# EXHIBIT E

## General Planning Code Amendments

The Oakland Planning Code (Title 17 of the Oakland Municipal Code) is proposed to be amended as follows. Additions are shown in underline and deletions are shown in ~~strike through~~. Note that only the relevant code subsections being amended are included and unamended portions of tables are omitted.

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### Chapter 17.01 GENERAL PROVISIONS OF PLANNING CODE AND GENERAL PLAN CONFORMITY

#### 17.01.070 Determination of General Plan conformity by Director of City Planning.

The Director of City Planning shall determine whether any specific proposal conforms to the General Plan. Any interested party may apply for a written General Plan conformity determination upon payment of a fee as prescribed in the city master fee schedule. Prior to making a decision, there shall be notice given by mail or delivery to all owners and occupants of ~~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 pursuant to Section 17.134.040; provided, however, that failure to send notice to any such owner where his or her address is not shown on the last available equalized assessment roll shall not invalidate the affected proceedings.

#### 17.01.120 Proposals clearly not in conformance with the General Plan or the Land Use Diagram.

Any proposal determined to clearly not conform to the General Plan shall not be allowed and no application shall be accepted, nor shall any permits be approved or issued, for any such proposal, except as provided in this Section or in Section 17.01.040 or Section 17.01.070.

C. If permitted or conditionally permitted by Zoning Regulations, and where determined by the Planning Director to be consistent with the surrounding land uses and appropriate for the area, notwithstanding that the project may not be consistent with the General Plan classification shown on the Land Use Diagram. It is recognized that the General Plan land uses have been broadly applied to areas without parcel by parcel specificity and that the Land Use Diagram details are largely illustrative of the Plan's written goals and policies. Because the Diagram is generalized, and does not necessarily depict the accuracy of each parcel or very small land areas, a determination of project consistency can be requested of the Director of City Planning. The applicant must demonstrate to the satisfaction of the Planning Director that the predominant use, or average density, is different from that shown on the Diagram and is appropriate for the area in question and that the project is in conformance with the written goals and policies of the General Plan. Written notice of the Director's determination shall be sent to all property owners and occupants 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 on the last available equalized assessment roll shall not invalidate the affected proceedings. The Director's determination may be appealed to the City Planning Commission pursuant to Section 17.01.080B.

## Chapter 17.07 TITLE, PURPOSE, AND SCOPE OF THE ZONING REGULATIONS

### 17.07.060 Conformity with zoning regulations required.

Except as otherwise allowed by Subsections A., B., and C. below, Section 17.114.030 and by the Nonconforming Use regulations in Chapter 17.114, or as authorized under Section 17.138.015, the Development Agreement procedure in Chapter 17.138, or the Variance and Exception procedure in Chapter 17.148, no activities or facilities shall be established, substituted, expanded, constructed, altered, moved, maintained, or otherwise changed, and no lot lines shall be created or changed, except in conformity to the zoning regulations.

## Chapter 17.09 DEFINITIONS

### 17.09.040 Definitions

**"Accessory Dwelling Unit"** or **"ADU"** means an interior, attached or detached dwelling unit that is accessory to a proposed or existing primary Residential Facility located on the same lot; provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation; meets the standards and criteria of Section 17.103.080 and Chapter 17.88; and conforms to one or more of the following permitted ADU types:

**D.** **"Multifamily Category One ADU"** means an Accessory Dwelling Unit that is a conversion of a legally existing, non-habitable space, such as storage rooms, boiler rooms, passageways, attics, basements, or garages located within legally existing portions of Two- to Four-Family or Multifamily Dwelling Facilities. Non-habitable space does not include detached accessory structures, existing residential units, commercial space, community rooms, gyms, laundry rooms or any finished spaces that are meant to be occupied by people and used communally.

**E.** **"Multifamily Category Two ADU"** means a newly constructed detached Accessory Dwelling Unit, or a conversion of a legally existing detached accessory structure, on a lot with existing Two- to Four-Family or Multifamily Dwelling Facilities. A converted detached Category Two ADU(s) is either: (a) within the building envelope of an existing detached accessory structure and involves no expansion of existing building envelope; or (b) within a rebuilt detached accessory structure built in the same location and to the same exterior dimension as the existing detached accessory structure(s).

**F.** **"Multifamily Category Three ADU"** means a newly constructed ADU that is interior or attached to a primary structure, or a conversion of a legally existing attached accessory structure that is rebuilt pursuant to the requirements set forth in Table 17.103.02, or a combination of both new construction and conversion for the purposes of creating only one ADU on the lot.

**"Affordable Housing".** Affordable Housing shall mean that the relevant housing is available and restricted by written agreement to occupancy at an Affordable Housing Cost or an Affordable Rent to moderate income households, low income households, or very low income households. If the proposed development will be rented to tenants at an Affordable Rent, the units shall be subject to a recorded affordability restriction for fifty-five (55) years or for the life of the development project, whichever is greater. If the proposed development is for-sale units, the units shall be subject to a recorded affordability agreement for forty-five (45) years consistent with the provisions of Government Code Section 65915(c)(2). The written agreement shall be recorded against the units as covenants running with the land, senior in priority to any private liens or encumbrances except as provided below and shall be enforceable by the City against the applicant or the applicant's successors-in-interest to the property 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 they determine that the financing of the Affordable Housing units would be infeasible without said subordination.

"**Affordable Housing Cost**" shall have the same meaning as provided in Section 50052.5 of the California Health and Safety Code and its implementing regulations. Affordable Housing Cost includes loan principal, loan interest, property and mortgage insurance, property taxes, home owners' association dues and a reasonable allowance for utilities.

"**Affordable Rent**" shall have the same meaning as Section 50053 of the California Health and Safety Code and its implementing regulations. Affordable rent includes rent and a reasonable allowance for utilities.

"**By Right Residential Approval**". "By Right Residential Approval" shall mean a ministerial approval process for specified residential projects 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 shall 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 the S-13 and S-14 Combining Zones, if applicable. 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.

**"Dwelling unit"** means a room or suite of rooms including only one kitchen, except as otherwise provided in Section 17.102.270, and designed or occupied as separate living quarters for one person or family; or, where the facility occupied is a One-Family Dwelling, such person or family and not more than ~~three (3)~~ four (4) boarders, roomers, or lodgers where access to all rooms occupied by such boarders, roomers, or lodgers is had through the main entrance of the dwelling unit.

**"Employee housing"** is defined consistent with California Health and Safety Code Section 17008, as may be amended, and means any portion of any living unit, or property upon which a living unit is located, where the accommodations consist of living quarters, dwelling, boardinghouse, tent, bunkhouse, maintenance-of-way car, mobilehome, manufactured home, recreational vehicle, travel trailer, or other housing accommodations, and is maintained by an

employer in connection with any work or place where work is being performed, whether or not rent is involved.

**"Food Desert"** refers to areas designated as "Low-access tract at one-half mile" by the US Department of Agriculture (USDA) 2019 Food Access Research Atlas and is defined as an urban tract with at least five-hundred (500) people, or thirty-three percent (33%) of the population, living more than one-half mile from the nearest supermarket, supercenter, or large grocery store.

**"Full-service restaurant"** means any activity described in Oakland Planning Code Section 17.10.272. ~~a place that is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation; and that has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals. The sale or service of sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or snack foods shall not constitute a full-service restaurant. Also, see Sections 17.10.272 and 17.156.070.~~

**Moderate-, Low- and Very Low-Income Households**. "Moderate-, low- and very low-income households" means those households whose income matches levels determined periodically by the U.S. Department of Housing and Urban Development, based on the Oakland Primary Metropolitan Statistical Area (PMSA) median income levels by family size, under which:

1. **"Moderate income"** is as defined in Section 50093 of the California Health and Safety Code and its implementing regulations;
2. **"Low income"** is as defined in Section 50079.5 of the California Health and Safety Code and its implementing regulations;
3. **"Very low income"** is as defined in Section 50105 of the California Health and Safety Code and its implementing regulations.

"**Low Barrier Navigation Center**" is as defined in Section 65660 of the California Government Code and means a housing-first, low-barrier, service-enriched shelter focused on moving people into permanent housing that provides temporary living facilities while case managers connect individuals experiencing homelessness to income, public benefits, health services, shelter, and housing. "Low barrier" means best practices to reduce barriers to entry, and may include, but is not limited to, the following:

1. The presence of partners if it is not a population-specific site, such as for survivors of domestic violence or sexual assault, women, or youth;
2. Pets;
3. The storage of possessions;
4. Privacy, such as partitions around beds in a dormitory setting or in larger rooms containing more than two beds, or private rooms.

**"Major transit stop"** is defined consistent with California Public Resources Code Section ~~21064.3~~ 21155, as may be amended; and means a site containing an existing rail or bus rapid transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two (2) or more major bus routes with a frequency of service interval of fifteen (15) minutes or less on a single bus route during the morning and afternoon peak commute periods.

~~**"Mini-lot Planned Unit Development"** or **"Mini-Lot PUD"** means a comprehensively designed development approved pursuant to Planning Code Chapter 17.142 and containing a subdivision of lots which do not meet the minimum size or other requirements applying to individual lots in the zone where it is located.~~

**"Principal street"** means on interior lots, the street that abuts a lot. On corner lots and through lots, the principal street is the street that abuts the lot that is highest on the street hierarchy as defined in the Land Use and Transportation Element of the General Plan. Where streets have the same street hierarchy, the principal street shall be determined by the Zoning ~~Administrator~~ Manager based on the street widths, traffic capacity, land uses, transit activity, bicycle and pedestrian uses, and control of intersections.

**"Rooming Unit"** means a room or suite of rooms, not including a kitchen, designed or occupied as separate living quarters, with or without common boarding provisions, but excluding such rooms where they accommodate a total of four (4) ~~three (3)~~ or fewer paying guests within a One-Family Dwelling Residential Facility through the main portion of which access may be had to all such rooms; provided that in the case of student dormitories and similar group living arrangements, each two beds shall be deemed a R~~r~~ooming U~~u~~nit.

## Chapter 17.10 USE CLASSIFICATIONS

### 17.10.040 Accessory activities.

In addition to the principal activities expressly included therein, each activity type shall be deemed to include such activities as are customarily associated with, and are appropriate, incidental, and subordinate to, such a principal activity; are located on the same lot as such principal activity except as otherwise provided in Subsections A., J., and K. of this Section; and meet the further conditions set forth hereinafter. Such accessory activities shall be controlled in the same manner as the principal activities within such type except as otherwise expressly provided in the zoning regulations. Such accessory activities include, but are not limited to, the activities indicated below, but exclude the sale of alcoholic beverages to the general public except at a Full-Service Restaurant, Limited-Service Restaurant and Café, or an alcoholic beverage manufacturer, as described in Sections 17.10.272, 17.10.274, 17.10.550, and 17.10.560, and subject to the standards in Section 17.103.030. (See also Section 17.10.050 for additional activities included within activity types in the case of combinations of different principal activities.)

M. Public restrooms serving park and recreational facilities~~.~~;

N. Auto repair on the same lot as an auto showroom, or auto repair on a separate lot in the D-BV-4 Zone upon the granting of a Conditional Use Permit according to the requirements of limitation L18. in Table 17.101C.01~~.~~;

O. Operation of Electrical Vehicle Charging Stations and similar infrastructure.

### 17.10.060 Listing of facility classifications.

All facilities are classified into the following facility types, which are described in Section Article III of this Chapter. (See Section 17.10.080 for classification of combinations of facilities resembling different types.) The names of these facility types start with capital letters throughout the zoning regulations.

A. Residential Facilities:

One-Family Dwelling

Two- to Four-Family Dwelling

Multifamily Dwelling

Rooming House

Vehicular

### 17.10.070 Accessory facilities.

In addition to the principal facilities expressly included therein, each Residential and Nonresidential Facility type shall be deemed to include such facilities as are customarily associated with, and are appropriate, incidental, and subordinate to, such a principal facility; are located on the same lot as such principal facility except as otherwise provided in Subsections A., F., and G. of this Section; and meet the further conditions set forth hereinafter· Such

accessory facilities shall be controlled in the same manner as the principal facilities within such type except as otherwise expressly provided in the zoning regulations. They include but are not limited to the following facilities, but shall not be deemed to include Signs, which are classified and controlled separately:

G. A temporary real estate sales office which is necessary and incidental to, and located on the site of, a subdivision being developed into five (5) or more lots.;

H. Electrical Vehicle Charging Station equipment and similar infrastructure.

**Article II Activity Types**

**17.10.112 Residential Care Residential Activities.**

Residential Care Residential Activities include all Residential Care Facilities that require a state license or are state licensed for seven (7) or more residents which provide twenty-four (24) hour primarily nonmedical care and supervision. Occupancy of living accommodations by six (6) or fewer residents are excluded. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. State licensed Residential Care Facilities for six (6) or fewer residents shall be treated as Permanent Residential Activities except with regard to the three hundred (300) foot separation requirement in Section 17.103.010.~~B.~~

**17.10.114 Supportive Housing Residential Activities.**

Supportive Housing Residential Activities include housing: (a) with no limit on length of stay; (b) that is linked to an onsite or offsite service that assist the supportive housing resident in retaining the housing, improving his or her health status, and maximizing his or her ability to live and, when possible, work in the community; and (c) that is occupied by the following target population (as defined in subdivision (g) of Government Code Section 65582):

A. Adults with low incomes having one or more disabilities, including mental illness, HIV or AIDS, substance abuse, or other chronic health conditions and may, among other populations, include adults, emancipated minors, families with children, elderly persons, young adults aging out of the foster care system, individuals exiting from institutional settings, veterans, and homeless people; or

B. Individuals eligible for services provided under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code), who include individuals with a disability that originated before the individual was eighteen (18) years old, but not including handicapping conditions that are solely physical in nature.

This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. Supportive Housing shall only be subject to those restrictions that apply to other residential dwellings of the same facility type in the same zone (Government Code Section 65583(a)(5)).

Notwithstanding anything to the contrary contained in the Planning Code, Supportive Housing Residential Activities shall be a use by right in any zone where Multifamily Dwelling Residential Facilities are permitted if the proposal satisfies all of the requirements provided in Government Code Section 65651.

**17.10.125 Bed and Breakfast Residential Activities.**

A. The activity occupies a One-Family Dwelling Residential Facility or ~~a~~ Two- to Four Family Dwelling Residential Facility;

**17.10.140 Essential Service Civic Activities.**

Essential Service Civic Activities include the maintenance and operation of the following installations:

A. Electric, gas, and telephone distribution lines and poles, and water, storm drainage, and sewer lines, with incidental appurtenances thereto, but excluding electric transmission lines;

B. Community gardens. For the purpose of this classification, Community Gardens are defined as land that is used individually or collectively for the cultivation of fruits, vegetables, plants, flowers, herbs, and/or ornamental plants~~, and/or animal products and livestock production by one (1) or more persons~~ for personal consumption and/or donation. Typically in community gardens, the land is divided into individual plots, and each individual participant is responsible for their own plot and the yielding or the production of which belongs to the individual, but can also include land that is not divided and the participant group cultivates the subject land together. This classification does not include any cannabis activities; livestock production or the cultivation of animals and/or animal products by agricultural methods, except for bee keeping involving no more than three (3) hives; the use of heavy mechanized farming equipment;~~,~~ or commercial sales on or off the premises, except for limited seasonal sales~~. Any keeping, grazing, or feeding of animals must conform to all applicable regulations, including but not limited to, Municipal Code Chapters 6.04, 8.14, and 8.18~~;

G. Seasonal retail sales conducted for a limited duration under valid license or lease on property owned or leased by the City;

J. Telecommunications activities including the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received~~.~~;

K. Electrical Vehicle Charging Stations and similar infrastructure;

~~K~~L. All activities not classified elsewhere in the use regulations that are conducted on City and regional parklands and which are specifically referenced in master plans which are adopted by the Oakland City Council.

**17.10.160 Community Assembly Civic Activities.**

Community Assembly Civic Activities include the provision of civic activities to assembled groups of spectators or participants at the following institutions or installations. Examples of activities in this classification include but are not limited to the following:

- Churches, temples, synagogues, and other similar places of worship;
- Public and private nonprofit clubs, lodges, meeting halls, and recreation centers;

- Community, cultural, and performing arts center;
- Public and nonprofit gymnasiums and indoor swimming pools.

This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. Notwithstanding anything to the contrary contained in the Planning Code, Emergency Shelter Residential Activities are permitted by-right on properties owned by churches, temples, synagogues, and other similar places of worship approved for Community Assembly Civic Activities.

**17.10.170 Recreational Assembly Civic Activities.**

Recreational Assembly Civic Activities include the provision of recreational activities, typically performed by participants within public facilities. Examples of activities in this classification include but are not limited to the following:

- Food service and other concessions located within public parks;
- Public and parochial playgrounds and playing fields;
- ~~Temporary nonprofit festivals;~~
- Basketball courts, tennis courts, handball courts, lawn bowling, leisure areas, and similar outdoor park and recreational facilities;
- Community outdoor swimming and wading pools, and other water play features;
- Picnic areas.

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

**17.10.272 Full-Service Restaurant Commercial Activities.**

Full-Service Restaurant Commercial Activities include the provision of food or beverage services to patrons who order and are served while seated (table service), and pay after eating. Only a minor proportion, if any, of the food is sold for consumption off-premises. These restaurants have kitchens that contain equipment suitable for cooking an assortment of foods; and may include service of liquor, beer and/or wine, subject to the standards in Section 17.103.030. ~~Also, see Section 17.156.070 for definitions of a Full-Service Restaurant in relation to the Deemed Approved Beverage Sale regulations.~~ This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

**17.10.274 Limited-Service Restaurant and Cafe Commercial Activities.**

Limited-Service Restaurant and Cafe Commercial Activities include the provision of food or beverage services to patrons that generally order and pay at a service counter before eating. Food and beverages may be served in disposable containers and may be consumed on the premises or taken out. Seating for on-premises consumption is usually available and table service may or may not be provided. These restaurants may include service of beer and/or wine, subject to the standards in Section 17.103.030. Examples of these activities include, but

are not limited to, cafes and restaurants that do not fall under Section 17.10.272 Full-Service Restaurant Commercial Activities, or Section 17.10.280 Fast-food Restaurant Commercial Activities. ~~Also, see Section 17.156.070 for definition of a Limited-Service Restaurant or Café in relation to the Deemed Approved Alcoholic Beverage Sale regulations.~~ This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

**17.10.378 Artisan Production Commercial Activities**

Artisan Production Commercial Activities include the creation, exhibition and on-site sale of multi-media art and artisan products. This includes street-oriented displays of artistic products and publicly-accessible studio and sales spaces. These activities do not include manufacture, fabrication or production processes that produce noise, vibration, air pollution, fire hazard, or noxious emissions that could disturb or endanger neighboring properties. This classification does not include the production of alcoholic beverages classified in Section 17.10.550 Custom Manufacturing Industrial Activities. Artisan Production Activities include, but are not limited to:

A. Painting;

B. Drawing;

C. Sculpture;

D. Small-scale jewelry, metalworking, furniture, and woodworking production;

E. Photography, picture framing, printshop, digital print lab;

F. Fashion design, sewing, textiles fabrication;

G. Art gallery;

H. Food Production (excluding the production of highly pungent, odor-causing items, such as vinegar and yeast) with five thousand (5,000) square feet or less of floor area.

**17.10.380 Group Assembly Commercial Activities.**

Group Assembly Commercial Activities include the provision of instructional, amusement, and other services of a similar nature to group assemblages of people. This classification does not include any activity classified in Section 17.10.160 Community Assembly Civic Activities, Section 17.10.170 Recreational Assembly Civic Activities, or Section 17.10.180 Community Education Civic Activities. Examples of activities in this classification include, but are not limited to, the following:

- Yoga, martial arts, driving school, job training, and other instructional classes in facilities with ~~three thousand (3,000)~~ five thousand (5,000) square feet or more of classroom or instructional space;
- Drive-in theaters;
- Theaters or venues with ~~three thousand (3,000)~~ five thousand (5,000) square feet or more of performance, lobby space, and audience floor area;
- ~~Temporary carnivals, fairs, and circuses;~~
- Cabarets, night clubs, dance halls, adult entertainment, and pool halls;

- Banquet halls;
- Fitness clubs with ~~three thousand (3,000)~~ five thousand (5,000) square feet or more of floor area.

