

Case File Number ZA19007

March 4, 2020

**Location:** Citywide.

**Item:** Proposed changes to the Planning Code that relate to the following: 1) where to file and who schedules appeals; 2) accessory auto repair in the D-BV-4 Zone; 3) expiration of a Variance; 4) home occupation regulations; 5) Group Assembly Commercial Activities in the D-BV Zone; 6) appeal of determinations regarding General Plan consistency; 7) front setbacks on small lots in the RM Zones; 8) location of commercial facilities above residential facilities; 9) consideration of Design Review and Conditional Use Permit applications with subdivisions; 10) sidewalk width required for sidewalk cafes; 11) use of barbed and razor wire at construction sites; 12) height and distance of walls from open space zones and the right of way; 13) permit requirements for a change in alcohol licenses; 14) carshare requirements in the Downtown zones; 15) timeframe required to approve a Final Planned Unit Development Permit; 16) defining Small Project Design Review as a discretionary project under the California Environmental Quality Act; and 17) parking requirements for Group Assembly Commercial Activities.

**Applicant:** City of Oakland**Case File Number:** ZA190007**General Plan:** Citywide**Zoning:** Citywide

**Environmental Determination:** The proposed amendments to the Planning Code rely on the previously certified Final Environmental Impact Reports for the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan (1998); the West Oakland, Central City East, Coliseum, and Oakland Army Base Redevelopment Areas; the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, "EIRs"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).

**Staff Recommendation:** Review, discuss and recommend approval to the City Council

**For Further Information:** Contact case planner Neil Gray at 510-238-3878 or [ngray@oaklandca.gov](mailto:ngray@oaklandca.gov)

**SUMMARY**

Staff requests the Planning Commission review the attached Planning Code amendments and recommend their adoption to the City Council. Most of the changes are minor adjustments to existing regulations and clarify ambiguous language. Three changes are more substantial; they relate to home occupations, auto repair in the Broadway-Valdez District Commercial (D-BV) – 4 Zone, and terminating an approved Variance for an inactive activity.

## **BACKGROUND**

Staff proposes several amendments to the Planning Code. Most of the changes are minor adjustments to existing regulations and clarify ambiguous language. Three changes, however, are more substantial: allowing automotive repair that is accessory to an off-site auto showroom in Broadway-Valdez District Commercial (D-BV) - 4 Zone, terminating an approved Variance for an activity if it has not been active for two years, and applying changes to citywide home occupation regulations. The "Proposed Changes" section, below, provides a detailed discussion of the proposed changes to the code.

The proposed changes to the auto repair uses in the D-BV-4 Zone were presented to the Zoning Update Committee (ZUC) on July 17, 2019. At that meeting, the ZUC recommended adoption of the amendments with the following changes:

1. Remove the limitation of requiring the auto repair use to be within a previously existing auto related building;
2. Do not allow outdoor storage of auto vehicles for repair and service;
3. Increase the limit of ten percent expansion in the maximum allowable floor area of the proposed auto repair facility; and
4. Require expansion of auto repair facilities to be approved by the Planning Commission.

Staff has included each of these recommendations in the proposal except item 4. Staff recommends that these cases be decided administratively because the additions will generally be minor. Staff proposes to allow additions of up to 20 percent of the existing floor area instead of the previously proposed 10 percent.

## **PROPOSED AMENDMENTS**

The following is a summary of the proposed amendments grouped in Major Substantive Changes, Minor Substantive Changes, and Non-Substantive Changes. The actual amendments are contained in Attachment A of this report.

### **Major Substantive Changes**

#### **Changes to the Broadway Valdez Zones (Section 17.101C.030)**

*Background.* On October 18, 2018, representatives of Subaru met with Planning staff to discuss the legalization of their auto repair facility at 401 27<sup>th</sup> Street, which supports their showroom at 4133 Broadway. The facility was approved as a showroom in 2013 but had been converted without permits to auto servicing in 2017 despite being an unpermitted activity in the D-BV-4 Zone where it is located. The representatives stated that dealerships need ancillary auto repair facilities to be viable on Auto Row.

Staff has analyzed the Subaru issue in a larger policy context and recommends text amendments that allow stand-alone auto repair facilities in support of existing auto showrooms on Broadway Auto Row.

*Existing regulations.* Under the current D-BV Zone Regulations, Automotive Sales and Rental Commercial Activities require a Conditional Use Permit (CUP) with required findings relating to the indoor or offsite storage of inventory, consistency with the Broadway Valdez District Specific Plan (BVDSP), and preservation of retail frontage. Auto repair and other auto supportive activities are prohibited, unless accessory to an existing dealership on the *same lot*.

*Recommendation.* The proposed regulation would cover some of the North End of the BVDSP from 26<sup>th</sup> Street to I-580 (see Attachment A). There are two zones in that area: the D-BV-3 and D-BV-4 Zones. Only the D-BV-4 zone would be affected as D-BV-3 already conditionally permits Auto Repair and Cleaning

Commercial Activities. The regulation would require a minor CUP for stand-alone auto servicing activities and the activities would only be allowed to apply for a CUP if the following criteria is met:

1. The auto repair facility is between 26<sup>th</sup> Street and I-580, and the auto showroom is on Broadway;
2. With the exception of the building addition described in criteria 3. below, the auto repair activity is within an existing nonresidential facility;
3. The amount of added floor area devoted to the auto repair activity does not exceed twenty percent of that already existing on the affected lot; and
4. All overnight storage of inoperable vehicles and auto repair takes place indoors.

*Analysis.* The BVDSP accommodates the integration of existing auto showrooms and the creation of new showrooms in an urban format into a vibrant mixed use district. Accommodation of showrooms is important to preserve the authenticity and history of the plan area, employment, and sales tax revenue. However, these showrooms are only viable with associated repair services, which must often locate on a separate lot than showrooms due to the limited size of parcels in the plan area. Thus, conditionally permitting auto repair services uses associated with auto showrooms is consistent with intent of the BVDSP and is an appropriate code amendment.

Activity Variance Expiration (New Section 17.148.120)

*Background.* For this report, an “activity Variance” is a Variance that permits an activity type that is otherwise prohibited in the underlying zone. An activity Variance is only permitted upon making required findings. These are considered Major Variances per Section 17.134.020 of the Planning Code and, therefore, require approval by the Planning Commission. Approval of an activity Variance is rare due to the difficulty in making the required findings. However, some have been approved in the past, including ones that allowed industrial activities in residential neighborhoods.

*Existing Regulation.* As currently written in the code, some have argued that approved activity Variances “run with the land”, meaning that owners of the land continue to enjoy the Variance in perpetuity regardless of whether the activity ceases for any period of time. For example, an industrial activity that received an activity Variance to operate in a residentially zoned neighborhood in 1965 and ceased operation in 1970 could arguably reinstate the industrial activity in the present day even if intervening activities were less impactful.

*Recommendation.* Staff recommends that a activity Variance follow the same extinguishment regulations as CUPs. CUPs extinguish if the activity has ceased for two or more years with a possible one year extension to three years total.

*Analysis.* Staff supports this amendment because allowing property owners to depend on activity Variances granted long ago, and not exercised and relied upon for at least two or more years, denies the City an opportunity to review a proposed activity based on current policies and evaluation of impacts on neighborhoods.

Changes to home occupation regulations (Chapter 17.112)

*Existing Regulations.* There are currently two sets of home occupation regulations: one for the West Oakland Specific Plan (WOSP) Area and D-CE-3 Zone and one for the rest of Oakland. The main difference between these two versions is that the WOSP and D-CE-3 version allows home occupations in detached accessory structures, an employee at the home, and customers by appointment. The WOSP and D-CE-3 version also contains text stating that activities involving hazardous materials may require additional City permits while the version applying to the rest of the City does not.

Current regulations also state that only a one square foot by one square foot sign can indicate that an occupation occurs within a home.

*Recommendation.* Staff proposes moving replacing the existing Citywide home occupations in Chapter 17.112 with the home occupations that apply to the WOSP and the D-CE-3 Zone. This includes allowing home occupations in detached accessory structures, an employee at the home, and customers by appointment throughout the City. It also includes placing the text regarding hazardous materials in the Citywide version and requiring that the character defining features of a building be maintained in all home occupations. Finally, staff proposes to change the definition of “home occupation” in Chapter 17.09.040 to include “Limited Agricultural Activities and/or bee keeping, in an outdoor area” to match the definition of Home Occupations in Chapter 17.112.

*Analysis.* These changes will bring Citywide consistency to the home occupation regulations. Allowing businesses to operate in accessory structures, customers by appointment, and one employee at home have not generated complaints in West Oakland or the Central Estuary area. These changes will provide flexibility to entrepreneurs working out of their home. Providing text regarding hazardous materials is an important notice to all Oakland residents with home occupations to get proper permitting. Providing a business description and materials to Building Services and the Fire Department will provide a window for review and allow the departments to provide guidelines to the business owner to ensure safety and compliance. Finally, requiring the preservation of character defining features provides important design criteria for homes containing occupations.

**Minor Substantive Changes**

**Appeals of determinations of a project’s conformance to the General Plan to Planning Commission (Section 17.01.120(C))**

*Existing Regulation.* This subsection allows an applicant to ask the Planning Director to determine whether a project is consistent with the Land Use and Transportation Element of the General Plan (LUTE) after a notice to the neighborhood. This determination can be appealed to the City Council.

*Recommendation.* Staff proposes to have this determination appealable to the Planning Commission instead of the City Council.

*Analysis.* Staff makes this recommendation because all other staff level determinations are appealable to the Planning Commission, not the City Council. Staff does not see a compelling reason why this determination should have a different process.

**Setbacks for smaller lots (Table 17.17.04)**

*Existing Regulation.* Lots smaller than 4,000 square feet are allowed reduced minimum setbacks in the Mixed Housing Type Residential Zones. There is currently no listing in Table 17.17.04 for front setbacks.

