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OFFICE OF THE CITY CLERK  
OAKLAND

2018 OCT 11 PM 3:45 **AGENDA REPORT**

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** William A. Gilchrist,  
Director of Planning and  
Building Department

**SUBJECT:** Residential Hotel Regulations

**DATE:** October 1, 2018

City Administrator Approval

Date:

10/11/18

**RECOMMENDATION**

**Staff Recommends That The City Council Conduct A Public Hearing And, Upon Conclusion, Adopt The Following Pieces of Legislation:**

- 1) An Ordinance (1) Amending The Oakland Planning Code To Adopt A New Section 17.153 Regulating The Demolition, Conversion and Rehabilitation of Residential Hotels And Make Related And Conforming Amendments To Other Planning Code Sections, And (2) Determining That The Actions Authorized By This Ordinance Were Both The Subject Of Adequate Previous Analysis Under The California Environmental Quality Act ("CEQA") And Are Exempt From CEQA Pursuant To CEQA Guidelines Section 15061(b)(3) And 15183; And**
- 2) An Ordinance (1) Amending The Oakland Municipal Code To Establish A Citywide Residential Hotel Demolition And Conversion Impact Fee And Make Related And Conforming Amendments, (2) Amending The Master Fee Schedule (Ordinance No. 13497 C.M.S., As Amended) To Include The Residential Hotel Demolition and Conversion Impact Fee, And (3) Determining That The Adoption Of The Demolition and Conversion Impact Fee Is Exempt From CEQA And That Any Projects Funded By The Fee Revenue Will Be The Subject Of Future CEQA Analysis.**

**EXECUTIVE SUMMARY**

Oakland's Residential Hotels represent an increasingly rare form of flexible and easy to access "naturally occurring affordable housing" (NOAH) essential to shelter thousands of Oakland residents. The current economic climate of increasing construction costs and record demand for luxury housing and boutique hotels make the conversion of existing Residential Hotels an appealing investment opportunity for real estate speculators. However, the potential loss of Oakland's remaining Residential Hotel units—also called single room occupancy units (SROs)—represents a threat to the health and safety of Oakland's residents who may face displacement or homelessness in their absence.

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The proposed Municipal Code changes described in this report aim to protect Oakland's remaining Residential Hotel units by regulating the three main causes of reduction to the stock or their accessibility to low-income tenants:

- 1) Demolition of existing Residential Hotel units
- 2) Conversion of existing Residential Hotel units to be used for other Commercial or Residential Activities
- 3) Rehabilitation of Residential Hotels in a manner that reduces the size of units, or the amount of existing communal or private amenities; or adds amenities that may increase the market rent

While proposed Planning Code amendments would require the provision of replacement units for any converted or demolished Residential Hotel unit, staff also completed the necessary studies to determine a potential impact fee (\$212,000 per unit) necessary to mitigate the loss of the unit from the City's housing stock. The calculation of the impact is based on the amount required to *fund* the construction of a replacement unit and a two percent administrative cost. Upon payment, the fee would be deposited in the City's Affordable Housing Trust Fund. The proposal allows an applicant to either provide the replacement unit as would be required in proposed Planning Code Section 17.153.050, or pay the impact fee, as would be established in the proposed amendments to Oakland Municipal Code Chapter 15.70.

## **BACKGROUND / LEGISLATIVE HISTORY**

As noted in Oakland Housing and Community Development Department's (HCDD) 2015 report, "Downtown Oakland's Residential Hotels" (**Attachment A**), Residential Hotels in Oakland were constructed during late 19th and early 20th century to house transient workers. As the name implies, the typical units in Residential Hotels are single rooms for residents. They are distinguished from studio or efficiency units in that they typically do not include a private kitchen in the room and only occasionally include a private bathroom. Historically, Residential Hotel units also differ from other dwelling units in the type of population that they historically housed. Residential Hotel tenants were traditionally primarily itinerant male workers, rather than women, couples, or families.

Today, Residential Hotels do not typically require a security deposit, credit references, proof of income, or long-term lease agreement. For these reasons, Residential Hotels often serve the housing needs of vulnerable populations with unstable finances or little access to credit. The tenants of Residential Hotels are also not necessarily transient. The city's 2015 Residential Hotels report documented that 85 percent of surveyed SRO residents had occupied their units at least one month, 65 percent had occupied their units for more than one year, and a little over a quarter had occupied their units for at least five years; some residents had resided in the same building for more than twenty-five years.<sup>1</sup>

While previous City reports about Residential Hotels have focused on those located in Downtown Oakland, where most of these types of buildings can be found, the proposed

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<sup>1</sup> City of Oakland's Housing and Community Development Department, *Downtown Oakland's Residential Hotels* (2015), page 6.

Planning Code amendments will apply to Residential Hotels throughout the City of Oakland. See **Attachment B** for a map of properties preliminarily identified as Residential Hotels that will be further investigated as part of the Residential Hotel registry process to be established by the proposed Planning Code amendments.

Oakland also has numerous motels built in the 1960s and 1970s that today are frequently used for stays of longer than one month, in addition to shorter-term stays. While these may at times serve a similar market to SROs, they can be distinguished from traditional Residential Hotels in the following ways: 1) they are of more recent construction, 2) they were originally built to serve tourists, and 3) they nearly always contain private bathrooms. While worthy of study, determining resident status of the numerous motels on West MacArthur Boulevard and elsewhere in Oakland is outside the scope of the City Council directive (described below) and the proposed Planning Code amendments.

### ***Loss of Residential Hotels and Impacts on Oakland Residents***

In the midst of an unprecedented housing crisis, many of Oakland's Residential Hotels are under threat of being converted to either boutique hotel use, high-income rentals, or for-sale condominiums. The loss of this source of NOAH units could lead to an increase in Oakland's already large and growing population of unsheltered individuals unable to access other forms of housing. Most recent demographic surveys show that approximately 64 percent of Residential Hotel residents are African Americans<sup>2</sup>, and per the "Every One Counts! 2017 Homeless Count and Survey", 68 percent of Oakland's unsheltered population are Black or African American, while that group constitutes only 26 percent of Oakland's overall population. Therefore, a reduction in the number of Residential Hotel units or in accessibility to those units would likely further exacerbate an existing racial disparity in the number of African American homeless residents.

According to HCDD, from 1985 through 2015, the City lost approximately 799 Residential Hotel units in Downtown Oakland, and many more of these NOAH units are at-risk of being lost or are already lost.

### ***Policy Framework and City Council Directive***

The City of Oakland has adopted policy to protect and preserve the existing stock of residential hotels, because they provide housing of last resort for extremely low income households (*City of Oakland Housing Element 2015 – 2023*, Policies 5.4). Other *Housing Element* policies address preservation of the existing housing stock occupied by seniors, people with disabilities, and low-income populations generally (Policy 4.3 Housing Preservation and Rehabilitation). The *Housing Element* also addresses displacement in Policy 4.4 Anti-displacement of City of Oakland Residents, by supporting actions such as strengthening tenant relocation policies under ordinances regulating landlord actions in condo conversions, SRO conversions, Ellis Act withdrawals of rental units from the market, and Just Cause evictions.

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<sup>2</sup> City of Oakland's Housing and Community Development Department, *Downtown Oakland's Residential Hotels* (2015), page 9.

In 2015, the City published *A Roadmap Toward Equity: Housing Solutions for Oakland, California*, which focuses on many of the same policies adopted in the City's *Housing Element* through a more specific action plan. With the emphasis on equity and repairing disparities in opportunity that have disproportionately impacted Oakland's residents of color, the action plan prioritizes preservation of existing non-subsidized affordable housing stock (which would include the residential hotel inventory) to prevent displacement of long-time City residents. Preventing or mitigating the loss of residential hotel units whose residents are mostly people of color is an important component of the housing equity strategy.

Oakland has also allocated Measure KK funding to acquire residential hotel buildings for use as housing for extremely low income and homeless individuals.

Finally, on October 4, 2016, the City Council unanimously passed Resolution No. 86408 C.M.S. which requested the City Planning Commission to initiate action to amend Oakland's Planning Code to help preserve the existing supply of Residential Hotel units, and to return to City Council with proposed amendments. This resolution also called for an immediate increase in relocation payments for residents evicted in the case of a demolition or conversion, as well as a report from the City Administrator on programmatic options to preserve Residential Hotels. Subsequently, Oakland's City Council adopted an ordinance that placed a moratorium on actions that would lead to the loss of Residential Hotel units. This ordinance, titled Ordinance No. 13410 C.M.S., went into effect on December 13, 2016. In January of 2017, the moratorium was extended until December 11, 2018.

### ***Planning Commission Recommendations***

On September 26, 2018, the Oakland Planning Commission considered proposed Planning Code amendments and a potential option for an impact fee related to the demolition, conversion and rehabilitation of Residential Hotels. The Planning Commission unanimously affirmed staff's environmental determination and recommended that the City Council approve the proposed Planning Code amendments by the expiration of the moratorium (December 11, 2018) with various changes to the proposals. The Planning Commission's comments and staff's responses are included in **Attachment C** and the *revisions* to the proposed Planning Code amendments made in response to the Planning Commission's comments are shown in **Attachment D**.

### ***Existing Regulations Related to Residential Hotels***

There is an existing Planning Code Section (Section 17.102.230) aimed at preserving SRO units. However, the existing Code language allows conversion of SROs to hotels (Transient Habitation Commercial activity), and does not adequately regulate demolitions or conversion to other uses.

Residential Hotels may also be subject to Planning Code Chapter 17.157, *Deemed Approved Hotel and Rooming House Regulations*, which regulates habitability and safety of accommodations for guests in hotels, motels, and rooming houses, along with potential nuisances or blight issues for the surrounding community.

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## **ANALYSIS AND POLICY ALTERNATIVES**

### ***Principles***

Staff was guided by the following principles in developing the proposed changes to the Planning Code and Impact Fees:

1. Code changes should help maintain the existing, and increasingly scarce stock of Residential Hotel units in Oakland.
2. Regulations should strike a balance of protecting the stock of Residential Hotels without encumbering property owners in such a way that stymies investment and leads to units being kept either vacant or substandard.
3. Regulations should limit displacement of current SRO residents, as displacement is likely without other viable housing options.
4. Code changes should help maintain SROs as an accessible housing option for Oakland's most vulnerable and highest need residents.
5. Capital improvements to Residential Hotels should benefit current residents, rather than prospective future renters.

### ***Proposal***

The proposed Planning Code Amendments (***Exhibit A*** of the Planning Code Amendment Ordinance) include the following, and are further summarized below:

- New Planning Code Chapter 17.153 – These are the main Planning Code amendments regulating the demolition, conversion and rehabilitation of Residential Hotels.
- Related Planning Code changes:
  - Changes to Table of Contents
  - Changes to Chapter 17.10 (land use activities)
  - Changes to Chapter 17.54, 17.56, 17.74, 17.76 and 17.78 (references to 17.102.230)
  - Changes to Section 17.102.230 (existing regulations related to rooming units)
  - Changes to Section 17.134.020.A.3 (special situations requiring a Major Conditional Use Permit)

In addition to Planning Code amendments (Title 17), staff is proposing changes to Oakland Municipal Code, Title 15 (Building and Construction) to implement impact fees, as further summarized below.

#### ***New Planning Code Chapter 17.153***

The proposed new Chapter 17.153 is based on the regulations formulated in Oakland's Residential Hotel Moratorium, along with case studies of similar regulations in other cities, including San Francisco, San Diego, Sacramento, Berkeley, New York City and Chicago (***Attachment E***), and the feedback from stakeholders.

Here is a summary of the main regulations contained within the new Chapter 17.153:

### **1. Definitions**

The proposed Planning Code contains the following key definitions for terms that appear in this section, as summarized here:

- *Conversion* means any action that converts an existing Residential Hotel to be used for a Commercial Activity or other Residential Activity, or that changes a Residential Hotel Unit (which requires that the hotel be the primary resident of the guest) to a Commercial Hotel Unit (which provides lodging for guests that have a primary residence elsewhere).
- *Demolition* means any action that eliminates an existing Residential Hotel Unit.
- *Amenity Rehabilitation* means any action that reduces the size of Residential Hotel Units, or eliminates or reduces private or communal amenities such as bathrooms and kitchens, or any action that adds a kitchen or kitchenette to a room that currently doesn't have one.
- *Residential Hotel* is any building built before 1960 containing six (6) or more Rooming Units intended or used for sleeping purposes by guests, which is also the primary residence of those guests.
- *Residential Hotel Unit* means a Rooming Unit (a room occupied as living quarters without a kitchen) or Efficiency Dwelling Unit (contains only a single habitable room other than a kitchen or is less than 500 square feet in size), which is intended or used for sleeping purposes by guests, which is also the primary residence of those guests, and are located in a Residential Hotel.

### **2. Restrictions**

Proposed regulations would prohibit:

- Any action that reduces the size of Residential Hotel Units or eliminates or reduces private or communal amenities, such as bathrooms and kitchens (defined as Amenity Rehabilitation).

*Purpose:* Loss of private or communal facilities like kitchens and bathrooms are a burden for existing SRO tenants. Removing and reducing both private or communal bathroom and kitchen facilities was a key aspect of a tenant harassment lawsuit that was recently settled against an Oakland SRO landlord.

- Any action that adds a kitchen or kitchenette to a Residential Hotel room that currently doesn't have one (also included in the definition of Amenity Rehabilitation).

*Purpose:* Rehabilitation of Rooming Units to include kitchenettes is likely to place the unit at a higher rent level and further out of reach for the target very low-income

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populations. Adding a kitchen or kitchenette would change the definition from a Rooming Unit to an Efficiency Unit. Furthermore, staff's analysis shows that Efficiency Units appear to command an approximately 14 percent higher market rent than Rooming Units.<sup>3</sup> During focus group discussions, residents overwhelmingly said they preferred lower or more stable rents rather than additional amenities like a kitchenette.

- Conversion or demolition of a Residential Hotel Unit if there is a verified case of tenant harassment or illegal eviction.

*Purpose:* This restriction aims to provide a disincentive for harassment or illegal displacement of tenants intended to facilitate conversion or demolition.

- 3. Conditional Use Permit Requirement:** Proposed regulations would require a Conditional Use permit for any Demolition or Conversion, as defined earlier.

*Purpose:* Requiring a Conditional Use permit for any demolition or conversion allows the public and the Planning Commission to consider the potential public health and safety impacts of the resulting loss of existing SRO units and potential impacts to tenants.

- 4. Replacement Unit Requirement for Demolition or Conversion:** An applicant must provide replacement rental units that are equivalent in affordability, size, and services and facilities offered to each unit proposed for demolition or conversion. The replacement units must be within two miles of the subject facility, and obtain a certificate of occupancy prior to the proposed Residential Hotel unit demolition or conversion.

*Purpose:* Provision of replacement units would mitigate the potential public health and safety impacts of the demolition or conversion of Residential Hotel units. Requiring replacement units to be located near the original building allows displaced residents to retain their social, professional, and medical networks throughout any potential relocation. By providing equivalent housing in a comparable location, replacement units will effectively serve the same purpose and function as the lost Residential Hotel units.

- 5. Tenant Protections:** If a Residential Hotel unit is to be converted or demolished, the unit's tenant(s) shall receive written notice 120 days prior to commencement of work. The tenant must be referred to an equivalent, available unit, and if the tenant chooses not to move into that unit, they must be provided with a relocation allowance as specified for studio units in Section 8.22.450 of the Oakland Municipal Code. Any tenant(s) displaced because of conversion or demolition of Residential Hotel units shall be offered first right of refusal to rent the replacement units.

*Purpose:* As noted earlier, Residential Hotel units are often utilized as housing of last resort, meaning that displaced residents rarely have any other option besides homelessness if they are displaced from their units. This component of the Planning

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<sup>3</sup> Average Rooming Unit (without kitchen) rents from the 2015 "Downtown Oakland's Residential Hotels" report were compared to HUD Fair Market Rents for Efficiency Units (with kitchen) for 2015 in the three zip codes containing the Downtown SROs.

Code amendments aims to protect tenants from displacement, and ensures that they have a viable housing option if they do ultimately need to vacate their unit. Even projects or scopes of work that are excepted per Planning Code Section 17.153.060 must comply with these tenant protection requirements.

6. **Exceptions to the Conditional Use Permit Requirement:** It is important to craft exceptions to the proposed requirements to allow for life safety and other desired improvements that meet the goals of public health and safety.

**Table 1. Exceptions to the Conditional Use Permit Requirement**

<b>Exception</b>	<b>Applicability</b>	<b>Purpose</b>
Affordable Housing Projects that are reserved for occupancy by extremely low and very low-income households and minimize unit reduction	<ul style="list-style-type: none"> <li>• conversion</li> <li>• demolition</li> <li>• amenity rehabilitation</li> </ul>	The project will be serving the intended population.
Transitional Housing Projects	<ul style="list-style-type: none"> <li>• conversion</li> <li>• demolition</li> <li>• amenity rehabilitation</li> </ul>	The project will be serving the intended population.
Residential Hotel that has been completely vacant and unoccupied for more than ten (10) years	<ul style="list-style-type: none"> <li>• amenity rehabilitation</li> </ul>	Allows rehabilitation of vacant buildings that may already require significant upgrades.
Action necessary for health and safety purposes and does not result in temporary displacement of any tenant for more than sixty (60) days or permanent displacement of any tenant	<ul style="list-style-type: none"> <li>• amenity rehabilitation</li> </ul>	Allows for life safety related repairs and upgrades.
Action necessary for health and safety purposes	<ul style="list-style-type: none"> <li>• demolition</li> </ul>	Allows for life safety related repairs and upgrades.
Project that retains existing Residential Hotel Units or incorporate new replacement units, as part of a larger project, as long as these are deed-restricted affordable units	<ul style="list-style-type: none"> <li>• demolition</li> <li>• amenity rehabilitation</li> </ul>	The project will be serving the intended population.

7. **Waivers and Appeals Process:** This allows an applicant to request a waiver from the proposed requirements, and opportunity to appeal any decision regarding the waiver if the requirements have been applied incorrectly or inadvertently conflict with any federal, state or local law.

*Purpose:* This provides an applicant due process in case there is justification for a waiver or appeal.

- 8. Certificate of Use or Statement of Exemption:** The proposed regulations establish the procedure for creating a registry of Residential Hotels. The Certificate of Use requires property owners to provide evidence regarding their Residential Hotel's characteristics, including number of units, and number and type of communal facilities. The proposed regulations allow an owner to file a Statement of Exemption with supporting evidence if they believe their property should not be considered a Residential Hotel.

*Purpose:* Creation of a registry will help clarify the implementation of the proposed regulations. These requirements help establish a baseline of the Residential Hotel's characteristics to facilitate potential enforcement in case of code violations, and it also provides due process for property owners to show evidence if they believe they should not be considered a Residential Hotel.

#### *Related Planning Code Changes*

In association with the proposed new regulations for the conversion, demolition and rehabilitation of Residential Hotels, the following other portions of the Planning Code would be amended:

1. Changes to Table of Contents – to add the new Chapter 17.153
2. Changes to Chapter 17.10 (land use activities) – this proposal would amend the definition of the “Permanent Residential” land use activity to be based on stays of at least 30 days (rather than of at least seven days), and make complementary amendments to the “Semi-Transient Residential” and “Transient Habitation Commercial” activities, among others. This is a long overdue change that will allow Planning Code definitions to align with the city’s tenant rights timelines, transient occupancy tax timelines and other portions of the Municipal Code.
3. Changes to Chapter 17.54, 17.56, 17.74, 17.76 and 17.78 (references to Section 17.102.230) – this simply updates the references in other Chapters to the revised title for Section 17.102.230.
4. Changes to Section 17.102.230 (existing regulations related to Rooming Units) – the portion of this Planning Code Section related to restrictions on conversion or demolition of Rooming Units is being superseded by the proposed new Chapter 17.153. The Code Section’s restrictions on conversion of dwelling units would remain.
5. Changes to Section 17.134.020.A.3 (special situations requiring a Major Conditional Use Permit) – this section would be amended to reflect that the Conditional Use Permit required for the conversion, demolition or rehabilitation of Residential Hotels shall be considered a Major Conditional Use Permit, which requires review by the Planning Commission.