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

**17.10.385 Personal Instruction and Improvement Services Commercial Activities.**

Personal Instruction and Improvement Services Commercial Activities include the provision of informational, instructional, personal improvement and other services of a similar nature. This classification does not include any activity classified as Section 17.10.180 Community Education Civic Activities or Section 17.10.380 Group Assembly Commercial Activities. Examples of activities in this classification include, but are not limited to, the following:

- Yoga, martial arts, driving school, job training, and other instructional classes in facilities with less than ~~three thousand (3,000)~~ five thousand (5,000) square feet of classroom or instructional space;
- Fitness clubs with less than ~~three thousand (3,000)~~ five thousand (5,000) square feet of floor area;
- Theaters or venues with less than ~~three thousand (3,000)~~ five thousand (5,000) square feet of performance, lobby space, and audience floor area.

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

**17.10.585 Trucking and Truck-Related Industrial Activities.**

Trucking and Truck-Related Industrial Activities include the provision of freight handling and shipping services by trucks as well as parking, maintenance, and services for trucks and other heavy vehicles and equipment. Each classification involves the use of trucks and other heavy vehicles that have a gross vehicle weight rating greater than or equal to fourteen thousand (14,000) pounds. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

E. Truck and Other Heavy Vehicle Service, Repair, and Refueling. Repair, fueling, and other servicing of medium and heavy trucks, truck tractors, construction or agricultural equipment, buses, boats, heavy equipment, and similar vehicles. This classification includes the sale, installation, and servicing of related equipment and parts. This classification also includes gasoline, diesel, natural gas, and/or hydrogen fueling stations, repair shops, body and fender shops, wheel and brake shops, engine repair and rebuilding, welding, major painting service, tire sales and installation, and upholstery shops for trucks and other heavy vehicles. This classification does not include electrical vehicle charging stations installed as the primary use of a site (see Essential Service Activities, Section 17.10.140.K); or vehicle dismantling or salvage (see Salvage/Junk Yards, Subsection 17.10.583.E).

**17.10.590 General description of Agricultural and Extractive Activities.**

Agricultural and Extractive Activities include the on-site production of plants, ~~and~~ animals, and plant and animal products by agricultural methods, and of mineral products by extractive methods. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

**17.10.610 Limited Agricultural Activities.**

Limited Agricultural Activities include the cultivation on the premises of fruits, vegetables, plants, flowers, herbs, and/or ornamental plants intended to produce food, fibers, or other plant products for on- or off-site sale; the keeping, grazing, and/or feeding of no more than three (3) livestock animals by agricultural methods; and bee keeping activities involving no more than three (3) hives. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040; and employee housing consisting of no more than thirty-six (36) beds in a group quarters or twelve (12) units or spaces designed for use by a family or household. This classification does not include any cannabis activities; the keeping, grazing, and/or feeding of more than three (3) livestock animals or ~~except for~~ bee keeping involving ~~no~~ more than three (3) hives; the use of any heavy mechanized farming equipment; or any activity classified in Section 17.10.600 Plant Nursery Agricultural Activities. Any keeping, grazing, feeding, and/or production of animals or animal products must conform to all applicable regulations, including but not limited to, Municipal Code Chapters 6.04, 8.14, and 8.18. See also Section 17.102.140 for regulations regarding the keeping or training of horses, mules, or donkeys.

**17.10.615 Extensive Agricultural Activities.**

Extensive Agricultural Activities include the keeping, grazing, and/or feeding of more than three (3) livestock animals by agricultural methods, including bee keeping activities involving more than three (3) hives~~, intended to provide animals or animal products for on- or off-site sale~~; and agricultural activities not included in Section 17.10.610 Limited Agricultural Activities, including but not limited to, the use of any heavy mechanized farming equipment. Any keeping, grazing, feeding, and/or production of animals or animal products must conform to all applicable regulations, including but not limited to, Municipal Code Chapters 6.04, 8.14, and 8.18. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040; and employee housing consisting of no more than thirty-six (36) beds in a group quarters or twelve (12) units or spaces designed for use by a family or household. This classification does not include any cannabis activities; or any activity classified in Section 17.10.505 Animal Boarding Commercial Activities or Section 17.10.510 Animal Care Commercial Activities. See also Section 17.102.140 for regulations regarding the keeping or training of horses, mules, or donkeys.

**17.10.640 One-Family Dwelling Residential Facilities.**

One-Family Dwelling Residential Facilities include permanently fixed buildings, or those portions thereof, which accommodate or are intended to accommodate Residential Activities and ~~each of which~~ contains one (1) Regular Dwelling Unit on a parcel, along with any Accessory Dwelling

Units that may be permitted as set forth in Section 17.103.080 and Chapter 17.88. One-Family Dwelling Residential Facilities also include manufactured homes, as defined in Health and Safety Code Section 18007~~,~~; ~~and~~ mobile homes, as defined in Health and Safety Code Section 18008~~,~~; and employee housing providing accommodations for six (6) or fewer employees. They also include certain facilities accessory to the above, as specified in Section 17.10.070.

**17.10.670 Two- to Four-Family Dwelling Residential Facilities.**

Two- to Four-Family Dwelling Residential Facilities include permanently fixed buildings, or those portions thereof, which accommodate or are intended to accommodate Residential Activities and ~~each of which~~ contain~~s~~ two (2) to four (4) Regular Dwelling Units or Efficiency Dwelling Units on a parcel, along with any Accessory Dwelling Units that may be permitted as set forth in Section 17.103.080 and Chapter 17.88. They also include certain facilities accessory to the above, as specified in Section 17.10.070.

**17.10.680 Multifamily Dwelling Residential Facilities.**

Multifamily Dwelling Residential Facilities include permanently fixed buildings, or those portions thereof, which accommodate or are intended to accommodate Residential Activities and ~~each of which~~ contain~~s three (3)~~ five (5) or more Regular Dwelling Units or Efficiency Dwelling Units on a parcel, along with any Accessory Dwelling Units that may be permitted as set forth in Section 17.103.080 and Chapter 17.88. They also include certain facilities accessory to the above, as specified in Section 17.10.070.

**Part 4 Telecommunications Facility Types**

17.10.870 Micro Telecommunications Facilities.

**17.10.870 Micro Telecommunications Facilities.**

A Micro Telecommunications Facility is an attached wireless communication facility consisting of no more than six (6) ~~three (3)~~ antennas whose height is no more than four (4) feet and whose width is no more than one (1) foot and the antennas are concealed from view. If the antennas are visible, they may be no more than two (2) feet tall and the width and depth of the antennas may be no more than four (4) inches. The associated equipment cabinets are not to exceed four (4) feet high by three (3) feet wide by two (2) feet deep if they are visible. If the equipment cabinets are concealed in an existing building, there is no limit on size of equipment.

## Chapter 17.102 REGULATIONS APPLICABLE TO CERTAIN ACTIVITIES AND FACILITIES

### 17.102.120 Removal of dirt or other minerals—Residential and S-1, S-2, S-3, S-15 and OS Zones.

In all Residential Zones and in the S-1, S-2, S-3, S-15 and OS Zones, no grading or excavation shall involve the removal of any soil, rock, sand, or other material for purposes of sale, fill, building, or other construction usage off the premises, unless a conditional use is granted pursuant to the conditional use permit procedure in Chapter 17.134. However, excavations in any street, alley, or other public place and excavations for foundations, basements, or cellars for the erection of any buildings for which a building permit has been issued shall be exempt from the above restriction.

### 17.102.250 Special exceptions allowed for multi-unit residential buildings undergoing mandatory seismic retrofit.

The following special exceptions apply to any building undergoing permitted retrofit work in compliance with Chapter 15.27 of the Oakland Municipal Code:

B. Additional Units. The number of legal living units in any building undergoing permitted retrofit work may be increased by one (1) unit for properties containing at least five (5) but fewer than ~~twenty (20)~~ ten (10) living units and by two (2) units for properties containing ~~twenty (20)~~ ten (10) or more living units, regardless of any resulting nonconformity as to the normally required maximum density, as long as the additional unit is located either within the building envelope resulting from the permitted retrofit work or outside of such building envelope, but within the height and setback requirements normally applicable to the subject building. The building permit for the additional unit(s) must be issued no later than five (5) years from the date of the final inspection of the retrofit work. An additional unit is not allowed if the new unit would reduce the number of bedrooms or bathrooms in any existing unit, or reduce the total amount of floor area in any existing unit by ten percent (10%) or more.

### 17.102.340 Electroplating Activities in the Industrial Zones.

A. Distance Standards. No Electroplating Activity shall be located nor expanded within one thousand (1,000) feet from the boundary of any other zone except the CIX-2~~,~~ or IG~~, M-20, M-30, or M-40~~ Zones, nor from any area designated "Resource Conservation Area" or "Park and Urban Open Space" in the Oakland General Plan.

### 17.102.450 Laundromats.

~~The following regulations shall apply in all zones to laundromats:~~

~~A. Conditional Use Permit Required. All new or expanded uses laundromats shall be required to obtain a Conditional Use Permit as specified in Chapter 17.134.~~

~~B. Restriction on Over-Concentration of Laundromats. No new or expanded laundromat use shall be located closer than five hundred (500) feet from any existing laundromat as measured by the closest radial distance between buildings.~~

~~C.~~ Standards. The following standards shall apply to all new or expanded Laundromat uses:

~~1. On-Site Attendant. An employee shall be on the premises during all business hours.~~

A~~2~~. Security Cameras. Security cameras shall be operated on the premises during all business hours and recordings shall be maintained for a minimum of seven (7) days.

B~~3~~. When located adjacent to or below a dwelling unit the following shall be minimized:

1~~a~~. Noise shall not exceed the limits set forth in Chapter 17.120, Performance Standards.

2~~b~~. Vibrations shall not exceed the limits set forth in Chapter 17.120, Performance Standards.

3~~c~~. Venting shall be directed away from residential dwelling units.

C~~4~~. Transparency.

1~~a~~. A minimum of sixty percent (60%) of the building facade along a street or streets shall be glass (windows and/or doors).

2~~b~~. Window Clarity. Ninety percent (90%) of area of windows shall remain clear to allow views into the commercial space.

D~~5~~. Exterior Illumination. Outdoor lighting shall be attached to the exterior of the facility containing the laundromat establishment and operated after dusk so that the exterior of the premises are discernible.

E~~6.~~ Off-Site Impacts.

1~~a~~. Litter and debris shall be cleared from the premises and the adjacent right-of-way and sidewalks of the property at least once daily or as needed to maintain a litter free environment.

2~~b~~. Graffiti shall be removed from the exterior of the building within seventy-two (72) hours of application.

3~~c~~. At least two (2) "No Loitering" signs shall be posted on the building facade and other visible locations around the site. Signs shall be of a permanent nature and have letters a minimum of two (2) inches in height. ~~The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the premises including calling the police to ask that they remove loiters who refuse to leave. Persons loitering in the vicinity of the exterior of the establishment with no apparent business for more than ten (10) minutes shall be asked to leave. Techniques discussed in the manual entitled "Loitering: Business and Community Based Solutions" shall be used.~~

## Chapter 17.103 SPECIAL REGULATIONS AND FINDINGS FOR CERTAIN USE CLASSIFICATIONS

### 17.103.010 Residential Care and Emergency Shelter Residential Activities.

A. Additional Use Permit Criteria. A Conditional Use Permit for any conditionally permitted Residential Care or Emergency Shelter Residential Activity may only be granted 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 additional use permit criteria:

1. That staffing of the facility is in compliance with any State Licensing Agency requirements;
2. That if located in a Residential Zone, the operation of buses and vans to transport residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by Residential Activities in the surrounding area;
3. That if located in a Residential Zone, the on-street parking demand generated by the facility due to visitors is not substantially greater than that normally generated by the surrounding Residential Activities;
4. That if located in a Residential Zone, arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the livability of the surrounding properties;
5. That the facility's program does not generate noise at levels that will adversely affect the livability of the surrounding properties.

B. Restriction on Overconcentration of Resident Care and Emergency Shelter Residential Activities.

1. No Residential Care ~~or Emergency Shelter~~ Residential Activity shall be located closer than three hundred (300) feet from any other ~~such~~ Residential Care Residential Activity~~, or Facility~~ except for residential care facilities for foster family homes and the elderly.
2. No Emergency Shelter Residential Activity shall be located closer than three hundred (300) feet from any other Emergency Shelter Residential Activity.

C. See Section 17.103.015 for standards applicable to Emergency Shelters permitted “by-right”.

### 17.103.015 Standards applicable to Emergency Shelters permitted “by-right”.

A. Notwithstanding anything to the contrary contained in the Planning Code, Emergency Shelter Residential Activities shall be permitted by-right on properties owned by churches, temples, synagogues, and other similar places of worship approved for Community Assembly Civic Activities. Emergency shelters shall also be permitted by-right within the following areas, identified street corridors, and portions of street corridors (see Zoning Code Bulletin on Emergency Shelters Permitted By-right for a map of the following locations):

1. That portion of Martin Luther King Jr. Way lying between the 51st Street and the City of Oakland City Limits (Segment 1 on map in Zoning Code Bulletin).
2. That portion of San Pablo Boulevard lying between 53rd Street and the City of Oakland City Limits (Segment 2 on map in Zoning Code Bulletin).
3. That portion of the area surrounding Webster Street bounded by 29th Street to the south, the I-580 overpass to the north and Elm Street to the west and Webster Street (parcels fronting Webster Street) to the east (Segment 3 on map in Zoning Code Bulletin).
4. That portion of San Pablo Boulevard lying between Grand Avenue and I-580 (Segment 4 on map in Zoning Code Bulletin).
5. That area surrounding Third Street bounded by Martin Luther King Jr. Way to the east, Fifth Street to the north, Embarcadero West to the south and Union Street to the west (Segment 5 on map in Zoning Code Bulletin).
6. That portion of E. 12th Street between 14th Avenue and 23rd Avenue (Segment 6 on map in Zoning Code Bulletin).
7. That portion of Macarthur Boulevard between Fruitvale Avenue and High Street (Segment 7 on map in Zoning Code Bulletin).
8. That area of Coliseum Way bounded by San Leandro Street to the north, I-880 to the south, 66th Avenue to the east and High Street to the west (Segment 8 on map in Zoning Code Bulletin).

B. Where permitted by-right, Emergency Shelters shall comply with the development standards of the underlying zone and be in accordance with the following additional criteria:

1. **Compliance with required licenses, permits, and approvals.** An Emergency Shelter shall obtain and maintain in good standing required licenses, permits, and approvals from city, county and state agencies or departments and demonstrate compliance with applicable Building and Fire Codes. An Emergency Shelter Residential Facility shall comply with all county and state health and safety requirements for food, medical and other supportive services provided on-site.
2. **Number of beds.** A maximum of number of one hundred (100) beds or persons are permitted to be served nightly by the facility.
3. **Off Street Parking**. See Sections 17.116.060(B) and 17.103.010(A) for parking-related requirements for ~~emergency shelters~~ Emergency Shelters.
4. **Size and location of exterior onsite waiting and client intake areas.** Exterior waiting areas ~~must~~ shall comply with the applicable ~~Small Project~~ Design Review ~~Checklist~~ Criteria. ~~for Facilities with 3 or More Dwelling Units.~~
5. **Restriction on overconcentration of Emergency Shelter Residential Activities.** See Section 17.103.010(B) for overconcentration standards for Emergency Shelter Residential Activities.
6. **Length of stay**. No individual or family shall reside in an ~~emergency shelter~~ Emergency Shelter for more than one hundred eighty (180) consecutive days.

7. **External Lighting and Security.** Satisfactory completion of the City of Oakland's "Crime Prevention Through Environmental Design (CPTED) Checklist for Residential Projects" is required for all ~~emergency shelters~~ Emergency Shelters permitted by-right.

8. **Additional Requirements.** For City of Oakland- funded shelters refer to the current "Standard Contract – Service Agreement" that governs the disposition of funds from the City of Oakland, through the Department of Human Services, to a shelter operator.

**17.103.016 Low Barrier Navigation Centers.**

A low-barrier navigation center shall be permitted by-right in areas zoned to permit Permanent Residential Activities, including within mixed-use and nonresidential zones permitting Permanent Residential Activities, if it meets the following requirements:

A. Connected Services. It offers services to connect people to permanent housing through a services plan that identifies services staffing.

B. Coordinated Entry System. It is linked to a coordinated entry system, so that staff in the interim facility or staff who co-locate in the facility may conduct assessments and provide services to connect people to permanent housing. "Coordinated entry system" means a centralized or coordinated assessment system developed pursuant to Section 576.400(d) or Section 578.7(a)(8), as applicable, of Title 24 of the Code of Federal Regulations, as those sections read on January 1, 2020, and any related requirements, designed to coordinate program participant intake, assessment, and referrals.

C. Code Compliant. It complies with Chapter 6.5 (commencing with Section 8255) of Division 8 of the Welfare and Institutions Code.

D. Homeless Management Information System. It has a system for entering information regarding client stays, client demographics, client income, and exit destination through the local Homeless Management Information System, as defined by Section 578.3 of Title 24 of the Code of Federal Regulations.

Use by-right has the meaning defined in subdivision (i) of Section 65583.2 of the California Government Code. Division 13 (commencing with Section 21000) of the California Public Resources Code shall not apply to actions taken by a public agency to lease, convey, or encumber land owned by a public agency, or to facilitate the lease, conveyance, or encumbrance of land owned by a public agency, or to provide financial assistance to, or otherwise approve, a low-barrier navigation center constructed or allowed by this section.

**17.103.030 Fast-Food Restaurant, and Convenience Market Commercial Activities, and Establishments Selling Alcoholic Beverages.**

B. Special Restrictions on Establishments Selling Alcoholic Beverages.

5. Standards for Limited-Service Restaurant and Café Commercial Activities that include the service of alcoholic beverages:

b. Food service shall be offered at all times the Limited-Service Restaurant or Café is open, with the exception that the establishment may elect to close the kitchen ~~one hour~~ up to two (2) hours prior to closing.

**17.103.060 Recycling and Waste-Related Industrial Activities—Primary Recycling Collection Centers.**

A. Applicability. This Section applies to Recycling and Waste-Related Industrial Activities — Primary Collection Centers that are located in any zone. Where there is any apparent conflict between these regulations and regulations contained elsewhere in the Oakland Planning Code, ~~this Title 17,~~ and/or with conditions of approval, the more stringent shall govern.

B. Performance Standards. In addition to the performance standards set forth in Chapter 17.120, the performance standards specified in Subsection 17.73.035.B shall be uniformly applied, as applicable, and the relief from the performance standards in Subsection 17.73.035.C shall apply to all Primary Collection Centers.

**17.103.065 Truck-Intensive Industrial Activities.**

A. Definitions. For the purposes of this regulation, the following definitions apply:

1. "Sensitive Receptor Locations" are locations where sensitive receptors (children, elderly, asthmatics, and others at a heightened risk of negative health outcomes due to exposure to air pollution) congregate – including but not limited to schools, parks and recreational centers, playgrounds, childcare facilities, senior centers, hospitals and residences.
2. "Truck-Intensive Industrial Activities" include all Industrial Activities that fall under the following activity classifications as described in Chapter 17.10:
    a. General Manufacturing;
    b. Heavy/High Impact Manufacturing;
    c. Construction Operations;
    d. Warehousing, Storage and Distribution;
    e. Regional Freight Transportation - Rail Yards;
    f. Trucking and Truck-Related; and
    g. Recycling and Waste-Related - Primary Recycling Collection Centers.

B. Special Conditional Use Permit Criteria. In the M, CIX, IG, IO, D-CE-5, D-CE-6, D-CO-5, and D-CO-6 Zones, a Conditional Use Permit is required for a Truck-Intensive Industrial Activity to be located within six hundred (600) feet of any Residential Zone boundary and shall only be granted upon determination that the proposal conforms to the general criteria set forth in the Conditional Use Permit procedure (see Section 17.134.050) and to all of the following additional use permit criteria:

1. That truck traffic, truck idling, truck loading, and manufacturing activities associated with the proposal will not adversely affect sensitive receptor locations within six hundred (600) feet of the site in terms of air quality, noise, parking, and vibrations. Means of demonstrating compliance with these criteria include, but are not limited to, the following measures:

a. Locating truck loading, truck idling, truck ingress and egress, vents, smokestacks and other sources of air contaminants so as to minimize impacts on sensitive receptor locations;

b. Sizing truck loading areas to allow for easy truck entrance, egress, and maneuvering;

c. Providing sufficient onsite parking and maneuvering areas for trucks, cars, and heavy equipment;

d. Meeting local, regional, and state requirements regarding air quality and performance standards;

e. Incorporating measures to assure trucks follow designated truck routes;

f. Installing landscaping, vegetative buffers and/or walls to reduce diesel air contamination, contamination due to manufacturing operations, or any other sources of air contamination; and

g. Limiting adverse effects regarding dust - including dust resulting from tire and brake wear.