*Proposed Regulation.* Allow lots smaller than or equal to 4,000 square to have reduced minimum setbacks. Add in front yard setback regulations that match a prior table.

*Analysis.* This is a correction to a prior code update. Several lots in Oakland are 4,000 square feet and require reduced setbacks to feasibly construct new residential units. Adding front setback requirements in Table 17.17.04 to match a previous table is convenient for the reader.

Additional activities that create credit for dwelling units in the D-BV-1 Zone (Table 17.101C.01)

*Existing Regulation.* In the Broadway Valdez District- 1 (D-BV-1) Zone, commercial floor area must be constructed to establish a certain number of residential units. With the exception of a movie theater, these activities must be on the ground floor.

*Proposed Change.* Also allow second floor fitness clubs, yoga studios, martial arts studios, bowling alleys, theaters, and night clubs to count toward the minimum retail area to earn additional residential units.

*Analysis.* These are valuable amenities for a neighborhood that may not necessarily create an appropriate ground floor retail continuity, and traditional retail does not work as well on an upper floor.

Restriction on locating nonresidential activities over residential activities in commercial zones (Section 17.102.180)

*Existing Regulation.* This section only allows commercial or industrial activities to be conducted above residential activities in a commercial zone upon the granting of a CUP. HBX, CIX, and D-CE Work/Live Facilities are exempted from this limitation.

*Proposed Regulation.* Allow commercial activities to be conducted above residential activities by right in commercial zones.

*Analysis.* These changes allow more flexibility in the location of businesses and will provide opportunities for business incubator spaces within mixed use buildings.

Space allowed for Sidewalk Café Nonresidential Facilities (Section 17.103.090)

*Existing Regulation.* Sidewalk cafes are required to leave at a minimum of five and one-half-foot of unobstructed sidewalk wherever they are providing outdoor seating.

*Proposed Regulation.* The new regulation would require sidewalk cafes to leave five and one-half feet or 50 percent of the overall sidewalk width, whichever is greater. The update also adds utility poles, tree wells, and sidewalk planter strips to the list of obstacles that constitute obstruction.

*Analysis.* This change will assure that space is available for pedestrians, especially those in wheelchairs, while also allowing outdoor seating.

Razor and barbed wire around construction sites (Chapter 17.108.140(B))

*Existing Regulations.* Currently, neither barbed nor razor wire are allowed to be used in fences in residential or commercial zones.

*Proposed Regulation.* This change will allow the use of barbed and razor wire in fences in residential and commercial zones to enclose sites for the duration of construction, provided that the Director of City Planning determines that trespassing could be present and represent a public safety hazard. It will also add electrical wire to the list of prohibited materials in all fences.

*Analysis.* Barbed wire and razor wire are dangerous and unsightly, hence their current prohibition. However, arson, trespassing, and theft are constant issues for construction sites. Keeping trespassers out of construction sites is a public safety issue, and theft of construction materials adds to the cost of building in Oakland.

Fences and walls in nonresidential zones near residential and open space zones and the right of way (Section 17.108.140(C))

*Existing Regulations.* If within ten feet of a residential zone, fences and walls in a commercial or industrial zone can be a maximum eight feet tall “by right” and ten feet tall upon the granting of Small Project Design Review approval.

*Proposed Regulation.* Extend this limit to a wall within ten feet of the public right-of-way or open space zone. The proposal also requires fences between eight and ten feet tall to contain landscape screening.

*Analysis.* This proposal will soften the appearance of fences visible by the public, park visitors, and residents.

Change of ABC license in restaurants mapped in a restricted area (Section 17.114.070)

*Existing Regulation.* A CUP is required for any change in a nonconforming activity involving the sale of alcoholic beverages at a full-service restaurant in a “restricted area” that requires a new type of alcoholic beverage license from the State of California Department of Alcoholic Beverage Control (ABC). Restaurants in restricted areas require a CUP to sell alcohol.

*Proposed Regulation.* This proposed change removes the CUP requirement.

*Analysis.* Ordinance 13527, adopted by the City Council on April 2<sup>nd</sup>, 2019, removed restricted areas from the City. Therefore, this regulation is no longer relevant.

Change in parking requirement for Group Assembly Commercial Activities (Section 17.116.105)

*Existing Regulation.* Group Assembly Commercial Activities has the following parking requirement outside of Downtown:

One (1) space for each fifteen (15) seats in indoor places of assembly with fixed seats, plus one space for each one hundred (100) square feet of floor area in indoor places of assembly without fixed seats, plus a number of spaces to be prescribed by the Director of City Planning, pursuant to Section 17.116.040, for outdoor assembly.

Section 17.10.380 of the Planning Code describes Group Assembly Commercial Activities as:

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) square feet or more of classroom or instructional space;
- Drive-in theaters;
- Theaters or venues with three thousand (3,000) 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) square feet or more of floor area.

*Proposed Regulation.* Outside of Downtown, reduce the parking space requirement to one space per 600 feet of floor area on the ground floor and 1,000 square feet of floor area above the ground floor area for all Group Assembly activities exempt theaters, cabarets, and nightclubs with performance and/or dance space.

*Analysis.* Requiring one space per 100 square feet of floor area for yoga studios, fitness clubs, martial arts studios and similar activities requires more parking than is feasible for these businesses. The new requirements would be equivalent to restaurants, retail stores, and most other businesses.

Downtown car share space requirement (Section 17.116.105)

*Existing Regulation.* New multifamily buildings of ten or more units in CBD and D-LM zones must provide car-share spaces.

*Proposed Regulation.* This update to the zoning code would require multifamily dwellings of five or more units in the CBD and D-LM zones to provide car-sharing spaces.

*Analysis.* This change will result in the creation of more car-sharing spaces in Downtown Oakland. Minimal parking requirements and increased densification of development makes car-sharing an integral transportation option for downtown employees and residents.

Conditional Use Permits related to Planned Unit Developments or subdivisions (Section 17.134.110)

*Existing Regulation.* CUP approval that is part of a Planned Unit Development (PUD) can be filed separately from the associated subdivision map.

*Proposed Regulation.* The proposal would require the CUP, PUD, and subdivision to be applied for simultaneously.

*Analysis.* These applications should be considered together so staff can fully evaluate the findings required to approve the CUP and subdivision. Bifurcating these processes runs the risk of approving a CUP for a project that may not meet the findings to approve the subdivision.

Subdivision and Design Review approval (Section 17.136.120)

*Existing regulation.* Projects that require both design review and subdivision approval to be constructed do not have to be considered together.

*Proposed regulation.* Require that projects that require both design review and subdivision approval be considered together.

*Analysis.* Occasionally, a subdivision evaluation requires changes in the design of a building. If the design and subdivision are evaluated during the same process, then these changes can be made during the design review process.

Timing of a final development plan after approval of a Planned Unit Development (Section 17.140.040)

*Existing Regulation.* Current planning code requires developers to submit a Final Development Plan (FDP) within one year of approval of a Preliminary Development Plan (PDP) as part of a PUD permit. A PDP shows the location and design of rights of ways; use, location, and approximate dimensions of structures;

and the location of parks and other public facilities. The FDP shows the location of infrastructure; detailed architectural plans; detailed plans for street improvements; and grading or earth-moving plans.

*Proposed Regulation.* This proposal will allow developers two years to submit their final development plan after their PUD has been approved.

*Analysis.* This change is consistent with timeframes in the Planning Code regarding the submission of building permit applications after Planning approval. Two years is also an appropriate timeframe to require FDP submission because they are complex submittals that require review from several different City agencies.

Residential bonus in Planned Unit Developments (Section 17.142.100)

*Existing Regulation.* Through a PUD process, a project can incorporate certain activities that are not otherwise allowed in a zone. One allowed activity is Permanent Residential Activities.

*Proposed Regulation.* Do not allow Permanent Residential Activities as an allowed bonus through the PUD process.

*Analysis.* Allowing residential activities in areas that do not allow residential activities runs the risk of eroding the City's industrial zones.

Location to file an appeal (Sections 17.01.080B, 17.132.040, 17.134.070A/B, 17.136.090, 17.140.070, 17.144.070, 17.144.090, 17.148.070A/B, 17.152.070, 17.156.170, and 17.157.140)

*Existing Regulations.* These sections state that appeals need to be filed with the City Clerk using a form prescribed by the Planning Commission.

*Proposed Regulation.* The proposal will require that appeals be filed with the Bureau of Planning using a form prescribed by the Planning and Building Director.

*Analysis.* This new text will accurately reflect current practice. The current code has created confusion among applicants that have attempted to file appeals with the City Clerk only to be referred to the Bureau of Planning.

Listing Special Project Design Review as a discretionary permit (Section 17.158.190)

*Existing Regulations.* Section 17.158.190 lists the Planning Code permits that are considered discretionary for the purposes of CEQA. This list is important because only discretionary projects can be considered under the California Environmental Quality Act (CEQA). The current list of discretionary permits includes the following:

1. CUPs;
2. Small project design review, as defined in Chapter 17.136 of the Oakland Planning Code;
3. Regular design review, as defined in Chapter 17.136 of the Oakland Planning Code;
4. Development agreements;
5. PUDs;
6. Rezonings; and
7. Variances.

*Proposed Regulation.* Staff recommends that Special Project Design Review, a process created in 2016 for the evaluation of some industrial developments, be added to this list. This process is similar to Small



Project Design Review, which is also on the list. Special Project Design Review approvals are discretionary because they include subjective criteria and conditions of approval.

**Non-Substantive Changes**

**Adding missing note to development standards table for the RM Zones (Table 17.17.03)**

*Existing Regulation.* There is no reference to note 7 in the row stating the required front yard setback in the RM Zones. This note allows reduced front yard setbacks for commercial buildings in the “C” combining zone.

*Proposed Regulation.* Place reference to note 7 in the row corresponding to the front yard setback.