*Proposed Impact Fee for the Conversion and Demolition of Residential Hotel Units (Oakland Municipal Code, Title 15)*

A Nexus Analysis (**Attachment F**) was also completed to determine the nexus and potential impact fee (\$212,000 per unit) necessary to mitigate the loss of the unit from the City's housing stock. The calculation of the impact was based on the amount required to *fund* the construction of a replacement unit and a two percent administrative cost. Upon payment, the fee would be deposited in the City's Affordable Housing Trust Fund. The proposal allows an applicant to either provide the replacement unit as would be required in the proposed Planning Code Section 17.153.050, or pay the impact fee, as would be established in amendments to Oakland Municipal Code Chapter 15.70. The impact fee amount would automatically be adjusted upward annually for inflation in tandem with the increase in the residential building cost index.

*Purpose:* The purpose of an impact fee would be to address the loss of Oakland's remaining Residential Hotel units, and mitigate the threat to the health and safety of SRO residents who may face homelessness in their absence. Payment of impact fees would provide funds to the Affordable Housing Trust Fund to develop replacement Residential Hotel Units, equivalent in affordability, size, facilities and location to the Residential Hotel Units to offset the impact of removing the units from the rental market.

**Key Issues**

This section presents a summary of the key policy issues that were considered while creating the proposed regulations. In addition, **Attachment C** contains a summary of Planning Commission comments on the proposed regulations along with staff's responses.

**Issue: Concern from property owners that this is creating over-regulation for Residential Hotels.**

*Policy Response:* The proposed regulations have been created to serve an important public interest—address a threat to the health and safety of some of Oakland's most vulnerable residents, who may face displacement or homelessness in the absence of a Residential Hotel housing option. Only the regulations that Staff has determined are critical to meet the above intent are included—no more and no less.

**Issue: Developers are purchasing SRO buildings, investing heavily in capital improvements and refurbishment to the building, and putting them back on the market at significantly higher rents. This reduces the number of units financially accessible to Oakland's most vulnerable residents.**

*Policy Response:* While it is likely true that SRO buildings where there has been major capital investment will likely demand higher market rents, it is also true that the existing Residential Hotel stock is composed of older buildings that are often in need of major life safety and system upgrades. The City does not want to restrict that type of much-needed investment, and in terms of regulations and implementation of regulations, it is not practical nor feasible to specify all the types of rehabilitation that are restricted or permitted. However, the proposed regulations capture the addition of a kitchenette as a type of rehabilitation that

is clearly tied to an increase in market rents, while clearly not being required for life safety purposes.

**Issue: Residents may be displaced from their Residential Hotel Units due to capital improvements or demolition, and do not have other housing options. This puts residents at risk of becoming homeless and causes significant stress and trauma.**

*Policy Response:* In cases where Residential Hotel units would be converted or demolished, the proposed regulations will require that tenants receive advance notice, and referral to another equivalent units and a relocation allowance. Furthermore, in cases where there has been verified tenant harassment or illegal evictions in the past five years, conversion and demolition would be prohibited.

**Issue: Excessive regulation stymies investment and makes it difficult for property owners to attract the capital necessary to improve unit habitability, or bring long-vacant units back onto the market.**

*Policy Response:* The proposed regulations contain a specific exception from Rehabilitation restrictions for buildings that been continuously vacant for more than 10 years, with the understanding that those properties will require significant investment and upgrades. Furthermore, the proposed regulations do not establish rental rates for those SRO units.

**Issue: Focusing the definition of a Residential Hotel on physical features could have the unintended consequence of regulating dormitories, co-living spaces, and uses that are distinct from SROs.**

*Policy Response:* The purpose of the proposed registry is to limit the applicability of the regulations to only those properties determined to be a Residential Hotel. Furthermore, many Residential Hotels do function as co-living spaces, where residents appreciate and come together in communal spaces, and have opportunities for cultural cohesion, particularly in ethnic Residential Hotels. As noted by one focus group participant, a resident preferred living in a Residential Hotel Unit compared to a one-bedroom unit because the community feeling that was part of the Residential Hotel.

**Issue: Consideration of replacement unit requirement compared to an Impact Fee to mitigate the loss of Residential Hotel Units, resulting from a conversion or demolition action.**

*Policy Response:* The proposed regulations require a replacement unit for conversion or demolition of Residential Hotel Units. However, as noted earlier in the report, the City has also prepared a defensible Nexus Analysis under the California Mitigation Fee Act (**Attachment F**) that establishes a nexus and impact fee associated with the loss of a Residential Hotel Unit. If the impact fee is adopted, it is very important to require the full amount, since it is based on the cost to replace an equivalent unit. Any lower fee would amount to a loss in the City's housing stock of these types of units.

**Issue: Concern that Residential Hotels will attempt to undertake major rehabilitation work to qualify for a Substantial Rehabilitation exemption from rent control, as defined in Oakland Municipal Code, Title 8.**

*Policy Response:* There is currently a Moratorium in effect that prohibits the use of the Substantial Rehabilitation exemption from rent control; and on October 2, 2018, the City Council extended that Moratorium and directed staff to make changes to the Oakland Municipal Code to eliminate the Substantial Rehabilitation exemption for all properties citywide. The elimination of that exemption will also apply to Residential Hotel units.

**Issue: Merits of only allowing Affordable Housing Projects to be excepted from the requirements if they adhere to certain criteria.**

*Policy Response:* Affordable Housing Projects (AHPs) that guarantee housing that is affordable to low-income residents through property deed restrictions are a critical part of dealing with our current housing crisis, and provide a clear public health and safety benefit to the Oakland community. However, most affordable housing funds require units to have kitchenettes and to meet a certain minimum size threshold, which would require Amenity Rehabilitation and Demolition of units (to achieve the minimum size and/or to fit in kitchenettes). Therefore, the proposed regulations strike a balance between ensuring the feasibility of AHPs, and ensuring the housing remains dedicated to the target population of extremely-low and very-low income tenants. The regulations do this by allowing for AHPs to be excepted from demolition, conversion and rehabilitation requirements, while specifying the required income levels the AHPs must serve. The proposed regulations aim for the minimum loss of housing stock by specifying that the new unit types in the AHPs must be Rooming, Efficiency or one-bedroom units without specifying a specific cap in the reduction of units to allow for the flexibility that may be required by affordable housing funds. Furthermore, the proposed regulations require that an AHP, at the time of application, have at least 25 years remaining in their regulatory agreement timeline. The City's standard requirement for length of affordability of a new AHP is 55 years, yet requiring a regulatory agreement to have at least 25 guaranteed remaining years of affordability is a significant length of time and is also long enough to ensure that there is not an incentive for property owners with soon-expiring deed restrictions to convert, demolish or rehabilitate in anticipation of higher market rents.

## **FISCAL IMPACT**

Implementation of the new regulations will not have any fiscal impacts. The permits that may be required as part of the regulations, including a Major Conditional Use Permit and determinations, already have associated fees in the Master Fee Schedule that are meant to cover staff costs. The regulations will be enforced by Code Enforcement staff in the Planning and Building Department (PBD), like other Planning Code Regulations.

There may be fiscal benefits to any revenues generated by the impact fees that will help mitigate any potential impacts created by conversion or demolition of Residential Hotels. Any collected funds would be deposited into the Affordable Housing Trust Fund. There is no estimate for revenue since it would be dependent on property owners' interest and the granting of a Conditional Use Permit for conversion or demolition.

The Mitigation Fee Act requires annual monitoring and reporting and a five-year update of the Impact Fees. The potential costs of administering and implementing the program, including monitoring and reporting requirements are estimated to add two percent to the cost of the replacement unit as calculated for the impact fee revenue consistent with the administrative costs of our current impact fee programs. Pursuant to the Mitigation Fee Act, the City can charge the two percent administrative fee to reasonably cover the administration costs of the program.

### **PUBLIC OUTREACH / INTEREST**

Staff has conducted extensive community outreach, with a wide range of stakeholders, to formulate a comprehensive understanding of the role of Residential Hotels in Oakland. The efforts are described below, and further summarized in **Attachment G**:

Stakeholder Working Groups: Staff convened three stakeholder working group meetings wherein participants shared their concerns regarding diminishing SRO stock, strategies for protection, and goals for forthcoming policy. Attendees consisted of City of Oakland staff from the HCDD, City Attorney's Office, PBD and the Mayor's Policy Director for Housing Security, along with housing developers, policy analysts, tenant advocates, community development professionals, and Alameda County's Public Health Department staff.

Resident Focus Groups: Staff conducted two focus groups comprised of over nearly two dozen residents from two different Residential Hotels. While the staff prepared questions in advance, the format of the focus groups allowed for residents to engage one another, broach new subject matter, and utilize their institutional knowledge and personal experience to illuminate intricacies of life in a Residential Hotel. These sessions built staff understanding as to how specific policy changes would directly affect SRO residents.

Interview: Staff conducted one in-depth interview with a long-time resident of multiple Residential Hotels in Oakland. During this interview, the Residential Hotel resident expounded upon common themes broached during working group and focus group sessions.

Residential Hotel Ownership Meeting: Staff conducted a meeting with owners of Residential Hotel properties in Oakland. During this meeting, staff presented the background and context of our regulatory efforts, as well as an overview of proposed changes to the Planning Code. Property owners and their representatives had the opportunity to share how respective changes would impact them and their business, as well as future housing retention efforts. In addition to these most recent efforts, the City also relied upon the previous studies of Downtown Residential Hotels, published in 1985, 2005, and 2015, that included resident demographic data and property manager interviews.

### **COORDINATION**

As noted earlier in this report, staff convened three stakeholder working group meetings wherein participants shared their concerns regarding diminishing SRO stock, strategies for protection,

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and goals for forthcoming policy. Attendees consisted of City of Oakland staff from the HCDD, City Attorney's Office, PBD and the Mayor's Policy Director for Housing Security, along with housing developers, policy analysts, tenant advocates, community development professionals, and Alameda County's Public Health Department staff.

Furthermore, this report and legislation have been reviewed by the Office of the City Attorney and the Controller's Bureau.

### **SUSTAINABLE OPPORTUNITIES**

***Economic:*** These ordinances intend to promote greater economic integration in Oakland by preserving a housing typology that is naturally more affordable. Maintaining housing for low and very low-income residents improves economic performance by ensuring healthy and nearby housing for workers.

***Environmental:*** Maintaining housing close to transit centers will continue to eliminate greenhouse gas emissions by reducing miles traveled to/from work and essential services for residents.

***Social Equity:*** This resolution intends to promote social equity by protecting Oakland renters from losing access to naturally affordable housing in Residential Hotels.

### **CEQA**

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

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As a separate and independent basis, the actions authorized by this ordinance are exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), which exempts projects when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, and 15183, which exempts projects consistent with General Plan and Zoning. Each of these provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

Adoption of the impact fee is (1) not a Project under the California Environmental Quality Act ("CEQA") and is therefore exempt pursuant to CEQA Guidelines section 15378 (b)(4); (2) statutorily exempt pursuant to CEQA Guidelines section 15273(a)(4) (Rates, Tolls, Fares and Charges for obtaining funds for capital projects necessary to maintain service within existing service area); (3) statutorily exempt pursuant to CEQA Guidelines section 15267 (Financial Assistance to Low or Moderate Income Housing); (4) adoption of the Residential Hotel Demolition and Conversion Impact Fee Ordinance is not in-and-of-itself a "Project" (pursuant to CEQA Guidelines 15378) since the adoption of the fee itself will not result in a physical change in the environment. However, the actions authorized by this ordinance may be part of a larger "Project" that will be subject to environmental review in accordance with CEQA at "the earliest feasible time" prior to "approval" consistent with CEQA Guidelines Sections 15004 and 15352. The approval of any replacement residential hotel units or equivalent housing constructed with fee monies will be subject to appropriate review under CEQA prior to any administrative or City Council approvals; and/or (5) not intended to, nor does it, provide CEQA clearance for future development-related projects by mere payment of the fees. Each of the foregoing provides a separate and independent basis for CEQA compliance and when viewed collectively provides an overall basis for CEQA compliance.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Conduct A Public Hearing And, Upon Conclusion, Adopt The Following Pieces of Legislation:

- 1) An Ordinance (1) Amending The Oakland Planning Code To Adopt A New Section 17.153 Regulating The Demolition, Conversion and Rehabilitation of Residential Hotels And Make Related And Conforming Amendments To Other Planning Code Sections, And (2) Determining That The Actions Authorized By This Ordinance Were Both The Subject Of Adequate Previous Analysis Under The California Environmental Quality Act ("CEQA") And Are Exempt From CEQA Pursuant To CEQA Guidelines Section 15061(b)(3) And 15183; And
- 2) An Ordinance (1) Amending The Oakland Municipal Code To Establish A Citywide Residential Hotel Demolition And Conversion Impact Fee And Make Related And Conforming Amendments, (2) Amending The Master Fee Schedule (Ordinance No. 13497 C.M.S., As Amended) To Include The Residential Hotel Demolition and Conversion Impact Fee, And (3) Determining That The Adoption Of The Demolition and Conversion Impact Fee Is Exempt From CEQA And That Any Projects Funded By The Fee Revenue Will Be The Subject Of Future CEQA Analysis.

For questions regarding this report, please contact CHRISTINA FERRACANE, PLANNER III, at (510) 238-3903.

Respectfully submitted,



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Prepared by:  
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Strategic Planning Division

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*Attachments (7):*

*A: Downtown Oakland's Residential Hotels (2015)*

*B: Maps of Preliminary Identification of Residential Hotels*

*C: Summary of Planning Commission Comments and Staff's Responses*

*D: Revisions to the Proposed Planning Code Amendments Since the Planning Commission Hearing*

*E: Summary of Case Studies of Other Cities Regulations of Residential Hotels*

*F: "Nexus Analysis Impact Fee to Mitigate the Loss of Residential Hotel Units in Oakland" prepared by Hausrath Economics Group, dated October 5, 2018*

*G: Summary of Community Outreach*

# Downtown Oakland's Residential Hotels



**Cost**



**Characteristics**



**Challenges**



CITY OF OAKLAND

A Report Prepared by The City of Oakland, California  
Housing and Community Development Department  
September 2015

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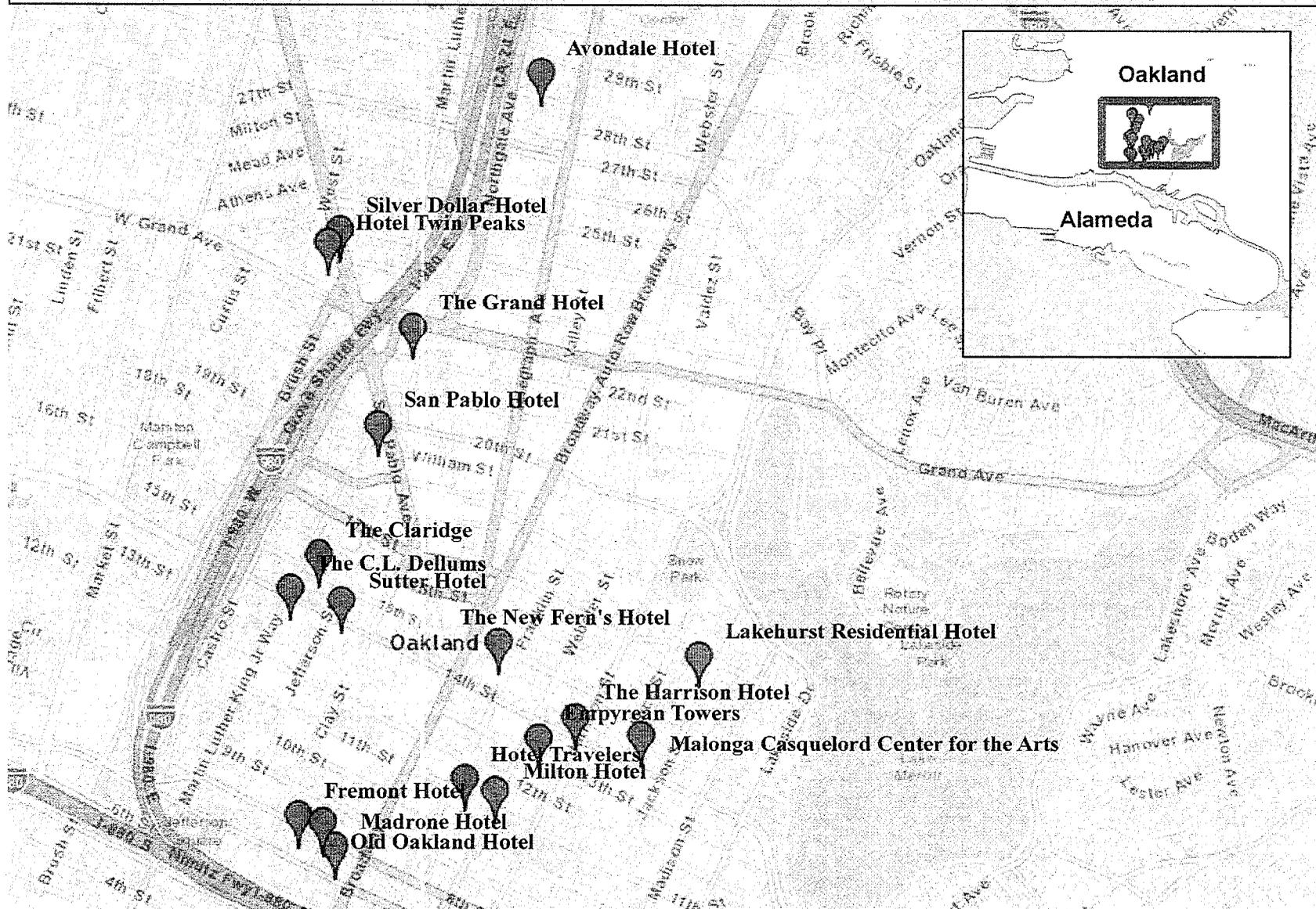
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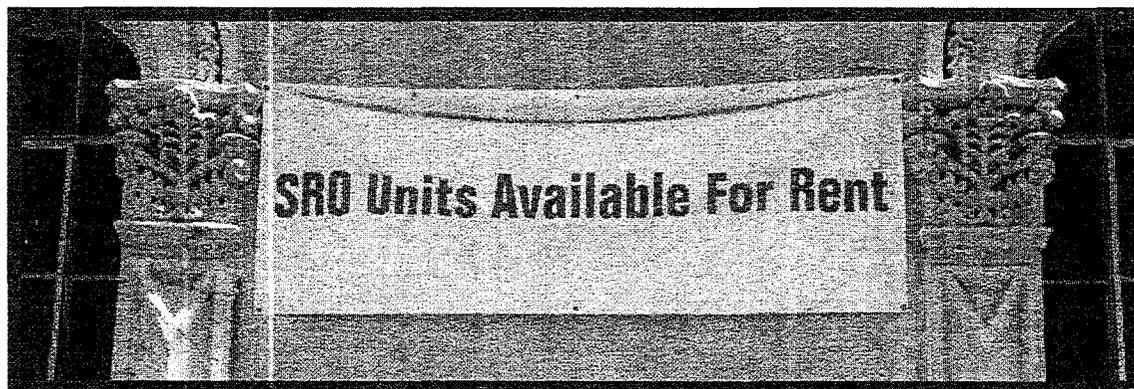
The Oakland Department of Housing and Community Development would like to acknowledge the following organizations for their assistance in providing information for this report: Alameda County Vector Control • Oakland City Attorney's Office • East Bay Asian Local Development Corporation (EBALDC) • East Bay Housing Organizations (EBHO) • Oakland Police Department • Office of San Francisco Supervisor Mark Farrell • Office of Oakland Council President Lynette Gibson McElhaney • Resources for Community Development (RCD Housing)

Photos and text by Brian Warwick. Study overseen by Maryann Sargent, Housing Development Coordinator.

