible for the approval process described in this chapter, including the elimination of maximum residential density standards, but are not eligible for and are exempt from the shall not receive the higher height limit allowance, reduced setback allowance, or relaxed maximum lot coverage allowance. but one hundred percent (100%) affordable housing developments shall not be subject to a density requirement. Developments in designated API Historic Districts must still meet the height, setback, and maximum lot coverage requirements in the underlying zoning district, and any existing structure cannot be demolished as part of a qualifying project. The development must also meet the applicable objective design review standards for historic buildings.

#### **17.95.060 Required Design Review Process**

Except for projects that are exempt from design review as set forth in Section 17.136.025, no Building Facility, Designated Historic Property, Potential Designated Historic Property, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

#### **17.95.070 Property Development Standards.**

The S-13 Zone shall apply as shown on the city zoning map. When an applicant or developer elects to utilize the S-13 Zone for one hundred percent (100%) affordable deed-restricted housing developments, the development standards prescribed in Table 17.95.01 shall apply. Where conflict between the standards set forth in the S-13 Zone and the underlying zoning district exists, the provisions in this chapter shall govern for qualifying developments.

**Table 17.95.01 Property Development Standards within the S-13 Affordable Housing Combining Zone**

<b><u>Development Standards</u></b>	
<b><u>Permitted Density</u></b>	<u>Unlimited residential density that fits within the allowed building envelope of new or existing structures.</u>
<b><u>Rear Setback</u></b>	<u>Ten (10) feet.</u>
<b><u>Maximum Lot Coverage</u></b>	<u>Seventy percent (70%) or whatever is allowed in the base zone, whichever is higher.</u>
<b><u>Height Regulations for lots less than 15,000 square feet</u></b>	<u>Two (2) additional stories above the maximum permitted building height in the base zone.</u>
<b><u>Height Regulations for lots equal to or greater than 15,000 square feet</u></b>	<u>Sixty-five (65) feet or two (2) additional stories above maximum permitted building height in the base zone, whichever is higher.</u>
<b><u>Minimum Parking</u></b>	<u>No minimum parking requirements.</u>

**17.95.080 Additional Incentives.**

In addition to the automatic relaxation of property development standards as described in Section 17.95.070, an applicant utilizing the By Right Approval under this chapter for a qualifying affordable housing project may submit to the city a proposal for up to three additional development incentives that contribute significantly to the economic feasibility of the construction of affordable housing. The requested incentive(s) shall not pertain to the allowable height or setbacks of the proposal but may otherwise pertain to any applicable objective development standard in the Planning Code. The applicant must include in the incentive proposal documentation that the granting of the incentive provides identifiable and actual cost reductions to the project. Incentive requests complying with the requirements of this section shall be granted unless the City establishes that the incentive would have a specific adverse impact on public health and safety or would be contrary to state or federal law.

## **Chapter 17.96 S-14 HOUSING SITES COMBINING ZONE REGULATIONS**

### **Sections:**

17.96.010 Title, Purpose and Applicability.

17.96.020 Definitions.

17.96.030 Zones with which the S-14 Zone may be combined.

17.96.040 Required Majority Residential Use.

17.96.050 Minimum Densities.

17.96.060 By Right Approval for Sites Identified in Prior Housing Element Cycles.

17.96.070 By Right Approval for Sites not Identified in Prior Housing Elements.

17.96.080 Required Design Review Process.

### **17.96.010 Title, Purpose and Applicability.**

The provisions of this Chapter shall be known as the S-14 Housing Sites Combining Zone Regulations. The Housing Sites Combining (S-14) Zone is intended to facilitate housing production on those sites that the City identified for housing pursuant to the 2023-2031 Housing Element. The S-14 Zone seeks to ensure that sites within the S-14 Zone are developed with residential uses; and that projects that contribute toward meeting Oakland's needs for lower income housing receive By Right Approval. These regulations shall apply in the S-14 Zone and where so stated herein shall supersede the regulations applying in the zones with which the S-14 Zone is combined.

### **17.96.020 Definitions.**

The following definitions shall apply to this Chapter only.

**By Right Approval.** "By Right Approval" shall mean a ministerial approval process in which the following apply:

- A. The City shall not require a Conditional Use Permit, Planned Unit Development permit, or other discretionary permit of any kind. The project will not require a discretionary permit and thus will not be subject to review under the California Environmental Quality Act.
- B. The City shall not exercise any subjective judgment in deciding whether and how to carry out or approve the project and shall apply property development standards and objective design review standards applicable to the underlying zoning designation and this S-14 Combining Zone only. The City shall maintain a list of publicly available applicable objective design review standards that may be amended from time to time.
- C. The project shall not be subject to a public hearing of any type, and there shall be no right of appeal. However, an applicant may request at its sole discretion review before the Design Review Committee of the Planning Commission.
- D. The City shall not impose any notice requirements on the project.
- E. The project shall be subject to any applicable City of Oakland standard conditions of approval, which shall be identified along with the decision letter issued for the project.
- F. The project must demonstrate consistency with the Oakland Equitable Climate Action Plan (ECAP) through completion of an ECAP Consistency Checklist submitted concurrently with the development application.

**Housing Sites Inventory.** “Housing Sites Inventory” shall mean Table C-26 included in Appendix C of the City of Oakland 2023-2031 Housing Element.

**Majority Residential Use.** “Majority Residential Use” shall mean a use consisting of residential units only, mixed use developments consisting of residential and non-residential uses with at least two-thirds of the square footage designated for residential activity, or transitional or supportive housing.