C. Special Performance Standards (in addition to those Performance Standards contained in Chapter 17.120). Truck-Intensive Industrial Activities in the M, CIX, IG, IO, D-CE-5, D-CE-6, D-CO-5, and D-CO-6 Zones located within six hundred (600) feet of any Residential Zone boundary shall be subject to the following special requirements to ensure that the criteria contained in Subsection B, above are fulfilled:

1. Truck access points to the activity site shall only be from truck routes designated by the City of Oakland;
2. All trucks associated with the activity shall comply with California Air Resources Board idling regulations;
3. All loading docks shall have electric plug-in capabilities;
4. New truck parking areas and loading docks shall be sited so as to minimize impacts on sensitive receptor locations, including but not limited to orienting them away from residential and open space areas;
5. Identification, directional and informational signs shall be provided on site. At a minimum, the following information shall be posted:

   a. Business Identification. 24-hour contact information of facility operator near the entrance(s) and perimeter of the facility;

   b. A map of authorized truck routes to the facility posted at the office and available to customers, truck operators, and the public; and

   c. “No Idling” signs near loading docks and truck parking and staging areas.
6. After business hours, all facility-owned vehicles shall be stored on-site or at an approved alternative off-street location;
7. The operation shall meet the requirements of the Bay Area Air Quality Management District (BAAQMD);

8. The proposal shall comply with all applicable performance standards contained in Chapter 17.120;

9. All equipment shall be maintained and kept in good working order and meet current regional and state air quality standards;

10. The business operator shall maintain a 24-hour "hotline" where neighbors can log complaints regarding nuisance activity associated with or emanating from the facility. Complaint logs shall be maintained and made available to the City for inspection/copying upon reasonable notice.

D. Standard Buffering and Landscaping Condition for Truck-Intensive Industrial Activities in the M, CIX, IG, IO, D-CE-5, D-CE-6, D-CO-5, and D-CO-6 Zones. A combination of wall and vegetative buffer shall be used as a method to block diesel and other emissions from sensitive receptor locations. For a vegetative buffer, dense rows of trees and other vegetation between sensitive receptor locations and emission sources shall be planted. See Appendix A. of the City of Oakland's Gateway Industrial District Design Standards for approved landscape buffers and a plant list. Street trees as required by Section 17.124.025 shall also be installed. All required planting shall be permanently maintained in good growing condition and, whenever necessary, replaced with new plant materials to ensure continued compliance with applicable landscaping requirements. All required irrigation systems shall be permanently maintained in good condition, and, whenever necessary, repaired or replaced.

**17.103.080 Accessory Dwelling Units in conjunction with One-Family, Two- to Four-Family, and Multifamily Dwelling Residential Facilities.**

The following regulations shall apply to the construction, establishment, or alteration of Accessory Dwelling Units (ADUs), as those dwelling unit types are defined in Chapter 17.09:

**A. Regulations Applying to All Accessory Dwelling Units.**

7. Restriction of ADUs in Certain Locations Based on Traffic Flow and Public Safety.

   See Chapter 17.88 for limitations on ADUs in the S-9 Fire Safety Protection Combining Zone.

   Development of ADUs is restricted with certain exceptions specified in Chapter 17.88 to one (1) interior conversion Category One ADU within the existing envelope of a primary structure or one (1) Junior Accessory Dwelling Unit (Junior ADU or JADU) per ~~Single~~ One-Family, Two- to Four-Family, or Multifamily lot. See the S-9 Fire Safety Protection Combining Zone Map Overlay ("Overlay Zone") Map to determine if the lot where the ADU is proposed is within the S-9 Zone.

14. ~~Mini-Lot~~ Planned Unit Developments (~~Mini-Lot~~ PUDs). ADUs proposed on ~~Mini-Lot~~ Planned Unit Developments (~~Mini-Lot~~ PUDs) must comply with requirements of Chapter 17.142 and Section 17.103.080.

**B. Property Development Standards applying to One-Family ADUs**

Table 17.103.01 below describes the property development standards which apply to the specified types of One-Family ADUs. The different types of ADUs are defined in Chapter 17.09. The number designations in the "Notes" column refer to the regulations listed at the end of the Table. "N/A" designates the standard is not applicable to the specified ADU type.

**Table 17.103.01: Property Development Standards applying to One-Family ADUs.**

| | **Types of One-Family ADUs** | | | **Notes** |
|---|---|---|---|---|
| **Development Standards** | **Junior ADU** | **One-Family ADU Category 1** | **One-Family ADU Category 2** | |
| **Parking for ADUs** | None Required | None required if located: a) within ½-mile walking distance of ~~public transit~~ a major transit stop or high-quality transit corridor, as defined in Section 21155 of the Public Resources Code; b) on any lot within a City of Oakland Area of Primary Importance (API) or Secondary Importance (ASI), as defined in the General Plan's Historic Preservation Element; c) in areas where parking permits are required but not offered to occupants of ADUs; or d) where there is a carshare vehicle within one block of the ADU.<br><br>Otherwise: One (1) space per ADU, which can be tandem | | 8, 9 |

**Notes for Table 17.103.01:**

**2.** At least a minimum square-footage that permits an Efficiency Dwelling Unit as defined in Chapter 17.09 and in the California Building Code.

### C. Property Development Standards applying to ADUs for Two- to Four-Family and Multifamily Facilities

Table 17.103.02 below, describes the property development standards, which apply to the types of ADUs permitted with Two- to Four-Family and Multifamily Facilities. The different types of ADUs are defined in Chapter 17.09. The number designations in the "Notes" column refer to the regulations listed at the end of the Table. "N/A" designates the standard is not applicable to the specified ADU type.

**Table 17.103.02: Property Development Standards applying to Two- to Four-Family and Multifamily ADUs**

| | Types of Two- to Four-Family and Multifamily ADUs | | | Notes |
|---|---|---|---|---|
| **Development Standards** | **Two- to Four-Family and Multifamily ADU Category 1** | **Two- to Four-Family and Multifamily ADU Category 2** | **Two- to Four-Family and Multifamily ADU Category 3** | |
| **Maximum Number** | 1 or up to 25% of existing units, whichever is greater, per ~~t~~Two- to Four-F~~f~~amily or ~~m~~Multifamily ~~building~~ Facility. For the purposes of the 25% limitation, a unit is considered existing if it has received its certificate of occupancy or passed its final building inspection on its building permit. | No more than 2 per lot | Only 1 per lot. Precludes creation of any other ADU | 1, 2 |
| **Parking for ADUs** | One (1) space; OR none if located: a) within ½-mile walking distance of ~~public transit~~ a major transit stop or high-quality transit corridor, as defined in Section 21155 of the Public Resources Code; b) on any lot within a City of Oakland Area of Primary Importance (API) or Secondary Importance (ASI), as defined in the General Plan's Historic Preservation Element; c) in areas where parking permits are required but not offered to occupants of ADUs; or d) where there is a carshare vehicle within one block of the ADU. | | | 6 |

**Notes for Table 17.103.02:**

**3.** At least a minimum square footage that permits an Efficiency Dwelling Unit as defined in Chapter 17.09 and in the California Building Code.

**5.** Two- to Four-Family and Multifamily Category One ADUs are allowed even if the existing space to be converted or rebuilt does not meet the underlying zone's current development standards, such as height limits, floor area ratios, lot coverage or setbacks. This allowance is only for ADUs located behind the primary building in its rear yard. If Category Two ADU is proposed in front or side of a primary structure, the maximum height is sixteen (16) feet. Notwithstanding, in the S-9 Zone, maximum ADU height is capped at sixteen (16) feet.

**17.103.085 Vehicular Residential Facilities.**

The following regulations shall apply to the construction, establishment, or alteration of Vehicular Residential Facilities wherever permitted, as specified in each individual zone:

**A. Classification.** A Vehicular Residential Facility shall be considered a Dwelling Unit. A Vehicular Residential Facility may also be considered an Accessory Dwelling Unit in accordance with Section 17.09.040. The Accessory Dwelling Unit regulations contained in Section 17.103.080 shall not apply to a Vehicular Residential Facility considered an Accessory Dwelling Unit, except that the restriction on Accessory Dwelling Units in certain locations for life safety reasons and the maximum density standard shall apply.

**17.103.090 Sidewalk Cafe Nonresidential Facilities.**

~~A. Procedures for Construction of Sidewalk Cafe Facilities.~~

~~1. Notwithstanding any design review requirement of the particular zone, Sidewalk Cafes that have a maximum of five (5) 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 (5) 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.~~

~~B.~~ Standards for Sidewalk Cafes.

~~1. Sidewalk Cafes shall not encroach upon any public right-of-way unless a minimum of five and one-half (5½) 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.~~

A~~2.~~ Operators/owners of Sidewalk Cafes shall comply with all permitting requirements imposed by ~~obtain an encroachment permit from~~ the City's Department of Transportation ~~Public Works Agency,~~ and ~~shall comply with all requirements imposed by~~ other affected departments and agencies. Standards for Sidewalk Cafes shall include, but not be limited to requirements ~~The encroachment permit shall include language~~ that a waste receptacle be placed outside, all garbage/litter associated with Sidewalk Cafes be removed within twenty-four (24) hours, and the operators/owners ~~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.

B~~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 Department of Transportation, ~~City~~ Planning and Building 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.

C~~4~~. The operators/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.

**Chapter 17.106 GENERAL LOT, DENSITY, AND AREA REGULATIONS**
**Sections:**



**17.106.010 Lot area and width exceptions.**

The minimum lot area and lot width requirements prescribed in the applicable individual zone regulations shall be subject to the following exceptions:

A. Existing Substandard Parcel. Any existing substandard parcel of contiguous land may be developed as a lot if such parcel existed lawfully under the previous zoning controls.

B. Division of Parcel with Existing Buildings. Where a parcel contains two (2) or more existing principal buildings which were lawfully established, said parcel may be divided into two (2) or more lots which do not have the minimum lot area, minimum lot width, and minimum frontage, yards, open space, and parking requirements otherwise applying to the divided lots may be waived or modified upon the granting of a C~~c~~onditional U~~u~~se P~~p~~ermit pursuant to the C~~c~~onditional U~~u~~se P~~p~~ermit procedure in Chapter 17.134. Each resulting lot shall accommodate at least one existing principal building and each lot shall have frontage on a street. A C~~c~~onditional U~~u~~se P~~p~~ermit may be granted only upon determination that the proposal conforms to the general use permit criteria in Chapter 17.134 and to the following special criteria:

1. That all principal structures existed lawfully under the previous zoning controls, and are habitable or in sound condition;

2. That the proposal will not result in a lot which is so small, so shaped, or so situated that it would be impractical for subsequent permitted uses;

3. That the proposal will maintain the existing amount of usable open space and off-street parking spaces for any Residential Facilities involved. If there are more parking spaces or usable open space on the lot than required, then the number of parking spaces and/or amount of open space can be reduced to the minimum required.

**17.106.020 Exceptions to street frontage and lot width mean requirement.**

Notwithstanding the requirements prescribed in the applicable individual zone regulations with respect to minimum lot width mean and minimum frontage upon a street, a lot which does not meet such requirements may be created and/or developed in each of the following situations:

A. If it has a frontage of not less than ~~twenty-five (25)~~ twenty (20) feet upon an undedicated vehicular way, other than one similar in function to an alley or path, which has a right-of-way not

less than forty (40) feet in width and which was shown on the sewer maps on file with the City Engineer on the effective date of the zoning regulations;

B. If it is served by a private access easement approved pursuant to the real estate subdivision regulations and subject to the provisions of Section 17.102.090;

C. If it consists of a parcel of contiguous land which existed lawfully under the previous zoning controls;

D. If it meets the same conditions as are prescribed in Section 17.106.010 for lot area and width exceptions;

E. With the exception of Subsections B. and C. of this Section, nothing in this Section shall exempt parcels in the S-9 and S-11 Zones from any street frontage requirement.

**17.106.030 Maximum density and ~~Floor-Area~~ Floor Area Ratio on lots containing both Residential and Nonresidential Facilities.**

The maximum density and ~~Floor-Area~~ Floor Area Ratio (FAR) requirements prescribed in the applicable individual zone regulations shall be subject to the following methods for calculating the portion of lot area used in computing density:

A. Portion of Lot Area Used in Computing Density in ~~the Central Business District and Jack London District~~ all zones. For mixed use projects in ~~the Central Business District and Jack London District~~ all zones, the allowable intensity of development shall be measured according to both the maximum nonresidential Floor Area Ratio (FAR) allowed by the zone and the maximum residential density allowed by the zone. The total lot area shall be used as a basis for computing both the maximum nonresidential FAR and the maximum residential density. ~~(The Central Business District is that area identified as part of the Land Use and Transportation Element Land Use Diagram of the General Plan. The Jack London district is that area identified as part of the Estuary Policy Plan and adopted as part of the General Plan).~~

~~B. Portion of Lot Area Used in Computing Density in Areas other than the Central Business District and Jack London District. For mixed use projects located in areas other than the Central Business District and Jack London district, in which a maximum Floor Area Ratio (FAR) is generally prescribed for Nonresidential Facilities, no portion of lot area used to meet the density requirements for a Residential Facility shall be used as a basis for computing, through such FAR, the maximum amount of floor area for any Nonresidential Facility on the same lot, unless the total Nonresidential floor area on the lot is less than three thousand (3,000) square feet.~~

B~~C~~. Different ~~Floor-Area~~ Floor Area Ratios. In all zones in which the maximum ~~Floor-Area~~ Floor Area Ratio (FAR) generally prescribed for Residential Facilities is different from that for Nonresidential Facilities, the overall maximum FAR of any lot containing both Residential and Nonresidential Facilities shall be the greater of the two prescribed FARs. However, the total floor area actually devoted to each class of facility shall not exceed the maximum ratio prescribed for that class.

**17.106.050 Use permit criteria for increased density or ~~Floor-Area~~ Floor Area Ratio with acquisition of ~~abutting~~ nearby development rights.**

A Cconditional Uuse Ppermit for an increase in the number of allowed living units or ~~Floor Area~~ Floor Area Ratio (FAR) upon acquisition of ~~nearby~~ the development rights of lots within three hundred (300) feet of the subject development site~~, wherever such increase is provided for in the applicable individual zone regulations,~~ may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in the Cconditional Uuse Ppermit procedure in Chapter 17.134 and to all of the following additional use permit criteria:

A. That the applicant has acquired development rights from the owners of ~~abutting~~ lots within three hundred (300) feet of the subject development site, restricting the number of living units or the amount of floor area which may be developed thereon so long as the facilities proposed by the applicant are in existence;

B. That the owners of all such ~~abutting~~ nearby lots shall prepare and execute an agreement, approved as to form and legality by the City Attorney and filed with the Alameda County Recorder, incorporating such restriction;

C. That the resultant reduction in potential number of living units or amount of floor area on ~~the abutting~~ such nearby lots is sufficient in amount and is so located as to cause the net effect upon the surrounding neighborhood to be substantially equivalent to that of the development which would be allowable otherwise.

## Chapter 17.108 GENERAL HEIGHT, YARD, AND COURT REGULATIONS

### 17.108.010 Height restrictions on lots abutting property in an RH, RD, or RM Zone.

~~In the RU, R-80, S-1, S-2, S-3, and S-15 Zones and all Commercial and Industrial Zones~~ Unless specified otherwise in the applicable individual zone, the following special height restriction regulations shall apply to every lot ~~therein~~ in the RU-1, R-80, S-1, S-2, S-3, and S-15 Zones, and all Commercial and Industrial Zones which abuts any lot located in an RH, RD, or RM Zone:

A. Where Side Lot Line Is Abutting Zone Boundary. Where an interior side lot line of the former lot abuts a RH, RD, or RM Zone, no building or other facility shall, except for the projections allowed by Section 17.108.030, exceed thirty (30) feet in height unless each portion above that height is set back there from the inner line of the minimum side yard ~~which is required by Section 17.26.140.C or 17.108.090 as applicable~~, or from the abutting portion of the lot line where such yard is not required, a minimum horizontal distance equal to one (1) foot for each foot by which it extends above that height if the principal building on the abutting lot has a height of thirty (30) feet or less. If the principal building on the abutting lot has a height of greater than thirty (30) feet, the maximum height shall increase two (2) feet for every foot away from the applicable setback or lot line.

B. Where Rear Lot Line Is Along Zone Boundary. Where the rear lot line of the former lot abuts an RH, RD, or RM Zone, no building or other facility shall, except for the projections allowed by Section 17.108.030, exceed thirty (30) feet in height unless each portion above that height is set back there from the inner line of the minimum rear yard ~~which is required by Section 17.108.100, or is required on every lot by the applicable individual zone regulations~~, or from the abutting portion of the lot line where such yard is not required, a minimum horizontal distance equal to one (1) foot for each foot by which it extends above that height if the principal building on the abutting lot has a height of thirty (30) feet or less. If the principal building on the abutting lot has a height of greater than thirty (30) feet, the maximum height shall increase two (2) feet for every foot away from the applicable setback or lot line.

### 17.108.020 Different maximum height in certain situations.

General Height for Civic Facilities with Increased Yards. On parcels in the RH, RD, RM, RU, CN, CC, CR, HBX, M-20, S-15, OS, D-CO, and D-CE Zones that have a height limit of less than ~~seventy-five (75)~~ ninety-five (95) feet, a facility accommodating or serving any Civic Activity may, notwithstanding the maximum height prescribed for facilities in general in the applicable individual zone regulations, have a height of up to ~~seventy-five (75)~~ ninety-five (95) feet upon the granting of a C~~c~~onditional U~~u~~se P~~p~~ermit pursuant to the C~~c~~onditional U~~u~~se P~~p~~ermit procedure in Chapter 17.134 if the minimum depth or width, as the case may be, of each front, side, and rear yard, if any, otherwise required is increased for such facility by one (1) foot for each foot by which the facility exceeds the aforesaid maximum height. To the extent allowed by the C~~c~~onditional U~~u~~se P~~p~~ermit, the greater height authorized by this Subsection may be exceeded by the projections allowed by Section 17.108.030.

### 17.108.080 Minimum side yard opposite living room windows.

On each lot containing Residential Facilities with a total of two (2) or more dwelling units, excluding any permitted Accessory Dwelling Units, a side yard with the minimum width prescribed hereinafter shall be provided opposite any legally required window of a living room in a Residential Facility wherever such window faces any interior side lot line of such lot, other than a lot line abutting an alley, path, or public park. The side yard prescribed by this Section is not required on other lots or in other situations. Such yard shall have a minimum width of ~~eight (8)~~ four (4) feet, plus ~~two (2) feet~~ one (1) foot for each story at or above the level of the aforesaid window; provided, however, that such side yard width shall not be required to exceed ten percent (10%) of the lot width in all zones, ~~in the RU-3, RU-4, RU-5, R-80, CN, CC, C-40, C-45, CBD, D-LM, D-CO, S-1, S-2, S-15, and D-KP Zones and fifteen percent (15%) of the lot width in all other Zones,~~ except that in no case shall such side yard width be less than ~~five (5)~~ four (4) feet. The side yard required by this Section shall be provided opposite the legally required window and opposite that portion of the wall containing such window, or of any extension of such wall on the same lot, for a distance of not less than ~~eight (8)~~ five (5) feet in both directions from the centerline of such legally required window, and at and above finished grade or the floor level of the lowest story containing such a window, whichever level is higher. Such yard shall be provided unobstructed except for the accessory structures or the other facilities allowed therein by Section 17.108.130.

**17.108.120 Minimum court between opposite walls on same lot.**

On each lot containing Residential Facilities with a total of two (2) or more dwelling units, excluding any permitted Accessory Dwelling Units, courts with the minimum depths prescribed below shall be provided in the cases specified hereinafter between opposite exterior walls, or portions thereof, of the same or separate buildings on such lot. Courts are not required on other lots or in other situations. The aforesaid walls shall be considered to be opposite one another if a line drawn in a horizontal plane perpendicularly from any portion of any of the legally required windows referred to hereinafter, or from any point along the wall containing such window, or any extension of such wall on the same lot, on the same story as and within ~~eight (8)~~ five (5) feet in either direction from the centerline of said legally required window, intersects the other wall. The courts required by this Section shall be provided opposite each of the legally required windows referred to hereinafter and along the wall containing such window, and along any extension of such wall on the same lot, for not less than ~~eight (8)~~ five (5) feet in both directions from the center line of such legally required window, and at and above finished grade or the floor level of the lowest story containing such a window, whichever level is higher. Such courts shall be provided unobstructed except for the accessory structures or the other facilities allowed therein by Section 17.108.130.