*Analysis.* This is a correction to a prior code update. The “C” overlay is applied to small commercial nodes within the Mixed Housing Type Residential LUTE designation. A reduced front yard setback is appropriate for commercial buildings.

**Rewording of a limitation on commercial activities in the Central Business District – Residential Zone (Table 17.58.01)**

*Existing Regulation.* Commercial activities are generally limited to the ground floor in the residential zone of the Central Business District. There are two exceptions to this limitation. Upon the granting of a CUP, an activity of 2,000 square feet or less in a Local Register historic property may be above the ground floor, and a principal activity can extend to the second floor if there is an internal connection between the spaces.

*Proposed Regulation.* No change to the regulation, only a rewording for clarity.

*Analysis.* Staff and the public have complained regarding the wording of this regulation. The corrections in the proposed ordinance provide clarity.

**ENVIRONMENTAL DETERMINATION**

The proposed amendments to the Planning Code rely on the previously certified Final Environmental Impact Reports for the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan (1998); the West Oakland, Central City East, Coliseum, and Oakland Army Base Redevelopment Areas; the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, “EIRs”). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment).

**KEY ISSUES AND IMPACTS**

Staff requests that the Planning Commission recommend to the City Council adoption of the Planning Code amendments contained in Attachment A. The expiration of activity Variances are an important protection against the impacts of industrial operations in residential neighborhoods, and allowing accessory auto repair activities provides important flexibility for auto uses in the Broadway/Valdez Specific Plan area. Finally, allowing home occupations in detached accessory

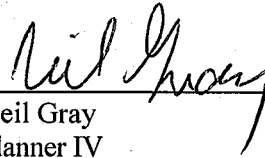
structures, an employee at the home, and customers by appointment has been successful in the Central Estuary and West Oakland Areas and should be applied throughout the City. Staff believes the remainder of the changes are relatively minor, common sense adjustments to the Planning Code.

**STAFF RECOMMENDATION**

For the reasons described in this report, staff recommends that the Planning Commission:

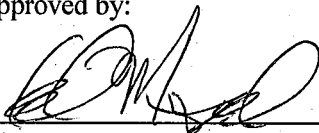
1. Affirm staff's environmental determination; and
2. Recommend that the City Council approve the proposed Planning Code amendments.

Prepared by:



Neil Gray  
Planner IV

Approved by:



Ed Manasse, Deputy Planning Director  
Department of Planning and Building

**ATTACHMENTS:**

- A. Proposed Code Amendment

## ATTACHMENT A: PROPOSED AMENDMENTS TO THE PLANNING CODE

The following are the Planning Code amendments proposed by staff. Deletions are in ~~strike-out~~ and additions are underlined.

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

#### Sections:

17.01.080 Appeal of Director's determination.

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

#### **17.01.080 Appeal of Director's determination.**

- B. Within ten (10) calendar days of a written determination by the Director of City Planning pursuant to Subsection 17.01.120.C. an appeal of such determination may be taken to the City Planning Commission Council by the applicant or any other interested party. Such appeal shall be accompanied by a fee as prescribed in the City master fee schedule. 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 Director and shall be filed with the Planning and Building Department, City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Planning Director or wherein his or her decision is not supported by the evidence in the record. Upon receipt of such appeal, the Secretary of the City Planning Commission Council shall set the date for consideration thereof. ~~After the hearing date is set, the Planning Director shall refer the matter to the Planning Commission for its review and advice. The Planning Commission shall consider the matter at its next available meeting. Such referral shall be only for the purpose of issue clarification and advice to the City Council. The Secretary City Clerk shall not less than seventeen (17) days prior to the Commission Council hearing, give written notice of the date and place of the hearing on the appeal 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. In considering the appeal, the Commission Council shall determine whether the proposal conforms to the provisions of Subsection 17.01.120.C., and may approve or disapprove the proposed determination. The decision of the City Planning Commission Council shall be made by resolution and shall be final.~~

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

- 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 within three hundred (300) feet of the property involved. The Director's determination may be appealed to the City Planning Commission Council pursuant to Section 17.01.080B.

**Chapter 17.09 DEFINITIONS**

**Sections:**

17.09.040 Definitions.

**"Home occupation"** means an accessory activity of a nonresidential nature which is performed within a living unit; or within a garage or accessory structure attached or detached thereto and reserved for use therefore, by an occupant of the living unit and which is customarily incidental to the residential use of the living unit; or for Limited Agricultural Activities and/or bee keeping, in an outdoor area which is reserved for use by an occupant of the living unit and customarily incidental to the residential use of the living unit. A home occupation shall be subject to the provisions of Chapter 17.112.

**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., and N 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.)

- A. Off-street parking and loading serving a principal activity, whether located on the same lot thereas or on a different lot, but only if the facilities involved are reserved for the residents, employees, patrons, or other persons participating in the principal activity;
- B. Home occupations, subject to the applicable provisions of the home occupation regulations in Chapter 17.112;
- C. Residential occupancy in connection with a principal Nonresidential Activity on the same lot, but only:
  1. If the residents are required to remain on the premises for protective, conference, or comparable technical purposes, or
  2. As joint living and work quarters subject to the applicable provisions of Section 17.102.190;
- D. Operation of an employee cafeteria by a firm engaging in a principal Nonresidential Activity on the same lot;
- E. Sale of goods on the same lot as a principal Civic Activity, but only if such goods are available only to persons participating in the principal activity;
- F. Production of goods for sale by a firm engaged in a principal Commercial Activity on the same lot, but only if:
  1. All goods so produced are sold at retail by the same firm either on the same or other lots, and
  2. Such production does not occupy more than seventy-five percent (75%) of the total floor area and open sales, display, storage, and service area occupied by such firm on the lot, and
  3. Such production does not occupy more than three thousand (3,000) square feet of such floor area and open area;
- G. Storage of goods sold by a principal Commercial Activity, or used in or produced by a principal Industrial Activity, engaged in by the same firm on the same lot;
- H. Operation of an administrative office of a firm engaged in a principal Industrial Activity on the same lot, but only if such office does not occupy more than fifty percent (50%) of

the total floor area and open sales, display, storage, and service area occupied by such firm on the lot;

- I. Wholesale sale, or retail sale of goods produced by a principal Industrial Activity on the same lot;
- J. Temporary construction, grading, and demolition activities which are necessary and incidental to the development of facilities on the same lot, or on another of several lots being developed at the same time;
- K. Temporary conduct of a 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;
- L. Benches, street furniture, lighting, public art, sheds, and similar infrastructure associated with city and regional parks;
- 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-2 and D-BV-4 Zones upon the granting of a Conditional Use Permit according to the requirements of limitation L18 in Table 17.101C.01.

**Chapter 17.17 RM MIXED HOUSING TYPE RESIDENTIAL ZONES REGULATIONS**

**Sections:**

17.17.050 Property development standards.

**17.17.050 Property development standards.**

**Table 17.17.03: Property Development Standards**

Development Standards	Zones				Additional Regulations
	RM-1	RM-2	RM-3	RM-4	
<b>Minimum Setbacks for Lots Equal to or Greater than Four Thousand (4,000) Square Feet</b>					
Minimum front ( $\leq 20\%$ street-to-setback gradient)	20 ft.	20 ft.	15 ft.	15 ft.	4, 5, <u>7</u>
Minimum front ( $> 20\%$ street-to-setback gradient)	5 ft.	5 ft.	5 ft.	5 ft.	4, 5, 6, <u>7</u>

7. No front or side setbacks are required for commercial facilities in the C Combining Zone except wherever an interior side lot line of any lot located in the C Combining Zone abuts an interior side lot line of any lot that is not located in a C Combining Zone or Commercial Zone, there shall be provided on the former lot, along the abutting portion of its side lot line, a side yard with a minimum width of five (5) feet. (Where it abuts a rear lot line, no yard is required). Section 17.108.080 still applies. Also, see Section 17.108.130 for allowed projections into setbacks.

B. **Reduced Setbacks for Smaller Lots.** Table 17.17.04 below prescribes reduced setback standards for lots less than four thousand (4,000) square feet. The number designations in the "Additional Regulations" column refer to the regulations listed at the end of the Table.

**Table 17.17.04 Reduced Setbacks for Smaller Lots (Less than Four Thousand (4,000) Square Feet)**

Regulation	Lot Size		Additional Regulations
	$\leq 4,000$ sf. or $\leq 40$ feet wide	$\leq 3,000$ sf. or $\leq 35$ feet wide	
<b>Minimum Setbacks</b>			
Minimum front ( $\leq 20\%$ street-to-setback gradient)	15 ft.	15 ft.	<u>1</u>
Minimum front ( $> 20\%$ street-to-setback gradient)	5 ft.	5 ft.	<u>1</u>
Minimum interior side	4 ft.	3 ft.	1
Minimum street side	4 ft.	3 ft.	1
Rear	15 ft.	15 ft.	1



**Additional Regulations for Table 17.17.04:**

1. No front or side setbacks are required for commercial facilities in the C Combining Zone except wherever an interior side lot line of any lot located in the C Combining Zone abuts an interior side lot line of any lot that is not located in a C Combining Zone or Commercial Zone, there shall be provided on the former lot, along the abutting portion of its side lot line, a side yard with a minimum width of four (4) feet for lots less than 4,000 sf. and a minimum width of three (3) feet for lots equal to or less than 3,000 sf. (Where it abuts a rear lot line, no yard is required). Section 17.108.080 still applies. Also, sSee Section 17.108.130 for allowed projections into setbacks.

**Chapter 17.58 CBD CENTRAL BUSINESS DISTRICT ZONES REGULATIONS** <sup>[25]</sup>

**Sections:**

**17.58.040 Permitted and conditionally permitted activities.**

**17.58.040 Permitted and conditionally permitted activities.**

Table 17.58.01 lists the permitted, conditionally permitted, and prohibited activities in the CBD Zones. The descriptions of these activities are contained in Chapter 17.10.

"P" designates permitted activities in the corresponding zone.