Figure 1

# Downtown Oakland's Residential Hotels





*A sign advertises "SRO Units Available For Rent" outside the Claridge. Vacancies are an anomaly among SROs currently—most residential hotels in Oakland are at or near full capacity.*

## About This Report

This report is designed to be a collection of useful information about downtown Oakland's residential hotels. It includes data such as occupancy rates and room fees, as well as relevant legal statutes and policies, and useful resources for further research. It is to be used as an introduction to Oakland's residential hotels rather than an exhaustive account. The report also includes a small sampling of how some other cities have chosen to approach their own single room occupancy hotels. It is not the purpose of this report to advocate for any specific policy or set of proposals, nor is the report intended to single out specific hotels for punitive action. Where evidence has pointed to crime, pests, or other problems at specific hotels, we have provided that information.

Previous reports were published by the Housing and Community Development Department in 1985 and 2004. This report's release is timed to coincide with Oakland's Downtown Specific Plan, which began the community participation process in the summer of 2015. It is our hope that this report provides a basis for community members, policy advocates, city officials, and the general public to engage in a meaningful debate about the ongoing role of Oakland's historic residential hotels.

## Defining Residential Hotels

Residential Hotels, also called Single Room Occupancy hotels, or SROs, were constructed during late 19th and early 20th century to house transient workers. As the name implies, they are composed of a single room for residents. They are distinguished from studio or efficiency units in that they typically do not include a private bathroom or kitchen in the room. Historically, residential hotels have also differed from other dwelling units in the type of population that they house. Residential hotel tenants have traditionally been primarily itinerant male workers, rather than women, couples, or families.

Residential hotels do not typically require a security deposit, credit references, proof of income, or long-term lease agreement. For these reasons, residential hotels can provide housing for vulnerable

**The Terms "residential hotel" and "SRO" (Single Room Occupancy) are used interchangeably in this report.**

populations with unstable finances or little access to credit. In recent decades, residential hotels have gained a reputation for entrenched poverty, crime, and prostitution. This report investigates these issues for residential hotels in downtown Oakland.

Despite being seen as housing of last resort, market-rate residential hotels are not necessarily an inexpensive form of housing. The cost of living in an SRO can rival or exceed that of traditional apartments. The tenants of residential hotels are also not necessarily tran-

sient. One quarter of Oakland residential hotel tenants have occupied their units for at least five years. Some residents have resided in the same building for more than twenty years.

Similar forms of housing, such as “extended stay” hotels, today often serve the same semi-permanent worker population that SROs once served. Oakland also has a number of motels built in the 1960s and 1970s that today house a primarily local population. While these serve a similar market to SROs, they can be distinguished from traditional residential hotels in a few ways: they are of more recent construction, they were originally built to serve tourists, and they nearly always contain private bathrooms and/or kitchen facilities. While worthy of study, the numerous motels on West MacArthur and elsewhere in Oakland are outside the scope of this report.

The terms residential hotel and SRO are used interchangeably in this report.

## Previous SRO Studies

This study follows reports that were released by the City of Oakland in 1985, 1995, and 2004. The 1985 study was written at a time when SRO housing was rapidly being lost due to redevelopment. At the time of the 1985 report, there were 2,003 SRO units in the downtown area. (This study did not include the San Pablo corridor.) Today, there are 1,403 remaining SRO units downtown and along the San Pablo corridor. The 1995 and 2004 studies are less extensive follow-up reports to the 1985 study. (A survey was also conducted in 2009, but the results were never released.)

**Read the full 1985 and 2004 SRO reports at:**

<http://www2.oaklandnet.com/Government/o/hcd/s/Data/DOWD008692#sro>.

**See the current rent restrictions for regulated affordable SRO units at:**

<http://www2.oaklandnet.com/Government/o/hcd/s/Data/DOWD008693>.

The 1989 Loma-Prieta earthquake left catastrophic damage on many residential hotels in Oakland, leaving as many as twenty-five hundred residents temporarily homeless. Because most of these residents were considered short-term tenants, they were not initially eligible for relief from the Federal Emergency Management Agency (FEMA). Funds were later granted in a landmark settlement. Much of the funding was

used to purchase and rehabilitate the hotels, to be operated by nonprofit affordable developers as permanent housing for low-income tenants.<sup>1</sup> The 1995 report briefly describes the difficult process of securing financing for structural repairs to residential hotels and replacement housing for displaced tenants. The 1995 report identifies a high vacancy rate--an average of 28%--as a chief concern for SRO landlords at the time.

The number of residential hotels in downtown Oakland has shrunk with each report. Some buildings have been demolished, converted to other uses or renovated into non-SRO dwellings. Today, 18 SRO buildings remain in the downtown and San Pablo corridor area. While Oakland and other cities are currently experimenting with microapartments and shared housing, residential hotels with shared kitchens and bathrooms are primarily a legacy form of housing.

Despite these changes, there is a great deal of continuity at many of the hotels still in operation. The majority of the properties have not changed hands since the 2004 report. Some residents have occupied the same unit since prior to 1985. Two of the hotels that were singled out as havens for crime or mismanagement in the 2004 report were the Grand Hotel and the Menlo Hotel (now called Empyrean Towers). Both of these have recently been placed into court-ordered receivership for these reasons.

## The 2015 Survey

Oakland’s Housing and Community Development Department staff conducted the current survey during June and July of 2015. Staff visited hotels directly and spoke with managers or desk clerks to obtain the information. While the hotel staff seemed knowledgeable and the numbers provided were consistent with other available data, we cannot independently verify all of the information given. Nonprofit organizations were generally able to provide more detailed occupancy statistics because of record-keeping requirements.

## Cost of Housing

On average, those hotels that accept daily guests charge \$62 per night. The SROs accepting weekly guests charge an average of \$251. The average monthly rate for those accepting monthly guests is

<sup>1</sup> Comerio, Mary C. “Housing Repair and Reconstruction After Loma Prieta.” *Housing Repair and Reconstruction After Loma Prieta*. University of California, Berkeley, 09 Dec. 1997. Web. 04 Oct. 2015. [http://nisee.berkeley.edu/loma\\_prieta/comerio.html](http://nisee.berkeley.edu/loma_prieta/comerio.html)

\$676.

The average rates in 2002 were \$35 daily, \$199 weekly, and \$544 monthly. (These figures have not been adjusted for inflation.) After adjusting for inflation, daily rates have increased 34%. Weekly rates have actually decreased 4.6%, and monthly rates have decreased 6.4% after adjusting for inflation.

Looking back to the 1985 study, the average rates then were \$18.50 daily, \$77 weekly, and \$246.50 monthly. Over the past 30 years, this represents an inflation-adjusted increase of 51% at the daily rate, 46% at the weekly rate, and 29% at the monthly rate.

Most residents of Oakland's SROs are permanent tenants. A full 85% of current residents have occupied their rooms at least one month, and 65% have been tenants for at least one year. An estimated 26% of residents have been tenants for five years or more.

Several hotels do not accept new guests on a monthly basis. Local residents who do not have permanent housing must shuttle around between different hotels every 30 days or less in order to comply with this policy. (Preexisting permanent tenants must be grandfathered in to this policy. For more information about tenancy regulations, see the "Relevant Legal Statutes for Regulation of SROs" chart.) The maximum stay for new guests at the Hotel Travelers, for example, is 28 days. Because the weekly rate at the Hotel Travelers is \$270, the effective monthly rate is \$1,080 per month. This is a full 50% higher than the average monthly rate for those that do accept monthly guests.

Permanent residents of SROs do not necessarily pay the market average for rent. Oakland's rent adjustment ordinance limits rent increases for permanent residents to the cost of inflation. Depending on when a resident has

Table 1

## Downtown Oakland's Residential Hotels

Hotel	Address	Total			
		Total Units	Available Units	Occupied Units	Occupancy Rate
1 Avondale Hotel	540 28th St	55	55	55	100%
2 The C.L. Dellums	644 14th St	72	72	70	97%
3 Claridge (formerly Ridge Hotel)	634 15th St	197	197	130	65%
4 Empyrean Towers (formerly Menlo Hotel)	344 13th St	96	96*	96*	unknown
5 Fremont Hotel	524 8th St	41	39*	39*	unknown
6 Grand Hotel (formerly Palm Hotel)	641 W. Grand Ave	77	32	32	100%
7 Harrison Hotel	1415 Harrison St	81	81	78	96%
8 Hotel Travelers	392 11th St	70	65	65	100%
9 Lakehurst Residential Hotel	1569 Jackson St	120	120	95	79%
10 Madrone Hotel	477 8th St	31	23	23	100%
11 Malonga Casquelourd Center for the Arts (formerly Alice Arts Center)	1428 Alice St	75	75	45†	60%†
12 Milton Hotel	1109 Webster St	40	20	20	100%
13 Old Oakland	805 Washington St	37	35	35	100%
14 San Pablo Hotel	1955 San Pablo Ave	144	144	137	95%
15 Silver Dollar Hotel	2329 San Pablo Ave	20	20	18	90%
16 Sutter Hotel	584 14th St	102	100	95	95%
17 The New Fern's Hotel	415 15th St	33	30	30	100%
18 Twin Peaks Hotel	2333 San Pablo Ave	20	20	9	45%
<b>Totals</b>		<b>1311</b>	<b>1224</b>	<b>1072</b>	<b>88%</b>

\*Estimated number, based on visual observations or news accounts.  
† Recently renovated. Still in the process of securing tenants.

moved in, market rents may have increased faster than inflation, and the resident may thus be paying below-market rent.

An individual paying more than 30% of his or her gross income in rent is typically classified as "rent-burdened," and an individual

paying more than 50% is classified as "severely rent-burdened." In order to not be rent-burdened, an individual would need to earn at least \$28,120 per year to afford the monthly rate. To afford the weekly rate on a yearly basis, an individual would need to earn \$40,160

Table 2

**2004 Residential Hotels**

NO.	HOTEL NAME	NUMBER STREET	TOTAL ROOMS	AVAILABLE ROOMS
1	Alendale Guest Home * †	278 Jayne Street	10	10
2	Alice Arts Center	1428 Alice Street	74	74
3	Asasha Hotel *	2541 San Pablo Avenue	Closed	N/A
4	Avondale Hotel	540 28th Street	52	52
5	Aztec Hotel	583 8th Street	59	59
6	C.L. Dellums Apartments	644 14th Street	72	68
7	California Hotel	3501 San Pablo Avenue	149	149
8	Fem's Hotel †	415 15th Street	32	31
9	Fremont Hotel	524 8th Street	38	38
10	Hamilton Hotel	2101 Telegraph Avenue	92	92
11	Harrison Hotel * †	1415 Harrison Street	90	89
12	Hotel Oakland	270 13th Street	315	315
13	Hotel Palm	641 West Grand Avenue	69	69
14	Hotel Travelers	392 11th Street	88	78
15	Hotel Westerner * †	1954 San Pablo Avenue	19	19
16	Jefferson Inn	1424 Jefferson Street	65	55
17	Lake Merritt Lodge	2332 Harrison Street	157	157
18	Lakehurst Residence	1569 Jackson Street	127	127
19	Madrone Hotel	477 8th Street	31	30
20	The Menlo	344 13th Street	96	96
21	Milton Hotel * †	1109 Webster Street	58	58
22	Moor Hotel *	2351 San Pablo Avenue	Closed	N/A
23	Oaks Hotel	587 15th Street	84	84
24	Old Oakland Hotel	805 Washington Street	38	37
25	Ridge Hotel	634 15th Street	200	200
26	San Pablo Hotel	1955 San Pablo Avenue	144	144
27	Silver Dollar Hotel *	2330 San Pablo Avenue	Unknown	Unknown
28	Sutter Hotel	584 14th Street	106	86
29	Twin Peaks Hotel	2333 San Pablo Avenue	20	20
30	Will Rogers Hotel *	371 13th Street	Closed	N/A
31	Hotel Royal *	2000 San Pablo Avenue	Closed	N/A
<b>NO. OF SRO UNITS</b>			<b>2,285</b>	<b>2,237</b>

per year. To afford the daily rate on a yearly basis, an individual would need to earn \$75,433. Area Median Income (AMI) in Alameda County is \$65,450 in 2015. A person earning 50% of AMI would bring home \$32,550 annually. Residents of SROs would need to earn at least 45% of AMI in order to not be rent burdened living in an SRO.

Demographic data on sources of income for SRO residents indicates that most residents rely on Social Security and disability payments as their primary source of income. The income generated from such payments would put most residents below the 25% AMI threshold. This evidence suggests that

### SROs and Affordable Developers

Since the 1989 Loma-Prieta earthquake, affordable housing developers have continued to acquire and rehabilitate residential hotels. These developers, which are usually mission-driven nonprofit organizations, receive a mix of funding from city, state, and federal agencies to rehabilitate the hotels and lease them out to low income residents. Developers must adhere to a set of requirements when they accept such funding:

- Tenants sign year leases, rather than staying on a weekly or nightly basis.
- Occupancy is restricted to low-income residents, usually those earning 50% or less of Area Median Income (AMI).
- The maximum rent that can be charged is restricted to levels set by the various regulatory agencies. The units must remain affordable for a set period of time, usually 55 years under current state regulations. (See Table 6, "SROs with Affordability Requirements" for affordability expiration dates.)

State and Federal policies directed toward rehabilitation of SROs into rehabilitated affordable housing have included the Section 8 Moderate Rehabilitation SRO Program, administered by the Department of Housing and Urban Development (HUD). This program was designed to help house homeless residents. The program was later folded into a larger program directed towards the homeless, Continuum of Care (CoC). California also sets aside 4% of Low Income Housing Tax Credit funds towards either Special Needs or SRO project types.

### Characteristics of SROs

Oakland's residential hotels vary widely in terms of size, cost, quality, and population served. Among the chief distinctions:

- **Size** — The Claridge is currently the largest residential hotel, with 197 units. The Silver Dollar and Twin Peaks hotels, meanwhile, have only 20 units each.

Table 3

## 2015 Residential Hotel Survey Results

	Number	Percentage
Hotels Receiving Tax Credits or Owned by Nonprofit Developer	5	28%
Market Rate Hotels	13	72%
Market Rate Hotels receiving bulk of clients through social service referrals	3	17%
Only accepts new residents less than 28 days	5	28%
Only accepts new residents for month/year leases	8	44%
Accepts Daily Rentals	4	22%
Accepts Weekly Rentals	6	33%
Accepts Monthly Rentals	13	67%
Rooms with private bathroom	482	34%
Rooms with private kitchen	133	9%
Buildings with common kitchen	6	32%
Buildings with private mailboxes for tenants†	9	47%
Landlords that accept Section 8 vouchers	7	42%
Rooms occupied for less than 1 month‡		15%
Rooms occupied for less than 1 year‡		17%
Rooms occupied for more than 1 year‡		65%
Rooms occupied for more than 5 years‡		26%
Average Daily Rate*	\$62	
Average Weekly Rate*	\$251	
Average Monthly Rate*	\$642	

\*Some rent levels are set in accordance with Oakland Housing Authority requirements.

†Buildings without private mailboxes typically hold all mail at the front desk in individual slots.

‡Where known. Some respondents provided only rough estimates or did not disclose information.

• **Demographics** — The Fremont Hotel and Milton Hotel served an almost exclusively Chinese-American population, with few English speakers among the residents or the staff. A handful of the hotels primarily serve populations with specific needs such as mental health care.

Our survey of hotel management did not include any questions about the race, gender, or origin of SRO residents. The Housing and Community Development Department was able to separately obtain detailed demographic data for 240 units, or 22% of all SRO residents. The residents of these units were 71% male and 28% female, in keeping with the traditional gender breakdown of SROs. Residents of these units identified as 66% black, 27% white, and 4.5% Asian. The majority of residents reported social security and/or disability benefits as their sole source of income, with a smaller group receiving pension payments or general assistance.

• **Needs** — Some buildings, such as the Lakehurst, the Avondale Hotel, and the Hotel Twin Peaks, primarily acquire tenants through referrals from social service agencies such as Bay Area Community Services (BACS). These tenants often have mental or physical disabilities limiting their ability to secure employment and housing. Unfortunately, most residential hotels do not offer onsite supportive services such as mental health professionals, medical staff, job training, or enrichment activities. The Lakehurst Hotel does employ a kitchen staff to serve two meals a day to residents, and the Hamilton Apartments, operated by Mercy Housing, offers Shelter Plus Care service. Moreover, many residents may be visited by social workers and other professionals independently of their relationship to housing.

• **Mail Delivery** — All of the hotels had some

form of mail delivery for tenants. Roughly half had private mailboxes, while the other half kept tenant mail in individual slots maintained by the desk clerk. One hotel, the Silver Dollar, had a common slot for all mail delivery to the building.

• **Ownership Status** — Many of the hotels are privately owned. As mentioned above, however, nonprofit housing organizations have taken an increasing interest in acquiring residential hotels. Not all buildings that receive subsidies are owned by nonprofits, however. The Claridge Hotel, whose affordability requirements expire in 2023, is privately owned. The Madrone Hotel is owned by a nonprofit housing developer and receives city rehabilitation funding but no state tax credits.

• **Management** — The majority of the residen-

Table 4

Residential Hotel Demographics		
	Number	Percentage of Total
Total Units Surveyed	240	22.4%
Female	67	27.9%
Male	170	70.8%
Black	154	64.2%
White	69	28.8%
Asian	9	3.8%
Other/Unknown/ Multiracial	10	4.2%

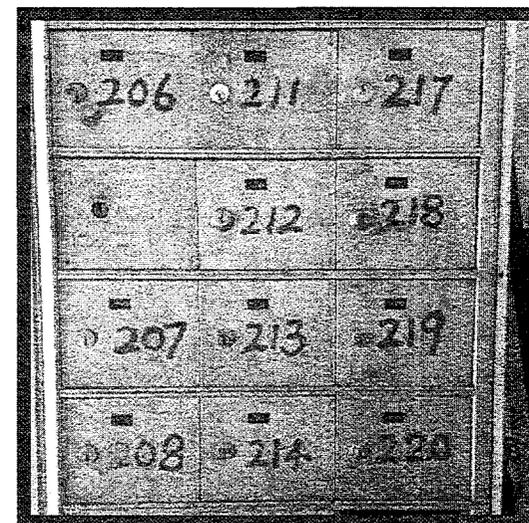
Available data indicates that residential hotels continue to primarily serve single men, in keeping with historic patterns.

tial hotels employ full-time staff during business hours to manage the property. There were a few exceptions. Staff was unable to reach a manager or desk clerk at the Silver Dollar Hotel, despite multiple attempts. Tenants reported that the management visits the building regularly but does not employ a desk clerk during business hours. (A tenant helped us complete the survey.) The Fremont Hotel also did not appear to have onsite management. City staff visited the hotel with a translator but were unable to find a manager on duty or a knowledgeable tenant willing to discuss the hotel. Statistics for this hotel were compiled by observing visual clues, such as counting the number of mailboxes, and shoes at the entrance of rooms.