A. Legally Required Living Room Windows in Either or Both Walls. If either or both such opposite walls contain any legally required window of any living room in a Residential Facility, a court shall be provided between such walls with a minimum horizontal depth equal to ~~sixteen (16)~~ fifteen (15) feet plus ~~four (4)~~ two (2) feet for each story above the level of the aforementioned court, but shall nor be required to exceed ~~forty (40)~~ twenty-five (25) feet.

**17.108.130 Exceptions to required openness of minimum yards and courts.**

| Facilities | Allowed Projection Into or Location Within Minimum Required Yard or Court, Subject to the Further Restrictions Indicated in This Section's First Paragraph (Blanks indicate that facility is not allowed.) | | | | |
|---|---|---|---|---|---|
| | **Front Yard** | **Side Yard on Street Side of Corner Lot** | **Side Yard Along Interior Side Lot Line** | **Rear Yard (But see coverage limit in first paragraph.)** | **Court** |
| **D.** Bay windows, if the aggregate width of bay windows on any one story does not exceed fifty percent (50%) of the length of the wall containing them; and if no individual bay window exceeds fifteen (15) feet in width. | Three (3) feet into above yard, though not to within five (5) feet of the front lot line for One-Family or Two- to Four-Family Residential Facilities. | Three (3) feet into above yard, though not to within five (5) feet of the front lot line for One-Family or Two- to Four-Family Residential Facilities. | | Five (5) feet into above yard. | |

| Facilities | Allowed Projection Into or Location Within Minimum Required Yard or Court, Subject to the Further Restrictions Indicated in This Section's First Paragraph (Blanks indicate that facility is not allowed.) | | | | |
|---|---|---|---|---|---|
| | **Front Yard** | **Side Yard on Street Side of Corner Lot** | **Side Yard Along Interior Side Lot Line** | **Rear Yard (But see coverage limit in first paragraph.)** | **Court** |
| **E.** Balconies, decks, and similar structures projecting from and serving Residential Facility and having a height, including railings, of more than six (6) feet above the finished grade of the required yard or level of the required court, but excluding corridors and similar facilities providing access to two (2) or more living units; provided that such structures are cantilevered or supported by necessary columns; and further provided that such structures are unroofed, except that a balcony or deck projecting from a higher story shall not be deemed a roof. | Six (6) feet into above yard, though not to within five (5) feet of the front lot line for One-Family or Two- to Four-Family Residential Facilities. | Five (5) feet into above yard, but may extend any distance if they meet the same provisos as stated in Subsection K. | Five (5) feet into above yard, though not to within five (5) feet of interior side lot line; but may extend any distance if they meet the same provisos as stated in Subsection K. | Six (6) feet into above yard, but may extend any distance if they meet the same provisos as stated in Subsection K. | |

| Facilities | Allowed Projection Into or Location Within Minimum Required Yard or Court, Subject to the Further Restrictions Indicated in This Section's First Paragraph (Blanks indicate that facility is not allowed.) | | | | |
|---|---|---|---|---|---|
| | **Front Yard** | **Side Yard on Street Side of Corner Lot** | **Side Yard Along Interior Side Lot Line** | **Rear Yard (But see coverage limit in first paragraph.)** | **Court** |
| **F.** Exterior access facilities which lead to the second or higher story of a building, including open or enclosed fire escapes and open, unroofed fireproof outside stairways, landings, exterior corridors, and wheelchair ramps. | Four (4) feet into above yard, but may extend any distance if they are required to accommodate wheelchair ramps or similar ADA access facilities. | Four (4) feet into above yard, but may extend any distance if they meet the same provisions as stated in Subsection K. or if they are required to accommodate wheelchair ramps or similar ADA access facilities. | Any distance into above yard if they meet the same provisions as stated in Subsection K. ~~(not allowed otherwise)~~ or if they are required to accommodate wheelchair ramps or similar ADA access facilities. | Four (4) feet into above yard, but may extend any distance if they meet the same provisions as stated in Subsection K. or if they are required to accommodate wheelchair ramps or similar ADA access facilities. | |
| **I.** Air conditioners, compressors, hot tub motors, and similar devices if emitting noise readily noticeable by the average person at or beyond the lot line, whether or not the devices are attached to a building. | | | Anywhere in above yard, provided that the subject device meets the applicable noise level standard in Chapter 17.120, and is screened from adjacent properties by a wall or fence with a minimum height of four (4) feet. | Anywhere in above yard. | Anywhere in court. |

| Facilities | Allowed Projection Into or Location Within Minimum Required Yard or Court, Subject to the Further Restrictions Indicated in This Section's First Paragraph (Blanks indicate that facility is not allowed.) | | | | |
|---|---|---|---|---|---|
| | **Front Yard** | **Side Yard on Street Side of Corner Lot** | **Side Yard Along Interior Side Lot Line** | **Rear Yard (But see coverage limit in first paragraph.)** | **Court** |
| **U.** Detached Category Two Accessory Dwelling Units. | | Anywhere in above yards ~~that~~ if the facility meets the criteria of Section 17.103.080, and if newly constructed, ~~the facility~~ is located at least six (6) feet from ~~the primary~~ all other detached dwelling units on the lot. This requirement shall not apply if it precludes ADUs of a minimum size per Section 17.103.080. | | | |
| **V.** Other detached dwelling units not provided for elsewhere by this Section. | | Anywhere in above yards if the facility meets the same criteria in Section 17.103.080 for detached Category Two Accessory Dwelling Units, and if newly constructed, is located at least six (6) feet from all other detached units on the lot. | | | |

**17.108.140 Fences, dense hedges, barriers, and similar freestanding walls.**

B. Residential Zones and Residential Facilities. The provisions of this Section apply to all properties located in all Residential Zones, and to all properties located in any zone containing Residential Facilities.

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

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

i. Exception. Fences or walls enclosing building construction sites may be exempted from the above limitation on barbed wire, ~~and~~ razor wire, or electrified wire for the duration of the permitted construction activity if the Director of City Planning, or his or her designee, determines that it will increase safety and security or that trespassing could present a public safety hazard. The Director of City Planning, or his or her designee, is hereby authorized to institute standards consistent with this subsection to guide implementation of this exception.

C. Commercial Zones and in the OS, S-1, S-2, S-3, D-CO-1, and S-15 Zones. The provisions of this Subsection apply to all properties located in all Commercial Zones and in the OS, S-1, S-2, S-3, D-CO-1, and S-15 Zones.

2. Restricted Materials. In any location visible from the adjacent public right-of-way, no barbed wire, razor wire, or electrified wire shall be permitted as part of or attached to fences or walls, or attached to the exterior of any building or similar facility.

   a. Exceptions. Fences or walls ~~enclosing the following activities~~ shall be exempted from the above limitation on barbed wire, ~~and~~ razor wire, or electrified wire where the Director of City Planning, or his or her designee, determines that it will increase safety and security or that trespassing could present a public safety hazard. ~~and/or disruption of public utility, transportation, or communication services.~~ The Director of City Planning, or his or her designee, is hereby authorized to institute standards consistent with this subsection to guide implementation of this exception.

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

      ~~ii. Rail transit routes.~~

      ~~iii. Building construction sites, but only for the duration of the permitted construction activity.~~

D. Industrial Zones. The provisions of this Subsection apply to all properties in all Industrial Zones.

   1. Height.

      a. The maximum height allowed by right of any fence, dense hedge, barrier, or similar freestanding wall located within ten (10) feet of the public right-of-way ~~or any abutting property located within a Residential or Open Space Zone~~ is eight (8) feet. A fence higher than eight (8) feet but no more than twelve (12) feet ~~ten (10) feet~~ may only be permitted in these locations if installed with additional landscape screening and upon the granting of ~~Small Project~~ Design Review pursuant to the ~~Small Project~~ Design Review procedure in Chapter 17.136.

      b. The minimum height of any fence, dense hedge, barrier, or similar freestanding wall located within ten (10) feet of any abutting property in a Residential or Open Space Zone shall be eight (8) feet. Any fence, dense hedge, or barrier or similar freestanding wall higher than eight (8) feet but no more than twelve (12) feet may only be permitted in these locations if installed with additional landscape screening and upon the granting of Design Review pursuant to the Design Review procedure in Chapter 17.136.

      c. Any fence, dense hedge, barrier, or similar freestanding wall located elsewhere on a lot in an Industrial Zone may only be permitted to exceed twelve (12) feet in height if installed with additional landscape screening and upon the granting of Design Review pursuant to the Design Review procedure in Chapter 17.136.

## Chapter 17.110 BUFFERING REGULATIONS

### 17.110.020 General buffering requirements—Residential and S-1, S-2, S-3, S-15, D-CO-1, and OS Zones.

The following regulations shall apply in all Residential Zones and in the S-1, S-2, S-3, S-15, D-CO-1, and OS Zones, and are in addition to the provisions set forth in Section 17.110.040:

A. Screening and Setback of Open Parking and Loading Areas. The following requirements shall apply in said zones to all open off-street parking areas located on any lot containing three (3) or more independent parking spaces, except in the case of a One-Family Dwelling or Two- to Four-Family Dwelling with Accessory Dwelling Units, and to all open off-street loading areas on any lot:

C. Control on Artificial Illumination of Parking and Loading Areas. Artificial illumination of all off-street parking areas located on any lot containing three (3) or more parking spaces and all off-street parking areas, and of driveways related thereto, except in the case of a One-Family Dwelling or Two- to Four-Family Dwelling with Accessory Dwelling Units, shall be directed away from all abutting lots and from any on-site residential living units so as to eliminate objectionable glare.

### 17.110.040 Special buffering requirements.

C. Location of Detached Accessory Buildings on Corner Lot Abutting a Key Lot in a Residential Zone. In all zones except as otherwise provided in Section 17.103.080 for Accessory Dwelling Units, on any reversed corner lot which abuts a key lot located in any Residential Zone, no detached accessory building shall be located within ~~five (5)~~ four (4) feet from the abutting side lot line of the key lot. No detached accessory building on such lot shall be located closer to the street line on which the key lot fronts than a distance equal to one-half (½) of the minimum front yard depth required on the key lot, ~~unless the accessory building is at least thirty-five (35) feet from the side lot line of the key lot~~ but shall not be required to exceed four (4) feet in width if it would reduce to less than twenty-five (25) feet the buildable width of any corner lot. An accessory building shall be considered detached from any principal building on the same lot if the only roofed attachment thereto consists of a breezeway or similar structure exceeding neither twelve (12) feet in height nor eight (8) feet in width.

## Chapter 17.114 NONCONFORMING USES

### 17.114.050 Nonconforming Activity—Discontinuance.

A. Activity Nonconforming Because It Is Not a Permitted Activity. Other than: 1) an Alcoholic Beverage Sales Commercial Activity, 2) an Automotive Servicing or Automotive Repair and Cleaning Activity in the D-BV Zones, or 3) Truck-Intensive Industrial Activities as defined in Section 17.103.065, Trucking and Truck-Related Industrial Activities, and Recycling and Waste-Related Industrial Activities in the ~~CIX-1A, CIX-1B, CIX-1C, and CIX-1D~~ M, CIX, IG, IO, D-CE-5, D-CE-6, D-CO-5, and D-CO-6 Zones, whenever an activity that is nonconforming wholly or partly because it is not itself a permitted activity where it is located, occupies four hundred (400) square feet or more of floor area and hereafter discontinues active operation for a continuous period of one (1) year, or occupies less than four hundred (400) square feet of floor area and hereafter discontinues active operation for a continuous period of six (6) months, and the facilities accommodating or serving such activity are not utilized for another activity during such period, said facilities may thereafter be utilized only for a normally permitted or conditionally permitted activity pursuant to Subsection 17.114.070.A., except the former activity may be resumed after a longer period upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134.

D. Whenever a nonconforming Truck-Intensive Industrial Activities as defined in Section 17.103.065, Trucking and Truck-Related Industrial Activity, or Recycling and Waste-Related Industrial Activity in the ~~CIX-1A, CIX-1B, CIX-1C, and CIX-1D~~ M, CIX, IG, IO, D-CE-5, D-CE-6, D-CO-5, and D-CO-6 Zones discontinues active operation for more than ~~ninety (90)~~ zero (0) days, ~~it may only be resumed upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134~~ based on purposeful abandonment, the right to continue the nonconforming use shall expire immediately upon discontinuance of use. However, if another activity has replaced it, the former activity may thereafter only be resumed if and only if such resumption would constitute an allowable change under Subsection 17.114.070.A. Section 17.114.060 shall also apply.

### 17.114.060 Nonconforming Activity—Damage or destruction.

B. **Nonconforming Residential Activities.** Facilities accommodating or serving a nonconforming Residential Activity which are damaged or destroyed to the extent of not more than seventy-five percent (75%) may be restored to their prior condition and occupancy. If such damage or destruction exceeds seventy-five percent (75%), the facilities may thereafter only be restored to accommodate or serve the prior nonconforming Residential 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 facility or unit(s);

2. That no expansion in the number of living units occurs;

3. That plans for the proposal are approved pursuant to the design review procedure in Chapter 17.136; and

4. That a building permit is sought and obtained no later than ~~two (2) years~~ three (3) years after the date of the facility's damage or destruction; the facility is repaired or replaced in

compliance with the building code; and construction pursuant thereto is diligently pursued to completion.

If all of the preceding requirements are not met, the replacement or restoration of such facilities may be permitted upon the granting of a Cconditional Uuse Ppermit pursuant to the Cconditional Uuse Ppermit procedure in Chapter 17.134.

**17.114.070 Nonconforming Activity—Allowed substitutions and other changes in activity.**

A. **Activity Nonconforming Because It Is Not a Permitted Activity.** The activities specified in the following table may be substituted for any of the indicated activities which is nonconforming wholly or partly because it is not itself a permitted activity where it is located:

| **Zone** | **Prior Nonconforming Activity** | **Activity Which May be Substituted for Prior Activity, Subject to the Provisions Listed Below This Table** |
|---|---|---|
| Any zone. | Any such activity. | Any activity otherwise permitted or, upon the granting of a Cconditional Uuse Ppermit pursuant to the Cconditional Uuse Ppermit procedure in Chapter 17.134, any activity otherwise conditionally permitted in the same location. |
| Any Residential Zone or S-1, S-2, or S-3 Zone. | Any such Industrial Activity where it is not a permitted or conditionally permitted activity. | Any Commercial Activity permitted in the CN-4 Zone. |
| | The following such Commercial Activities where they are not a permitted or conditionally permitted activity: | |
| | Research Service | (see below) |
| | General Wholesale Sales | (see below) |
| | Building Material Sales | (see below) |
| | Automobile and Other Light Vehicle Sales and Rental | (see below) |
| | Automotive and Other Light Vehicle Repair and Cleaning | (see below) |

| Zone | Prior Nonconforming Activity | Activity Which May be Substituted for Prior<br>Activity, Subject to the Provisions Listed Below This Table |
|---|---|---|
| | Taxi and Light Fleet-Based Service | (see below) |
| | Animal Care | (see below) |
| | Animal Boarding | (see below) |
| | Undertaking Service | (see below) |
| | Scrap Operation | (see below) |
| | | Any Commercial Activity permitted in the CC-2 Zone. |
| | The following such Commercial Activities where they are not a permitted or conditionally permitted activity: | |
| | General Food Sales | (see below) |
| | Full Service Restaurant | (see below) |
| | Limited Service Restaurant and Cafe | (see below) |
| | Fast-Food Restaurant | (see below) |
| | Convenience Market | (see below) |
| | Alcoholic Beverage Sales | (see below) |
| | Mechanical or Electronic Games | (see below) |
| | General Retail Sales | (see below) |
| | Consumer Service | (see below) |
| | Consumer Cleaning and Repair Service | (see below) |

| Zone | Prior Nonconforming Activity | Activity Which May be Substituted for Prior Activity, Subject to the Provisions Listed Below This Table |
|---|---|---|
| | Consumer Dry Cleaning Plant | (see below) |
| | Group Assembly | (see below) |
| | Personal Instruction and Improvement Services | (see below) |
| | Business, Communication, and Media Service | (see below) |
| | Broadcasting and Recording Service | (see below) |
| | | Any Commercial Activity permitted in the CN-4 Zone. |
| | The following such Commercial Activities where they are not a permitted or conditionally permitted activities: | |
| | Medical Service | (see below) |
| | Consultative and Financial Service | (see below) |
| | Administrative | (see below) |
| | | Administrative Civic Activities. Administrative Commercial Activities. Medical Service. Consultative and Financial Service. |
| | Any other Commercial Activity where it is not a permitted or conditionally permitted activity. | Any Commercial Activity permitted in the CC-2 Zone. |
| Any Commercial Zone. | Any such Commercial or Industrial Activity where it is not a permitted or | Any Commercial Activity permitted in the CC-2 Zone. |

| Zone | Prior Nonconforming Activity | Activity Which May be Substituted for Prior Activity, Subject to the Provisions Listed Below This Table |
|---|---|---|
| | conditionally permitted activity. | |
| Any Industrial Zone. | Any such Commercial or Industrial Activity where it is not a permitted or conditionally permitted activity. | Any Commercial Activity permitted in the CC-2 Zone. |

## Chapter 17.124 LANDSCAPING AND SCREENING STANDARDS

**Sections:**



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

Excluding permitted Accessory Dwelling Units, s~~S~~ubmittal and approval of a landscape plan for the entire site is required for the establishment of a new residential unit ~~excluding permitted Accessory Dwelling Units~~ outside any existing building envelope, and for additions to Residential Facilities of over ~~five hundred (500)~~ one thousand (1,000) square feet. The landscape plan and the plant materials installed pursuant to the plan shall conform with all provisions of this Chapter, Title 12 Street, Sidewalks and Public Spaces, and the following:

### 17.124.025 Required landscape plan for new Nonresidential Facilities and certain additions to Nonresidential Facilities.

Submittal and approval of a landscape plan for the entire site and street frontage is required for the establishment of a new Nonresidential Facility and for additions to Nonresidential Facilities of over one thousand (1,000) square feet. The landscape plan and the plant materials installed pursuant to the plan shall conform with all provisions of this Chapter, Title 12 Street, Sidewalks and Public Spaces and the standards for required landscaping and screening, including the following:

A. On streets with sidewalks where the distance from the face of the curb to the outer edge of the sidewalk is at least six and one-half (6½) feet, street trees shall be provided to the satisfaction of the Director of City Planning~~, as provided in Section 17.124.110~~. Proposed street trees shall be approved by the Tree Services Division and selected from the City's Master Street Tree List, as may be amended. ~~Frequently Planted Tree Species List. Alternative species may be approved by the Director of City Planning.~~ Selection of street tree species shall be based upon compatibility with the existing tree plantings on the street, the mature size of the tree, space available for the tree to grow, the presence of underground and overhead utility lines, utility poles, streetlights, driveway approaches and fire hydrants.

**17.124.030 Residential landscape requirements for street frontages.**

All areas between a primary Residential Facility and abutting street lines shall be fully landscaped, plus any unpaved areas of abutting rights-of-way of improved streets or alleys, provided, however, on streets without sidewalks, an unplanted strip of land five (5) feet in width shall be provided within the right-of-way along the edge of the pavement or face of curb, whichever is applicable. Existing plant materials may be incorporated into the proposed landscaping if approved by the Director of City Planning.

A. In addition to the general landscaping requirements set forth above, a minimum of one (1) fifteen-gallon tree, or substantially equivalent landscaping consistent with City policy and as approved by the Director of City Planning, shall be provided for every twenty-five (25) feet of street frontage. On streets with sidewalks where the distance from the face of the curb to the outer edge of the sidewalk is at least six and one-half (6½) feet, the trees to be provided shall include street trees to the satisfaction of the Director of City Planning. Proposed street trees shall be approved by the Tree Services Division and selected from the City's Master Street Tree List, as may be amended. ~~Frequently Planted Tree Species List, as provided in Section 17.124.110. Alternative species may be approved by the Director of City Planning.~~ Selection of street tree species shall be based upon compatibility with the existing tree plantings on the street, the mature size of the tree, space available for the tree to grow, the presence of underground and overhead utility lines, utility poles, streetlights, driveway approaches and fire hydrants.

**17.124.045 Trash and Utility Screening.**

A. Screening of Utility Meters. All utility meters shall be located either: 1) within a box set within a building or in the ground~~,~~; 2) on a non-street facing elevation~~,~~; or, if locations 1 and 2 are not feasible, 3) on a street-facing elevation, but only if completely screened ~~with vegetation~~ from view from the public right-of-way.