"C" designates activities that are permitted only upon the granting of a conditional use permit (see Chapter 17.134 for the CUP procedure) in the corresponding zone.

"L" designates activities subject to certain limitations or notes listed at the bottom of the Table.

"—" designates activities that are prohibited except as accessory activities according to the regulations contained in Section 17.010.040.

**Table 17.58.01: Permitted and Conditionally Permitted Activities**

Activities	CBD-R	CBD-P	CBD-C	CBD-X	Additional Regulations
<b>Civic Activities</b>					
Administrative	P(L4)(L7)	P(L5)	P	P	
<b>Commercial Activities</b>					
General Food Sales	P(L4)(L7)	P(L4)	P	P	
Full Service Restaurants	P(L4)(L7)	P	P	P	
Limited Service Restaurant and Cafe	P(L4)(L7)	P	P	P	
Fast-Food Restaurant	—	C	C	C	17.103.030 and 8.09
Convenience Market	C(L7)	C	C	C	17.103.030
Alcoholic Beverage Sales	C(L7)	C	C	C	17.103.030 and 17.114.030
Mechanical or Electronic Games	—	C	C	C	
Medical Service	P(L4)(L7)	P(L5)	P	P	
General Retail Sales	P(L4)(L7)	P	P	P	

Activities	CBD-R	CBD-P	CBD-C	CBD-X	Additional Regulations
Large-Scale Combined Retail and Grocery Sales	—	—	—	—	
Consumer Service	P(L4)(L7)(L9)	P(L4)(L9)	P(L9)	P(L9)	
Consultative and Financial Service	P(L4)(L7)	P(L5)	P	P	
Check Cashier and Check Cashing	—	C(L10)	C(L10)	C(L10)	17.103.040
Consumer Cleaning and Repair Service	P(L4)(L7)	P(L5)	P	P	
Consumer Dry Cleaning Plant	C(L7)	C	C	C	
Group Assembly	C(L7)(L11)	P(L4)(L11)	P(L11)	P(L11)	
Personal Instruction and Improvement Services	P(L4)(L7)	P(L5)	P	P	
Administrative	P(L4)(L7)	P(L5)	P	P	
Business, Communication, and Media Services	P(L4)(L7)	P(L5)	P	P	
Broadcasting and Recording Services Commercial Activities	—	P(L5)	P	P(L4)	
Research Service	P(L4)(L7)	P(L5)	P	P	

**Limitations on Table 17.58.01:**

**L7.** These activities ~~may~~ shall only be located on or below the ground floor of a building with the following two exceptions:

- a) Upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP process), an activity is permitted anywhere above the ground floor if the floor area devoted to the activity is both: 1) less than or equal to two thousand (2,000) square feet; and 2) in a Local Register property, then the activity is permitted anywhere above the ground floor upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP process); and
- b) An activity located on the ground floor may extend to the second floor of a building if each: 1) the floor area devoted to Nonresidential Activities in the building is less than the floor area devoted to Residential Activities; 2) the activity on the second floor is the same as, or accessory to, the ground floor activity and part of the same business or establishment; and 3) there is a direct internal connection between the ground floor and the second story activities.

**Chapter 17.101C D-BV BROADWAY VALDEZ DISTRICT COMMERCIAL ZONES REGULATIONS**

Sections:

17.101C.030 - Permitted and conditionally permitted activities.

**17.101C.030 - Permitted and conditionally permitted activities.**

Table 17.101C.01 lists the permitted, conditionally permitted, and prohibited activities in the D-BV Zones. The descriptions of these activities are contained in Chapter 17.10. Section 17.10.040 contains permitted accessory activities.

"P" designates permitted activities in the corresponding zone.

"C" designates activities that are permitted only upon the granting of a Conditional Use permit (CUP) in the corresponding zone (see Chapter 17.134 for the CUP procedure).

"L" designates activities subject to certain limitations or notes listed at the bottom of the table.

"—" designates activities that are prohibited except as accessory activities according to the regulations contained in Section 17.010.040.

**Table 17.101C.01: Permitted and Conditionally Permitted Activities**

Activities	Zones				Combining Zone*	Additional Regulations
	D-BV-1	D-BV-2	D-BV-3	D-BV-4	N*	
<b>Civic Activities</b>						
Essential Service	P(L2019)	P(L2019)	P(L2019)	P(L232)	P(L2019)	
<b>Commercial Activities</b>						
Automobile and Other Light Vehicle Gas Station and Servicing	—(L17)	—(L17)	C(L5)	—(L17)	—(L17)	
Automobile and Other Light Vehicle Repair and Cleaning	—(L17)	—(L17) (L18)	C(L5)	—(L17) (L18)	—(L17)	
Automotive Fee Parking	P(L198)	P(L198)	P(L198)	P(L198)	P(L198)	
<b>Agriculture and Extractive Activities</b>						
Limited Agriculture	—	—	—	C(L210)	—	
Extensive Agriculture	—	—	—	C(L221)	—	

\*If the N Combining Zone, the N regulations supersede the primary zone.

**Limitations on Table 17.101C.01:**

**L12.** Only these activities can be counted towards the minimum retail floor area that is required ~~in order to develop Residential Facilities~~ pursuant to Sections 17.101C.050C and Section 17.101C.050D. For General Food Sales Commercial Activities, no more than five thousand (5,000) square feet can be counted toward the minimum retail area; for Group Assembly Commercial Activities, only a movie or other theatre, fitness club, exercise studio, yoga studio, martial arts space, bowling alley, and night club that is above the ground floor can be counted toward the minimum retail area; for Automobile and Other Light Vehicle Sales and Rental Commercial Activities, only the interior showroom space can be counted toward the residential bonus threshold (space for auto repair, interior/outdoor inventory storage, and outdoor sales is not included). For pharmacies that fall within the General Retail Sales Commercial Activities: (a) if the retail component of the store is predominantly comparison goods, then the activity is permitted and counts toward the minimum retail floor area that is required in order to develop Residential Facilities; (b) if the retail component of the store is predominantly convenience goods, then the activity does not count toward the minimum retail floor area that is required in order to develop Residential Facilities and is only permitted upon the granting of a Conditional Use Permit (CUP) (see Chapter 17.134 for the CUP procedure), and shall conform to the CUP criteria contained in Section 17.134.050. As described in the Broadway Valdez District Specific Plan and as further determined by the Planning Director: comparison goods include items such as clothing, jewelry, toys, books, sporting goods, home furnishings, appliances, and electronics; and convenience goods include items such as groceries, toiletries, alcoholic and soft drinks, tobacco products, candy, magazines, and newspapers.

**L17.** Reestablishment of a discontinued, legal non-conforming Automobile and Other Light Vehicle Gas Station and Servicing activity and/or an Automotive and Other Light Vehicle Repair and Cleaning activity may only occur no later than six (6) months after discontinuation of such a activity, per Section 17.114.050(A).

**L18.** An auto showroom and its accessory automotive repair activity are permitted to be on separate lots upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure). In addition to the CUP criteria contained in Section 17.134.050, the project must also meet each of the following criteria:

1. The auto repair facility is between 26<sup>th</sup> Street and I-580, and the auto showroom is on Broadway;
2. With the exception of the building addition described in criteria 3. below, the auto repair activity is within an existing nonresidential facility;
3. The amount of added floor area devoted to the auto repair activity does not exceed twenty percent (20%) of that already existing on the affected lot; and
4. All overnight storage (including inoperable vehicle storage) and auto repair takes place indoors.

**L198.** Automotive Fee Parking is permitted when located on a lot containing a principle facility. Automotive Fee Parking is also permitted in a multi-story parking garage to serve nearby businesses upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure). In addition to the CUP criteria contained in Section 17.134.050, these conditionally permitted ground floor activities must also meet each of the ~~additional~~ criteria contained in L5.

**L2019.** Community Gardens and Botanical Gardens are only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure).

**L210.** Limited Agriculture is only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure). In addition to the CUP criteria contained in Section 17.134.050, this activity must meet the following use permit criteria:

1. The proposal will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood in terms of noise, water and pesticide runoff, farming equipment operation, hours of operation, odor, security, and vehicular traffic;
2. Agricultural chemicals or pesticides will not impact abutting properties or the surrounding neighborhood; and
3. The soil used in growing does not contain any harmful contaminants and the activity will not create contaminated soil.

**L224.** Extensive Agriculture is only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure). In addition to the criteria contained in Section 17.134.050, this activity must meet the following use permit criteria:

1. The proposal will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood in terms of noise, water and pesticide runoff, farming equipment operation, hours of operation, odor, security, and vehicular traffic.

**L232.** Community Gardens are permitted outright if they do not include the cultivation of animals, animal products, and/or livestock production, except for bee keeping involving no more than three (3) hives. The cultivation of animals, animal products and/or livestock production, except for bee keeping involving no more than three (3) hives, is only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure).