• **Occupancy Rate** — The average occupancy rate is 88% among residential hotels. This average was distorted by a handful of outliers. Buildings that received guests primarily through social service agency referrals tended to have a lower occupancy rate. In addition, the Malonga Casquelorde Center for the Arts (formerly the Alice Arts Center) recently completed a large renovation and is still in the midst of completing its lease-up process. They expect to fill these vacancies shortly and be fully occupied. The Claridge Hotel is another outlier, with an occupancy rate of just 65%. Staff at the hotel gave vague responses about why the occupancy rate was so low; while insisting that they were all available for rent, they also made reference to the units being cleaned up due to damage from former tenants. Tax credit requirements state that a building’s management must make a “reasonable attempt” to fill any vacancies before allowing a unit to remain vacant or be filled by a market-rate tenant. The occupancy rate of all other affordable housing SROs is 98%.

• **Length of Stay** -- Some residential hotels rent only by the day and week, while others rent only by the month. Overall, 65% of dwellings accepted monthly rentals.

Under city law, guests who stay longer than 30 days are considered permanent residents. This entitles them to certain legal protections: they cannot be evicted without just cause, and rent increases are tied to inflation. For this reason, some hotels have instituted a policy of not allowing new guests to stay more than one month (or 28 or 21 days, in certain instances). Long-term tenants at these hotels are grandfathered in as permanent residents, while new guests are limited in their stay. The Hotel Travelers is one such example--fifty of the seventy units are occupied by permanent residents, while the remaining units are dedicated to short-term rentals.



Private mailboxes at the Fremont Hotel. Roughly half of all SROs have private mailboxes, while the rest keep all mail behind the front desk, to be distributed by the desk clerk.

## Loss of SRO Units

While the number of SRO units in Oakland continues to decline, the reasons for such loss are multifaceted. Many former SROs continue to house or serve low-income populations. The California Hotel, Oaks Hotel, Hamilton Apartments, and Jefferson Inn were renovated by nonprofit affordable developers, with bathrooms and kitchenettes installed in each room. These upgraded apartments are no longer classified as "single room occupancy," but they provide a much higher quality of housing to low-income residents. Other properties have been converted into housing with onsite supportive services. Operation Dignity, a transitional home for veterans, is at the site of the former Aztec Hotel.

Where residential hotels are extensively renovated, some loss of units is customary in order to provide more space and amenities. The Lake Merritt Lodge, for example, was rehabilitated to provide student housing for the Hult International Business School. It now has 97 rooms instead of its former 157.

As Oakland gentrifies, rumors have spread about investors making plans to renovate residential hotels in order to market them to wealthier customers. In May of 2015, the San Francisco Business Times reported that Hotel Travelers may soon be converted to an upscale boutique hotel. (See "Oakland's Residential Hotels in the News" on page 11 for more information.) Sutter Hotel management has also expressed to city staff their interest in converting their building to upscale apartments. Unlike residential hotels managed by affordable developers, there are few restrictions in place to preserve for-profit market-rate residential hotels. Oakland currently has a section of its municipal code aimed at preserving SRO units (see "Preservation Efforts for Oakland's Residential Hotels", page 16). However, this code relies largely on the discretion of City staff in choosing to issue or deny permits for demolition or conversion.

The Moor Hotel, pictured on page 13, has been shuttered for over a decade. While the reasons for the property's long-term closure are unknown, this is consistent with the practice of land banking, in which an owner will hold on to a property purely for the speculative value of the land.

Table 5 What Has Happened to Former Residential Hotels?

SROs in Operation in 2004	Address	Former Units	Current Units	Current Use
Alendale Guest Home	278 Jayne Ave	10	unknown	Market-rate apartment rental units.
Aztec Hotel	583 8th St	59	58	Transitional Home for Veterans.
California Hotel	3501 San Pablo Ave	149	137	Affordable housing apartments with private kitchens and bathrooms.
Hamilton Apartments*	510 21st St	160	92	Affordable housing operated by Mercy Housing. Supportive services, private kitchens and bathrooms for all residents.
Hotel Westerner	1954 San Pablo Ave	19	n/a	Demolished. Parcel was incorporated into larger market-rate apartment project (The Uptown).
Jefferson Inn	1424 Jefferson St	65	101	Savoy Apartments, a project-based Section 8 development with private kitchens and bathrooms.
Lake Merritt Lodge	2332 Harrison St	157	97	Student Housing for Hult International Business School.
Oaks Hotel	587 15th St	85	n/a	Combined with Jefferson Inn to form Savoy Apartments.
SROs Closed Prior to 2004	Address	Former Units	Current Units	Current Use
Asasha Hotel	2541 San Pablo Ave	unknown	20	Project Pride, a development for women in recovery with children.
Hotel Royal	2000 San Pablo Ave	unknown	n/a	Alameda County Social Service Center office.
Hotel Touraine	559 16th Street	108	62	Henry Robinson Multi Service Center, providing transitional housing and supportive services for the homeless. Each unit has individual restrooms.
Moor Hotel	2351 San Pablo Ave	unknown	n/a	Vacant building.
Will Rogers Hotel	371 13th St	96	63	Clarion Hotel, a tourist hotel.
		Totals†	908	630

\*The Hamilton Apartments were rehabilitated and converted to affordable studios prior to 2004. They have been reclassified in this report.

†Totals are approximate. Because the number of units at some hotels is unknown, actual totals are higher for both former and current units.

Table 6 SROs with Affordability Requirements

Name	Address	Affordability Expiration Year
Claridge	634 15th Street	2023
San Pablo Hotel	1955 San Pablo Avenue	2024
Harrison Hotel	1415 Harrison Street	2026
C.L. Dellums	644 14th Street	2068
Madrone Hotel	477 8th Street	2069

The Claridge, which is no longer owned by an affordable housing developer, is likely to be converted to a more upscale use upon expiration of its affordability requirements in 2023.

## Residential Hotels and Pests

The most common pests found at residential hotels are bedbugs, cockroaches, mice, rats, fleas, lice, and flies. Vector Control of Alameda County handles all complaints of pests within dwellings in Oakland. Upon receiving a complaint or request for investigation, Vector Control visits the property to assess the problem. Vector Control does not exterminate pests, but rather recommends an abatement plan for the owner. The agency records if and when the problem is abated, although they have no enforcement power for non-compliant properties.

Vector Control keeps records of each complaint logged since 2007. Residential hotels accounted for a disproportionate number of complaints to Vector Control during that time period. SROs accounted for 253 of the roughly 2800 total complaints registered within Oakland from January 2007 through July 10th of 2015. In other words, just 18 buildings—less than 1% of the total dwelling units in Oakland—account for over 9% of vector control complaints.

Going further, a small number of SRO properties account for a disproportionate number of SRO vector control problems. The Claridge Hotel accounts for more than one-third of SRO vector control complaints from 2007 to June 2015, and just under one-third of all SRO complaints for the period from 2014 to June 2015. The Claridge is Oakland's largest SRO, with 197 units, but this figure is still high when divided

Table 7

### Vector Control SRO Complaints

1/1/2007-6/10/2015

Hotel Name	Complaints, 2007 to 6/10/15	Total Units	Complaints Per 100 Units (Weighted Average)
Silver Dollar Hotel	11	20	55.0
New Fern's Hotel	13	33	39.4
Claridge	73	197	37.1
Old Oakland	11	37	29.7
Grand Hotel	22	77	28.6
Sutter Hotel	19	102	18.6
Avondale Hotel	9	55	16.4
Empyrean Towers	15	96	15.6
Hotel Travellers	10	70	14.3
Madrone Hotel	4	32	12.5
San Pablo Hotel	18	144	12.5
Harrison Hotel	10	81	12.3
Lake Merritt Lodge	11	157	7.0
Lakehurst Hotel	10	120	8.3
Hamilton Apts	7	92	7.6
C.L. Dellums	5	72	6.9
Fremont Hotel	2	41	4.9
Center for the Arts	3	75	4.0
Hotel Twin Peaks	0	20	0.0
Milton Hotel	0	40	0.0
<b>Totals and Averages</b>	<b>253</b>	<b>1561</b>	<b>16.2</b>

by the total number of rooms.

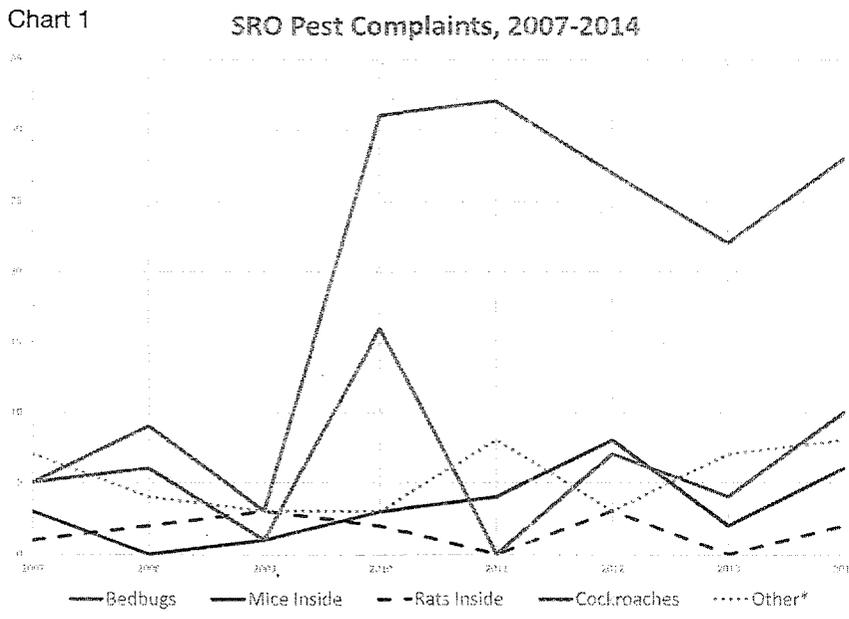
Since 2010, there has been a dramatic rise in the number of complaints regarding bedbugs at residential hotels. This is a reflection of a wider phenomenon; bedbugs have re-emerged as a nuisance pest across the globe in recent decades. Bedbugs can contaminate furniture, clothing, and accessories undetected, making containment especially difficult. Because hotels host a transient population, they can transmit bedbugs easily if not treated aggressively.

A word of caution must be given regarding the interpretation of these figures. Because vector control's records are based on resident complaints, they are not necessarily a precise representation of the pest problems in SROs. A single outbreak may induce multiple complaints, while a persistent pest problem may go unreported for years. Many SRO residents lack access to a telephone or internet service and may not have a convenient way of contacting the proper authorities. Others may be uncomfortable acting as advocates for themselves if management is hostile to remediation. Still others may see Vector Control as an unwanted intrusion and not allow agents to investigate their rooms for outbreaks. Bedbugs can thwart even the most well-meaning of landlords. A high number of requests may indicate a severe problem, or it may indicate that the owner is seeking to aggressively treat an outbreak.

**Table 8** **Vector Control SRO Complaints By Type and Year**

Year	Bedbugs	Mice Inside	Rats Inside	Cockroaches	Other*	Total
2007	5	3	1	5	6	20
2008	8	0	2	6	4	20
2009	3	1	3	1	3	11
2010	31	3	2	16	3	55
2011	32	4	0	0	8	44
2012	27	8	3	7	3	48
2013	21	2	0	4	7	34
2014	24	6	2	10	8	50
<b>Total</b>	<b>151</b>	<b>27</b>	<b>13</b>	<b>49</b>	<b>42</b>	<b>282</b>

Note: Totals exceed 253 because some complaints addressed multiple problems.  
 \*"Other" may include bats, opossums, pigeons, rats outside, mice outside, lice, and larval flies.



The number of bedbug complaints at SROs jumped sharply in 2010 and has remained elevated, while other types of pest complaints have remained flat.

**Table 9** **Vector Control SRO Complaints 1/1/2014 - 6/10/2015**

Hotel Name	Complaints,		Complaints Per 100 Units (Weighted Average)
	1/1/14-6/10/15	Total Units	
Silver Dollar Hotel	4	20	20.0
Old Oakland	6	37	16.2
Claridge	18	197	9.1
Sutter Hotel	6	102	5.9
Empyrean Towers	4	96	4.2
Harrison Hotel	3	81	3.7
Madrone Hotel	1	32	3.1
New Fern's Hotel	1	33	3.0
Malonga Casquelourd Center for the Arts	2	75	2.7
Grand Hotel	2	77	2.6
San Pablo Hotel	3	144	2.1
Lakehurst Hotel	2	120	1.7
Avondale Hotel	0	55	0.0
C.L. Dellums	0	72	0.0
Fremont Hotel	0	33	0.0
Hotel Travelers	0	70	0.0
Milton Hotel	0	40	0.0
Hotel Twin Peaks	0	20	0.0
<b>Totals and Averages</b>	<b>52</b>	<b>1304</b>	<b>4.0</b>

The New Fern's Hotel has shown a dramatic reduction in the number of pest complaints in recent years. Complaints from the Silver Dollar and Claridge Hotels, on the other hand, suggest that pest infestations at these hotels have not yet been abated.

# Residential Hotels and Crime

Residential hotels have become associated in the public consciousness with crime. Nearly all of the residential hotels in Oakland had numerous security features intended to address this issue. Surveillance cameras were omnipresent at SROs; most hotels had surveillance cameras installed at all entryways, lobbies and hallways throughout the buildings. The desk clerks can monitor all activities through a closed-circuit television screen installed at the front desk station.

The desk clerks at most hotels were stationed behind a window of thick glass. Most SROs kept the front door locked even when a desk clerk was on duty. The desk clerks at these hotels could buzz in visitors remotely. If a desk clerk was not on duty, the hotel was locked and closed to visitors.

The Oakland Police Department (OPD) identified drug use and sales, drunk in public charges, public disturbances caused by mental health issues, and to a lesser extent, prostitution, as the chief problems originating from SROs. Assault and domestic violence calls were less common.

The San Pablo corridor, which includes the Silver Dollar and Twin Peak hotels, was identified as a hotspot of criminal activity. The intersection of 14th Street and Martin Luther King was noted as a hub of prostitution (specifically, transgender prostitution). This has been the case for decades, and may not be solely attributed to residential hotels; the combination of several freeway exits and rooms for rent in a low-income neighborhood long associated with prostitution may all be contributing factors.

The Harrison Hotel was identified as having a problem with loitering and drinking

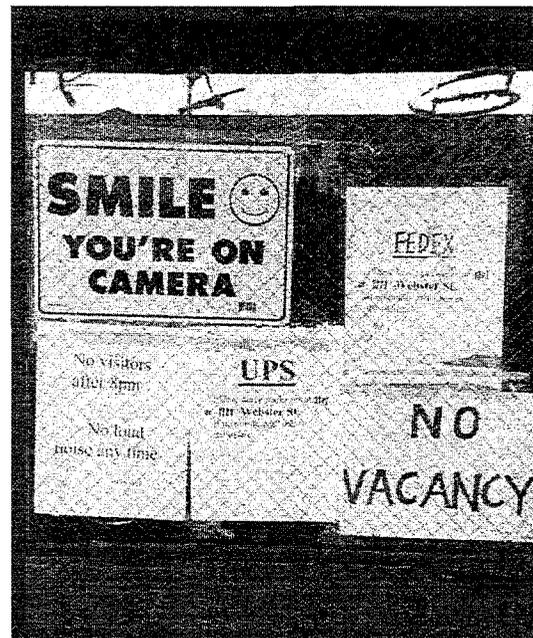
in public, especially in front of the liquor store adjacent to the hotel. The 2004 SRO study similarly identified the Harrison Apartments as a hub of loitering. The Harrison Apartments are owned by Resources for Community Development (RCD), a nonprofit housing developer. An asset manager at RCD reported that the organization is aware of the loitering problem outside the hotel. The asset manager attributed the problem partly to the fact that residents have few other options for where to go; the units are very small and lack amenities, there is no lobby or common area at the hotel, and

there is little public space in the direct vicinity of the hotel. The manager also reported that RCD has considered hiring additional onsite security, but the slim operating margin of the hotel does not allow room for the added expense.

Police officers are limited in terms of what kinds of enforcement activities they can undertake. The Oakland Police Department has fewer police officers than most cities of its size and has therefore chosen to prioritize enforcement of violent crimes over other crimes. Moreover, with the passage in 2014 of California Proposition 47, minor drug possession has been reclassified as a misdemeanor. A person found with drugs will be cited and released, rather than being arrested and imprisoned. Due to the extensive paperwork required to cite someone found with a small amount of drugs, OPD indicated that it was usually not worth the paperwork to aggressively confront these violations.

The Oakland Police Department also observed that the presence of upscale new apartment buildings has amplified friction between different social classes, often leading to complaints. Affluent new residents in nearby apartments and condominiums have frequently called the police over activity that would not have warranted investigation previously. The Jade Apartments, next door to the Claridge Hotel, were identified as a source of frequent complaints about low-level offenses nearby.

The Claridge has taken several steps to curb criminal activity within its building. They now require all non-resident guests to sign in at the front desk, and they conduct extensive video surveillance. Management has gone so



Nearly all residential hotels have "no loitering" signs, surveillance cameras, and heavily secured entrances and exits.

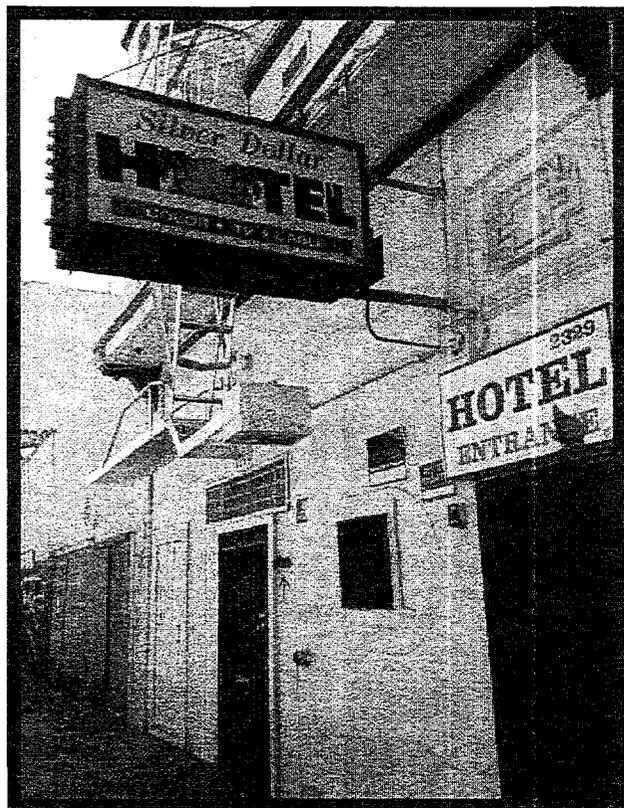
far as to broadcast classical music within the lobby in an attempt to discourage loitering. Some community members speculate that this has simply driven criminal activity into the street, where it is more visible to neighbors.

OPD reported very few complaints with regard to the Lakehurst Hotel, which primarily receives tenants through social service referrals. Similarly, the department reported very few issues having arisen at the Hamilton Apartments, a former SRO that now offers studio units and supportive services for residents with special needs.

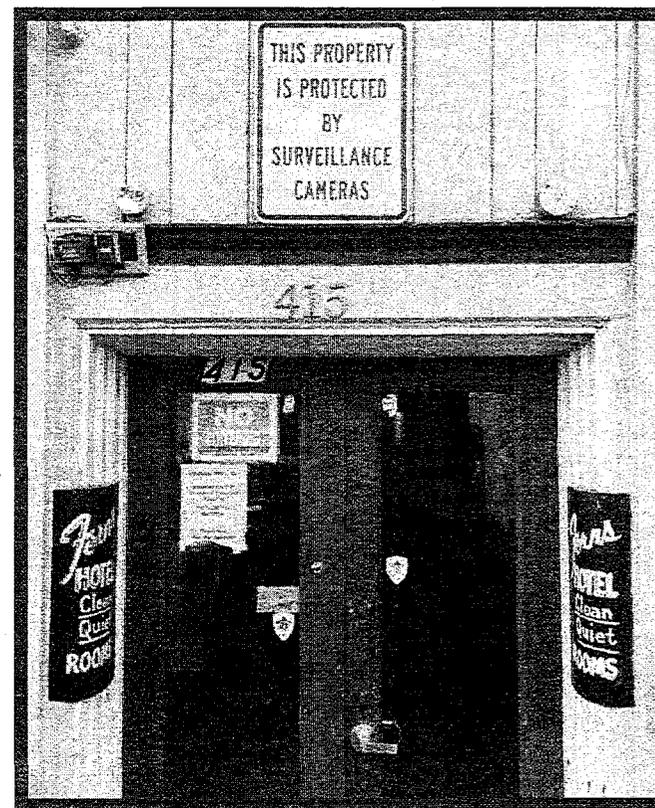
Police officers did not endorse conversion and displacement as a practical solution to some of the problems of SROs. In the words of one officer, "If you kick them out, they become homeless, and we already have a huge homeless population on our hands."