**17.124.070 Required materials and opacity.**

Required landscaping, fences, and walls shall be composed of the materials prescribed in other provisions of the zoning regulations.

A. Where trees are required, they shall be of a ~~species,~~ degree of maturity~~,~~ and spacing prescribed by the Director, subject to the right of appeal from such determination pursuant to the administrative appeal procedure in Chapter 17.132.

~~**17.124.110 Frequently planted tree species list for Oakland.**~~

| | | | ~~1~~ | ~~2~~ |
|---|---|---|---|---|
| ~~**No.**~~ | ~~**Botanical Name**~~ | ~~**Common Name**~~ | ~~**Size**~~ | ~~**H × S**~~ |
| ~~1.~~ | ~~Arbutus unedo~~ | ~~Strawberry Tree~~ | ~~S~~ | ~~25×25~~ |
| ~~2.~~ | ~~Cercis canadensis~~ | ~~Eastern Redbud~~ | ~~S~~ | ~~25×25~~ |
| ~~3.~~ | ~~Lagerstroemia indica X L. fauriei~~ | ~~Crape Myrtle~~ | ~~S~~ | ~~30×20~~ |
| ~~4.~~ | ~~Photinia fraseri~~ | ~~Photinia~~ | ~~S~~ | ~~20×15~~ |

| | | | | |
|---|---|---|---|---|
| 5. | Prunus cerasifera 'Thundercloud' | Purple Leaf Plum | S | 30×20 |
| 6. | Pyrus kawakamii | Evergreen Pear | S | 25×30 |
| 7. | Rhus lancea | African Sumac | S | 20×20 |
| 8. | Tristania laurina 'Elegant' | Water Gum | S | 25×20 |
| 9. | Acer buergeranum | Trident Maple | M | 30×25 |
| 10. | Aesculus carnea 'Briotii' | Red Horsechestnut | M | 40×35 |
| 11. | Eriobotrya deflexa | Bronze Loquat | M | 20×20 |
| 12. | Geijera parviflora | Australian Willow | M | 30×30 |
| 13. | Ginkgo biloba 'Saratoga' or 'Autumn Gold' | Maidenhair Tree | M | 35×30 |
| 14. | Koelreuteria bipinnata | Chinese Flame Tree | M | 30×30 |
| 15. | Koelreuteria paniculata | Golden Rain Tree | M | 30×30 |
| 16. | Laurus nobilis 'Saratoga' | Saratoga Laurel | M | 40×20 |
| .. | Magnolia grandiflora 'Saint Mary' | Saint Mary Magnolia | M | 20×20 |
| 18. | Maytenus boaria 'Green Showers' | Mayten Tree | M | 30×25 |
| 19. | Metrosideros excelsus | New Zealand Christmas Tree | M | 30×30 |
| 20. | Olea europa 'Swan Hill' | Olive | M | 40×40 |
| 21. | Pyrus calleryana 'Aristocrat' | Aristocrat Pear | M | 40×30 |
| 22. | Carpinus betulus 'Fastigiata' | European Hornbem | L | 50×40 |
| 23. | Fraxinus oxycarpa 'Raywood' | Raywood Ash | L | 35×25 |
| 24. | Gliditsia triacanthos inermis 'Shademaster' | Thornless Honey Locust | L | 40×30 |
| 25. | Nyssa sylvatica | Sour Gum or Tupelo | L | 50×25 |
| 26. | Pistacia chinensis 'Keith Davey' or 'Pearl Street' | Chinese Pistache | L | 50×30 |
| 27. | Platanus acerifolia 'Yarwood' | London Plane | L | 70×50 |
| 28. | Podocarpus gracilior | African Fern Pine | L | 30×20 |
| 29. | Quercus rubra | Red Oak | L | 50×40 |
| 30. | Quercus coccinea | Scarlet Oak | L | 75×50 |

1. Size: (S) Small, (M) Medium, (L) Large
2. H × S: Height by Spread

## Chapter 17.126 USABLE OPEN SPACE STANDARDS

**Sections:**



### 17.126.010 Title, purpose, and applicability.

The provisions of this Chapter shall be known as the ~~Standards for Required~~ Usable Open Space Standards. The purpose of these provisions is to prescribe standards for the development and maintenance of open areas which serve the need for leisure, recreation, and space. These standards shall apply to all usable open space required by other provisions of the zoning regulations, except as otherwise specified within the CBD, D-BV and D-LM Zones, and the S-17 Downtown Residential Open Space Combining Zone.

No additional open space is required for newly established living units located entirely within an existing facility. However, if the amount of open space on the lot equals or is less than required, then that existing amount must be preserved with the establishment of new living units. If there is more open space on the lot than required, then the amount of open space can be reduced to the minimum required.

### 17.126.030 Group usable open space.

All required group usable open space shall be permanently maintained, shall be located on the same lot as the living units it serves, and shall conform to the following standards:

B. **Location.** The space may be located anywhere on the lot ~~within twenty (20) feet of~~ accessible to all the living units served, except that not more than twenty-five percent (25%) of the required area shall be located on the roof of any building other than an attached garage or carport, with the exception of property located within the S-15, CC, CN, and D-CO Zones where the space ~~may be located anywhere on the lot and~~ may be located entirely on the roof of any building on the site.

### 17.126.040 Private usable open space.

All required private usable open space shall be permanently maintained; shall be located, except as otherwise provided in Subsection B. of this Section, on the same lot as the living unit it serves; and shall conform to the following standards:

B. **Location.** The space may be located anywhere on the lot, except that ground-level space shall not be located in a required minimum front yard and ~~except that~~ above-ground-level space shall not be located within ~~five (5)~~ four (4) feet of an interior side lot line. Above-ground-level space may be counted even though it projects beyond a street line. All private usable open spaces shall be adjacent to, and not more than four (4) feet above or below the floor level of, the living unit served.

C. **Size and Shape.** An area of contiguous ground-level space shall be of such size and shape that a rectangle inscribed within it shall have no dimension less than ten (10) feet. ~~An area of a~~ Above-ground-level space shall ~~be of such size and shape that a rectangle inscribed within it shall have no dimension less than five (5) feet~~ have no dimensional requirements. When space is located on a roof, the area occupied by vents or other structures which do not enhance usability of the space shall not be counted toward the above dimension.

F. **Enclosure.** Ground-level space shall be screened from abutting lots, streets, alleys, and paths, and from abutting private ways described in Section 17.106.020~~, and from other areas on the same lot by a building wall,~~ by dense landscaping not less than five and one-half (5½) feet high and not less than three (3) feet wide, or by a solid or grille, lumber or masonry fence or wall not less than five and one-half (5½) feet high, subject to the standards for required landscaping and screening in Chapter 17.124 and the exceptions stated in said Chapter. However, when such screening would impair a beneficial outward and open orientation or view, ~~with no building located opposite and within fifty (50) feet from such required screening, as measured perpendicularly therefrom in a horizontal plane,~~ the above prescribed height may be reduced to three and one-half (3½) feet. Fences and walls shall not be so constructed as to interfere with the access required by applicable fire prevention regulations.

### 17.126.050 Plazas for Nonresidential Facilities.

Every plaza required for Nonresidential Facilities shall be permanently maintained, shall be located on the same lot as the facilities for which it is provided, and shall conform to the following standards:

A. **Usability.** The plaza shall have an appropriate dust-free surface, and shall be suitable for walking, sitting, and similar activities. Off-street parking and loading areas, driveways, and service areas shall not be counted as plazas. At least ~~twenty-five percent (25%)~~ ten percent (10%) of the plaza area shall be occupied by planting, sculpture, pools, or similar features.

C. **Size and Shape.** The plaza shall be of such size and shape that a rectangle inscribed within it shall have no dimension less than ~~thirty (30)~~ fifteen (15) feet.

## Chapter 17.128 TELECOMMUNICATIONS REGULATIONS

**Sections:**



### ~~17.128.030 Removal of telecommunications facilities.~~

~~The project sponsor of a proposed telecommunications facility shall be required to provide proof of the establishment of a sinking fund to cover the cost of removing the facility if it is abandoned within a prescribed period. As used in these provisions, the word "abandoned" shall mean a facility that has not been operational for a consecutive six-month period, except where nonoperation is the result of maintenance or renovation activity pursuant to valid city permits. The sinking fund shall be established to cover a two-year period, at a financial institution approved by the city's Office of Budget and Finance. The sinking fund payment shall be determined by the Office of Budget and Finance and shall be adequate to defray expenses associated with the removal of the telecommunications facility.~~

## Chapter 17.130 ADMINISTRATIVE PROCEDURES GENERALLY

### 17.130.010 Title, purpose, and applicability.

The provisions of this Chapter shall be known as the ~~General Regulations~~ Administrative Procedures Generally. The purpose of these provisions is to set forth certain regulations that may or shall, depending on the situation, apply to all provisions of procedures and administration (Chapters 17.130 through 17.148).

### 17.130.020 Alternative notification procedures.

A. Number of Owners and Occupants Greater than ~~Five Hundred (500)~~ One Thousand (1,000). If the number of owners and occupants of real property to whom notice would be mailed or delivered pursuant to any provision of procedures and administration (Chapters 17.130 through 17.148) were to exceed ~~five hundred (500)~~ one thousand (1,000), the Director of City Planning may, at his or her discretion, use or specify other alternative notification procedures deemed appropriate. Such decision may be appealed pursuant to the administration appeal procedure in Chapter 17.132.

C. Notification of Adjoining Jurisdictions. Whenever a provision of procedures and administration (Chapters 17.130 through 17.148) results in an adjoining jurisdiction falling within an area in which notices are to be mailed or delivered to Oakland property owners and occupants, such notice shall also be mailed or delivered to the Director of City or County Planning, whichever the case may be, in said jurisdiction.

## Chapter 17.132 ADMINISTRATIVE APPEAL PROCEDURE

### 17.132.020 Appeal.

Within ten (10) 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 such decision may be taken to the City Planning Commission by any interested party. In the case of appeals involving ~~one- or two-unit~~ One-Family or Two- to Four-Family Residential 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 and Building 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 Planning Director or Zoning Manager 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, n~~Not less than seventeen (17) days prior ~~thereto, give written notice~~ to the date of the Commission's or Committee's consideration of the appeal, written notice shall be given 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.

### 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 Planning Director's or Zoning Manager's determination or interpretation. The decision of the Commission or Committee shall be final immediately, except as otherwise provided in Section 17.132.040.

### 17.132.040 Appeal to Council on transit line sign controls.

Within ten (10) 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 Planning Director and shall be filed with the Planning and Building Department. 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 date set for consideration thereof. ~~; and said Secretary shall, not~~ Not less than seventeen (17) days prior thereto, ~~give~~ written notice shall be given 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 City Council shall be made by resolution and shall be final.

## Chapter 17.134 CONDITIONAL USE PERMIT PROCEDURE

### 17.134.010 Title, purpose, and applicability.

The provisions of this Chapter shall be known as the Conditional Use Permit Procedure. The purpose of these provisions is to prescribe the procedure for the accommodation of uses with special site or design requirements, operating characteristics, or potential adverse effects on surroundings, through review and, where necessary, the imposition of special conditions of approval. This procedure shall apply to all proposals for which a conditional use permit is required by the zoning regulations.

### 17.134.020 Definition of Major and Minor Conditional Use Permits.

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

1. **Thresholds.** Any project requiring a Cconditional Uuse Ppermit 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 (1) acre.;

b. Nonresidential projects involving more than twenty-five thousand (25,000) square feet of floor area, except in the R-80, CBD-R, CBD-P (when not combined with the S-7 Zone), CBD-C, CBD-X, S-2, S-15, D-BV, D-CO, or D-LM Zones.;

~~c. Residential projects requiring a conditional use permit for density resulting in a total number of living units as follows:~~

~~i. Three (3) or more dwelling units in the RM-2 Zone;~~

~~ii. Seven (7) or more dwelling units in the RM-3 or RM-4 Zone.~~

~~d. Residential projects requiring a conditional use permit to exceed the basic or permitted density resulting in seven (7) or more dwelling units in the RU or CBD-R Zones.~~

ce. Large-Scale Developments.

i. Any development not involving one hundred percent (100%) affordable housing units, other than manager's units, which is located in the ~~R-80, CBD-R, CBD-P (when not combined with the S-7 Zone), CBD-C, CBD-X, S-2,~~ S-15, D-CO, or D-LM Zones, and results in more than one hundred thousand (100,000) square feet of new floor area.;

ii. Any development not involving one hundred percent (100%) affordable housing units, other than manager's units, which is located in the R-80 or S-2 Zones, and results in 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;

iii. Any development not involving one hundred percent (100%) affordable housing units, other than manager's units, which is located in the CBD-R, CBD-P (when

not combined with the S-7 Zone), CBD-C, or CBD-X Zones, and results in more than two hundred thousand (200,000) square feet of new floor area, or a new building or portion thereof of more than two hundred fifty (250) feet in height.

df. Projects that request to be considered for an exception to the D-LM Height/Bulk/Intensity Area standards, as described in Table 17.101G.04, Note 2.

2. **Uses.** Any project requiring a Conditional Use Permit 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 percent (20%):

   a. Activities:

      ~~i. Residential Care Residential;~~

      ~~ii. Emergency Shelter Residential;~~

      i. ~~iii.~~ Extensive Impact Civic;

      ii. Special Health Care Civic;

      iii. ~~iv.~~ Fast-food Restaurant Commercial;

      iv. Convenience Market Commercial;

      v~~i~~. Alcoholic Beverage Sales Commercial;

      vi~~i~~. Transient Habitation Commercial;

      vii~~i~~. Heavy/High Impact Industrial;

      viii. ~~ix.~~ Small Scale Transfer and Storage Hazardous Waste Management Industrial;

      ix. Industrial Transfer/Storage Hazardous Waste Management Industrial;

      x~~i~~. Mining and Quarrying Extractive~~;~~.

      ~~xii. Special Health Care Civic Activities.~~

3. **Special Situations.** Any project requiring a Conditional Use Permit 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)~~ seven thousand five hundred (7,500) square feet of floor area, except where the proposal involves only the resumption of a nonconforming activity;

**17.134.040 Procedures for consideration.**

A. **Major Conditional Use Permits.**

1. In All Zones. An application for a M~~m~~ajor C~~c~~onditional U~~u~~se P~~p~~ermit 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 notice on 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~~ owners and occupants of 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~~ on the last available equalized assessment roll shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing. While the hearing is open, any interested party must enter into the record any issues and/or oral, written, and/or documentary evidence to the Commission for its consideration; failure to do so will preclude the party from raising such issues and/or evidence during the appeal hearing and/or in court. 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 carry out the purposes of the zoning regulations and ensure conformity to said criteria. The determination of the Commission shall become final ten (10) calendar days after the date of decision unless appealed to the City Council in accordance with Section 17.134.070. Any party seeking to appeal the determination will be limited to issues and/or evidence presented to the Commission prior to the close of the Commission's public hearing on the matter, in accordance with the above procedures. 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.

B. **Minor Conditional Use Permits.**

1. In All Zones. An application for a Mminor Cconditional Uuse Ppermit 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 still be considered a minor permit, but shall be processed according to the procedure in Subsection A. of this Section. In these instances, any other minor permits associated with the application shall be considered concurrently by the Planning Commission, pursuant to Section 17.130.090. Notice shall be given by posting an enlarged notice on the 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~~ owners and occupants of 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~~ on the last available equalized assessment roll shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) 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. Any interested party must enter into the record any issues and/or oral, written, and/or documentary evidence: (a) to the Director prior to the close of the written public comment period for his or her consideration, or (b) to the Commission while the hearing is open for its consideration, whichever is applicable; failure to do so will preclude the party from raising such issues and/or evidence during the appeal hearing and/or in court. 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 carry out the purposes of the zoning regulations and ensure conformity to said criteria. The determination of the Director of City Planning shall become final ten (10) 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 (10) days after the date of decision unless appealed to the City Council in accordance with Section 17.134.070. Any party seeking to appeal the determination will be limited to issues and/or evidence presented (a) to the Director prior to the close of the written public comment period, or (b) to the Commission prior to the close of the Commission's public hearing on the matter, whichever is applicable, in accordance with the above procedures. 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.

**17.134.050 General use permit criteria.**

Except as different criteria are prescribed elsewhere in the zoning regulations, a Cconditional Uuse Ppermit shall be granted only if the proposal conforms to all the following general use permit criteria, as well as to 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;

D. That the proposal conforms to all applicable Rregular Ddesign Rreview criteria set forth in the Rregular Ddesign Rreview procedure at Section 17.136.050;

F. For proposals involving a One-Family or Two-Family Residential Facility: If the Cconditional Uuse Ppermit concerns a regulation governing maximum height, minimum yards, maximum lot coverage, or maximum floor area ratio, the proposal also conforms with at least one of the following additional 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 Cconditional Uuse Ppermits that allow height increases, the proposal provides detailing, articulation or other design treatments that mitigate any bulk created by the additional height; or

**17.134.060 Appeal to Planning Commission—Minor Cconditional Uuse Ppermits.**

Within ten (10) calendar days after the date of a decision by the Director of City Planning on an application for a Mminor Cconditional Uuse Ppermit, 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 One-Family or Two- to Four-Family Residential Facilities, the appeal shall be considered by the Commission's Residential Appeals Committee. 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. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department, along with the appropriate fees required by the City's Master 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 itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, previously presented to the Director of City Planning prior to the close of the written public comment period on the item, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues and/or evidence during the appeal and/or in court. The appeal is not de novo. 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) days prior to the date of the Commission's or Committee's consideration of the appeal, the Secretary shall give written notice shall be given 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. During the hearing on the appeal, the appellant will be limited to issues and/or evidence presented to the Director of City Planning prior to the close of the written public comment period for the underlying decision being appealed, as the appeal is not de novo. The appellant shall not be permitted to present any other issues and/or evidence (written, oral, or otherwise) during the appeal process. 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 carry out the purposes of the zoning regulations and ensure conformity to said criteria. The decision of the Commission or, if applicable, the Committee shall be final.

**17.134.070 Appeal to Council—Major Conditional Use Permits.**

A. With the exceptions of appeal for adult entertainment activities, appeals to the City Council shall be governed by the following:

Within ten (10) calendar days after the date of a decision by the City Planning Commission on an application for a Major Conditional Use Permit, 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 Planning Director and shall be filed with the Planning and Building Department, along with the appropriate fees required by the City's Master Fee Schedule. 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. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record. previously presented to City Planning Commission prior to the close of its public hearing on the item, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues and/or evidence during the appeal and/or in court. The appeal is not de novo. 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 date set for consideration thereof.; ~~and said Secretary shall,~~ ~~n~~Not less than seventeen (17) days prior thereto, ~~give~~ written notice shall be given 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. During the hearing on the appeal, the appellant will be limited to issues and/or evidence presented prior to the close of the City Planning Commission's public hearing on the item, in accordance with the above procedures, as the appeal is not de novo. The appellant shall not be permitted to present any other issues and/or evidence (written, oral, or otherwise) during the appeal process. 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 carry out the purposes of the zoning regulations and ensure conformity to said criteria. The decision of the City Council shall be made by resolution and shall be final.

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

Within ten (10) calendar days after the date of a decision by the City Planning Commission on an application for a Major Conditional Use Permit, 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 Planning Director and shall be filed with the Planning and Building Department, along with the appropriate fees required by the City's Master Fee Schedule. 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. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, previously presented to City Planning Commission prior to the close of its public hearing on the item, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues and/or evidence during the appeal and/or in court. The appeal is not de novo. 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 date set for consideration thereof.; ~~and said Secretary shall,~~ N~~n~~ot less than seventeen (17) days prior thereto, ~~give~~written notice shall be given 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. During the hearing on the appeal, the appellant will be limited to issues and/or evidence presented prior to the close of the City Planning Commission's public hearing on the item, in accordance with the above procedures, as the appeal is not de novo. The appellant shall not be permitted to present any other issues and/or evidence (written, oral, or otherwise) during the appeal process. 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 carry out the purposes of the zoning regulations and 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 and must decide the appeal within sixty (60) days of the appeal being filed.