## Chapter 17.101E D-CE CENTRAL ESTUARY DISTRICT ZONES REGULATIONS

### Sections:

~~17.101E.100 Special Regulations for Home Occupation in the D-CE-3 Zone.~~

### **17.101E.100 Special Regulations for Home Occupation in the D-CE-3 Zone.**

~~A. Purpose and Applicability. The special home occupation regulations described below shall apply in the D-CE-3 Zone only. The purpose of these regulations is to prescribe the expanded conditions under which nonresidential activities may be conducted in the D-CE-3 Zone when incidental to Residential Activities. These special home occupation regulations are intended to incentivize the preservation of historic homes in the Jingtowntown/Elmwood neighborhood, and to encourage more home-based artisan crafts in the district. The historic character-defining features of the structures must be maintained. For home occupation regulations in all other zones, see Planning Code Chapter 17.112.~~

#### ~~B. Definitions.~~

- ~~1. A "home occupation" is an accessory activity of a nonresidential nature which is performed within a living unit, or within a garage or accessory structure attached or detached thereto and located on the lot as the living unit, or, for Limited Agricultural Activities and/or bee keeping, in an outdoor area on the same lot as a living unit by an occupant of the living unit and which is customarily incidental to the residential use of the living unit. A home occupation may include, but is not limited to, the handicraft or custom manufacture of products, Limited Agricultural Activities (unless the activities include mechanized farming equipment), bee keeping (unless the activities include more than three (3) hives), the conduct of an art or profession, the offering of a service, or the conduct of a business, subject to the provisions of this Chapter.~~
- ~~2. For the purpose of this Chapter, 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. This activity does not include the keeping, grazing, or feeding of animals, except for bee keeping involving no more than three (3) hives. Any on-site sales of agricultural products are limited to no more than four (4) times per year between the hours of 8:00 am and 9:00 pm in a temporary movable structure not exceeding two hundred (200) square feet in size.~~
- ~~3. For the purpose of this Chapter only, a "bee keeping activity" is the maintenance of honey bee colonies, commonly in hives, by one or more persons. A bee keeper keeps bees in order to collect their honey and other products that the hive produces, to pollinate crops, or to produce bees for sale to other bee keepers.~~

~~C. Exclusions. The following activities shall not in any case qualify as home occupations:~~

- ~~1. Introductory service;~~
- ~~2. Teaching of organized classes totaling more than six (6) persons at a time;~~

- ~~3. Accommodation of more than three (3) paying guests within a One Family Dwelling Residential Facility, or of any number of paying guests within a living unit in any other type of Residential Facility;~~
- ~~4. Operation of a beauty parlor with more than two (2) hairdrying machines;~~
- ~~5. Maintenance of a construction contractor's storage or construction yard or garage;~~
- ~~6. Care, treatment, or boarding of animals for profit;~~
- ~~7. Agricultural Activities that include the use of mechanized farm equipment.~~
- ~~8. Bee keeping activities that include more than three (3) hives.~~

~~D. Requirements.~~

- ~~1. Location. A home occupation shall only be performed in the following locations:
  - ~~a. Within a living unit by a resident thereof;~~
  - ~~b. Within an attached or detached garage or accessory structure reserved for a living unit; however, existing parking must be maintained or replacement parking provided.~~
  - ~~c. For Limited Agricultural Activities and bee keeping only, in an outdoor area on the same lot as a living unit, but only if the home occupation activity does not include the use of mechanized farming equipment or involve the keeping of more than three (3) bee hives.~~~~
- ~~2. Customers by Appointment. Professional and personal services shall only be provided by appointment except in rare and unusual circumstances. Regular walk-in clients are prohibited.~~
- ~~3. Nonresident Employees. One (1) nonresident employee is permitted. For the purpose of this chapter, the term "nonresident employee" includes an employee, business partner, co-owner, or other person affiliated with the home occupation, who does not live at the site, but who visits the site as part of the home occupation business. One (1) "nonresident employee" does not include when there are sequential employee shifts with each shift staffed by a different employee, even when only one (1) nonresident employee is at the site at any one (1) time. Only one (1) nonresident employee is permitted per residential unit, even if more than one (1) home occupation business operates at the subject unit.~~
- ~~4. Articles Sold. Articles offered for sale shall be limited to those produced on the premises, except where the home occupation serves as an agent or intermediary between off-site suppliers and off-site customers, in which case all articles, except for samples, shall be received, stored, and sold directly to customers at off-premises locations.~~
- ~~5. Exterior Appearance and Signs. There shall be no outside or window display of materials or products. No outside or window Sign shall advertise or otherwise identify the home occupation except for one (1) Sign with a display surface of not more than one (1) square foot on any face. Such Sign shall be nonmoving, and its illumination, if any, shall be indirect and non-flashing. There shall be no other exterior indication of the home occupation, and no impairment of the residential appearance of the facilities within which the home occupation is conducted.~~
- ~~6. Retention of Historic Character Defining Features. The historic character defining features of the building shall be maintained in all home occupations.~~



- ~~7. Vehicular Storage. No commercial or passenger vehicle carrying any Sign advertising or otherwise identifying the home occupation shall be parked on any portion of the lot where such Sign is visible at any lot line of the lot containing the home occupation.~~
  - ~~8. Traffic Generation. The home occupation shall not generate vehicular traffic substantially greater than that normally generated by Residential or Nonresidential Activities in the surrounding area.~~
  - ~~9. Nuisances. The home occupation shall be so conducted as not to cause offensive or objectionable noise, vibration, smoke, odors, humidity, heat, cold, glare, dust, dirt, or electrical disturbance which is perceptible by the average person at or beyond any lot line of the lot containing the home occupation.~~
  - ~~10. Hazards. Activities involving hazardous materials (such as fire, chemicals and/or more than three (3) machines) may require additional City permits, including but not limited to, a building permit for updated building facilities.~~
- ~~E. Application. For Activities involving hazardous materials, the applicant shall submit a site plan, floor plan and description of the business (including machinery used, materials and materials storage, etc.) for review by the Planning and Zoning, Building Services and Fire Departments. See the City's Basic Application for Development Review for the floor plan and site plan requirements; See also the City's Supplemental Questionnaire for Proposed Activities/Uses.~~
- ~~F. Required approval. No home occupation in the D-CE-3 Zone shall be permitted unless the Director of City Planning certifies that it will conform to the special home occupation regulations contained in this Section. The Director may fix a termination date upon a home occupation in order to affect a periodic review thereof. The Director's determination shall be subject to appeal pursuant to the administrative appeal procedure in Chapter 17.132~~

## **Chapter 17.102 REGULATIONS APPLICABLE TO CERTAIN ACTIVITIES AND FACILITIES**

### **Sections:**

17.102.180 Restriction on vertical location of activities in buildings containing both Residential and Nonresidential Activities—Commercial Zones.

17.102.190 Joint Living and Working Quarters.

17.102.195 Residentially-Oriented Joint Living and Working Quarters.

### **17.102.180 Restriction on vertical location of activities in buildings containing both Residential and Nonresidential Activities—Commercial Zones.**

In all Commercial Zones, no ~~Commercial or Industrial~~ Activity shall be conducted within any building above any story thereof occupied wholly or partly by Residential Activities, except upon the granting of a ~~Ceonditional Uuse Ppermit~~ pursuant to the ~~Ceonditional Uuse Ppermit~~ procedure in Chapter 17.134. However, this requirement shall not apply to:

A. Nonresidential Activities within:

1. HBX, CIX, IG, IO, or D-CE Work/Live Facilities;

2. Joint Living and Working Quarters, pursuant to Section 17.102.190;

3. Residentially-Oriented Joint Living and Working Quarters, pursuant to Section 17.102.195; or

B. An approved home occupation, pursuant to Chapter 17.112.

### **17.102.190 Joint Living and Working Quarters.**

A. General Provisions.

3. Any building proposed to contain JLWQ(s) must have the following characteristics:

a. The building was originally designed for nonresidential ~~industrial or commercial~~ occupancy;

B. Definition. Joint Living and Working Quarters (JLWQs) means residential occupancy by one or more persons maintaining a common household of one or more rooms or floors within the building envelope of an existing building originally designed for nonresidential ~~industrial or commercial~~ occupancy. Each Joint Living and Working Quarter includes: (1) cooking space and sanitary facilities which satisfy the provisions of other applicable codes; and (2) adequate working space reserved for, and regularly used by persons residing therein.

### **17.102.195 Residentially-Oriented Joint Living and Working Quarters.**

B. Definition. Residentially-Oriented Joint Living and Working Quarters means residential occupancy by one or more persons maintaining a common household of one or more

rooms or floors in an existing building that is at least ten (10) years old and originally designed for non-residential occupancy. Each Residentially-Oriented Joint Living and Working Quarter includes cooking space and sanitary facilities which satisfy the provisions of other applicable municipal codes. A Residentially-Oriented Joint Living and Working Quarter consists of a designated residential area and a designated work area. However, the definitions applied by City Council Resolution Number 68518 C.M.S. that apply to "Joint Live/Work Space" including criteria that define space requirements are not applicable to Residentially-Oriented Joint Living and Working Quarters.

C. Conditions for Conversion.

1. In the area prescribed in Subsection A., an existing building or portion of a building that was originally designed for non-residential occupancy can be converted to Residentially-Oriented Joint Living and Working Quarters as long as each of the following standards is met:

D. Conditional Use Permit Required in Certain Instances. In the area prescribed in Subsection A., a project that involves the conversion of an existing building or portion of a building that was originally designed for non-residential occupancy to Residentially-Oriented Joint Living and Working Quarters and does not meet one or more of the requirements of Subsection C.1. above may be permitted upon the granting of a Conditional Use Permit pursuant to the Conditional Use Permit procedure in Chapter 17.134. A Conditional Use Permit may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in Conditional Use Permit procedure in Chapter 17.134 and to any and all applicable additional use permit criteria set forth in the particular individual zone regulations.

E. Non-Applicability of Certain Requirements Pertaining to Dwelling Units. In the area prescribed in Subsection A., the conversion to Residentially-Oriented Joint Living and Working Quarters of a building or portion of a building that was originally designed for non-residential occupancy is not subject to the requirements for off-street parking in Section 17.116.020 (New Parking to Be Provided for New Living Units in Existing Facilities) and is not subject to the open space requirements for new residential dwelling units contained in the applicable zoning district or districts, but is subject to the requirements of Subsection C.1. above for retention of existing parking and open space.

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

### **Sections:**

#### **Article VIII - Nonresidential Facilities**

#### **Article VIII Nonresidential Facilities**

##### **17.103.090 Sidewalk Cafe Nonresidential Facilities.**

##### **17.103.090 Sidewalk Cafe Nonresidential Facilities.**

#### **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 or fifty percent (50%) of the overall improved sidewalk width, whichever is greater, 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, utility poles, trees, tree wells, sidewalk planter strips, and all similar obstacles shall constitute obstruction.
3. The operators/owners of Sidewalk Cafes shall defend, indemnify, and hold harmless the City of Oakland its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Oakland, its agents, officers or employees to attack, set aside, void or annul, an approval by the City of Oakland, the City Planning Bureau, ~~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.