## Visitor Fees

Some hotels charge a small fee (typically \$5 to \$10) to residents who bring guests into his or her room. Because questions about visitor fees were not included in the hotel survey, it is not known how widespread the practice is; however, at least one hotel, the Sutter, has previously indicated to city staff that they do charge the fees. The reason for such fees is a matter of dispute. Visitor fees may be a method for hotels to tacitly condone and profit from drug dealing or prostitution among residents. The Sutter Hotel, however, firmly insists that they were directed to charge the fees by the Oakland Police Department, as a way of preventing illegal activity. The beat police officer for the area was unfamiliar with the practice of visitor fees and was not aware of any directives by the police department in this regard.



*Left: The Silver Dollar Hotel, at 2329 San Pablo Avenue, has been repeatedly identified as being associated with crime. The hotel also has a high rate of vector control complaints. Right: A sign warns, "THIS PROPERTY IS PROTECTED BY SURVEILLANCE CAMERAS" at the New Fern's Hotel.*



## Legal Actions

If a hotel or other dwelling is exhibiting a pattern of mismanagement, tolerance of crime, or other nuisance behavior, the City Attorney's Office may choose to take legal action. Operating agreements and receivership are the two main forms of legal action available to the city attorney's office for handling troubled SRO properties.

### Operating Agreements

Before pursuing legal action through the courts, the City Attorney's Office may attempt to come to an operating agreement with a property owner. Such agreements are legally binding conditions placed on the property in order to address a serious problem. For example, the owner of a crime-ridden property may agree to install security features such as gates, surveillance equipment, and lighting. In cases where a hotel has a recurrent pattern of tolerating or condoning human trafficking or other crimes, the City Attorney's Office may push for even stronger measures, such as requiring the owners to delegate management to an outside company.

### Receivership

An additional tactic for dealing with mismanaged properties is to place them into receivership. This action must be approved by a municipal court. Receivership can be granted for habitability issues or a pattern of crime at a property. California Civil Code also allows the courts to grant receivership using an "equitable approach," which involves subjective consideration of a wide range of factors. Courts often hear testimony from tenants, and may also consider whether the property managers are making a good-faith effort to address code violations.

Under receivership, a court-appointed third party acts as the manager of the property for a set period of time. The third party manager is obligated to address the problems that triggered receivership, while also acting in the financial best interests of the property owner. The management company may take out a loan to make improvements, with a priority lien placed against the property. Receivership does not usually require a transfer of ownership, although the owner may voluntarily choose to sell the property in order to pay back debts acquired.

After a set period of time (usually not more than three years), control of the property is restored to the owner. Additional conditions may be placed upon the property once control has been restored to the owner.

For example, an outside management company may be required to monitor the property on an ongoing basis.

Properties may also be shut down entirely for a period of time, with all of the residents required to vacate the premises. This tactic has been used in Oakland for tourist hotels with a track record of condoning prostitution. This is generally not a practical solution for hotels with permanent residents who have few other housing options. During receivership, eviction of tenants must still be based on just cause.

### Cases of Receivership

In 2015, the courts ordered receivership at two residential hotels. The West Grand Hotel, at 641 West Grand Avenue, was taken into receivership in May of 2015. The Emphyrean Towers, at 344 13th Street, was approved for receivership on June 26, 2015.

The West Grand Hotel was placed into receivership due to a high volume of drug arrests, as well as habitability issues. There were numerous fire safety violations, such as an inoperable sprinkler system and blocked fire escapes. The owners had also neglected to repair several plumbing leaks and electrical hazards.

The Emphyrean Towers was placed into receivership using an equitable approach. Unsafe water, plumbing leaks, and faulty heating and electrical wiring were some of the problems contributing to the court's decision. The Tenant Defense Center, a nonprofit legal association, was a key advocate in bringing evidence of code violations to the attention of the City Attorney's Office.

The receivership action on the Emphyrean Towers was concurrent with several news reports highlighting the poor living conditions of the hotel. News channel KTVU ran an expose detailing the plumbing, electrical, and other hazards of the building. In response to these stories, Oakland Mayor Libby Schaaf expressed her support for a more proactive inspection process. "We can't let living conditions get to the way that they are at these towers," Schaaf emphasized.

The Emphyrean Towers also made the news under its previous name of the Hotel Menlo. In January of 2011, owner Richard Singer was caught on film attempting to pay an undercover agent to commit arson on the hotel. Singer was fined \$60,000 and sentenced to 27 months in prison for soliciting a crime of violence.

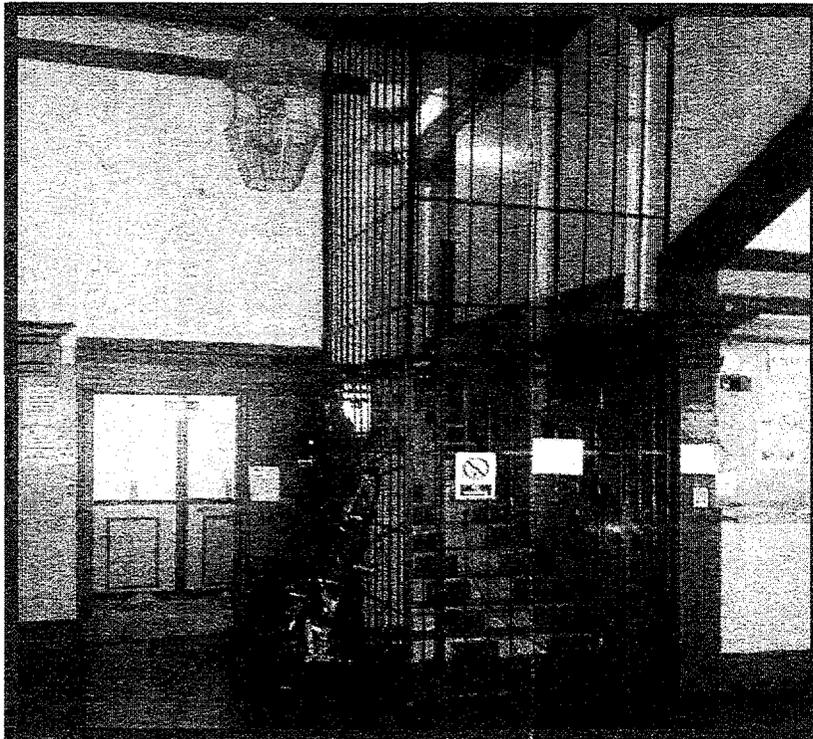
## Preservation Efforts for Oakland's Residential Hotels

In 2003, Oakland's Redevelopment Agency passed a resolution adopting a replacement housing policy for SRO units. The policy stated that any redevelopment project which resulted in the loss of SRO units from the market required a one-for-one replacement elsewhere within the city. This law only applied to developments carried out or funded in part by the Redevelopment Agency itself.

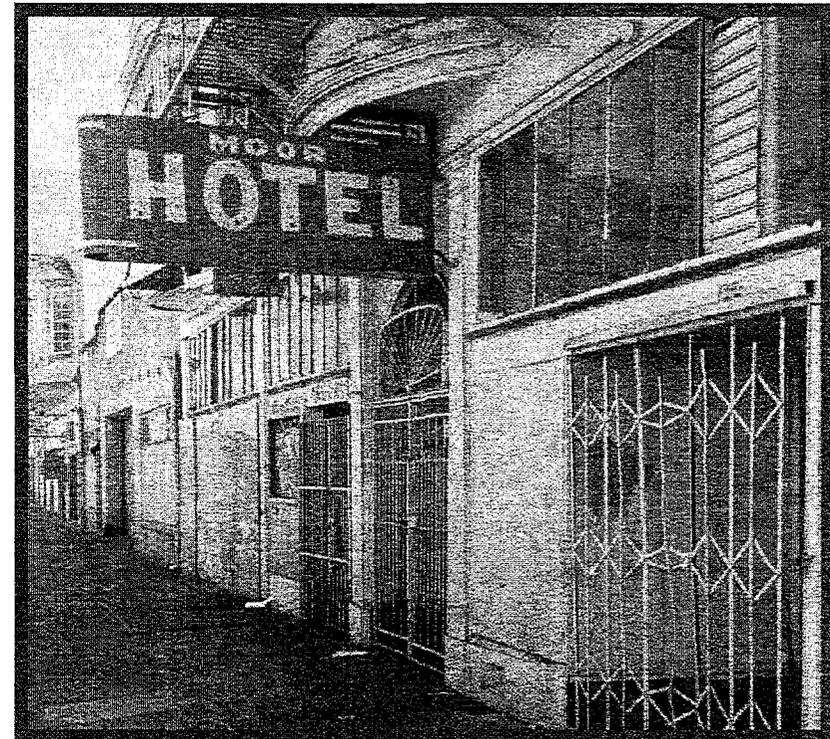
In 2012, the state dissolved all redevelopment agencies within California. Upon dissolution of the Oakland Redevelopment Agency, the City assumed the housing functions and obligations of the former Redevelopment Agency, including the SRO replacement housing policy. Therefore, the policy would continue to apply to the City to the extent that former redevelopment funds are being used to assist a project that results in the loss of SRO units in

Oakland.

Oakland's Municipal Code also contains a section (§ 17.102.230) governing rooming units in nonresidential zones, which describes most SROs. Property owners wishing to demolish such units or convert them to nonresidential uses must apply for a conditional use permit. The criteria for permit approval are somewhat subjective; one criterion is "That the benefits to the City resulting from the proposed demolition or conversion will outweigh the loss of a unit from the City's housing supply." Housing advocates such as East Bay Housing Organizations (EBHO) have long sought to establish stricter criteria for demolition or conversion of SRO units, in order to prevent displacement of Oakland's low-income residents.



*The stairs at Empyrean Towers are enclosed by a metal cage. Reports indicate that the elevator is frequently out of service for tenants.*



*The Moor Hotel has been shuttered since prior to the 2004 report.*

## Relevant Legal Statutes for Regulation of SROs

### Demolition or Conversion of Rooming Units

Oakland Municipal Code § 17.102.230

*Requires property owners wishing to demolish or convert dwelling units in nonresidential locations to acquire a conditional use permit from the City of Oakland. Outlines criteria for granting such a permit.*

### Tenant Protection Ordinance (TPO)

Oakland Municipal Code § 8.22.600-8.22.680

*Prohibits harassing behaviors by landlords against tenants.*

### Just Cause for Eviction Ordinance

Oakland Municipal Code § 8.22.300-390

*Guests are considered permanent tenants after 30 days. Landlords cannot evict permanent tenants without just cause.*

### Evasion of Permanent Tenant Status

California Civil Code § 1940.1

*Prohibits landlords from requiring guests to check out before 30 days and check back in shortly thereafter for the sole purpose of preventing them from becoming permanent tenants.*

### Nuisance Eviction Ordinance

Oakland Municipal Code § 8.23.100

*The city may carry out evictions of residents convicted of drug-related offenses, violent crimes, or prostitution.*

### Ellis Act

California Civil Code § 7060-7060.7

*Permits landlords to evict tenants for the purpose of exiting the rental housing market.*

### Rent Adjustment Ordinance

Oakland Municipal Code § 8.22.010-8.22.200

*Sets maximum rent increases on all rental properties occupied before 1983. Increase is tied to consumer price index.*

### Red Light Abatement Act

California Penal Code § 11225-11235

*Allows prosecution of hotel owners that condone prostitution on their premises.*

### Generalized Drug Nuisance Abatement Act

California Health & Safety Code § 11570-11587

*Defines properties in which drug use or sales take place as a public nuisance.*

## Agencies Responsible for Monitoring SROs

### Building Services

[www2.oaklandnet.com/Government/o/PBN/OurOrganization/BuildingServices](http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/BuildingServices)

*Responsible for code enforcement, inspections, and permits.*

### Vector Control

(510) 567-6800 || [www.acvcsd.org](http://www.acvcsd.org)

*Responsible for controlling any animals that spread disease, including rats, roaches, and bedbugs.*

### Fire Department

911 || Fire Prevention Bureau (510) 238-3851

*Inspects buildings for fire safety, including properly functioning emergency exits, fire extinguishers, and sprinkler systems. Issues permits.*

### Police Department

911 || Non-emergency number (510) 777-3333

*Responds to crime and emergency complaints.*

### City Attorney's Office

[www.oaklandcityattorney.org](http://www.oaklandcityattorney.org)

*Prosecutes crimes. Has targeted residential hotels found to be in gross violation of health and safety standards.*

### California Tax Credit Allocation Committee (CTCAC)

[www.treasurer.ca.gov/ctcac](http://www.treasurer.ca.gov/ctcac)

*Monitors properties that receive tax credit funding to ensure they are serving low-income residents as legally required.*

## Oakland's SROs in the News

### Hotel Travelers

**“Damon Lawrence, founder of the Homage Hotel Group, is making plans to open the Town Hotel in downtown Oakland. The Town Hotel will replace an existing hotel at 392 11th St.”**

Sciaccia, Annie. “New Boutique Hotel Heads to Downtown Oakland.” *San Francisco Business Times*. 6 May, 2015. Web. 15 September 2015.  
<http://www.bizjournals.com/sanfrancisco/blog/2015/05/new-boutique-hotel-heads-to-downtown-oakland.html>

### California Hotel

**“At the end of a three-year, \$43 million rehabilitation, the historic 1929 landmark is a beacon again...Only 26 defiant tenants were still living in the falling-apart hotel that overlooks Interstate 580 when EBALDC bought the property in 2011.”**

O'Brien, Matt. “California Hotel Reopens as a Home for Low-Income Residents.” *Contra Costa Times*. May 15, 2014. Web. 15 September 2015.  
[http://www.contracostatimes.com/news/ci\\_25771994/oakland-california-hotel-reopens-home-low-income-residents](http://www.contracostatimes.com/news/ci_25771994/oakland-california-hotel-reopens-home-low-income-residents)

### Grand Hotel

**“Every tenant in our city has a right to safe and humane living conditions...Unfortunately the owners of the West Grand Hotel treat their tenants as nothing more than ATM machines while their buildings literally fall apart.”**

**Oakland City Attorney Barbara Parker**

“Oakland Seeks to Shut Down Hotel Alleging Squalid Conditions.” *ABC 7 News*. 6 August 2014. Web. 15 September 2015.  
<http://abc7news.com/news/oakland-seeks-to-shut-down-hotel-alleging-squalid-conditions/246321/>

### Savoy Apartments

**“We’re happy to create a pocket of affordability in a neighborhood that will soon be unaffordable.”**

Torres, Blanca. “Developer turns two run-down Oakland hotels into new housing.” *San Francisco Business Times*. 22 October 2013. Web. 15 September 2015.  
<http://www.bizjournals.com/sanfrancisco/blog/real-estate/2013/10/satellite-affordable-housing-oakland.html>

## Empyrean Towers

**“We can’t let living conditions get to the way that they are at these towers.”**

**Mayor Libby Schaaf**

“City of Oakland files lawsuit against owners of troubled hotel.” *KTVU*. 25 April 2015. Web. 15 September 2015.  
<http://www.ktvu.com/news/4317940-story>

**“Every morning for the last year, I’ve woke up nauseous, and four out of seven days, I’ve vomited,” Anast said. “I didn’t realize it was going on throughout the hotel until I started talking to other tenants.”**

Fraley, Malaika. “Contaminated water forces out about 100 residents of Oakland residential hotel.” *San Jose Mercury News*. 8 May 2015. Web. 15 September 2015.

**“Fire damage, broken toilets, missing smoke detectors and uncollected garbage are just some of the problems on a long list of complaints reported by tenants of the Empyrean Towers in downtown Oakland.”**

“Mounting problems, complaints at notorious Bay Area hotel.” *KTVU*. February 5, 2015. Web. 15 September 2015.  
<http://www.ktvu.com/news/4156581-story>

**“The defendant provided a check in the amount of \$1,500 for the materials necessary to commit the arson. The defendant admitted that he had agreed to pay a total of \$65,000 after the Hotel Menlo was successfully burned down.”**

“Richard Singer Convicted of Soliciting Arson.” *Federal Bureau of Investigation*. August 31, 2011. Web. 15 September 2015.

## Regulation of Residential Hotels in Other Cities

Many cities have passed legislation specifically targeting residential hotels in recent years. Some laws seek to preserve the hotels' role as housing for the poor. Others address habitability issues. Below is a summary of some of the characteristics and regulatory landscape of SROs in other cities.

- **San Francisco** has 523 residential hotels, with nearly 10,000 units in total.<sup>1</sup> The San Francisco Residential Hotel Unit Conversion and Demolition Ordinance of 1980 restricts the conversion of SROs to uses other than tourist hotels. In 2012, San Francisco's Department of Public Health adopted an extensive set of mandatory treatment practices for bedbug prevention.

- **Los Angeles** has 336 residential hotels, with 18,739 units.<sup>2</sup> Most of these units are located downtown, primarily in the Skid Row area. In 2005, Los Angeles instituted a temporary moratorium on converting or demolishing SROs. In 2008, a comprehensive SRO ordinance was passed. The law requires hotel owners who demolish SROs to replace them within two miles of the existing building or pay the city for the land acquisition costs and 80% of the construction costs of a new development.

- **San Diego** requires long-term tenants to be given 60 days' notice and approximately two months' rent in the event of a hotel closure. SRO owners who want to demolish, convert or close an SRO must replace each unit with an SRO unit or pay a fee. However, many SRO owners have been granted exemptions to the law by notifying the city before January 2004 that they would

1 Figures provided by office of San Francisco County Supervisor Mark Farrell.

2 Scott, Ana. "New Law Protects Residential Hotels." *LA Downtown News*. LA Downtown News. 12 May 2008. Web. 15 September 2015.

eventually go out business.<sup>3</sup>

- **Portland** has adopted minimum standards for SROs. Rooms must be 100 square feet, and each floor must have a cooking facility.<sup>4</sup>

- **Chicago** had 81 remaining residential hotels as of 2012. In 2014, Chicago passed an ordinance making it more difficult to convert SRO hotels to upscale apartments or condos. The ordinance requires owners to either find a buyer to maintain the building's affordability status for 15 years or pay \$20,000 per unit into an SRO preservation fund. Displaced tenants would also receive between a lump sum, between \$2,000 and \$10,600, to help pay for relocation costs.<sup>5</sup>

- **New York** passed Local Law 19 in 1983, requiring any SRO landlord wishing to redevelop an SRO building to demonstrate that there had been no harassment of SRO residents in the previous three years. Former Mayor Ed Koch also initiated an SRO Support Subsidy Program to provide financial support for nonprofit organizations renovating and preserving residential hotels. This policy continues today.<sup>6</sup>

3 Garrick, David. "Old housing law drawing fire." *San Diego Union Tribune*. Tribune Publishing. 18 April 2015. Web. 15 September 2015.

4 "29.30.290 Special Standards for Single-Room Occupancy Housing Units." *PortlandOnline RSS*. Web. 15 Sept. 2015. <http://www.portlandonline.com/auditor/index.cfm?a=18218&c=28732>

5 Wisniewski, Mary. "Chicago passes rules to stem redevelopment of cheap hotels." *Reuters*. Reuters. 12 November 2014. Web. 15 September 2015.