**17.134.080 Adherence to approved plans.**

A. A Conditional Use Permit shall be subject to the plans and other conditions upon the basis of which it was granted. Except as indicated in Subsection B. below or u~~U~~nless a different termination date is prescribed, the permit shall terminate three (3) years ~~two (2) years~~ from the effective date of its granting unless, within such period, all necessary permits for construction or alteration have been ~~issued~~ filed with the Planning and Building Department and diligently pursued towards completion, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this approval, the Zoning Manager, or his or her designee, may grant up to a two-year extension of this date, with additional extensions subject to approval by ~~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 ~~such~~ said approval or extension period has also expired. If litigation is filed challenging this approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

B. In order to support implementation of the City's 2023-2031 Housing Element, the following shall supercede the applicable provisions in Subsection A. for the time period of January 31, 2023 to January 31, 2031:

   1. A Conditional Use Permit granted for the creation of residential units between January 31, 2023 and January 31, 2026 shall terminate five (5) years from the effective date of its granting unless all necessary permits for construction, alteration, demolition, or removal, as the case may be, have been filed with the Planning and Building Department and diligently pursued towards completion within such period. Upon written request and payment of appropriate fees submitted no later than the expiration date of this approval, the Zoning Manager, or his or her designee, may grant up to a three-year extension of this date; and

   2. A Conditional Use Permit granted before January 31, 2023 for the creation of residential units that has not expired before that date shall be granted an automatic extension to January 31, 2028. Upon written request and payment of appropriate fees submitted no

later than the expiration date of this approval, the Zoning Manager, or his or her designee, may grant up to a three-year extension of this date.

### 17.134.130 Termination of a Conditional Use Permit

A. A Conditional Use Permit (CUP) granted pursuant to the provisions of this Chapter that permits an activity shall not be of any force or effect if the following is true:

1. With the exception of closures required to repair damage or destruction to the facility containing the activity, the subject activity is nonresidential and has ceased, or has been suspended, for a consecutive period of ~~two (2)~~ three (3) or more years. In the M, CIX, IG, IO, D-CE-5, D-CE-6, D-CO-5, and D-CO-6 Zones, the subject Truck-Intensive Industrial Activity (as defined in Section 17.103.065) has ceased, or has been suspended, for a consecutive period of six (6) or more months.

B. A single, one-year extension of the period described in subsection (A) may be granted by, and at the discretion of, the Director of the Bureau of Planning, or his or her designee. The request for the extension shall be: 1) in writing, 2) made by the applicant or owner of the subject site, and 3) made prior to the ~~two (2)~~ three (3) year period described in subsection (A). Notwithstanding the above, no extension request shall be granted for Truck-Intensive Industrial Activities (as defined in Section 17.103.065) in the M, CIX, IG, IO, D-CE-5, D-CE-6, D-CO-5, and D-CO-6 Zones.

## Chapter 17.136 DESIGN REVIEW PROCEDURE

**Sections:**



### 17.136.023 Projects subject to By Right Residential Approval.

Projects eligible for By Right Residential Approval under Chapter 17.95 or 17.96; and projects for Affordable Housing where one hundred percent (100%) of the housing units, other than manager's units, are restricted to very low-, low-, and moderate-income households, and not proposed on a site with a City, State, or National landmark or within an S-7 or S-20 Zone or an Area of Primary Importance (API) as determined by the Oakland Cultural Heritage Survey, shall not be subject to any design review procedure under this Chapter and shall instead be subject to the By Right Residential Approval procedure as defined in Section 17.09.040.

## Chapter 17.140 PLANNED UNIT DEVELOPMENT PROCEDURE

### 17.140.030 Preliminary Planning Commission action.

An application for a Planned Unit Development (PUD) 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 notice on the premises of the subject property. Notice of the hearing shall also be given by mail or delivery to all owners and occupants of ~~persons shown on the last available equalized assessment roll as owning~~ real property 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 on the last available equalized assessment roll ~~in such records~~ shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing. If, however, the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement these procedures. While the hearing is open, any interested party must enter into the record any issues and/or oral, written, and/or documentary evidence to the Commission for its consideration; failure to do so will preclude the party from raising such issues and/or evidence during the appeal hearing and/or in court. The Commission shall determine whether the proposal conforms to the permit criteria set forth in Section 17.140.080 and to the Planned Unit Development regulations in Chapter 17.142, and may approve or disapprove the application and the accompanying preliminary development plan or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to carry out the purposes of the zoning regulations and ensure conformity to said criteria ~~and regulations~~. In so doing, the Commission may, in its discretion, authorize submission of the final development plan in stages corresponding to different units or elements of the development. It may do so only upon evidence assuring completion of the entire development in accordance with the preliminary development plan and stage development schedule. The determination of the Commission shall become final ten (10) calendar days after the date of decision unless appealed to the City Council in accordance with Section 17.140.070. Any party seeking to appeal the determination will be limited to issues and/or evidence presented to the Commission prior to the close of the Commission's public hearing on the matter, in accordance with the above procedures. 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.

### 17.140.040 Submission of final development plan.

~~Within two (2) years after the approval or modified approval of a preliminary development plan,~~ Unless a different termination date is prescribed, the applicant shall file with the ~~City~~ Planning and Building Department a final plan for the entire development within three (3) years after the approval or modified approval of a preliminary development plan, or~~,~~ when submission in stages has been authorized pursuant to Section 17.140.030, for the first unit of the development. The final plan shall conform in all major respects with the approved preliminary development plan. The final plan shall include all information included in the preliminary development plan plus the following: the location of water, sewerage, and drainage facilities; detailed building and landscaping plans and elevations; the character and location of signs; plans for street improvements; and grading or earth-moving plans. The final plan shall be sufficiently detailed to indicate fully the ultimate operation and appearance of the development. Copies of legal documents required for dedication or reservation of group or

common spaces, for the creation of nonprofit homes' association, or for performance bonds, shall also be submitted. ~~If the final plan, meeting the requirements stated in this section, is not submitted within two (2) years after the date of approval or modified approval of the preliminary development plan, whether approved by operation of law or otherwise, the preliminary development plan shall be considered void.~~

### 17.140.060 Final Planning Commission action.

Within ten (10) calendar days after the date of a decision by the City Planning Commission on an application for approval of a preliminary or final development plan, or for modification or amendment of any such plan, an appeal from said decision may be taken to the City Council by the applicant, the permit holder, 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. Such appeal shall be made on a form prescribed by the Planning Director and shall be filed with the Planning and Building Department, along with the appropriate fees required by the City's Master Fee Schedule. 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. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, previously presented to City Planning Commission prior to the close of its public hearing on the item, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues and/or evidence during the appeal and/or in court. The appeal is not de novo. Upon receipt of such 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 date set for consideration thereof. ~~; and said Secretary shall,~~ ~~n~~Not less than seventeen (17) days prior thereto, ~~give~~ written notice shall be given 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. During the hearing on the appeal, the appellant will be limited to issues and/or evidence presented prior to the close of the City Planning Commission's public hearing on the item, in accordance with the above procedures, as the appeal is not de novo. The appellant shall not be permitted to present any other issues and/or evidence (written, oral, or otherwise) during the appeal process. In considering the appeal, the Council shall determine whether the proposal conforms to the applicable criteria and standards, and may approve or disapprove the proposed development or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to carry out the purposes of the zoning regulations and ensure conformity to said criteria ~~and standards~~. The decision of the City Council shall be made by resolution and shall be final.

### 17.140.070 Appeal to Council.

Within ten (10) calendar days after the date of a decision by the City Planning Commission on an application for approval of a preliminary or final development plan, or for modification or amendment of any such plan, an appeal from said decision may be taken to the City Council by the applicant, the permit holder, 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. Such appeal shall be made on a form prescribed by the Commission and shall be filed with the Planning and Building Department, ~~City Clerk,~~ along with the appropriate fees required by the City's Master Fee Schedule. 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. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, previously presented to City Planning Commission prior to the close of its public hearing on the item, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues and/or evidence during the appeal and/or in court. The appeal is not de novo. Upon receipt of such 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,~~ ~~n~~Not less than seventeen (17) days prior thereto, ~~give~~ written notice shall be given 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. During the hearing on the appeal, the appellant will be limited to issues and/or evidence presented prior to the close of the City Planning Commission's public hearing on the item, in accordance with the above procedures, as the appeal is not de novo. The appellant shall not be permitted to present any other issues and/or evidence (written, oral, or otherwise) during the appeal process. In considering the appeal, the Council shall determine whether the proposal conforms to the applicable criteria and standards, and may approve or disapprove the proposed development or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to carry out the purposes of the zoning regulations and ensure conformity to said criteria ~~and standards~~. The decision of the City Council shall be made by resolution and shall be final.

### 17.140.110 Adherence to approved plan, and modification thereof.

The applicant shall agree in writing to be bound, for himself or herself and his or her successors in interest, by the conditions prescribed for approval of a Planned Unit Development. The approved final plan and stage development schedule shall control the issuance of all building permits and shall restrict the nature, location, and design of all uses. Minor changes in an approved preliminary or final development plan may be approved by the Director of City Planning

if such changes are consistent with the purposes and general character of the development plan. Proposed extensions to the three-year ~~one-year~~ time limit imposed by Section 17.140.040, ~~and proposed extensions of revisions of the stage development schedule,~~ upon application filed at any time before said period has expired, shall be referred to the City Planning Commission, and the Commission may approve, modify, or deny such proposals. The decision of the Commission is appealable to the City Council. All other modifications, including ~~extensions or~~ revisions of the stage development schedule, shall be processed in the same manner as the original application and shall be subject to the same procedural requirements.

## Chapter 17.142 PLANNED UNIT DEVELOPMENT REGULATIONS]

Article I - Title, Purposes and Applicability

~~Article II - Mini-Lot Planned Unit Developments~~

Article III - Planned Unit Developments

### 17.142.004 Applicability.

These regulations shall apply to all:

~~A. Mini-Lot Planned Unit Developments (Mini-Lot PUDs) located on a single tract of land of less than sixty thousand (60,000) square feet, and containing lots which do not meet the minimum size or other requirements applying to individual lots in the zone where it is located; and~~

A~~B~~. Planned Unit Developments (PUDs) located on a single tract of land of at least four (4) acres in the RH Zones, and thirty thousand (30,000) ~~sixty thousand (60,000)~~ square feet or more in all other zones, or on two (2) or more tracts of land equaling at least four (4) acres in the RH Zones, and thirty thousand (30,000) ~~sixty thousand (60,000)~~ square feet or more in total in all other zones which may be separated only by a street or other right-of-way.

### ~~17.142.010 Definition of Mini-Lot Planned Unit Development.~~

~~A Mini-Lot Planned Unit Development (Mini-Lot PUD) is a comprehensively designed development containing lots that do not meet the minimum size or other requirements applying to individual lots of less than sixty thousand (60,000) square feet in the zone where it is located.~~

### ~~17.142.012 Basic provisions for Mini-Lot Planned Unit Developments.~~

~~See Section 17.103.080.A.14 for requirements for ADUs within Mini-Lot Planned Unit Developments (Mini-lot PUDs). Subject to the provisions of this article, the maximum height and minimum yard, lot area, width, and frontage requirements otherwise applying to individual lots may be waived or modified within a Mini-Lot PUD, and floor area, parking, and other facilities may be located within said development without reference to lot lines, upon the granting of a Conditional Use Permit pursuant to the Conditional Use Permit procedure in Chapter 17.134 and upon determination:~~

~~1. That there is adequate provision for maintenance of the open space and other facilities within the development; and~~

~~2. That except as specified below, the total development meets all the requirements that would apply to it if it were a single lot.~~

~~a. ADUs are allowed on individual Mini-Lots that permit Permanent Residential Activities, and in conjunction with an existing or proposed primary Residential Facility. If, however, any shared interest element of a previously approved Mini-Lot development would be modified or impacted by the ADU's construction, the application shall be considered through a revision of the Mini-Lot PUD permit; in which case, the review time for the ADU application shall be extended to coincide with the review time of the revision.~~

~~b. For the RM-2 Zone in the West Oakland District only (defined for the purposes of this Chapter as all areas between Interstate 980 to the east, Interstate 880 to the south and west, and Interstate 580 to the north), the minimum setback requirements for the total development shall be the same as those in Table 17.17.04 for a single lot less than four thousand (4,000) square feet in size. Also for the RM-2 Zone in the West Oakland District only, the minimum setback requirements for the total development may be further reduced to be the same as those in Table 17.17.04 for a single lot less than three thousand (3,000) square feet in size upon the following additional determination:~~

~~**i.** Excluding the subject parcel, the prevalent size of existing lots in the surrounding block is three thousand (3,000) square feet or less, and the prevalent frontage width along the same block face is thirty-five (35) feet or less.~~

**~~17.142.014 Zones in which requirements may be waived for a Mini-Lot~~ Planned Unit ~~Development.~~**

~~A Conditional Use Permit pursuant to Section 17.142.012 may only be granted in the S-1 or S-2 Zone, or in any Residential or Commercial Zone other than RH or RD Zones.~~

**~~17.142.016 Maximum size for which requirements may be waived for a Mini-Lot~~ Planned Unit ~~Development.~~**

~~Maximum Size for Which Requirements May Be Waived. A Conditional Use Permit pursuant to Section 17.142.012 of this Chapter may be granted only if the total land area of the Mini-Lot Planned Unit Development is less than sixty thousand (60,000) square feet.~~

**17.142.020 Definition of Planned Unit Development.**

A "Planned Unit Development" (PUD) is a large, integrated development adhering to a comprehensive plan and located on a single tract of land of at least four (4) acres in the RH Zones, and thirty thousand (30,000) ~~sixty thousand (60,000)~~ square feet or more in all other zones, or on two (2) or more tracts of land equaling at least four (4) acres in the RH Zones, and thirty thousand (30,000) ~~sixty thousand (60,000)~~ square feet or more in total in all other zones which may be separated only by a street or other right-of-way. In developments that are approved pursuant to the Planned Unit Development regulations in this Chapter, certain uses may be permitted in addition to those otherwise allowed in the underlying zone, certain of the other regulations applying in said zone may be waived or modified, and the normally required design review process may also be waived for developments at the time of initial granting of a Planned Unit Development (PUD) permit. Unless otherwise specified in the PUD permit, any future changes within the Planned Unit Development shall be subject to applicable design review regulations.

**17.142.030 Developments for which Planned Unit Development permit approval is required or requested.**

A. The following developments are permitted only upon the granting of a Planned Unit Development permit pursuant to the Planned Unit Development procedure in Chapter 17.140.

1. Any Planned Unit Development incorporating any of the bonuses set forth in Section 17.142.100.

2. Any integrated development which is primarily designed for or occupied by Commercial Activities, which is located in any Commercial Zone, and which is developed under unified control, in accordance with a comprehensive plan, on a single tract with ~~sixty thousand (60,000)~~ thirty thousand (30,000) square feet or more of land area, or on two (2) or more tracts which total such area and which are separated only by a street or other right-of-way.

B. Unless required by the Planning Director, other large, integrated developments involving the same minimum land area thresholds of a Planned Unit Development, as defined in Section 17.142.020, are permitted without such a permit. However, an applicant for such a development may request a Planned Unit Development permit pursuant to the Planned Unit Development procedure in Chapter 17.140. ~~, but shall be subject to all regulations generally applying in the zone in which they are located.~~

**17.142.090 Minimum size for which bonuses may be granted.**

The minimum total land area of any Planned Unit Development incorporating any of the bonuses set forth in Section 17.142.100 shall be four (4) acres in the RH ~~and RD-1~~ Zones, and ~~sixty thousand (60,000)~~ thirty thousand (30,000) square feet in all other zones. ~~except the CC-1 Zone. In the CC-1 Zone, the minimum total land area shall be four (4) acres for any Planned Unit Development incorporating any of the bonuses set forth in Subsection 17.142.100.E, and sixty thousand (60,000) square feet for any other Planned Unit Development incorporating any of the bonuses set forth in Section 17.142.100.~~

**17.142.100 Bonuses.**

For Planned Unit Developments qualifying under Sections 17.142.080 and 17.142.090, the following exceptions to otherwise applicable regulations may be permitted upon the granting of a Planned Unit Development permit pursuant to the Planned Unit Development procedure in Chapter 17.140:

A. Additional Permitted Activities Where Increase in Overall Density or Floor-Area Ratio (FAR) Is Proposed. Except in the RH ~~and RD-1~~ Zones, the following activities, as described in the use classifications in Chapter 17.10, may be permitted in a Planned Unit Development incorporating an increase in overall density or Floor-Area Ratio pursuant to Subsection E. of this Section, in addition to the activities generally permitted in the zone where the development is located:

   1. Civic Activities:

      Limited Child-Care

      Community Education

   2. Commercial Activities, provided that such activities shall not occupy in the aggregate more than five percent (5%) of the total floor area in such development, and further provided that the maximum floor area devoted to such activities by any single establishment shall be three thousand (3,000) square feet~~, and further provided that~~

~~such activities shall not be permitted at all in any such development which has an overall density in Residential Facilities of less than forty (40) living units per net residential acre (excluding streets and other rights-of-way)~~:

General Food Sales

Full Service Restaurant

Limited Service Restaurant and Cafe

Fast-Food Restaurant

Convenience Market

Alcoholic Beverage Sales

Consumer Service (see Section 17.102.170 for special regulations relating to massage services and Section 17.102.450 for special regulations related to laundromats)

Medical Service

B. Further Additional Permitted Activities Where No Increase in Overall Density or Floor-Area Ratio Is Proposed. Except in the RH ~~and RD-1~~ Zones, the following activities, as described in the use classifications, may be permitted in a Planned Unit Development for which no increase in overall density or Floor-Area Ratio is proposed pursuant to Subsection E. of this Section, in addition to the activities listed in Subsection A. of this Section and in addition to the activities generally permitted in the zone in which the development is located. The special limitations prescribed in Subsection A.3. of this Section with respect to location and amount of floor area devoted to Commercial Activities shall not apply in such a development.

1. Residential Activities:

   Semi-Transient

2. Civic Activities:

   Health Care (Nursing Home)

   Recreational Assembly

   Nonassembly Cultural

   Administrative

   Utility and Vehicular

3. Commercial Activities:

   Mechanical or Electronic Games

   General Retail Sales

   Consumer Service (see Section 17.102.170 for special regulations relating to massage services and Section 17.102.450 for special regulations related to laundromats)

   Consultative and Financial Service

Consumer Cleaning and Repair Service

~~Consumer Dry Cleaning Plant~~

Group Assembly

Personal Instruction and Improvement Services

Administrative

Business, Communication, and Media Service

Broadcasting and Recording Service

Research Service

General Wholesale Sales

Automobile and Other Light Vehicle Gas Station and Servicing

Automotive Fee Parking

Animal Care

Animal Boarding

4. Industrial Activities:

   Custom Manufacturing

C. Additional Permitted Facilities in the RH Zones without the S-9 Combining Zone ~~RH-4 and RD-1 Zones~~. In the RH Zones without the S-9 Combining Zone ~~RH-4 and RD-1 Zones~~, the following facilities, as described in the use classifications, may be permitted in addition to the facilities otherwise permitted in said zone, provided that at least fifty percent (50%) of the dwelling units in the total development shall be One-Family Dwellings:

   1. Residential Facilities:

      Two- to Four-Family Dwelling

      Multifamily Dwelling

D. Additional Permitted Facilities in Other Zones. Except in the RH Zones with the S-9 Combining Zone, ~~and RD-1 Zones,~~ the following facilities, as described in the use classifications, may be permitted in addition to the facilities otherwise permitted in the zone in which the development is located:

   1. Residential Facilities:

      One-Family Dwelling

      Two- to Four-Family Dwelling

      Multifamily Dwelling

      Rooming House

E. Increase in Overall Density or Floor-Area Ratio.

1. Except in the RH ~~and RD-1~~ Zones with the S-9 Combining Zone, ~~and except in a development incorporating the bonuses specified in Subsection B. of this Section,~~ the maximum overall number of living units in Residential Facilities and the maximum overall Floor-Area Ratio, if any, otherwise permitted or conditionally permitted in the zone in which the development is located may be increased by up to thirty-three percent (33%) if the overall development contains a combination of two (2) or more of the following dwelling types and if not more than three-fourths (3/4) ~~two-thirds (2/3)~~ of the total number of living units are included in any one of such types:

    a. Detached buildings each containing only one living unit;

    b. Town house or similar ~~One-Family~~ semi-detached or attached buildings each containing only one (1) or two (2) living units;

    c. Buildings each containing two (2) to four(4) living units;

    d. Buildings each containing five (5) or more ~~than two (2)~~ living units.

2. Except in the RH ~~and RD-1~~ Zones with the S-9 Combining Zone, ~~and except in a development incorporating the bonuses specified in Subsection B. of this Section,~~ the maximum overall number of living units in Residential Facilities and the maximum overall Floor-Area Ratio, if any, otherwise permitted or conditionally permitted in the zone in which the development is located may be increased by up to twenty-five percent (25%) in a development other than one described in Subsection E.1. of this Section.