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

**Sections:**

17.108.130 Exceptions to required openness of minimum yards and courts.

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

**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
K. Detached garages and sheds; detached or attached carports, parking podiums and other detached or attached accessory structures not provided for elsewhere by this Section; and portions of principal Nonresidential Facilities not provided for elsewhere nearby.		<p>Anywhere in above yards, provided that:</p> <ol style="list-style-type: none"> <li>1. The facility is within thirty-five (35) feet of the rear lot line; and</li> <li>2. The wall height of the facility does not exceed nine (9) feet in height to the top of the plate above finished grade and the roof height, for roofs with a maximum 8 in 12 slope, does not exceed twelve (12) feet above finished grade, except for incidental decorative features or minor appurtenances such as flues; and</li> <li>3. The facility itself does not contain any residential living quarters; and</li> <li>4. No building or portion thereof within the minimum yard is itself used for any commercial or manufacturing repair or production operations, unless it has no exterior openings there other than emergency exits or fixed windows or skylights, or it involves an approved home occupation in the <del>West Oakland Specific Plan Area as specified in Chapter 17.112; Section 17.112.060 or an approved home occupation in the D-CE Central Estuary District zones as specified in Chapter 17.101E;</del> and</li> <li>5. The affected side yard, if any, is not one required by Section 17.102.240.</li> </ol> <p>But on any reversed corner lot which abuts a key lot in any Residential Zone, detached accessory buildings shall also be subject to the provisions stated in Subsection 17.110.040.C.</p>			

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

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

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

1. Height. In the locations specified below, the height of any fence, dense hedge, or barrier, or similar freestanding wall, but excluding retaining walls, shall not exceed the following:
2. Materials. The following materials are restricted in constructing or rebuilding walls or fences:

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

- i. Exception. Fences enclosing building construction sites may be exempted from the above limitation on barbed wire and razor wire for the duration of the permitted construction activity if the Director of City Planning determines that trespassing could present a public safety hazard.

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.

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 in a Residential or Open Space Zone ~~is shall not exceed~~ eight (8) feet. A fence higher than eight (8) feet but no more than ten (10) feet may only be permitted in these locations if installed with additional landscape screening and upon the granting of Small Pproject Ddesign Rreview pursuant to the Small Pproject Ddesign Rreview procedure in Chapter 17.136-
- b. The maximum height of any fence, dense hedge, barrier, or similar freestanding wall elsewhere on a lot ~~is shall be~~ ten (10) feet.

2. Restricted Materials. In any location visible from the adjacent public right-of-way, no barbed wire, or 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 enclosing the following activities ~~may shall be~~ exempted from the above limitation on barbed wire and razor wire ~~if where~~ the Director of City Planning determines that trespassing could present a public safety hazard and/or disruption of public utility, transportation, or communication services:

- i. Public utility installations, including but not limited to electrical substations and gas substations.
- ii. ~~Rights-of-way and~~ 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 shall be~~ eight (8) feet. A fence higher than eight (8) feet but no more than ten (10) feet may only be permitted in these locations if installed with additional landscape screening and upon the granting of Small Pproject Ddesign Rreview pursuant to the Small Pproject Ddesign Rreview procedure in Chapter 17.136.



## Chapter 17.112 HOME OCCUPATION REGULATIONS

### Sections:

17.112.010 Title, purpose, and applicability.

17.112.020 Definitions.

17.112.030 Exclusions.

17.112.040 Requirements.

17.112.050 Required approval.

~~17.112.060 Special Regulations for Home Occupation in the West Oakland Specific Plan Area.~~

### 17.112.010 Title, purpose, and applicability.

The provisions of this Chapter shall be known as the Home Occupation Regulations. The purpose of these regulations is to prescribe the conditions under which limited Nonresidential Activities may be conducted when incidental to Residential Activities. ~~Except as otherwise specified in Section 17.101E.100 for the D-CE-3 Central Estuary District Zone, T~~these regulations shall apply to all activities of a nonresidential nature which are incidental to Residential Activities when such Nonresidential Activities would not be allowed if they were not incidental to Residential Activities. ~~See Section 17.112.060 for home occupation regulations specific to the West Oakland Specific Plan Area and Section 17.101E.100 for home occupation regulations specific to the D-CE-3 Central Estuary District Zone.~~

### 17.112.020 Definitions.

- A. ~~Except as otherwise defined in .100(B) for the D-CE-3 Central Estuary District Zone and Section 17.112.060(B) for the West Oakland Specific Plan Area, A~~a "home occupation" is an accessory activity of a nonresidential nature which is performed within a living unit, or within a garage or accessory structure attached or detached thereto and reserved for use by an occupant of the living unit; ~~therefor,~~ or, for Limited Agricultural Activities and/or bee keeping, in an outdoor area on the same lot as a living unit by an occupant of the living unit and which is customarily incidental to the residential use of the living unit. A home occupation may include, but is not limited to, the handicraft or custom manufacture of products, Limited Agricultural Activities (unless the activities include mechanized farming equipment), bee keeping (unless the activities include more than three (3) hives), the conduct of an art or profession, the offering of a service, or the conduct of a business, subject to the provisions of Sections 17.112.030, 17.112.040, and 17.112.050.
- B. For the purpose of this Chapter, 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. This activity does not include the keeping, grazing, or feeding of animals, except for bee keeping involving no more than three (3) hives. Any on-site sales of agricultural products are limited to no more than

four (4) times per year between the hours of 8:00 am and 9:00 pm in a temporary movable structure not exceeding two hundred (200) square feet in size.

### 17.112.030 Exclusions.

The following activities shall not in any case qualify as home occupations:

- D. Operation of a beauty parlor with more than two (2) hair-drying machines;
- I. On-site car and/or truck repair.

### 17.112.040 Requirements.

- A. Applicability. The home occupation regulations described below shall apply citywide, ~~except as otherwise specified in Section 17.112.060 for the West Oakland Specific Plan Area and Section 17.101E.100 for the D-CE-3 Central Estuary District Zone.~~
- B. Location. A home occupation shall only be performed in the following locations:
  - 1. Within a living unit by a resident thereof;
  - 2. Within an attached or detached garage or accessory structure that is attached to, and reserved for, use by an occupant of a living unit; and
  - 3. For Limited Agricultural Activities and bee keeping only, in an outdoor area on the same lot as a living unit, but only if the home occupation activity does not include the use of mechanized farming equipment or involve the keeping of more than three (3) bee hives.
- C. Customers by Appointment. Professional and personal services shall only be provided by appointment except in rare and unusual circumstances. Regular walk-in clients are prohibited.
- D. Nonresident Employees. One (1) nonresident employee is permitted. For the purpose of this Section, the term "nonresident employee" includes an employee, business partner, co-owner, or other person affiliated with the home occupation, who does not live at the site, but who visits the site as part of the home occupation business. One (1) "nonresident employee" does not include any sequential employee shifts with each shift staffed by a different employee, even if only one (1) nonresident employee would be at the site at any one (1) time. Only one (1) nonresident employee is permitted per Residential Unit, even if more than one (1) home occupation business operates at the subject unit. No person other than a resident of the living unit shall be employed in the conduct of the home occupation, except that practitioners in the medical arts may employ one assistant who does not reside in the living unit.
- ED. Articles Sold. Articles offered for sale shall be limited to those produced on the premises, except where the home occupation serves as an agent or intermediary between off-site suppliers and off-site customers, in which case all articles, except for samples, shall be received, stored, and sold directly to customers at off-premises locations.
- FE. Exterior Appearance and Signs. There shall be no outside or window display of materials or products. No outside or window Sign shall advertise or otherwise identify the home occupation except for one Sign with a display surface of not more than one square foot on any face. Such Sign shall be nonmoving, and its illumination, if any, shall be indirect and nonflashing. There shall be no other exterior indication of the home occupation, and no

impairment of the residential appearance of the facilities within which the home occupation is conducted. The historic character-defining features of the building shall be maintained in all home occupations.

- GF. Vehicular Storage. No commercial or passenger vehicle carrying any Sign advertising or otherwise identifying the home occupation shall be parked on any portion of the lot where such Sign is visible at any lot line of the lot containing the home occupation.
- HG. Traffic Generation. The home occupation shall not generate pedestrian or vehicular traffic substantially greater than that normally generated by Residential Activities in the surrounding area.
- IH. Nuisances. The home occupation shall be so conducted as not to cause offensive or objectionable noise, vibration, smoke, odors, humidity, heat, cold, glare, dust, dirt, or electrical disturbance which is perceptible by the average person at or beyond any lot line of the lot containing the home occupation.
- J. Hazards. Activities involving hazardous materials (such as fire, chemicals and/or more than three (3) machines) may require additional City permits, including but not limited to, a building permit for updated building facilities.

#### **17.112.050 Required approval.**

No home occupation shall be permitted unless the Director of City Planning certifies that it will conform to the home occupation regulations. For activities involving hazardous materials, the applicant shall submit a sufficient description of the business (including but not limited to, a site plan, floor plan, machinery used, materials, and materials storage) to allow for review by the Building Services Division and/or Fire Department.

The Director may fix a termination date upon a home occupation in order to affect a periodic review thereof. The Director's determination shall be subject to appeal pursuant to the Administrative Appeal Procedure in Chapter 17.132.