6 "History of Supportive Housing." *History of Supportive Housing*. Web. 15 Sept. 2015. <http://shnny.org/learn-more/history-of-supportive-housing/>

### Cross-subsidization: the Skwachàys Lodge model

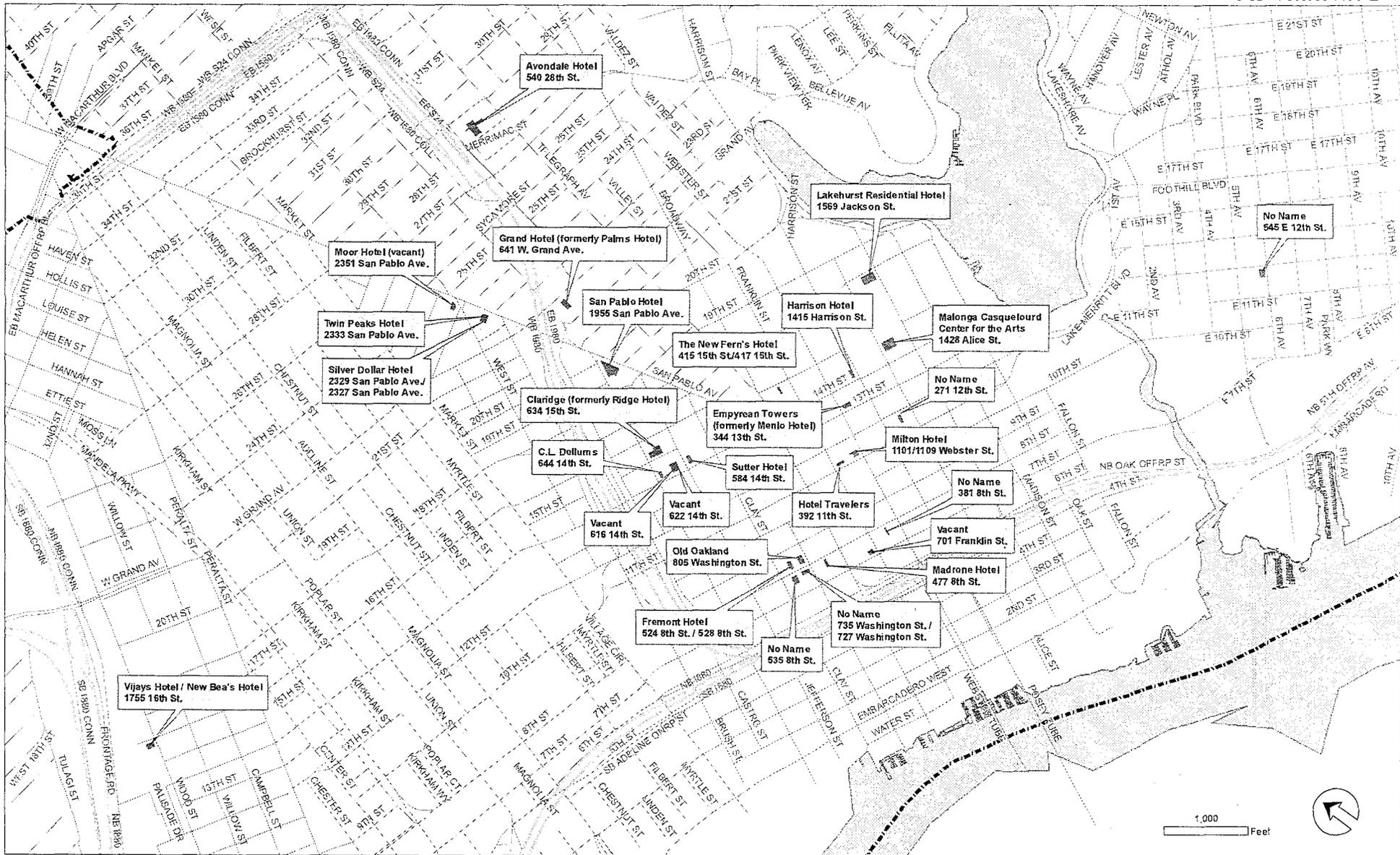
The economic pressures of gentrification and scarce housing are not unique to Oakland. The Gastown district in Vancouver, Canada, is home to both numerous SROs and new luxury condos. Demand for hotels continues to increase as Vancouver has become a popular travel destination in recent years. One former SRO was recently converted to a tourist hotel, with a twist: 18 of the units were devoted to tourist rentals, with the profits used to subsidize the remaining 24 units of affordable housing. The hotel, Skwachàys Lodge, is dedicated to preserving indigenous First Nations culture. The ground-floor is a



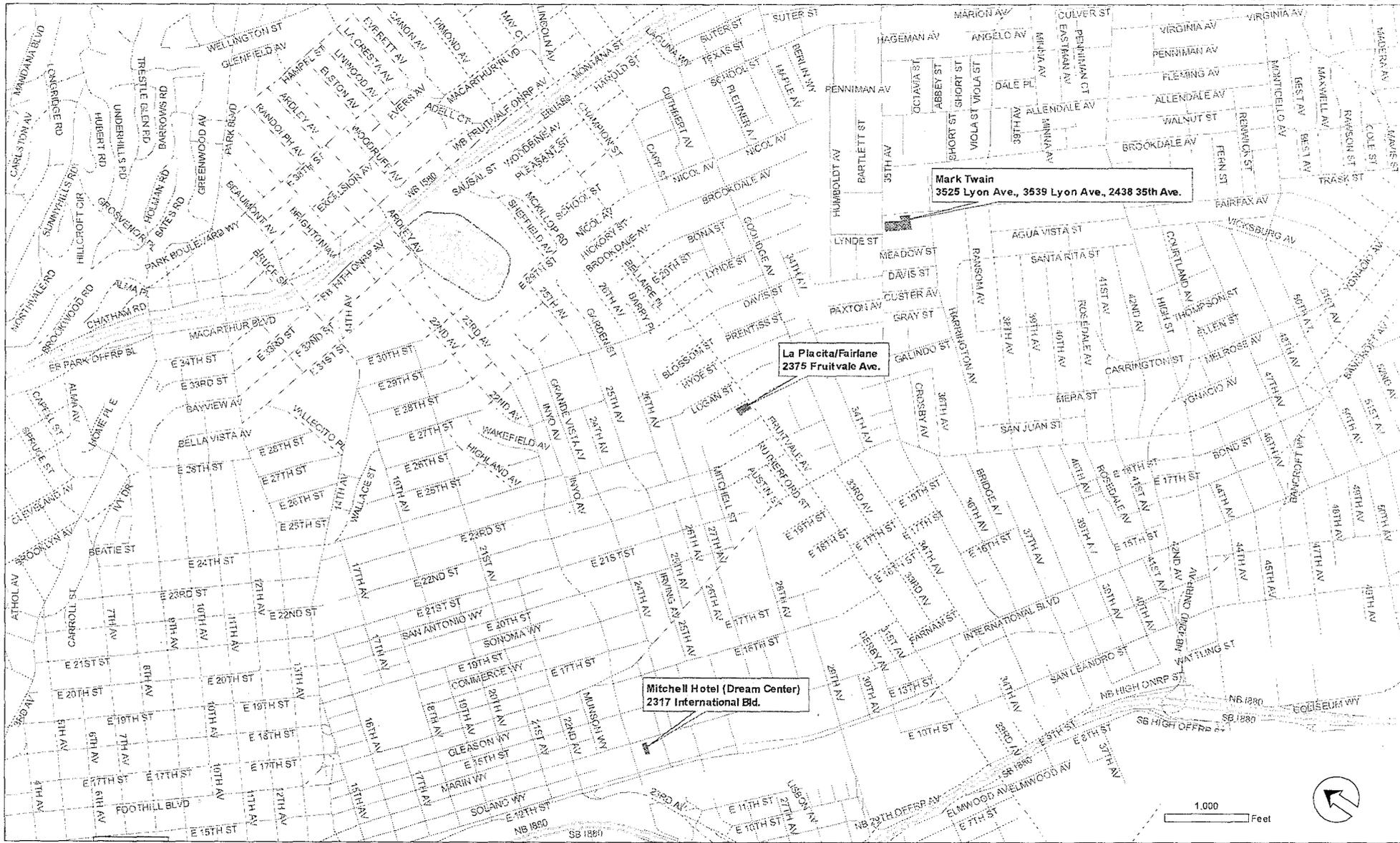
Photo: [skwachays.com](http://skwachays.com)

First Nations art gallery, and the long-term residents are aboriginal "artists-in-residence," some of whom helped design the First Nations-inspired rooms. The affordable housing is funded entirely free of government subsidies.

The Skwachàys Lodge founders intended their business model to serve as a template for other regions. The program is not a panacea; the renovated building has still displaced about half of its permanent residents in favor of tourists. Nevertheless, the hotel is one example of how organizations can produce high-quality affordable housing in the absence of government financing.



# Preliminary Identification of Residential Hotels – Downtown & West Oakland



# Preliminary Identification of Residential Hotels – East Oakland

## Summary of Planning Commission Comments and Staff's Responses

The following is a list of changes to the proposed Residential Hotel regulations, as recommended by the Planning Commission at their September 26, 2018 public hearing. Staff has also included an analysis of those recommended changes for the City Council's consideration. City Council has the option of adopting all, some or none of the Planning Commission's recommended changes.

Staff's changes to the proposed Planning Code amendments in response to the Planning Commission's comments are included in *Attachment D* to the Agenda Report and in *Exhibit A* of the Planning Code Amendment Ordinance.

### 1. Clarifying Text Edits

**Planning Commission Recommendation:** Planning Commission recommended making the following specific text edits to the proposed Planning Code amendments:

- Change Section 153.050A to strike "Provide" and read "Add to the City's housing supply..."
- Changes to Sections 17.153.050 and 17.153.060 to incorporate relocation and tenant protections even if a project or scope of work qualifies as an exception to the restrictions or Conditional Use Permit requirements.
- Change Section 153.040.B to add the phrase "a Residential Hotel Unit or a Residential Hotel"
- Change Section 153.060.C to add "Demolition" as an allowed exception for life safety improvements

**Staff Analysis:** Staff concurs with the Planning Commission's proposed text edits, since they further clarify the intent of the proposed Planning Code amendments. In addition to the above, Planning staff is proposing the following additional text clarifications:

- Global change – When referring to an agreement (such as the one required with an affordable housing project), clarify that it is an agreement with the City "or other public agency".
- Change Section 17.153.010.C(10) to clarify that unrestricted demolition, conversion or rehabilitation of Residential Hotels exacerbates the housing crisis by making such units unaffordable to very low, and extremely low-income Oakland residents.
- Change to Section 17.153.050 (B) to clean up text related to tenants (demolition and conversion would result in permanent displacement of tenants)

### 2. Impact Fee for Demolition or Conversion of Residential Hotel Units

**Planning Commission Recommendation:** Planning Commission recommended eliminating the option of paying an impact fee rather than providing replacement units in the case where a Conditional Use Permit was granted for the Conversion or Demolition of Residential Hotel Units. Planning Commissioners voiced concern that any impact fee amount would not be able to adequately create replacement units, particularly given the escalating costs of construction, or the maximum justifiable fee would not be adopted by Council.

**Staff Analysis:** Staff believes that the City Council should still consider the adoption of the option for payment of an Impact Fee (in lieu of providing replacement units). However, it is critical that the Council adopt the maximum justifiable impact fee (\$212,000) based on the

amount required to fully fund the construction of an equivalent replacement unit plus a two percent administrative cost, as established in the Nexus Analysis (*Attachment F* to the Agenda Report). Furthermore, affordable housing developers have described how those significant additional housing funds could allow them to create new equivalent replacement units and also use those funds to leverage the construction of other types of affordable housing units. The fee also could facilitate the replacement of relatively small numbers of residential hotel units which could not be built and operated economically at a small scale.

3. Regulations for Conversion of a Dwelling Unit to a Nonresidential Activity

**Planning Commission Recommendation:** Planning Commission recommended removing from existing Planning Code Section 17.102.230 an option to prove there is an economic benefit to converting a dwelling unit to a Nonresidential Activity rather than providing a replacement unit.

**Staff Analysis:** Staff concurs with this proposed change, since economic benefit is difficult to measure and provides a loophole for getting out of the requirement to provide replacement units, which is the more important public purpose at this time.

4. First Right of Refusal to Purchase Residential Hotel Buildings

**Planning Commission Recommendation:** Planning Commission recommended requiring Residential Hotel properties provide the City of Oakland with a right of first refusal to purchase the buildings.

**Staff Analysis:** Planning staff has incorporate language in the proposed Planning Code Amendments that provides the City with a right of first refusal, based on a similar requirement implemented by the City of Chicago for Residential Hotel properties. The property owner would provide the City with a Notice of Intent to Sell and the City would then forward contact information to housing development businesses and organizations interested in the preservation of Residential Hotel properties. The City could then meet with potential buyers and existing Residential Hotel owners to review financing opportunities that support the preservation of affordable housing, including the City's affordable housing funds.

5. Verification of Information Submitted by Owner

**Planning Commission Recommendation:** Planning Commission recommended strengthening the certification provisions related to information provided by the owner, possibly including self-audit under penalty of perjury or third party verification.

**Staff Analysis:** The Bureau of Planning's basic application for a planning permit is accompanied by a certification signed by the owner, that under penalty of perjury, all the information provided to the City is true and correct, to the best of their knowledge. Therefore the Planning Commission's recommendation is already standard practice.

6. Construction of New Rooming Units

**Planning Commission Recommendation:** Planning Commission recommended City staff review Planning and Building Codes to allow and possibly incentivize adding new stock of this type (i.e. rooming units) to increase housing options.

**Staff Analysis:** Staff believes it is important to allow all types of housing in the City of Oakland, including new forms of Residential Hotel Units. A micro-living quarters project, with very small units that have private bathrooms but share communal kitchens, has been built in the Broadway Valdez District, where this housing typology is allowed. And the Downtown Specific Plan process currently underway is considering making Planning Code amendments to expand the areas in Downtown where new micro-living quarters would be allowed. Additionally, the City has received development proposals for similar housing typologies outside of Downtown, and the demand for new housing typologies is being balanced with the need to provide some level of open space and parking for the new residents. It should be noted that all types of housing development projects that provide a certain level of affordable units are incentivized, because the Planning Code allows those projects to waive requirements, like parking and open space.

7. Life Safety Repairs

**Planning Commission Recommendation:** Planning Commission recommended ensuring that the proposed Planning Code amendments encouraging financial feasibility of life safety repairs (or additional units) while ensuring no net loss of SRO units.

**Staff Analysis:** The proposed regulations are meant to provide a clear exception for life safety repairs, even those that might require demolition of a unit (for example to provide a new stairwell needed for egress). The life safety exception for demolition was inadvertently not included in the proposed presented to Planning Commission; it has not been added into the proposal. Furthermore, staff has drafted a new exception to the demolition or conversion restrictions for projects that retain the existing Residential Hotel Units or create an equal number of replacement units as part of a new project.

8. Definitions of Permanent Occupancy and Transient Occupancy Units

**Planning Commission Recommendation:** Planning Commission recommended that Planning Staff work with Commissioner Shirazi, EBHO and other relevant stakeholders to craft new definition options to present to City Council.

**Staff Analysis:** The terms “Permanent Occupancy Unit” and “Transient Occupancy Unit” that were part of the Planning Code amendment proposal presented to the Planning Commission were trying to recognize the mix of short-term and long-term stays that are characteristic of Residential Hotels. However, staff acknowledges that the most important characteristic of a Residential Hotel is their use as a *primary residence*, whether or not that residency extended for years or for only a week at a time. Therefore, staff has replaced the definitions related to length of occupancy with definitions for use of the units as a primary residence (Residential Hotel Unit) or for use as lodging to guests that otherwise have a primary residence elsewhere (Commercial Hotel Unit).

9. Vacant Units

**Planning Commission Recommendation:** Planning Commission recommended that staff consider the possibility of excepting from the restrictions individual Residential Hotel units that have been vacant for extended periods of time and have therefore also been out of the market.

**Staff Analysis:** The proposed Planning Code amendments include an exception from amenity related restrictions (adding kitchens) for buildings that have been entirely and continuously

vacant for more than 10 years. However, staff does not recommend extending that exception to individual units, since the building should have been kept in habitable conditions even if it was partially occupied.

10. Urgency of Permanent Regulations

**Planning Commission Recommendation:** Planning Commission recommended the City Council to pass permanent Planning Code changes prior to the expiration of the Moratorium (on December 11, 2018).

**Staff Analysis:** Staff concurs that it is critical that permanent regulations are adopted before the expiration of the Moratorium to avoid unregulated demolition, conversion and reconfigurations of Residential Hotels that will have detrimental impacts on the residents of Oakland.

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## Revisions to Proposed Planning Code Amendments Since the Planning Commission Hearing (September 26, 2018)

This document shows changes to the proposed Planning Code amendments presented at the September 26, 2018 Planning Commission hearing. *New* changes are shown in underlining for additions and ~~strikeout~~ for deletions. The entire package of proposed Planning Code amendments can be found in *Exhibit A* to the Planning Code Amendments Ordinance, which accompanies the Agenda Report.

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

#### 17.102.230 –Conversion of a dwelling unit to a Nonresidential Activity.

- A. Conditional Use Permit Requirement. The conversion of a dwelling unit, other than those considered Residential Hotel Units per Chapter 17.153, from its present or last previous use by a Permanent Residential Activity or a Semi-Transient Residential Activity to its use by a Nonresidential Activity is only permitted upon the granting of a Conditional Use Permit pursuant to the Conditional Use Permit procedure in Chapter 17.134. The only exception to this requirement are conversions in the HBX-Zones. Such permit may be granted only upon determination that the proposed conversion conforms to the general use permit criteria set forth in the Conditional Use Permit procedure and to at least one of the following additional use permit criteria:
1. The dwelling unit proposed for conversion is unoccupied, or is situated in a residential building that has been found, determined, and declared to be substandard or unsafe pursuant to Subsection 15.08.350(B) of the Oakland Municipal Code; or
  2. A replacement unit, equivalent in affordability and type to each unit proposed for conversion, will be added to the City's housing supply prior to the proposed conversion taking place; or
  3. ~~The benefits to the City resulting from the proposed conversion will outweigh the loss of a unit from the City's housing supply.~~
- B. Tenant Assistance. Upon the granting of a Conditional Use Permit for the conversion of a dwelling unit to a Nonresidential Activity, the actual conversion cannot take place until the following have occurred:
1. Any tenant has been given a one hundred twenty (120) day written notice of the conversion. All such written notices shall comply with the legal requirements for service by mail.
  2. The owner of the building containing the dwelling unit to be converted has referred the tenant to an equivalent, available unit; if the tenant chooses not to live in the equivalent dwelling unit, the tenant has been provided with a relocation allowance,

**Commented [FC1]:** Specific edit recommended by Planning Commission.

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as specified in Section 8.22.450 of the Oakland Municipal Code, including any additional payments for tenant households that contain members who qualify as lower income, elderly, disabled and/or minor children, as set forth in Oakland Municipal Code Section 8.22.450(B).