F. Distribution of Facilities without Reference to Lot or Block Line. The overall number of living units and amount of floor area, off-street parking and loading facilities, usable open space, and landscaping and screening may be located within the development without reference to lot lines or blocks, except as otherwise provided in Subsection 17.142.110.I and except that any provided ~~required~~ parking spaces serving Residential Activities shall be located within two hundred (200) feet of the building containing the living units served.

G. Waiver or Reduction of Yard and Other Dimensional Requirements. Except as otherwise provided in Subsection 17.142.110.C~~E~~, the minimum lot area, width, and frontage; height; and yard requirements otherwise applying may be waived or modified for the purpose of promoting an integrated site plan.

H. Limitations on Signs. Except in the R~~H~~ ~~and RD-1~~ Zones and except in a development incorporating an increase in density or Floor-Area Ratio pursuant to Subsection E. of this Section, Signs may be developed subject to the limitations prescribed therefor in the ~~CC-1~~ CC-2 Zone rather than those in the zone in which the development is located.

**17.142.110 Development standards.**

The following regulations shall apply to all developments for which a permit is required by Section 17.142.030:

A. Density and Floor-Area Ratio (FAR) Calculation. The maximum overall number of living units in Residential Facilities and the maximum overall Floor-Area Ratio, if any, shall be based on the land area within the development, excluding the following:

1. Publicly dedicated land area, including but not limited to streets, freeways, alleys, parks, and paths~~;~~.

~~2. When computing density for Residential Facilities in the RH, RD, or RM Zones, the following:~~

~~a. Land, other than public housing sites, which is publicly owned or reserved for public ownership,~~

~~b. Land which is specifically devoted to or intended for Nonresidential Facilities.~~

B. Density in the RH~~, and RD-1~~ Zones. In the RH ~~and RD-1~~ Zones, the maximum number of dwelling units shall be as prescribed in said zones. ~~one (1) unit for each forty-three thousand five hundred sixty (43,560) square feet of land area as described in Subsection A. of this Section. In the RH-2 Zones, the maximum number of dwelling units shall be one (1) unit for each twenty-five thousand (25,000) square feet of land area as described in Subsection A. of this Section. In the RH-3 Zone, the maximum number of dwelling units shall be one (1) unit for each twelve thousand (12,000) square feet of land area as described in Subsection A. of this Section. In the RH-4 Zone, the maximum number of dwelling units shall be one (1) unit for each eight thousand (8,000) square feet of land area as described in Subsection A. of this Section. In the RD-1 Zone, the maximum number of dwelling units shall be one (1) unit for each five thousand (5,000) square feet of land area as described in Subsection A. of this Section.~~

C. Height in the RH ~~RH-4 and RD-1~~ Zones. In the RH ~~RH-4 and RD-1~~ Zones, no building shall exceed the normally required maximum height, ~~fifty (50) feet in height,~~ except as would otherwise be allowed by Subsection 17.108.020.A and except for the same projections as are allowed by Section 17.108.030.

E. Yards and Courts. Subject to the provisions of this article, the minimum yard and court requirements otherwise applying to individual lots may be waived or modified within a PUD, and other facilities may be located within said development without reference to lot lines. ~~Yards and courts shall be provided of such depth and width as to provide the same minimum separation between walls of Residential Facilities or between such facilities and the walls of other facilities, regardless of whether such walls are on the same or on separate lots, as is generally required in the RU-2 Zone for courts between such walls when located on the same lot.~~

F. Usable Open Space. In the RH-1, RH-2 and RH-3 Zones, ~~two hundred (200) square feet of group usable open space per dwelling unit and three hundred (300) square feet of private usable open space per dwelling unit shall be provided for Residential Facilities; and in the RH-4 and RD-1 Zones,~~ two hundred (200) square feet of group usable open space per dwelling unit and one hundred (100) square feet of private usable open space per dwelling unit shall be provided for Residential Facilities. In any other zone, developments incorporating an increase in overall density or Floor-Area Ratio pursuant to Subsection 17.142.100.E shall provide usable open space for Residential Facilities in the amount required in the individual zoning chapters and in Chapter 17.126, and private usable open space may be substituted for required group space in the ratio prescribed in said chapters.

## Chapter 17.144 REZONING AND LAW CHANGE PROCEDURE

**Sections:**



### 17.144.030 Initiation.

A. Private Party Initiation. The owner of any property, or his or her authorized agent, may make application to the Planning and Building Department ~~City Planning Commission~~ to rezone such property, to amend or delete any development control map applicable thereto, or to establish, amend, or delete a designated landmark or landmark site applicable thereto.

### 17.144.060 Planning Commission action on private party application.

In the case of private party initiation, the City Planning Commission shall hold a public hearing on the application. ~~within sixty (60) days after the date of application.~~ Notice of the hearing shall be given by posting an enlarged notice on the premises of the subject property. Notice of the hearing shall also be given by mail or delivery to all owners and occupants of ~~persons shown on the last available equalized assessment roll as owning~~ real property 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 on the last available equalized assessment roll ~~in such records~~ shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date for the hearing. If, however, the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement these procedures. ~~Within sixty (60) days f~~Following Commission action on any environmental document which may be required pursuant to the California Environmental Quality Act in connection with the proposal, the Commission shall make a decision on the application; provided that the Commission may, with the consent of the applicant, defer action until necessary studies or plans shall have been completed for the area. The Commission shall consider whether the existing zone or regulations are inadequate or otherwise contrary to the public interest, and may approve, modify, or disapprove the application. In case of approval or modified approval, the Commission shall forward its recommendation to the City Council for appropriate action. In case of denial of a private party application, the decision of the Commission shall become final ten (10) calendar days after the date of the decision unless appealed to the City Council in accordance with Section 17.144.070. 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.

### 17.144.080 Planning Commission action on Commission or Landmarks Preservation Advisory Board proposal.

In the case of initiation by the City Planning Commission or the Landmarks Preservation Advisory Board, the Commission shall, within a reasonable period of time, hold a public hearing on the proposal. Notice of the hearing shall be given in the same manner as set forth in Section

17.144.060. In addition, notice of the hearing shall be mailed or delivered not less than seventeen (17) days prior to the date set for the hearing to the owners and occupants of all real property included in the proposal; ~~as shown on the last available equalized assessment roll;~~ provided, however, that failure to send notice to any such owner where his or her address is not shown on the last available equalized assessment roll ~~in said records~~ shall not invalidate the affected proceedings. If, however, the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement these procedures. When the proposal involves changing the text of the zoning regulations, notice of the hearing shall be given in the official newspaper of the city at least seventeen (17) days prior to the date set for the hearing. ~~Within sixty (60) days f~~Following Commission action on any environmental document which may be required pursuant to the California Environmental Quality Act in connection with the proposal, the Commission shall make a decision on the proposal; provided that the Commission may defer action until completion of such studies or plans as may be necessary to determine the advisability of the proposal. The Commission shall consider whether the existing zone or regulations are inadequate or otherwise contrary to the public interest, and may approve, modify, or disapprove the proposal. The Commission shall, in every case, make a recommendation to the City Council for appropriate action.

**17.144.090 Council action.**

Upon receipt of an appeal by a private party, or upon receipt of a recommendation from the City Planning Commission, the City Council shall set the date for consideration of the matter. After setting the hearing date, the Council, prior to hearing the appeal or recommendation, 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 scheduled 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. In the case of receipt of a recommendation from the City Planning Commission, the City Clerk shall notify the Secretary of the City Planning Commission of the date set for consideration thereof. ~~; and said Secretary shall give~~ N~~n~~otice of the hearing shall be given by mail or delivery to all parties who have commented on the matter 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.

In the case of an appeal by a private party, the City Clerk shall notify the Secretary of the City Planning Commission of the date set for consideration thereof. ~~; and said Secretary shall,~~ N~~n~~ot less than seventeen (17) days prior thereto, ~~give~~ written notice shall be given 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. Upon an appeal by a private party, or upon the receipt of a recommendation from the City Planning Commission, the Council may approve, modify, or reverse the decision or may approve, modify, or disapprove the Commission's recommendations, as the case may be. The decision of the City Council shall be made by resolution and shall be final.

## Chapter 17.148 VARIANCE AND EXCEPTION PROCEDURE

### 17.148.010 Title, purpose, and applicability.

The provisions of this Chapter shall be known as the Variance and Exception Procedure. The purpose of these provisions is to prescribe the procedure for the relaxation of any substantive provision of the zoning regulations, under specified conditions, so that the public welfare is secured and substantial justice done most nearly in accord with the intent and purposes of the zoning regulations. This procedure shall apply to all proposals to vary the strict requirements of the zoning regulations.

### 17.148.020 Definition of Major and Minor Variances and Minor Zoning Exceptions.

A. **Major Variance.** A "Major Variance" is ~~a variance~~ the relaxation of a specific requirement in the zoning regulations which involves any of the following provisions:

1. Allowable activity types or facility types;
2. Maximum number of living units;
3. Minimum lot area, except in the situation mentioned in Section 17.106.010.B;
4. Maximum Floor Area ~~Floor Area~~ Ratio (FAR), except for One-Family Dwellings and Two- to Four-Family Dwellings;
5. Maximum size of Commercial or Industrial establishments~~;~~.
6. ~~Restriction on over-concentration of Residential Care and Emergency Shelter Residential Activities as set forth in Subsection 17.103.010.B.~~

B. **Minor Variance.** A "Minor Variance" is ~~a variance~~ the relaxation of a specific requirement in the zoning regulations which does not involve any of the provisions listed in Subsection A. of this Section and exceeds the allowance for minor zoning exceptions in Subsection C. of this Section.

C. **Minor Zoning Exception**. A "Minor Zoning Exception" is the relaxation of a specific requirement in the zoning regulations which does not result in more than a ten percent (10%) deviation from an applicable numeric zoning standard or involve any of the provisions listed in Subsection A. of this Section.

### 17.148.030 Application.

In all zones, application for a variance or minor zoning exception shall be made by the owner of the affected property, or his or her authorized agent, on a form prescribed by the ~~City~~ Planning and Building Department and shall be filed with such Department. The application shall be accompanied by such information, including but not limited to, site and building plans, drawings and elevations, and operational data, as may be required to permit the review of the proposal in the context of the required findings, and by the fee prescribed in the fee schedule in Chapter 17.150.

**17.148.040 Procedure for consideration.**

A. **Major Variances.**

1. In All Zones. An application for a Mmajor V~~v~~ariance 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 notice on the premises of the subject property involved in the application. Notice of the hearing shall also be given by mail or delivery to all owners and occupants of ~~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 on the last available equalized assessment roll ~~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 for the hearing. While the hearing is open, any interested party must enter into the record any issues and/or oral, written, and/or documentary evidence to the Commission for its consideration; failure to do so will preclude the party from raising such issues and/or evidence during the appeal hearing and/or in court. The Commission shall determine whether the conditions required in Section 17.148.050 are present, and may grant or deny an application for a variance or require such changes in the proposed use or impose such reasonable conditions of approval as are in its judgment necessary to carry out ~~promote~~ the purposes of the zoning regulations. The decision of the Commission shall become final ten (10) calendar days after the date of decision unless appealed to the City Council in accordance with Section 17.148.070. Any party seeking to appeal the determination will be limited to issues and/or evidence presented to the Commission prior to the close of the Commission's public hearing on the matter, in accordance with the above procedures. 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.

B. **Minor Variances.**

1. In All Zones. An application for a M~~m~~inor V~~v~~ariance 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 rather than acting on it himself or herself. In this case, the application shall still be considered a minor permit, but shall be processed according to the procedure in Subsection A. of this Section. In these instances, any other minor permits associated with the application shall be considered concurrently by the Planning Commission, pursuant to Section 17.130.090. At his or her discretion, an administrative hearing may be held. Notice shall be given by posting an enlarged notice on the premises of the subject property involved in the application; notice shall also be given by mail or delivery to all owners and occupants of ~~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 on the last available equalized assessment roll ~~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 for the hearing, if such is to be held, or, if not, for decision on the application by the Director. Any interested party must enter into the record any issues and/or oral, written, and/or documentary evidence: (a) to the Director prior to the close of the written public comment period for his or her consideration, or (b) to the Commission while the hearing is open for its consideration, whichever is applicable; failure to do so will preclude the party from raising such issues and/or evidence during the appeal hearing and/or in court. The Director shall determine

whether the conditions required in Section 17.148.050 are present, and may grant or deny the application for a variance or require such changes in the proposed use or impose such reasonable conditions of approval as are in his or her judgment necessary to carry out ~~promote~~ the purposes of the zoning regulations. The decision of the Director of City Planning shall become final ten (10) calendar days after the date of decision unless appealed to the City Planning Commission in accordance with Section 17.148.060. In those cases which are referred to the Commission by the Director, the decision of the Commission shall become final ten (10) days after the date of decision unless appealed to the City Council in accordance with Section 17.148.070. Any party seeking to appeal the determination will be limited to issues and/or evidence presented (a) to the Director prior to the close of the written public comment period, or (b) to the Commission prior to the close of the Commission's public hearing on the matter, whichever is applicable, in accordance with the above procedures. 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.

C. **Minor Zoning Exceptions.**

1. In All Zones. An application for a Minor Zoning Exception shall be considered by the Zoning Manager, or his or her designee. The Zoning Manager, or his or her designee, shall determine whether the proposal meets the requirements for a Minor Zoning Exception as set forth in this Chapter. At the time of Minor Zoning Exception application, the owner of the affected property, or his or her authorized agent, shall obtain from the Planning and Building Department, a notice poster to install on the project site; and a Notice to Neighboring Properties form which includes the project description and contact information. 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 mail or delivery 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) to all owners and occupants of the City of Oakland lot or lots adjacent to the project site and directly across the street abutting the project site. All required posting of the site and notification of adjacent and across the street property owners and occupants 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 and Building Department shall receive and consider comments from any interested party. The Zoning Manager, or his or her designee, may approve or disapprove a Minor Zoning Exception proposal and may require such changes therein or impose such reasonable conditions of approval as are in his or her judgment necessary to carry out the purposes of the zoning regulations. The decision by the Zoning Manager, or his or her designee, shall be final immediately and not appealable.

**17.148.050 Findings required.**

A. With the exception of variances for Adult Entertainment Activities or Sign Facilities, a variance may be granted only upon determination that all of the following conditions are present:

2. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners and occupants of similarly zoned property; or, as an alternative in the case of a M~~m~~inor V~~v~~ariance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.

5. That the elements of the proposal requiring the variance (e.g., elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the ~~regular~~ design review criteria set forth in the design review procedure in Chapter 17.136. ~~at Section 17.136.050.~~

7. For proposals involving One-Family Residential Facilities ~~one (1) or two (2) residential dwelling units~~ on a lot: That, if the variance would relax a regulation governing maximum height, minimum yards, maximum lot coverage or maximum floor area ratio, the proposal also conforms with at least one of the following additional criteria:

   b. Over sixty percent (60%) of the lots in the immediate vicinity are already developed and the proposal does not exceed the corresponding as-built condition on these lots and, for height variances, 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 (5) 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 decision on any variance.

B. A variance for Adult Entertainment Activities shall be granted upon a determination that all of the following conditions are present, notwithstanding any conflicting requirements contained elsewhere in the zoning regulations:

   2. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners and occupants of similarly zoned property;

C. A variance for Sign Facilities shall be granted upon a determination that all of the following conditions are present, notwithstanding any conflicting requirements contained elsewhere in the zoning regulations:

   2. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners and occupants of similarly zoned property; and

D. A Minor Zoning Exception shall be granted upon a determination that:

   1. The elements of the proposal requiring the Minor Zoning Exception (e.g., elements such as buildings, walls, fences, driveways, garages, carports, etc.) conform with the applicable design review criteria set forth in the design review procedure in Chapter 17.136; and

   2. For proposals involving One-Family Residential Facilities, the Minor Zoning Exception when viewed in its entirety would not adversely impact abutting properties 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 proposal were built according to the applicable regulation.

**17.148.060 Appeal to Planning Commission—Minor Variances.**

Within ten (10) calendar days after the date of a decision by the Director of City Planning on an application for a M~~m~~inor V~~v~~ariance, 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-Family or Two- to Four-Family ~~one- or two-unit~~ Residential Facilities, the appeal shall be considered by the Commission's Residential Appeals Committee. 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. Such appeal shall be made on a form prescribed by the ~~City~~ Planning and Building Department and shall be filed with such Department, along with the appropriate fees required by the City's Master 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 itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, previously presented to the Director of City Planning prior to the close of the written public comment period on the item, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues and/or evidence during the appeal and/or in court. The appeal is not de novo. Upon receipt of such appeal, the Secretary of the City Planning Commission shall set the date for consideration thereof. Not less than seventeen (17) days prior to the date of the Commission's or Committee's consideration of the appeal, ~~the Secretary shall give~~ written notice shall be given 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. During the hearing on the appeal, the appellant will be limited to issues and/or evidence presented to the Director of City Planning prior to the close of the written public comment period for the underlying decision being appealed, as the appeal is not de novo. The appellant shall not be permitted to present any other issues and/or evidence (written, oral, or otherwise) during the appeal process. In considering the appeal, the Commission or, if applicable, the Committee shall determine whether the conditions required in Section 17.148.050 are present, and may grant or deny an application for a variance or require such changes in the proposed use or impose such reasonable conditions of approval as are in its judgment necessary to carry out the purposes of the zoning regulations. The decision of the Commission or, if applicable, the Committee shall be final.

**17.148.070 Appeal to Council—Major Variances.**

A. With the exceptions of appeals for Adult Entertainment Activities or for Signs, appeals to the City Council shall be governed by the following:

Within ten (10) calendar days after the date of a decision by the City Planning Commission on an application for a Major Variance, an appeal from said decision may be taken to the City Council by the applicant, the holder of the variance, 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. Such appeal shall be made on a form prescribed by the Planning Director and shall be filed with the Planning and Building Department, along with the appropriate fees required by the City's Master Fee Schedule. 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. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, previously presented to City Planning Commission prior to the close of its public hearing on the item, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues and/or evidence during the appeal and/or in court. The appeal is not de novo. Upon receipt of such 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 date set for consideration thereof. ~~; and said Secretary shall,~~ Nnot less than seventeen (17) days prior thereto, ~~give~~written notice shall be given 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. During the hearing on the appeal, the appellant will be limited to issues and/or evidence presented prior to the close of the City Planning Commission's public hearing on the item, in accordance with the above procedures, as the appeal is not de novo. The appellant shall not be permitted to present any other issues and/or evidence (written, oral, or otherwise) during the appeal process. In considering the appeal, the Council shall determine whether the conditions required by Section 17.148.050 are present, and may grant or deny an application for a variance or require such changes in the proposed use or impose such reasonable conditions of approval as are in its judgment necessary to carry out the purposes of the zoning regulations. The decision of the City Council shall be made by resolution and shall be final.

B. Appeals to the City Council relating to Adult Entertainment Activities or for Signs shall be governed by the following:

Within ten (10) calendar days after the date of a decision by the City Planning Commission on an application for a Major Variance, an appeal from said decision may be taken to the City Council by the applicant, the holder of the variance, 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. Such appeal shall be made on a form prescribed by the Planning Director and shall be filed with the Planning and Building Department, along with the appropriate fees required by the City's Master Fee Schedule. 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. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, previously presented to City Planning Commission prior to the close of its public hearing on the item, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues and/or evidence during the appeal and/or in court. The appeal is not de novo. 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 date set for consideration thereof. ~~; and said Secretary shall, n~~Not less than seventeen (17) days prior thereto, ~~given~~ written notice shall be given 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. During the hearing on the appeal, the appellant will be limited to issues and/or evidence presented prior to the close of the City Planning Commission's public hearing on the item, in accordance with the above procedures, as the appeal is not de novo. The appellant shall not be permitted to present any other issues and/or evidence (written, oral, or otherwise) during the appeal process. In considering the appeal, the Council shall determine whether the conditions required by Section 17.148.050 are present, and shall grant an application for variance if it determines that all the said criteria are present or require such changes in the proposed use or impose such reasonable conditions of approval as are, in its judgment, necessary to carry out the purposes of the zoning regulations and 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 and must decide the appeal within sixty (60) days of the appeal being filed.