#### **~~17.112.060 Special Regulations for Home Occupation in the West Oakland Specific Plan Area.~~**

~~A. Purpose and Applicability. The special home occupation regulations described below shall only apply in the West Oakland Specific Plan Area. The purpose of these regulations is to prescribe the expanded conditions under which nonresidential activities may be conducted in the West Oakland Specific Plan Area when incidental to Residential Activities. These special home occupation regulations are intended to incentivize the preservation of historic homes in West Oakland's neighborhoods, and to encourage more home-based artisan crafts in the district. The historic character-defining features of the structures must be maintained.~~

#### ~~B. Definitions.~~

- ~~1. For the purpose of this section only, a "home occupation" is defined as an accessory activity of a nonresidential nature which is performed within a living unit, or within a garage or accessory structure attached or detached thereto and located on the same lot as the living unit, or for Limited Agricultural Activities and/or bee-keeping, in an outdoor area on the same lot as a living unit by an occupant of the living unit and which is~~

~~customarily incidental to the residential use of the living unit. A home occupation may include, but is not limited to, the handicraft or custom manufacture of products, Limited Agricultural Activities (unless the activities include mechanized farming equipment), bee keeping (unless the activities include more than three (3) hives), the conduct of an art or profession, the offering of a service, or the conduct of a business, subject to the provisions of this section and Sections 17.112.030 and 17.112.050.~~

- ~~2. For the purpose of this section, 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. This activity does not include the keeping, grazing, or feeding of animals, except for bee keeping involving no more than three (3) hives. Any on-site sales of agricultural products are limited to no more than four (4) times per year between the hours of 8:00 am and 9:00 pm in a temporary movable structure not exceeding two hundred (200) square feet in size.~~
- ~~3. For the purpose of this section, a "bee keeping activity" is the maintenance of honey bee colonies, commonly in hives, by one or more persons. A bee keeper keeps bees in order to collect their honey and other products that the hive produces, to pollinate crops, or to produce bees for sale to other bee keepers.~~

~~C. Requirements.~~

- ~~1. Location. A home occupation in the West Oakland Specific Plan Area shall only be performed in the following locations:
  - ~~a. Within a living unit by a resident thereof;~~
  - ~~b. Within an attached or detached garage or accessory structure reserved for a living unit; and~~
  - ~~c. For Limited Agricultural Activities and bee keeping only, in an outdoor area on the same lot as a living unit, but only if the home occupation activity does not include the use of mechanized farming equipment or involve the keeping of more than three (3) bee hives.~~~~
- ~~2. Customers by Appointment. Professional and personal services shall only be provided by appointment except in rare and unusual circumstances. Regular walk-in clients are prohibited.~~
- ~~3. Nonresident Employees. One (1) nonresident employee is permitted. For the purpose of this section, the term "nonresident employee" includes an employee, business partner, co-owner, or other person affiliated with the home occupation, who does not live at the site, but who visits the site as part of the home occupation business. One (1) "nonresident employee" does not include when there are sequential employee shifts with each shift staffed by a different employee, even when only one (1) nonresident employee is at the site at any one (1) time. Only one (1) nonresident employee is permitted per residential unit, even if more than one (1) home occupation business operates at the subject unit.~~
- ~~4. Articles Sold. Articles offered for sale shall be limited to those produced on the premises, except where the home occupation serves as an agent or intermediary between off-site suppliers and off-site customers, in which case all articles, except for samples, shall be received, stored, and sold directly to customers at off-premises locations.~~

- ~~5. Exterior Appearance and Signs. There shall be no outside or window display of materials or products. No outside or window Sign shall advertise or otherwise identify the home occupation except for one (1) Sign with a display surface of not more than one (1) square foot on any face. Such Sign shall be nonmoving, and its illumination, if any, shall be indirect and non-flashing. There shall be no other exterior indication of the home occupation, and no impairment of the residential appearance of the facilities within which the home occupation is conducted.~~
  - ~~6. Retention of Historic Character-Defining Features. The historic character-defining features of the building shall be maintained in all home occupations.~~
  - ~~7. Vehicular Storage. No commercial or passenger vehicle carrying any Sign advertising or otherwise identifying the home occupation shall be parked on any portion of the lot where such Sign is visible at any lot line of the lot containing the home occupation.~~
  - ~~8. Traffic Generation. The home occupation shall not generate vehicular traffic substantially greater than that normally generated by Residential or Nonresidential Activities in the surrounding area.~~
  - ~~9. Nuisances. The home occupation shall be so conducted as not to cause offensive or objectionable noise, vibration, smoke, odors, humidity, heat, cold, glare, dust, dirt, or electrical disturbance which is perceptible by the average person at or beyond any lot line of the lot containing the home occupation.~~
  - ~~10. Hazards. Activities involving hazardous materials (such as fire, chemicals and/or more than three (3) machines) may require additional City permits, including but not limited to, a building permit for updated building facilities.~~
- ~~D. Application. For Activities involving hazardous materials, the applicant shall submit a site plan, floor plan and description of the business (including machinery used, materials and materials storage, etc.) for review by the Planning and Zoning, Building Services and Fire Departments. See the City's Basic Application for Development Review for the floor plan and site plan requirements; See also the City's Supplemental Questionnaire for Proposed Activities/Uses.~~

## Chapter 17.114 NONCONFORMING USES

### Sections:

#### Article II - Nonconforming Activities

#### Article II Nonconforming Activities

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

#### 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:

Changes that do not constitute substitutions may be made in any activity which is nonconforming wholly or partly because it is not itself a permitted activity where it is located. The above substitutions and other changes may be made without regard for requirements on off-street parking and loading, conduct of activities within enclosed buildings, means of customer access, and total floor area which normally apply to activities, except as otherwise provided in Section 17.116.020C. However:

3. If the nonconforming activity is located at ground level on any lot in the CN-1 or CN-2 Zone, no change shall be made in the nature of the particular activity, except when the result is itself permitted in the same location, unless a Conditional Use Permit is granted pursuant to the Conditional Use Permit procedure. This does not restrict a change in ownership, tenancy, or management where the previous line of business or other function is not changed.
4. For any nonconforming Alcoholic Beverage Sales Commercial Activity presently located in any zone in which it is not a permitted activity, no change shall be made in the activity which change requires obtaining a different type of alcoholic beverage sale retail license from the state of California Department of Alcoholic Beverage Control. Further, ~~no change shall be made in any nonconforming activity involving the sale of alcoholic beverages at a full service restaurant in any location described by Section 17.103.030.B.2, which change requires obtaining a different type of alcoholic beverage sale retail license from the state of California Department of Alcoholic Beverage Control, unless a conditional use permit is granted pursuant to the conditional use permit procedure in Chapter 17.134.~~

If the activity resulting from a change allowed above is not a normally permitted and otherwise conforming activity, and is not authorized by a Conditional Use Permit or other special zoning approval, it shall be deemed a nonconforming activity and changes in it shall be subject to this Section.

**Chapter 17.116 OFF-STREET PARKING AND LOADING REQUIREMENTS**

**Sections:**

**Article II Off-Street Parking Requirements**

17.116.080 Off-street parking—Commercial Activities.

**17.116.080 Off-street parking—Commercial Activities.**

**A. Minimum Parking for Commercial Activities.**

Except as otherwise provided in Article III and elsewhere in this Title, the following table contains the amounts of off-street parking that are required in the indicated location for all Commercial Activities.

Commercial Activity	Zone	Minimum Total Size for Which Parking Required	Total Required Parking
<p><u>Group Assembly—only theaters, cabarets, nightclubs with performance and/or dance space, and temporary and permanent carnivals, fairs, and circuses. Go to “All other activities,” below for other Group Assembly activities.</u></p>	<p>CBD-P, CBD-C, CBD-X, S-2, D-LM-2 through D-LM-5, D-CO, and S-15 Zones.</p> <p>All other zones.</p>	<p>—</p> <p>Ten thousand (10,000) square feet of floor area.</p>	<p>No spaces required.</p> <p>One (1) space for each fifteen (15) <u>fixed seats</u> in indoor places of assembly <del>with fixed seats</del>, plus one space for each one hundred (100) square feet of floor area in indoor places of assembly without fixed seats, plus a number of spaces to be prescribed by the Director of City Planning, pursuant to Section 17.116.040, for outdoor assembly area.</p>

**Chapter 17.132 ADMINISTRATIVE APPEAL PROCEDURE**

**Sections:**

17.132.040 Appeal to Council on transit line sign controls.

**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 Commission and shall be filed with the Planning and Building Department, City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Commission or wherein its decision is not supported by the evidence in the record. Upon receipt of the appeal, the Council shall set the date for consideration thereof. After setting the hearing date, the Council, prior to hearing the appeal, may refer the matter back to the Planning Commission for further consideration and advice. Appeals referred to the Planning Commission shall be considered by the Commission at its next available meeting. Any such referral shall be only for the purpose of issue clarification and advice. In all cases, the City Council shall retain jurisdiction and, after receiving the advice of the Planning Commission, shall hold a hearing on and decide the appeal. The City Clerk shall notify the Secretary of the City Planning Commission ~~of the receipt of said appeal and of the date set for consideration thereof;~~ and said Secretary shall, not less than seventeen (17) days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Council shall review the purpose and intent, as well as the letter, of the pertinent provisions, and shall affirm, modify, or reverse the Commission's decision. The decision of the City Council shall be made by resolution and shall be final.



## **Chapter 17.134 CONDITIONAL USE PERMIT PROCEDURE**

### **Sections:**

17.134.020 Definition of Major and Minor Conditional Use Permits.

17.134.070 Appeal to Council—Major Conditional Use Permits.

17.134.110 Conditional Use Permit related to Planned Unit Development or subdivision.

### **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 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 the appeal, the Council shall set the date for consideration thereof. After setting the hearing date, the Council, prior to hearing the appeal, may refer the matter back to the Planning Commission for further consideration and advice. Appeals referred to the Planning Commission shall be considered by the Commission at its next available meeting. Any such referral shall be only for the purpose of issue clarification and advice. In all cases, the City Council shall retain jurisdiction and, after receiving the advice of the Planning Commission, shall hold a hearing on and decide the appeal. The City Clerk shall notify the Secretary of the City Planning Commission ~~of the receipt of said appeal and of the date set for consideration thereof;~~ and said Secretary shall, not less than seventeen (17) days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. 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 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 ~~M~~major ~~C~~conditional ~~U~~use ~~P~~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 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 the appeal, the Council shall set the date for consideration thereof. The City Clerk shall notify the Secretary of the City Planning Commission ~~of the receipt of said appeal and of the date set for consideration thereof;~~ and said Secretary shall, not less than seventeen (17) days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. 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 changes in the proposed use or impose such reasonable conditions of approval as are, in its judgment, necessary to ensure conformity to said criteria. The decision of the City Council shall be made by resolution and shall be final. The City Council shall vote on the appeal within thirty (30) days after its first hearing of the appeal and must decide the appeal within sixty (60) days of the appeal being filed.