3. The Director of City Planning has been provided with proof that the above actions have been taken.

### Chapter 17.134 CONDITIONAL USE PERMIT PROCEDURE

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

- A. **Major Conditional Use Permit.** A Conditional Use Permit (CUP) is considered a Major Conditional Use Permit if it involves any of the following:
  3. **Special Situations.** Any project requiring a Conditional Use Permit that involves any of the following situations:
    - a. A project requiring development of an Environmental Impact Report (EIR);
    - b. A single establishment containing a Commercial or Industrial Activity, or portion thereof, which is located in any Residential Zone and occupies more than five thousand (5,000) square feet of floor area, except where the proposal involves only the resumption of a nonconforming activity;
    - c. Off-Street Parking Facilities in the C-40, CBD-P, CBD-C, CBD-X, S-2, and D-LM Zones serving fifty (50) or more vehicles;
    - d. Monopole Telecommunications Facilities in, or within three hundred (300) feet of the boundary of, any Residential or HBX Zone;
    - e. A project in the OS Zone listed as requiring a Major Conditional Use Permit in Chapter 17.11;
    - f. An Electroplating Activity as defined in Section 17.09.040 subject to the provisions of Section 17.102.340;
    - g. A Telecommunications Facility in or within one hundred (100) feet of the boundary of any Residential Zone, HBX Zone, or the D-CE-3 or D-CE-4 Zone;
    - h. A Telecommunications Facility whose antennas and equipment are not fully concealed from view within three hundred (300) feet of the boundary of the RH, RD, RM, RU-1, or RU-2 Zones, HBX Zones, or the D-CE-3 or D-CE-4 Zone;
    - i. A project requiring a Conditional Use Permit as set forth under Section 17.153.050 for any demolition or conversion of Residential Hotel Units or a Residential Hotel.

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

#### Sections:

- 17.153.010 Title, purpose and findings
- 17.153.020 Definitions
- 17.153.030 Status determination
- 17.153.040 Restrictions
- 17.153.050 Conditional Use Permit requirement
- 17.153.060 Exceptions to restrictions and the Conditional Use Permit requirement
- 17.153.070 Waivers determination and appeals process
- 17.153.080 Administrative regulations
- 17.153.090 Conflicting provisions

#### 17.153.010 Title, purpose and findings

- A. **Title.** The provisions of this Chapter shall be known as the Demolition, Conversion and Rehabilitation Regulations for Residential Hotels.
- B. **Purpose.** The purpose of this Chapter is to minimize adverse impact on the housing supply and on low income, elderly, and disabled persons resulting from the loss of Residential Hotel Units as a naturally affordable housing option. This is to be accomplished by establishing a process for identifying and preparing a registry of known existing Residential Hotel Units, and by regulating the demolition, conversion and rehabilitation of Residential Hotel Units.
- C. **Findings.** The City Council finds that:
  - 1. The City of Oakland is experiencing a severe housing affordability crisis that requires immediate emergency action by the City government.
  - 2. Residential Hotels are often housing of last resort for the poor, especially in areas with extremely high costs of housing such as Oakland.
  - 3. The housing affordability crisis continues to overwhelm Oakland residents and threatens the public health, safety and/or welfare of our citizenry.
  - 4. A number of economic forces, including the dearth of hotels and the high cost of new construction in Oakland, create incentives for developers to purchase Residential Hotels and repurpose them for non-residential uses, such as boutique hotels, or

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

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

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

9. The unrestricted demolition, conversion or rehabilitation of Residential Hotels exacerbates the housing crisis by making such units unaffordable to low, very low, and extremely low-income Oakland residents, and may result in the displacement of Oakland residents from their homes and communities.
10. Based on the previous findings, the City finds that there is a current and immediate threat to the public health, safety, and/or welfare associated with the Demolition, Conversion and Rehabilitation of Residential Hotels.

Commented [FC2]: Planning staff clarification.

### 17.153.020 Definitions

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

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

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

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

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

**"Conversion"** means any action that converts one or more existing Residential Hotel Units originally intended as a Permanent Occupancy Unit to a Transient Occupancy Commercial Hotel Unit, or converts the Residential Hotel to a Commercial Activity or another Residential Residential or Commercial Activity, as those terms are defined in Section Chapter 17.10.030 of the Oakland Planning Code, regardless of whether substantial improvements have been made to such units.

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

Commented [FC3]: Planning Commission edit.

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

**"Occupancy Unit, Permanent"** means a Residential Hotel Unit that shall be restricted to occupancy by the same person or household for stays of thirty (30) or more consecutive days.

**"Occupancy Unit, Transient"** means a Residential Hotel Unit that is allowed to have occupancy by the same person or household for stays of fewer than thirty (30) consecutive days.

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

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

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**“Residential Hotel”** is defined in accordance with California Health and Safety Code Section 50519, and means any building built before 1960 containing six (6) or more Rooming Units, as defined in Section 17.09.040, intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests, and where the entrances to the individual units are generally accessed via a shared lobby area. See also the process for Status Determination in Section 17.153.030. Any building or units that are constructed to satisfy the requirements of Section 17.153.050(A) shall be subject to the provisions of this Chapter.

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

**Commented [FC4]:** Addresses Planning Commission recommendation to change regulations related to how the units are utilized based on primary residency vs. length of stay.

### 17.153.030 Status determination

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

- A. **Timelines for notices and filing.** Within thirty (30) days of the adoption of this ordinance, the Planning and Building Department shall mail out a summary of this Chapter and a notice to property owners preliminarily determined by the city to be operating a Residential Hotel. Each property owner notified of such shall be required to file an Initial Usage Report or Statement of Exemption, as described in Section 17.153.030(B) below. Buildings that do not meet the definition of a Residential Hotel as set forth in Section 17.153.020 may be considered for an exemption, as stated in Section 17.153(B)(2) below. If the owner or operator intends to file a Statement of Exemption, they must file it with the Planning and Building Department within ninety (90) calendar days of the mailing date of the notice; otherwise, the owner or operator shall file an Initial Usage Report within one hundred eighty (180) calendar days. All filings shall be accompanied by supporting evidence. However, upon application by an owner or operator and upon showing a good cause, the Director may grant an extension of time not to exceed thirty (30) days for filing either the Statement of Exemption or the Initial Usage Report.
- B. **Filing for status determination.** All properties notified by the Planning and Building Department of their preliminary Residential Hotel status must file an Initial Usage Report or a Statement of Exemption to determine the legal use-status of the subject property as of December 13, 2016.
  1. **Initial Usage Report.** The Initial Usage Report shall be filed in accordance with the timelines set forth in Section 17.153.030, and be accompanied by evidence,

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such as a certified copy of the Residential Hotel's tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, to confirm the following required information:

- a. Floor plans showing all the legal units, communal facilities such as bathrooms, kitchens, laundry facilities or other shared amenities, as well as any ground floor commercial space and lobby area, as of December 13, 2016.
- ~~b. The floor plans shall indicate by room number and location which units were legally functioning as Transient Occupancy Units and which were functioning as Permanent Occupancy Units, as defined in Section 17.153.020, as of December 13, 2016.~~
- ~~c.b. The floor plans shall also indicate the legal number and location of private bathrooms, and the number and location of communal bathrooms, including shower, toilet and sink facilities, as of December 13, 2016.~~

2. **Statement of Exemption.** The provisions of this Chapter shall not apply to a building that does not meet the definition of Residential Hotel nor to units that do not meet the definition of a Residential Hotel Unit, as set forth in Section 17.153.020. In order to be considered for an exemption, property owners notified by the Planning and Building Department of their property's preliminary status as a Residential Hotel must file a Statement of Exemption, in accordance with the timelines set forth in Section 17.153.030 and shall be accompanied by evidence, such as a certified copy of the property's tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, floor plans, or any other evidence necessary to prove the property does not meet the afore-mentioned definition of Residential Hotel or that individual units do not meet the definition of a Residential Hotel Unit, as set forth in Section 17.153.020.

- C. **Insufficient Filing.** If the Director determines that additional information is needed to make a determination, the Director shall request the additional information in writing. The owner shall furnish the requested information within thirty (30) calendar days upon receipt of the written request. If the requested information is not furnished, the Director will issue the Certificate of Status confirming that the building is a Residential Hotel that is composed entirely of individual Residential Hotel Units. ~~If insufficient information was provided regarding the occupancy of individual Residential Hotel Units, those in question shall be determined to be Permanent Occupancy Units.~~
- D. **Failure to File Statement of Exemption or Initial Usage Report.** If a presumed Residential Hotel that received notice of their preliminary Residential Hotel status and of a requirement to file a Statement of Exemption or Initial Usage Report, does not submit one within the time set forth in Section 17.153.030(A), the Director shall mail a notice to the owner of record by registered or certified mail stating that the owner has ten (10) calendar days to submit the Initial Usage Report or Statement of Exemption. If these are

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not filed within ten (10) calendar days, the Director will issue the Certificate of Status, confirming that the building is a Residential Hotel that is composed entirely of individual Residential Hotel Units, ~~the occupancy of individual Residential Hotel Units shall be determined to be Permanent Occupancy Units.~~

**Commented [FC5]:** Addresses Planning Commission recommendation to change regulations related to how the units are utilized based on primary residency vs. length of stay.

- E. **Certificate of Status.** The Director shall review the information provided in the Initial Usage Report or Statement of Exemption, and accompanying supporting data. If, in the opinion of the Director, the Initial Usage Report or Statement of Exemption is supported by adequate evidence, the Director shall certify the information provided in the Initial Usage Report or certify an Exemption. If the property is deemed a Residential Hotel, the Certificate of Status, including a graphic floor plan, shall be posted permanently in the lobby or entranceway of the Residential Hotel.
- F. **Appeal of Certificate of Status.** An owner or operator, or any interested party, may appeal the Certificate of Status issued by the Director, provided that there was no challenge pursuant to the provisions of Section 17.153.070 below, and further provided that an appeal is filed within ten (10) calendar days of the mailing of the Certificate of Status and will follow the administrative appeal procedures set forth in Chapter 17.132.

### 17.153.040 Restrictions

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

- A. Any amenity rehabilitation of Residential Hotel Units or a Residential Hotel; or
- B. Conversion or demolition ~~of a Residential Hotel Unit or a Residential Hotel~~, if there have been any verified cases of tenant harassment or illegal evictions during the immediately preceding five (5) years.

**Commented [FC6]:** Planning Commission edit.

### 17.153.050 Conditional Use Permit requirements

Except as set forth in Section 17.153.060, any demolition or conversion of Residential Hotel Units or a Residential Hotel, shall only be permitted upon the granting of a Conditional Use Permit pursuant to the Conditional Use Permit procedure in Chapter 17.134 and upon determination that the proposal conforms to the general use permit criteria described in Chapter 17.134 and if, prior to the demolition or conversion, the Residential Hotel owner shall do ~~all~~ each of the following:

A. Comply with one of the following provisions:

1. ~~Provide~~ Add to the City's housing supply replacement rental units equivalent in affordability, size, services and facilities offered to each unit proposed for demolition or conversion, and within two (2) miles of the subject facility, that must obtain a certificate of occupancy for such units prior to the proposed demolition or conversion taking place; or

**Commented [FC7]:** Planning Commission edit.

- 4-2. Pay the impact fee as set forth in Oakland Municipal Code Chapter 15.70.

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B. Whenever a Residential Hotel Unit is to be converted or demolished, and will result in tenant displacement for more than sixty (60) days, the Residential Hotel Owner shall:

Commented [FC8]: Planning staff clarification.

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

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

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

The following are not subject to the restrictions set forth in Section 17.153.040 nor do they require the granting of a Conditional Use Permit requirements as set forth in Section 17.153.050 as specified below; all other Conditional Use Permit requirements set forth in other Chapters of Title 17 shall still apply; and the requirements set forth in Section 17.153.050 (B) related to tenants shall still apply.

Commented [FC9]: Responding to Planning Commission recommendation to ensure that projects that qualify for an Exception to the Residential Hotel restrictions or Conditional Use Permit requirements are still required to ensure notification and tenant rights.

A. Any Residential Hotel that is an Affordable Housing Project as defined in Section 17.153.020, and complies with the following additional criteria:

1. The units are restricted to occupancy by extremely low and/or very low-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106. However, in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%)

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of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and

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

**Commented [FC10]:** Global: Planning staff clarification.

- B. Any Residential Hotel that is will-converted ing to a Transitional Housing Activity, as defined in Oakland Municipal Code 17.10.116 and per State of California Government Code 65582.
- C. Any Residential Hotel that has been completely vacant and unoccupied continuously for more than ten (10) years, as demonstrated by the applicant, is not subject to restrictions on amenity rehabilitation; but these properties shall remain subject to restrictions on conversion and demolition; or
- D. Any amenity rehabilitation, which is determined by the Chief Building Official to: (1) is determined by the Chief Building Official to be necessary for health and safety purposes and (2) does not result in temporary displacement of any tenant for more than sixty (60) days or permanent displacement of any tenant; or
- D.E. Any demolition, which is determined by the Chief Building Official to be necessary for health and safety purposes; or
- F. Any Residential Hotel that must comply with a City order to repair or demolish an unsafe, uninhabitable or substandard condition. A proposed project that will create or retain at the

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property a number of units equal to the number of Residential Hotel units in the existing property as Affordable Housing and complies with the following additional criteria:

1. The affordable units are restricted to occupancy by extremely low and/or very low-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106. However, in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%) of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and
2. The Project shall have an executed written agreement with the City or other public agency setting forth the number, type, location, approximate size and construction schedule of all units, restricting the occupancy and rent or sale price of such units, and setting forth other terms and conditions as required for ensuring compliance with the requirements of this Section. Said agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the Project for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the Affordable Housing units would be infeasible without said subordination; and
3. The executed written agreement with the City or other public agency shall require that the new rental units remain affordable for at least fifty-five (55) years.

**Commented [FC11]:** Responding to Planning Commission recommendations to incentivize projects that create or preserve affordable housing options for very low or extremely low income occupants.

**17.153.070 Waiver determination and appeals process**

A. Waiver determinations may be granted by the Director to the restrictions set forth in Section 17.153.040 or the Conditional Use Permit requirements set forth in Section 17.153.050 under any one of the following scenarios:

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

**Commented [FC12]:** Planning edit of list format (numbering vs. lettering).

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- B. Applications for waiver determinations. Applications for waiver determinations must be made no later than the date of application for a building or planning permit on a form provided by the City, and shall include payment of fees as established in the Master Fee Schedule. The burden of establishing by satisfactory factual proof the applicability and elements of this Section shall be on the Applicant. The Applicant must submit full information in support of their submittal as requested by the Director. Failure to raise each and every issue that is contested in the application and provide appropriate supporting evidence will be grounds to deny the application and will also preclude the Applicant from raising such issues in court. Failure to submit such an application shall preclude such person from challenging the Residential Hotel regulations in court. The Director may require, at the expense of the Applicant, review of the submitted materials by a third party.
- C. The Director shall mail the Applicant a written determination on the application for a waiver.
- D. If an applicant for a waiver determination set forth in Section 17.153.070(A) that has been denied seeks to challenge the written determination of the Director, the Appellant must appeal to the City Planning Commission, and such appeal must be filed within ten (10) calendar days of the date from which the Director's written determination was issued and by 4:00 p.m. Appeals must be on the form provided by the City of Oakland and must state specifically wherein it is claimed there was error or abuse of discretion by the Director or wherein the decision is not supported by substantial evidence, and must include payment in accordance with the City of Oakland Master Fee Schedule. Failure to make a timely appeal will preclude an Appellant from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all arguments and evidence in the record which supports the basis for the appeal. Failure to do so will preclude an Appellant from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented in the appeal.

### 17.153.080 Sale of Residential Hotel.

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

- A. Provide to the Director by first class mail at least 180 days' notice of the proposed sale or transfer of the property; and
- B. Allow the City or its authorized representative or representatives 180 days following the date of notice to tender an offer to purchase the property; and
- C. Upon receiving any such offer, engage in good-faith negotiations, during the remaining portion of the 180-day period towards a purchase and sale agreement with the City or a non-profit or affordable housing organization identified by the City.

### 17.153.0980 Administrative regulations.

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

### **17.153.090-100 Conflicting provisions.**

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

Residential Hotel or Single Room Occupancy (SRO) Ordinance Case Studies

	Replacement	Tenant Relocation	SRO Status	Incentives	Exemptions	Other
San Francisco	<ul style="list-style-type: none"> <li>• Requires one-for-one replacement at comparable rent</li> <li>• Alternatively, can pay site acquisition costs plus 80% of cost of construction</li> <li>• Replacement could mean less than one-to-one rehabilitated units for elderly, disabled or low-income persons, transitional or emergency housing</li> <li>• To convert, the permit application requires:                             <ul style="list-style-type: none"> <li>• Current rental rates</li> <li>• Length of tenancy of permanent residents affected</li> <li>• Statement of one-for-one replacement</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Permanent resident (min 32 days) have 60 days after issuance of permit</li> <li>• Permanent residents shall receive up to \$300 moving assistance</li> <li>• Displaced permanent resident given first right of refusal for replacement units</li> <li>• \$1,000 per displaced person</li> </ul>	<ul style="list-style-type: none"> <li>• Required filing of initial status determination within 30 days of ordinance (exemption claim or initial unit usage report) – building inspectors make initial determination)</li> <li>• Residential hotels maintain daily logs, submit weekly and annual reports (required to maintain hotel license and certificate of use)</li> <li>• Building dept. prepares annual status report on conversions; SRO operators advisory committee meets every 3 months</li> </ul>		<ul style="list-style-type: none"> <li>• 95% tourist hotel</li> <li>• Rents over \$1,000</li> <li>• Unlawful conversions to rooming house</li> <li>• Partially converted</li> <li>• 100% low-income housing</li> <li>• Public or nonprofit housing such as jail, residential care facility, convent, etc.</li> </ul>	<ul style="list-style-type: none"> <li>• Penalties are at least 3x the daily rate, per day for each unlawfully converted unit</li> <li>• Weekly rentals are allowed to SF residents, but not to tourists</li> </ul>
Chicago		<ul style="list-style-type: none"> <li>• Displaced tenants (residents of min 32 days) given a lump sum between \$2,000 and \$10,600 depending on reasons for displacement (sold, unsafe).</li> <li>• Prohibits retaliation</li> </ul>				<ul style="list-style-type: none"> <li>• Requires affordable housing nonprofits be offered right of first refusal (with good faith negotiations) for 180 days to keep it affordable to very low income families (or 1 for 1 low-income) for 15 years, before selling, OR pay \$20,000 per unit</li> <li>• Fines for violation are \$200-500 per day, plus payment of preservation fee</li> </ul>

	Replacement	Tenant Relocation	SRO Status	Incentives	Exemptions	Other
Los Angeles	<ul style="list-style-type: none"> <li>• Must be replaced within two miles or pay the City for land acquisition costs and 80% of construction costs</li> <li>• Applicant has to file application for clearance with Housing department – includes rental rates and length of tenancy</li> <li>• Permit cannot be issued until COC has been issued for replacement issues</li> <li>• Can choose to replace existing residential units with deed-restricted low-income SRO units with 55 regulatory agreement with at least:                             <ul style="list-style-type: none"> <li>• 10% - 30% AMI</li> <li>• 40% - 40% AMI</li> <li>• 30% - 50% AMI</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Tenants given right of first refusal within 60 days of COC</li> <li>• Relocation assistance</li> </ul>	<ul style="list-style-type: none"> <li>• Housing Department mails notification; owner can appeal within 60 days to prove that it contains tourist units or is not a residential hotel</li> </ul>	<p>Can be replaced at less than one-to-one if: a) The replacement units provide amenities, such as bathrooms and kitchens, not present in the units to be withdrawn, b) The needs of the current residents of the Residential Hotel would be served by the better amenities and larger units; and the reduction in the number of units would not significantly decrease the number of available Residential Units in the City.</p>	<ul style="list-style-type: none"> <li>• Continuously unoccupied since 2005 (or new building on site of a demolished SRO)</li> <li>• Has been turned into an affordable housing project</li> <li>• Project was first approved after 1990</li> <li>• Plans are vested</li> <li>• Applicant provided notice of intent to withdraw all of the building's accommodations from rent or lease before moratorium</li> <li>• Buildings under 55 units that rent all rooms only for 30 days or longer</li> </ul>	<ul style="list-style-type: none"> <li>• Annual review of residential hotels</li> </ul>
New York City	<ul style="list-style-type: none"> <li>• Regulations focus on preventing harassment of tenants and facilitating new development</li> </ul>	<p>Tenants are considered “stabilized” if they have lived there for six months or if they have requested a six-month lease</p> <p>Cannot be evicted if they have lived somewhere for 30 days or requested a six-month lease</p>		<ul style="list-style-type: none"> <li>• Variety of incentives for rehabilitation</li> <li>• Technical assistance (financial counseling, referrals, training) to landlords and managers (not specifically for SROs).</li> <li>• SRO support subsidy program to renovate and preserve</li> </ul>		<ul style="list-style-type: none"> <li>• To get building permit, must prove they haven’t harassed or neglected their tenants in the last three years</li> <li>• Many brownstones converted to SROs, now gentrifying and converting back.</li> <li>• City buys and sells or donates (interest-free loans that aren’t repaid) SROs to nonprofits</li> <li>• Requires that rehabbed and newly constructed replacement units be sold or leased to a nonprofit organization</li> </ul>