**17.148.080 Adherence to approved plans.**

A. A variance or minor zoning exception shall be subject to the plans and other specified conditions upon the basis of which it was granted. Except as indicated in Subsection B. below or u~~U~~nless a different termination date is prescribed, the permit shall terminate three (3) ~~two~~ ~~(2)~~ years from the effective date of its granting unless, within such period, all necessary permits for construction or alteration have been filed with the Planning and Building Department and diligently pursued towards completion, ~~issued,~~ or the authorized activities have commenced in the case of a variance not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this approval, the Zoning Manager, or his or her designee, may grant up to a two-year extension of this date, with additional extensions subject to approval by ~~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 variance approval if said approval or extension period has also expired. If litigation is filed challenging this approval, or its implementation, then the time period stated above for obtaining necessary permits for construction or alteration and/or commencement of authorized activities is automatically extended for the duration of the litigation.

B. In order to support implementation of the City's 2023-2031 Housing Element, the following shall supercede the applicable provisions in Subsection A. for the time period of January 31, 2023 to January 31, 2031:

   1. A variance or minor zoning exception granted for the creation of residential units between January 31, 2023 and January 31, 2026 shall terminate five (5) years from the effective date of its granting unless all necessary permits for construction, alteration, demolition, or removal, as the case may be, have been filed with the Planning and Building Department and diligently pursued towards completion within such period. Upon written request and payment of appropriate fees submitted no later than the expiration date of this approval, the Zoning Manager, or his or her designee, may grant up to a three-year extension of this date; and

   2. A variance or minor zoning exception granted before January 31, 2023 for the creation of residential units that has not expired before that date shall be granted an automatic extension to January 31, 2028. Upon written request and payment of appropriate fees submitted no later than the expiration date of this approval, the Zoning Manager, or his or her designee, may grant up to a three-year extension of this date.

## Chapter 17.152 ENFORCEMENT

**Sections:**



### 17.152.100 Notice.

Not less than seventeen (17) days prior to the revocation hearing, ~~the City Planner shall give~~ written notice shall be given to the complainant, property owner, and permit holder, if the latter is different from the property owner, of the date, time and place of the revocation hearing. The time and place of the revocation hearing shall be set, if at all possible, between seven (7) p.m. and ten (10) p.m. during the week. Notice also shall be given to other interested individuals, entities and neighborhood organizations that have requested notification, and to similar individuals and groups, as the Zoning Manager ~~City Planner~~ deems necessary. The revocation administrative record shall be mailed with the notice to the property owner and permit holder. Notices also shall be appropriately posted on the property that is the subject of the revocation proceedings. All posted and mailed notices to individuals and entities other than the owner and permit holder shall indicate the availability of the revocation administrative record. Notice by mail is deemed given on the date it is properly addressed and placed in the U.S. mail system. At the discretion of the Hearing Officer, and upon a good cause request by the city, the revocation administrative record may be amended.

### 17.152.150 Appeal to Planning Commission.

If the Hearing Officer's decision is properly appealed to the City Planning Commission, the ~~City~~ Planning Director, upon receipt of a valid appeal, shall forward a complete Hearing Officer hearing record, including a transcript of the Hearing Officer proceedings and the Hearing Officer's written decision, to the City Planning Commission. The Hearing Officer's record of proceedings shall be forwarded to the City Planning Commission prior to the date the Commission hears the appeal. The appeal hearing before the Commission shall not be a de novo hearing.

Any appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Hearing Officer or wherein his/her decision is not supported by the evidence in the record. Upon receipt of such appeal, the Secretary to the Commission shall set the date for consideration thereof. ~~and, n~~Not less than seventeen (17) days prior thereto, ~~give~~ written notice shall be given to: the appellant, any adverse individuals and/or entities, or the attorney, spokesperson, or representative of such individual or entity, other interested groups and neighborhood associations that have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date, time and place of the hearing on the appeal, and, as soon as the same become technologically feasible, post the date, time and place of the hearing on the city's web site. Notice of the appeal shall be posted on the property.

**17.152.170 Appeal to the City Council.**

Upon receipt of the appeal, the City Council shall set the date for consideration thereof. After setting the hearing date, the City Clerk shall notify the Secretary of the Planning Commission of the receipt of the appeal and of the date, time and place set for consideration thereof. ~~; and said Secretary shall, n~~Not less than seventeen (17) days prior thereto, ~~give~~ written notice shall be given to: the appellant, any adverse individual or entity, or to the attorney, spokesperson, or representative of such individual or entity; other interested groups and neighborhood associations who have requested notification; and similar groups and individuals as the Secretary deems appropriate, of the date, time and place of the hearing on the appeal, and as soon as the same becomes technologically feasible, post the date, time and place of the hearing on the city's web site. The City Council shall affirm, modify or reverse the Commission's decision. The decision of the City Council shall be final.

## Chapter 17.155 SPECIAL REGULATIONS APPLYING TO MINING AND QUARRYING EXTRACTIVE ACTIVITIES

**Sections:**



### 17.155.060 Process.

D. Subsequent to the appropriate environmental review, the Planning and Building Department shall prepare a staff report with recommendations for consideration by the City Planning Commission. The City Planning Commission shall hold at least one (1) noticed public hearing on Use Permit and/or Reclamation Plan. Notice shall be given by mail or delivery to all owners and occupants of ~~persons shown on the last available equalized assessment role as owning~~ real property in the City limits 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 on the last available equalized assessment roll shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing. At the conclusion of such hearing or hearings, the Planning Commission shall recommend to the City Council that it should approve, approve with changes, or deny the subject Reclamation Plan and/or Use Permit.

E. The City Council shall hold at least one (1) noticed public hearing on a Use Permit and/or Reclamation Plan. Notice shall be given by mail or delivery to all owners and occupants of ~~persons shown on the last available equalized assessment role as owning~~ real property in the City limits 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 on the last available equalized assessment roll shall not invalidate the affected proceedings. All such notice shall be given not less than seventeen (17) days prior to the date set for the hearing.

## Chapter 17.156 DEEMED APPROVED ALCOHOLIC BEVERAGE SALE REGULATIONS

**Sections:**

### 17.156.070 Definitions.

As used in this Chapter:

**"Full-Service Restaurant"** means any activity described in Oakland Planning Code Section 17.10.272. ~~a place which is regularly and in a bona fide manner used and kept open for the serving of at least lunch and dinner to guests for compensation and which has suitable kitchen facilities connected therewith, containing conveniences for cooking an assortment of foods which may be required for such meals. The sale or service of sandwiches (whether prepared in a kitchen or made elsewhere and heated up on the premises) or snack foods shall not constitute a full-service restaurant. To be considered a Full-Service Restaurant under the Deemed Approved Program, the establishment must meet the following criteria:~~

~~1. A "Full-Service Restaurant" shall serve "meals" to guests at all times the establishment is open for business. An establishment shall not be considered a "full-service restaurant" if it served alcohol without "meal" service being provided with the exception that alcohol sales to restaurant patrons may continue for up to two (2) hours after meal service has ceased to allow guests to comfortably complete their meals.~~

~~2. There shall be a real offer or holding out to sell "meals." Premises shall make an offer or holding out of sales of "meals" to the public by maintaining and displaying a printed menu and/or a menu board. A two-thirds (2/3) majority of the items offered on the menu shall be available at any given time the establishment is open. The mere offering of "meals" without actual sales shall not be deemed sufficient.~~

~~3. The "offer" of "meals" is not adequate to meet the above criteria. A "Full-Service Restaurant" shall make actual and substantial sales of "meals" to guests for compensation. Substantial sales shall mean that no less than sixty percent (60%) of total revenue shall be generated from food service and no more than forty percent (40%) of revenue from the sales of alcohol.~~

~~4. "Meals" means the usual assortment of foods commonly ordered at various times of the day for the cuisine served. The service of snack foods and/or appetizers alone shall not be deemed compliance with this requirement. "Meals" shall be prepared on the premises. Heating of food prepared elsewhere shall not constitute a meal for the purposes of this policy.~~

~~5. Premises shall be equipped for meal service and maintained in good faith. Premises must possess and maintain appliances for the cooking of a variety of foods such as stoves, ovens, broilers, or other devices, as well as pots, pans, or containers that can be used for cooking. Premises shall possess the necessary utensils, table service, and condiment dispensers with which to serve "meals" to the public.~~

~~6. A Full-Service Restaurant shall comply with all local health department standards.~~

~~7. A Full-Service Restaurant may have a separate lounge or bar area provided that the restaurant and bar/lounge area operate as a single entity. The physical layout, entry location(s), spatial connection between the areas, and operational characteristics, among other factors, shall be used to determine compliance. Any bar/lounge area cannot remain open when the dining area is closed. However, the dining area may be open while the bar/lounge area is closed.~~

~~8. To the extent that State Department of Alcoholic Beverage Control (ABC) regulations do not conflict with the above criteria, a Full-Service Restaurant shall comply with all ABC regulations related to "Bona fide public eating place, meals."~~

**"Limited-Service Restaurant and Cafe"** means any activity described in Oakland Planning Code Section 17.10.274. ~~a place that provides food or beverage services to patrons that generally order and pay at a service counter before eating. Food and beverages may be served in disposable containers and may be consumed on the premises or taken out. Seating for on-premises consumption is usually available and table service may or may not be provided. Examples of these activities include, but are not limited to, cafes and restaurants that do not fall under the definition of "Full-Service Restaurant" as used in this Chapter; or the definition of Full-Service Restaurant Commercial Activities, as specified in Section 17.10.272, or Fast-Food Restaurant Commercial Activities, as specified in Section 17.10.280.~~

**Article IV Deemed Approved Status Procedure**

17.156.120 Notification to owners and occupants of Deemed Approved Activities.

17.156.160 Appeal to Planning Commission.

17.156.170 Appeal on the revocation of a Deemed Approved Status to the City Council.

17.156.180 Notification of public hearing.

**17.156.120 Notification to owners and occupants of Deemed Approved Activities.**

The Officer shall notify the owner of each Deemed Approved Activity, and also the property owner and occupant if not the same, of the activity's Deemed Approved Status. Such notice shall be sent via U.S. ~~certified return receipt~~ mail; shall include a copy of the performance standards of Article III of this Chapter with the requirement that these be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review; notification that the activity is required to comply with all these same performance standards; that a review fee is required, and the amount of such fee provided in the master fee schedule; and that the activity is required to comply with all other aspects of the Deemed Approved Alcoholic Beverage Sale regulations. ~~Should the notice be returned, then the notice shall be sent via regular U.S. Mail.~~

**17.156.160 Appeal to Planning Commission.**

Within ten (10) calendar days after imposition of conditions of approval on a Deemed Approved Activity or the revocation of Deemed Approved Status, an appeal may be taken to the City Planning Commission by the Deemed Approved Activity owner 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. Such appeal shall be made on a form prescribed by the City. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Officer or wherein its decision is not supported by the evidence in the record. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, previously presented to the Administrative Hearing Officer prior to the close of the public hearing on the item, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues and/or evidence during the appeal and/or in court. The appeal is not de novo. Upon receipt of the appeal

and the required appeal fee in accordance with Section 17.156.190, the Secretary to the Planning Commission shall set the date for consideration thereof. ~~The Administrative Hearing Officer shall, n~~Not less than seventeen (17) days prior thereto, ~~give~~ written notice shall be given to: the applicant; the appellant in those cases where the applicant is not the appellant; the 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 appropriate, of the date and place of the hearing on the appeal.

During the hearing on the appeal, the appellant will be limited to issues and/or oral, written, and/or documentary evidence presented to the Administrative Hearing Officer prior to the close of the public hearing on the item and raised in the appeal itself, as the appeal is not de novo. The appellant shall not be permitted to present any other issues and/or evidence (written, oral, or otherwise) during the appeal process. In considering the appeal, the Planning Commission shall determine whether the established use conforms to the applicable Deemed Approved performance standards and/or conditions of approval, and may continue or revoke a Deemed Approved Status; or require such changes in the existing use or impose such reasonable conditions of approval as are, in its judgment, necessary to carry out the purposes of the zoning regulations and ensure conformity to said performance standards. The decision of the Planning Commission on the appeal to the conditions of approval imposed by the Administrative Hearing Officer shall be final.

**17.156.170 Appeal on the revocation of a Deemed Approved Status to the City Council.**

Within ten (10) calendar days after the date of a decision by the City Planning Commission to revoke a Deemed Approved Status, an appeal from said decision may be taken to the City Council by any 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. Such appeal shall be made on a form prescribed by the Planning Director and shall be filed with the Planning and Building Department, along with the appropriate fees required by the City's Master Fee Schedule. 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. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, previously presented to City Planning Commission prior to the close of its public hearing on the item, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues and/or evidence during the appeal and/or in court. The appeal is not de novo. Upon receipt of the appeal and an appeal fee in accordance with Section 17.156.190, the Council shall set the date for consideration thereof. The City Clerk shall notify the Secretary of the City Planning Commission of the date set for consideration thereof. ~~; and said Secretary shall, n~~Not less than seventeen (17) days prior thereto, ~~give~~ written notice shall be given to: the owner of the Deemed Approved Activity; the property owner; 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 time, date and place of the hearing on the appeal. During the hearing on the appeal, the appellant will be limited to issues and/or evidence presented prior to the close of the City Planning Commission's public hearing on the item and raised in the appeal itself, as the appeal is not de novo. The appellant shall not be permitted to present any other issues and/or evidence (written, oral, or otherwise) during the appeal process. In considering the appeal, the Council shall determine whether the Deemed Approved Activity conforms to the applicable Deemed Approved performance standards, and may approve or disapprove the revocation or require such changes therein or impose such reasonable conditions of approval as are in its judgment necessary to

carry out the purposes of the zoning regulations and ensure conformity to said standards. The decision of the City Council shall be made by resolution and shall be final.

### 17.156.180 Notification of public hearing.

The Officer shall notify the owner of each Deemed Approved Activity, and also the property owner and occupant if not the same, of the time and place of the public hearing. Such notice shall be sent via U.S. ~~certified return receipt~~ mail, and shall include notification that the Deemed Approved Status of the Deemed Approved Activity will be considered before the Officer. The public hearing shall be noticed by posting notices on the premises of the subject property; notice shall also be given by mail or delivery to all owners and occupants of ~~persons shown on the last available equalized assessment roll as owning~~ real property in the city within three hundred (300) feet of the subject property; provided, however, that failure to send notice to any such owner where his or her address is not shown on the last available equalized assessment roll ~~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 for the hearing, if such is to be held. Fees for notification shall be in accordance with Section 17.156.190 and paid for by the Deemed Approved Activity in question.

A. Notice on Site. A ~~city-provided~~ notice shall be posted on the premises of the subject activity, placed in the window of the activity (if a window facing the street is not present, then the placard will be required to be posted onto the exterior of the building). All notices shall advertise the time, date, purpose and location of the public hearing for each particular site. All notices shall be given not less than seventeen (17) days prior to the date set for the hearing.

B. Notice by Mail. Notice by mail is deemed given on the date the notice is placed into the U.S. Mail system.

## Chapter 17.157 DEEMED APPROVED HOTEL AND ROOMING HOUSE REGULATIONS

**Sections:**

**Article IV Deemed Approved Status Procedure**



### 17.157.090 Notification of owners and occupants of Deemed Approved Hotel Activities.

The city shall notify the owner of each Deemed Approved Hotel Activity, and also the property owner and occupant if not the same, of the activity's Deemed Approved Status. Such notice shall be sent via U.S. ~~certified return receipt~~ mail; shall include a copy of the performance standards of Article III of this Chapter; notification that the activity is required to comply with all these same performance standards; and that the activity is required to comply with all other aspects of the Deemed Approved Hotel regulations. ~~Should the notice be returned, then the notice shall be sent via regular U.S. Mail.~~

### 17.157.130 Appeal to City Planning Commission.

Within ten (10) calendar days after imposition of conditions of approval on a Deemed Approved Hotel Activity or the revocation of Deemed Approved Status, an appeal may be taken to the City Planning Commission by the Deemed Approved Activity owner or any other interested party. In the event the last date of appeal falls on a weekend or a 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. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Officer or wherein its decision is not supported by the evidence in the record. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, previously presented to the Administrative Hearing Officer prior to the close of the public hearing on the item, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues and/or evidence during the appeal and/or in court. The appeal is not de novo. Upon receipt of the appeal and the required appeal fee in accordance with Section 17.157.160 the Secretary of the City Planning Commission shall set a date for consideration thereof. ~~The Secretary of the City Planning Commission shall, n~~Not less than seventeen (17) days prior thereto, ~~give~~ written notice shall be given to: the owner of the Deemed Approved Hotel Activity; the property owner; the appellant in those cases where the appellant is not the owner; the 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 appropriate, of the date and place of the hearing on the appeal.

During the hearing on the appeal, the appellant will be limited to issues and/or oral, written, and/or documentary evidence presented to the Administrative Hearing Officer prior to the close of the public hearing on the item and raised in the appeal itself, as the appeal is not de novo. The appellant shall not be permitted to present any other issues and/or evidence (written, oral, or

otherwise) during the appeal process. In considering the appeal, the City Planning Commission shall determine whether the Deemed Approved Hotel Activity conforms to the applicable Deemed Approved performance standards and/or conditions of approval, and may continue or revoke a Deemed Approved Status; or require such changes in the existing use or impose such reasonable conditions of approval as are, in its judgment, necessary to carry out the purposes of the zoning regulations and ensure conformity to said performance standards. The decision of the City Planning Commission on the appeal to the conditions of approval imposed by the Administrative Hearing Officer shall be final.

**17.157.140 Appeal on the revocation of a Deemed Approved Status to the City Council.**

Within ten (10) calendar days after the date of a decision by the City Planning Commission to revoke a Deemed Approved Status, an appeal from said decision may be taken to the City Council by any interested party. In the event the last date of appeal falls on a weekend or a 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 Planning Director and shall be filed with the Planning and Building Department, along with the appropriate fees required by the City's Master Fee Schedule. 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. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record, previously presented to City Planning Commission prior to the close of its public hearing on the item, which supports the basis of the appeal; failure to do so will preclude the appellant from raising such issues and/or evidence during the appeal and/or in court. The appeal is not de novo. Upon receipt of the appeal and an appeal fee in accordance with Section 17.157.160, the Council shall set the date for consideration thereof. The City Clerk shall notify the Secretary of the City Planning Commission of the date set for consideration thereof. ~~; and said Secretary shall, n~~Not less than seventeen (17) days prior thereto, ~~give~~ written notice shall be given to: the owner of the Deemed Approved Hotel Activity; the property owner; the appellant in those cases where the appellant is not the owner; the 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 appropriate, of the date and place of the hearing on the appeal.

During the hearing on the appeal, the appellant will be limited to issues and/or evidence presented prior to the close of the City Planning Commission's public hearing on the item and raised in the appeal itself, as the appeal is not de novo. The appellant shall not be permitted to present any other issues and/or evidence (written, oral, or otherwise) during the appeal process. In considering the appeal, the Council shall determine whether the Deemed Approved Hotel Activity conforms to the applicable Deemed Approved performance standards and/or conditions of approval, and may approve or disapprove the revocation of the Deemed Approved Status; or require such changes to the existing use or impose such reasonable conditions of approval as are, in its judgment, necessary to carry out the purposes of the zoning regulations and ensure conformity to said performance standards. The decision of the City Council shall be made by resolution and shall be final.

**17.157.150 Notification of public hearing before Administrative Hearing Officer.**

The Officer shall notify the owner of each Deemed Approved Activity, and also the property owner and occupant if not the same, of the time and place of the public hearing. Such notice shall be sent via U.S. ~~certified return receipt~~ mail, and shall include notification that the Deemed Approved Status of the Deemed Approved Hotel Activity will be considered by the Officer. The

public hearing shall be noticed by posting notice on the premises of the subject property; notice shall also be given by mail or delivery to all owners and occupants of ~~persons shown on the last available equalized assessment roll as owning~~ real property in the city within three hundred (300) feet of the subject property; provided, however, that failure to send notice to any such owner where his or her address is not shown on the last available equalized assessment roll ~~in said records~~ shall not invalidate the affected proceedings. Such notices shall be given not less than seventeen (17) days prior to the date set for the hearing, if such is to be held. Fees for notification shall be in accordance with Section 17.157.160 and paid for by the Deemed Approved Hotel Activity in question.

A. Notice on Site. A ~~city-provided~~ notice shall be posted on the premises of the subject activity, placed in the window of the activity (if a window facing the street is not present, then the notice will be required to be posted onto the exterior of the building). All notices shall advertise the time, date, purpose and location of the public hearing for each particular site. All notices shall be given not less than seventeen (17) days prior to the date set for the hearing.

B. Notice by Mail. Notice by mail is deemed given on the date the notice is placed into the U.S. Mail system.