**17.134.110 Conditional Use Permit related to Planned Unit Development or subdivision.**

Whenever a Conditional Use Permit is required for a proposal also requiring a Planned Unit Development permit, application for the use permit shall be included in the application for the Planned Unit Development permit, and shall be processed and considered as part of same. Whenever a Conditional Use Permit is required within a proposed subdivision, the application for the use permit ~~shall~~ may be submitted with the tentative map or tentative parcel map required by the Oakland Municipal Code, and may be processed and considered therewith.

In either case, however, the reviewing officer or body shall, in considering such a use permit, determine whether the proposal conforms to all the applicable use permit criteria.

## **Chapter 17.136 DESIGN REVIEW PROCEDURE**

### **Sections:**

17.136.090 Appeal to City Council—Regular design review.

17.136.120 Design review related to conditional use permit, Planned Unit Development, variance, or subdivision.

### **17.136.090 Appeal to City Council—Regular design review.**

Within ten (10) calendar days after the date of initial decision by the City Planning Commission on an application for regular design review under the procedure specified in Subsection 17.136.040.D, an appeal from said decision may be taken to the City Council by the applicant, the Landmarks Preservation Advisory Board, or any other interested party. In the event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal. No such appeal to the City Council is allowable under the procedure specified in Subsection 17.136.040.C. Such appeal shall be made on a form prescribed by the Planning Director 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 the appeal, the Council shall set the date for consideration thereof. After setting the hearing date, the Council, prior to hearing the appeal, may refer the matter back to the Planning Commission for further consideration and advice. Appeals referred to the Planning Commission shall be considered by the Commission at its next available meeting. Any such referral shall be only for the purpose of issue clarification and advice. In all cases, the City Council shall retain jurisdiction and, after receiving the advice of the Planning Commission, shall hold a hearing on and decide the appeal.

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

**17.136.120 Design review related to Conditional Use Permit, Planned Unit Development, variance, or subdivision.**

- A. Whenever design review approval is required for a proposal also requiring one or more other discretionary permits, such as a Conditional Use Permit, Planned Unit Development permit, or variance, the application for design review shall be submitted with the application for said other permit and shall be processed and considered as part of the same proposal. The reviewing officer or body shall, in considering the design review aspects of the proposal, determine whether it conforms to all the applicable design review criteria. Decisions on the design review aspects of a proposal also requiring one or more other discretionary permits, such as a Minor Conditional Use Permit or Minor Variance, shall still be appealable within ten (10) calendar days after the date of decision to the City Planning Commission or City Council to the extent such appeal would otherwise be allowed under Sections 17.136.080 and 17.136.090. In the event the last date of appeal falls on a weekend or holiday when City offices are closed, the next date such offices are open for business shall be the last date of appeal.
- B. Whenever design review approval is required for a proposal also requiring subdivision approval, the application for design review approval ~~shall~~ may be submitted with the tentative map or tentative parcel map required by the Oakland Municipal Code, ~~and but~~ and shall ~~nonetheless~~ be subject to all the separate procedure and criteria pertaining to design review.

## **Chapter 17.140 PLANNED UNIT DEVELOPMENT PROCEDURE**

### **Sections:**

17.140.040 Submission of final development plan.

17.140.070 Appeal to Council.

### **17.140.040 Submission of final development plan.**

Within two (2) years ~~one (1) year~~ after the approval or modified approval of a preliminary development plan, the applicant shall file with the City Planning Department a final plan for the entire development 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 ~~one (1) year~~ 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.

### **17.140.070 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 Planning Director ~~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, not less than seventeen (17) days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. 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 ensure conformity to said criteria and standards. The decision of the City Council shall be made by resolution and shall be final.

## **Chapter 17.142 MINI-LOT AND PLANNED UNIT DEVELOPMENT REGULATIONS**

### **Sections:**

#### Article III - Planned Unit Developments

### **Article III Planned Unit Developments**

#### 17.142.100 Bonuses.

#### 17.142.110 Development standards.

### **17.142.100 Bonuses.**

- 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.~~ Residential Activities:

Permanent

12. Civic Activities:

Limited Child-Care

Community Education

23. Commercial Activities, provided that such activities shall not occupy in the aggregate more than five percent (5%) ~~four percent (4%)~~ of the total floor area in such development, 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):

### **17.142.110 Development standards.**

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

- 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, in any developments incorporating an increase in overall density or Floor-Area Ratio pursuant to Subsection 17.142.100.E, ~~group usable open space shall be provided~~ usable open space for Residential Facilities in the ~~minimum amount required in the individual zoning chapters and of two hundred (200) square feet per dwelling unit. Except as otherwise provided in Subsection 17.142.100.F, all required usable open space shall conform to the standards for required usable open space 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:**

17.144.070 Appeal to Council by private party.

17.144.090 Council action.

### **17.144.070 Appeal to Council by private party.**

Within ten (10) calendar days after the date of an adverse decision by the City Planning Commission on a private party application, an appeal from said decision may be taken to the City Council by the applicant. 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 Commission and shall be filed with the Planning and Building Department, City Clerk. The appeal shall state specifically wherein it is claimed the Commission erred in its decision. The appeal shall be considered in accordance with Section 17.144.090.

### **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 notice of the hearing 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 receipt of the appeal and of the date set for consideration thereof; and said Secretary shall, not less than seventeen (17) days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. 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 PROCEDURE**

### **Sections:**

17.148.070 Appeal to Council—Major Variances.

17.148.100 Variance related to Conditional Use Permit, Regular Design Review, Planned Unit Development, or subdivision.

17.134.120 Termination of a Variance related to an activity

### **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 ~~M~~major ~~V~~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 City Planning 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, not less than seventeen (17) days prior thereto, give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. 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 Mmajor Vvariance, 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 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 the appeal, the Council shall set the date for consideration thereof. The City Clerk shall notify the Secretary of the City Planning Commission of the receipt of said appeal and of the date set for consideration thereof; and said Secretary shall, not less than seventeen (17) days prior thereto, given written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. 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 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.

**17.148.100 Variance related to Conditional Use Permit, Regular Design Review, Planned Unit Development, or subdivision.**

Whenever a variance is required for a proposal also requiring a Conditional Use Permit, Regular Design Revue, or a Planned Unit Development permit, application for the variance shall be included in the application for said Conditional Use Permit, Regular Design Revue, or Planned Unit Development permit, and shall be processed and considered as part of same. Whenever a variance is proposed within a proposed subdivision, the application for the variance

shall may be submitted with the tentative map or tentative parcel map required by the Oakland Municipal Code, and may be processed and considered therewith. In either case, however, the reviewing officer or body shall, in considering such a variance, determine whether the conditions required in Section 17.148.050 are present.

**17.148.120 Termination of a Variance related to an activity**

A. A Variance granted pursuant to the provisions of this Chapter that permits an otherwise prohibited 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 has ceased, or has been suspended, for a consecutive period of two (2) or more years.

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) year period described in subsection (A).

## **Chapter 17.156 DEEMED APPROVED ALCOHOLIC BEVERAGE SALE REGULATIONS**

### **Sections:**

#### **Article IV - Deemed Approved Status Procedure**

#### **Article IV Deemed Approved Status Procedure**

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

#### **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 Planning 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 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 receipt of said appeal and of the date set for consideration thereof; and said Secretary shall, not less than seventeen (17) days prior thereto, give written notice 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 ensure conformity to said standards. The decision of the City Council shall be made by resolution and shall be final.

## **Chapter 17.157 DEEMED APPROVED HOTEL AND ROOMING HOUSE REGULATIONS**

### **Sections:**

Article IV - Deemed Approved Status Procedure

#### **Article IV Deemed Approved Status Procedure**

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

#### **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 City Planning Commission and shall be filed with the City Clerk 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 receipt of said appeal and the date set for consideration thereof; and said Secretary shall, not less than seventeen (17) days prior thereto, give written notice 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 ensure conformity to said performance standards. The decision of the City Council shall be made by resolution and shall be final.

## **Chapter 17.158 ENVIRONMENTAL REVIEW REGULATIONS**

### **Sections:**

#### **Part 2 - California Environmental Quality Act ("CEQA") Procedures**

##### **Article 2.1 - General Provisions**

#### **Part 2 California Environmental Quality Act ("CEQA") Procedures**

##### **Article 2.1 General Provisions**

17.158.180 Ministerial actions.

17.158.190 Discretionary actions.

##### **17.158.180 Ministerial actions.**

Ministerial actions typically processed by the City include, but are not limited to:

- K. Approval of Design review exemptions, as defined in Chapter 17.136 of the Oakland Planning Code;

##### **17.158.190 Discretionary actions.**

Discretionary actions typically processed by the City include, but are not limited to:

- A. Certain approvals granted under the zoning regulations, including but not limited to:
  - 1. Conditional Use Permits;
  - 2. Small Project Design Review, as defined in Chapter 17.136 of the Oakland Planning Code;
  - 3. Special Project Design Review, as defined in Chapter 17.136 of the Oakland Planning Code;
  - 4. Regular Design Review, as defined in Chapter 17.136 of the Oakland Planning Code;
  - 5. Development Agreements;
  - 6. Planned Unit Developments;
  - 7. Rezonings;
  - 8. Variances.