**Prior Housing Element Sites.** “Prior Housing Element Sites” shall mean those sites included in the Housing Sites Inventory and also included in the previously adopted 2007-2014 or 2015-2023 Housing Elements, as identified in column O of Table C-26 of the City of Oakland 2023-2031 Housing Element as either “Used in Prior Housing Element – Non-Vacant” or “Used in Two Consecutive Prior Housing Elements – Vacant.”

**Realistic Capacity.** “Realistic Capacity” shall mean the projected residential development capacity, stated in terms of total probable number of dwelling units, capable of being achieved on the sites identified in the Housing Sites Inventory, column S.

**17.96.030 Zones with which the S-14 Zone may be combined.**

The S-14 Zone may be combined with any other zone. The S-14 Zone shall apply to all parcels identified in the Housing Sites Inventory, with specified sections applicable to Prior Housing Element Sites.

The City shall maintain a mapping resource of parcels included in the Housing Sites Inventory, including Prior Housing Element Sites, that will be available to the public. However, the Housing Sites Inventory included in the 2023-2031 Housing Element shall be the definitive source for determining whether a parcel is included within the S-14 Zone.

**17.96.040 Required Majority Residential Use.**

All development projects proposed in the S-14 Zone must be a Majority Residential Use. Any development project proposed in the S-14 Zone not providing a Majority Residential Use shall not be permitted.

**Notwithstanding the above, a development project proposed in the S-14 Zone that is not a Majority Residential Use may be permitted if the applicant can demonstrate either of the following:**

**A. The proposed development includes a total residential unit count that equals no less than one hundred percent (100%) of the Realistic Capacity designated for the site as shown in Column S of the Housing Sites Inventory; or**

**B. The proposed development is a non-residential development that is coordinated with the development of a site under the same ownership that is within ¼ mile of the proposed development’s site and that when the square footage of both developments are considered together meets the definition of a Majority Residential Use. For purposes of this section, “coordinated” shall mean that the Realistic Capacity applicable to the non-residential development will be applied to the newly identified site for purposes of determining minimum densities under Section 17.96.050, and the developer of the proposed non-residential development has either applied for planning entitlements for**

the residential development or has entered into an agreement, provided to the City, for partnered housing with a residential developer. Such agreement shall identify the Realistic Capacity and minimum density for the site and identify how the non-residential developer will contribute to affordable housing. The development standards applicable to the residential site must be sufficient to accommodate the applied Realistic Capacity. Affordable housing may be contributed by the non-residential developer through the donation of the property to the residential developer or through a cash payment to the residential developer that shall be used toward the cost of constructing the residential project. If a building permit has not been issued for the residential development, the City may withhold issuance of building permits for the non-residential development until building permits for the residential development are issued. If the residential development does not commence construction, the City may withhold certificates of occupancy for the non-residential development until the construction of the residential development is commenced.

#### **17.96.050 Minimum Densities.**

All development projects proposed in the S-14 Zone must comply with the minimum residential density requirements described in this section. Any project proposed in the S-14 Zone not providing the minimum required residential density shall not be permitted.

All projects proposed in the S-14 Zone shall include a residential unit count that equals no less than seventy-five percent (75%) of the Realistic Capacity designated for the site as shown in Column S of the Housing Sites Inventory.

Notwithstanding the above, a proposed development in which one hundred percent (100%) of the residential units are reserved for moderate-, low-, and very low-income households may propose a residential unit count that is less than seventy-five percent (75%) of the Realistic Capacity designated for the site so long as the residential unit count equals no less than one hundred percent (100%) of the lower income capacity for the site as shown in Column P of the Housing Sites Inventory.

#### **17.96.060 By Right Approval for Prior Housing Element Sites.**

If a project is proposed on a Prior Housing Element Sites parcel and at least twenty percent (20%) of the project's units will be made available to lower income households, the project shall be subject to By Right Approval.

#### **17.96.070 By Right Approval for Sites not used in Prior Housing Elements.**

If a project is proposed on a parcel included in the Housing Sites Inventory and is not a Prior Housing Element Sites parcel, the project shall be subject to By Right Approval if the project proposes at least as many lower and moderate income units as shown in Columns P and Q of the Housing Sites Inventory, for each income category, the project overall proposes at least as many total units as described as the Realistic Capacity for the parcel, and the project satisfies at least one of the following conditions:

A. One hundred percent (100%) of the housing units, other than manager's units, are restricted to very low, low and moderate income residents;

B. At least twenty percent (20%) of the total housing units are restricted to very low-income households;

- C. At least twenty-five percent (25%) of the total housing units are restricted to any combination of very low and lower income household;
- D. At least forty percent (40%) of the total housing units are restricted to any combination of very low, low, and moderate-income households.

Notwithstanding the above, a project shall not be eligible for By Right Approval under this section if the project proposes development in phases or proposes more than one hundred thousand (100,000) square feet of floor area.

For purposes of determining if the project proposes at least as many units as described as the realistic capacity for the parcel, the project may satisfy the requirement for low income designations by providing units restricted to very low income households, may satisfy the requirements for moderate income designations by providing units restricted to very low and low income households, and may satisfy the requirements for above moderate income units by providing very low, low, or moderate income units, as listed above.

#### **17.96.080 Required Design Review Process.**

Except for projects that are exempt from design review as set forth in Section 17.136.025, no Building Facility, Designated Historic Property, Potential Designated Historic Property, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.