	Replacement	Tenant Relocation	SRO Status	Incentives	Exemptions	Other
San Diego	<ul style="list-style-type: none"> <li>• One-for-one replacement (new construction or conversion) – capital cost only</li> <li>• 50% of replacement cost (hotel area x current development cost/sf)</li> <li>• Must be in the same community plan area</li> <li>• Exempted from replacement requirement:                             <ul style="list-style-type: none"> <li>• Conversion to VLI housing project</li> <li>• Demolition with agreement to construct VLI within two years</li> <li>• Demo or conversion for LI senior citizens, operated by nonprofit</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• As of 2004, required that they be made available to VLI households at 30% of household income</li> <li>• Gives 60-day notice</li> <li>• Housing Commission, not building owner, provides assistance in locating housing</li> <li>• Monetary compensation for residents of over 90 days (small rent rebate per month + one year rent for rehab, 2x one year rent for demolition)</li> </ul>	<ul style="list-style-type: none"> <li>• Not clear</li> </ul>	<ul style="list-style-type: none"> <li>• No local funds for financial incentives (state tax credit rehab only)</li> </ul>	<ul style="list-style-type: none"> <li>• If necessary to implement a redevelopment project; will contribute to public health, safety and welfare; and that contribution exceeds negative impact on the supply of SROs</li> </ul>	<ul style="list-style-type: none"> <li>• Denies permits if any tenant was evicted within the past 180 days for anything other than breach of lease, nuisance or illegal activity</li> <li>• Built new SROs in 1980s-90s: incentives to increase production</li> </ul>
Sacramento	<p>Residential hotel units may be replaced through:</p> <ol style="list-style-type: none"> <li>1. Construction of new housing;</li> <li>2. Rehabilitation of existing nonregulated property</li> <li>3. Acquisition or purchase of covenants of existing housing.</li> </ol> <p>Replacement units must have rental costs not exceeding 40% of the Sacramento metropolitan area median income, be located close to transportation and services; recorded affordability covenants for at least 55 years.</p>	<p>Relocation payments - \$2,400 per person. If no current tenant, payment made to an eligible past tenant. If there is a tenant eligible for relocation benefits who cannot be located by the owner, (80) percent of benefits go to Sacramento housing agency. If not claimed within one year, the funds in housing trust fund.</p>	<p>Four hotels identified (712 units)</p>		<p>Still applies to withdrawal of units as the result of abatement by public authorities or other involuntary circumstances, unless the condition causing the withdrawal was beyond the control of the owner.</p>	<p>The city recently allowed more rentals to qualify toward the required room count</p>



**HAUSRATH  
ECONOMICS  
GROUP**

**NEXUS ANALYSIS**

**IMPACT FEE TO MITIGATE  
LOSS OF RESIDENTIAL HOTEL UNITS IN OAKLAND**

*A Report to*

**CITY OF OAKLAND**

*Prepared by*

**HAUSRATH ECONOMICS GROUP**

**with**

**URBAN ECONOMICS**

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*October 5, 2018*

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# IMPACT FEE TO MITIGATE THE LOSS OF RESIDENTIAL HOTEL UNITS IN OAKLAND

## NEXUS ANALYSIS

### EXECUTIVE SUMMARY

This report provides documentation to establish an impact fee to mitigate the loss of residential hotel units in Oakland. The report establishes the singular importance of this increasingly scarce segment of the City's housing inventory. The remaining residential hotel units house a population characterized by very low and extremely low incomes: people who live on the margins of the normal housing market. As investors and development interests respond to real estate market trends favoring downtown and the transit corridors where residential hotels were historically developed, it is likely that, without the proposed mitigation measures, the remaining inventory of residential hotel units will be lost. Following displacement, existing tenants, having limited means and few alternatives, are at high risk of experiencing homelessness. The proposed impact fee would fund equivalent replacement units to provide for no-net-loss of residential hotel units and thereby mitigate tenant displacement. Both objectives respond to long-standing City of Oakland policies for this essential component of the City's housing supply.

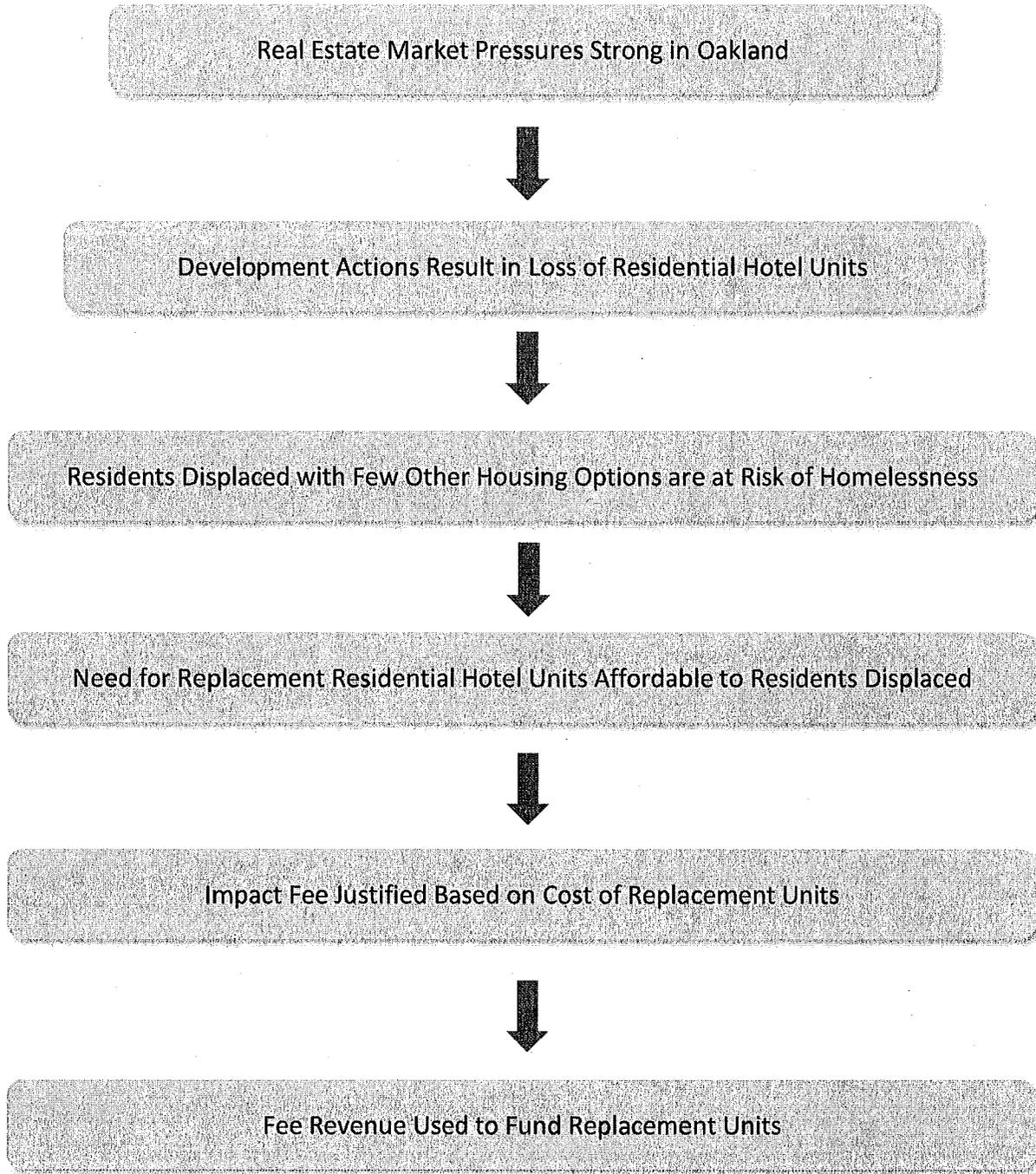
**Figure 1** on the following page outlines the elements of the nexus analysis. The report then summarizes the findings required to establish an impact fee under the California Mitigation Fee Act. The rest of the report presents the step-by-step documentation including the analysis and assumptions for the fee calculations.

The nexus analysis identifies a justifiable impact fee of \$212,000 assessed per residential hotel unit lost due to development actions that demolish residential hotel units, convert residential hotel units to other uses, or rehabilitate units to such an extent they no longer serve as low cost units for very low and extremely low income individuals. Payments of the fee would be deposited into a special account in the City's Affordable Housing Trust Fund for use in developing replacement residential hotel units. Oakland's Housing Element policies call out the need to protect and preserve residential hotels and to prevent displacement of current residents. In addition, payment of the impact fee enables the development actions to proceed while mitigating displacement impacts, thereby providing a benefit to the development actions on which the fee is imposed.

# Figure 1

## Elements of Nexus Analysis to Mitigate Loss of Residential Hotel Units

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## **MITIGATION FEE ACT FINDINGS**

This report provides the documentation required under the California Mitigation Fee Act—AB 1600, enacted in California Government Code Sections 66000 – 66025—to identify the purpose of the proposed fee, describe the community amenities that the fee would support, and demonstrate a reasonable relationship between: specified development actions and the use of the fee, the type of development actions and the need for the community amenity, and the amount of the fee and the cost to provide the community amenity. The following summarize the findings.

### **Findings**

#### **Purpose of the fee**

The purpose of the impact fee to mitigate the loss of residential hotel units is to maintain the supply of residential hotel units in Oakland. Oakland’s residential hotel units are a critical element of the City’s housing inventory. These units have specific characteristics that make them typically affordable to people at the very lowest levels of household income: very low and extremely low income households. These units are scarce; public redevelopment and, more recently, private actions have reduced the supply significantly. Real estate market factors make higher value uses such as tourist hotels and market rate housing attractive to property owners and developers leading to conversion or demolition of residential hotel units. Recent strong housing demand and increasing market rate rent levels in Oakland create incentives to make improvements to what investors consider underutilized residential hotel properties to attract higher-rent paying residents. Existing residents are displaced in this process.

Residential hotel units are often referred to as “housing of last resort.” Residents displaced from residential hotel units have few options for alternative housing and are at high risk of becoming homeless once displaced. The City of Oakland has a stated policy to protect and preserve the existing stock of residential hotels because they provide housing of last resort for extremely low income households (*City of Oakland Housing Element 2015 – 2023*, Policy 5.4). The *Housing Element* also establishes City interest in strengthening policies to help prevent displacement of current Oakland residents (Policy 4.4). Furthermore, *A Roadmap Toward Equity: Housing Solutions for Oakland California* (2015) identifies re-housing and/or preventing displacement of current residents as the first in a list of key actions to address the housing affordability crisis fueled by the region’s extraordinary economic growth.

The impact fee would provide funding to produce new residential hotel units equivalent to the units lost through demolition, conversion, or rehabilitation. This new supply represents housing options affordable to individuals whose only options are the particular rent levels and tenancy conditions offered by the residential hotel inventory. The replacement inventory would mitigate displacement and an increase in people experiencing homelessness. The impact fee would

directly offset the loss of residential hotel units on a one-for-one basis, providing for no net loss of this important element of the City's housing supply. The impact fee revenue would not result in a net increase in the supply of residential hotel units and would not correct any existing deficiencies in the supply of housing affordable to very low income and extremely low income households in Oakland.

### **Use of fee revenue**

The impact fee would provide funding to produce new residential hotel units affordable to the residents displaced. Fee revenue would be used to acquire land, prepare the site, and produce new residential hotel units equivalent to those lost to demolition, conversion, or rehabilitation. In addition to land costs, the development costs funded by the fee include project "hard" construction costs, project design and engineering, permits and fees, legal and accounting services, title, taxes, insurance, development overhead and fees, contingency, and construction period financing (as appropriate).

### **Relationship between the use of the fee and the development action**

The fee revenue would be used to produce new residential hotel units to replace on a one-for-one basis units demolished, converted, or rehabilitated to such an extent that they no longer serve as low-cost units for very low and extremely low income individuals. Thus, use of the fee mitigates the impacts of the development action: displacement and the resultant increase in the number of people experiencing homelessness. Use of the fee revenue is supported by the City's adopted housing policy to preserve existing single room occupancy hotels because they "provide housing of last resort"<sup>1</sup> and is further articulated in Housing Element and 2015 *Roadmap Toward Equity* anti-displacement strategies.<sup>2</sup>

Payment of the impact fee enables the development actions to proceed while mitigating displacement impacts, thereby providing a benefit to the development actions on which the fee is imposed.

### **Relationship between the need for equivalent new residential hotel units and the development action**

The real estate market factors that threaten the residential hotel inventory have been building over time. In particular, Oakland is only relatively recently considered a viable investment alternative to San Francisco for the type of higher density downtown development that targets

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<sup>1</sup> City of Oakland, *Housing Element 2015 – 2023*, Policy 5.4.

<sup>2</sup> City of Oakland, *Housing Element 2015 – 2023*, Policy 4.4 and City of Oakland Department of Housing and Community Development and PolicyLink, *A Roadmap Toward Equity: Housing Solutions for Oakland, California*, 2015.

residential hotel properties as underutilized development sites. These market pressures are unlikely to abate.

The development actions remove units from the inventory of existing residential hotel units thereby reducing the supply of housing specifically oriented to single persons of very low and extremely low income. This component of Oakland's housing supply performs a particular function: providing a minimal set of housing services to meet the needs of those on the margins of the traditional housing market. These are individuals who have very low incomes, irregular incomes, and no savings for security deposits or first and last month's rent. These individuals may not have credit histories that will pass a credit check. Elimination of existing residential hotel units displaces existing residents and permanently reduces the supply of housing in Oakland for those on the fringe of the housing market. Without equivalent replacement units, the number of people experiencing homelessness would increase. In addition, the substantial costs to shelter and serve those who are homeless are avoided if these residents are not displaced.

#### **Relationship between the amount of the fee and the cost of equivalent new residential hotel units**

The amount of the fee per residential hotel unit lost due to demolition, conversion, or rehabilitation is directly proportional, on a one-for-one basis, to the cost to develop an equivalent residential hotel unit. Land acquisition costs are based on analysis of current (2018) market land values in the area in which new residential units would be produced—roughly the area covered by a two-mile radius from 14<sup>th</sup> and Broadway in downtown Oakland, where most existing residential hotels are concentrated. Development costs reflect the costs of new residential construction similar in characteristics to residential hotel units (consisting of rooming units or efficiency dwelling units) in buildings that have services and facilities comparable to those of existing residential hotels. Cost estimates include land costs, project “hard” construction costs, and a number of “soft” costs for design and engineering, permits and fees (excluding City impact fees), legal and accounting services, insurance, title, taxes, development overhead and fees, contingency, and construction period financing (as appropriate).

The amount of the fee is limited to the cost to produce new units reduced for the value of income from rents affordable to very low and extremely low income tenants. Analysis indicates that annual rental revenue is generally sufficient to cover on-going operating expenses, assuming a basic level of service and generate a modest return from net operating income.

The fees would be assessed per residential hotel unit so impact fee payments are related directly to the number of units lost and therefore to the relative impact attributable to the development action.

## **IMPACT FEE DOCUMENTATION**

### **Rationale/Approach**

The proposed impact fee to mitigate the loss of residential hotel units in Oakland would provide funding to produce equivalent replacement units, thereby resulting in no net loss of this particular component of Oakland housing supply. The funding would come from sponsors of development actions that result in the loss of existing residential hotel units.

City of Oakland policy since the mid-1980's has recognized the importance of residential hotel units in the City's housing inventory and the special need they fulfill in the spectrum of housing services offered in Oakland. These types of units provide a housing stock that is uniquely affordable to individuals who have few if any alternative housing options. These units are "housing of last resort" to those at the very lowest income levels—individuals who may not have a credit history, do not have savings for security deposits or first and last month's rent, and who may need to pay rent in smaller than monthly increments.

Oakland Housing Element policy supports the preservation of single room occupancy hotels (Policy 5.4), calling for a "variety of mechanisms" to protect and improve the existing stock. Before the December 2016 moratorium on activities that result in the loss of residential hotel units, specific actions adopted to implement this policy were limited to requiring a conditional use permit to convert a residential hotel facility to a non-residential use (with an exception for conversion to a commercial hotel) or to demolish a residential hotel. The City's Residential Rent Adjustment Program (adopted in 1980) also protects permanent residents of residential hotel units (those with tenancies of more than 30 days) from eviction without just cause and limits rent increases to annual inflation adjustments. The Ellis Act Protection Ordinance provides for some financial relief for displaced tenants but does not preserve the existing housing inventory.

The language in the December 2016 moratorium recognizes that these adopted protections are inadequate in the face of the incentives for new development in today's real estate market and the resultant increase in pressures on existing buildings in areas now ripe for investment in higher value uses. Following on the directives from the 2015 Housing Equity Road Map, the moratorium cites the need to preserve the existing affordable housing supply, prevent displacement, and curb the increase in people experiencing homelessness.

The proposed impact fee is one tool to achieve these policy goals for the residential hotel supply and the function that it serves in the City's housing market. The impact fee would enable new development to go forward while at the same time mitigating the loss of existing residential hotel units. Fees assessed on a one-for-one basis at the cost to produce an equivalent new residential hotel unit would maintain the supply of this particular housing type and avoid an increase in displacement and in the number of people experiencing homelessness.

## **Outline for Justification and Documentation**

The development impact fee justification is presented and documented in the subsequent sections of this report, organized in the following order:

### **I. Residential hotel inventory and tenants, and the City's policy interest in maintaining this segment of the housing supply and mitigating displacement**

- A. Define residential hotel units
- B. Document the function of these units in the City's housing inventory and describe the characteristics of people who live in residential hotels
- C. Establish the City's policy interest in preserving the stock of residential hotel units and preventing displacement of residential hotel tenants

### **II. Real estate market trends and development actions resulting in the loss of residential hotel units in Oakland**

- A. Document the real estate market trends affecting the supply of residential hotel units in Oakland
- B. Define the development actions that result in the loss of residential hotel units and the displacement of existing tenants

### **III. Justified impact fee to produce equivalent units and provide one-for-one mitigation for loss of residential hotel units**

- A. Define the characteristics of new residential hotel units equivalent to the units lost
- B. Determine the amount of the mitigation fee to be assessed per residential hotel unit lost by estimating the cost to produce new equivalent units

## **I. Residential Hotel Inventory and Tenants, and the City's Policy Interest in Maintaining this Segment of the Housing Supply and Mitigating Displacement**

The following discussion presents a description of the residential hotel inventory in Oakland and of the characteristics of residential hotel tenants. The description draws on surveys spanning 30 years and establishes the loss of the inventory over time. By offering basic housing services in exchange for very low rents and minimal tenancy requirements, residential hotels have served those who have few, if any, other housing options. If these tenants are displaced, they are very likely to become part of the population experiencing homelessness in Oakland. The City has a

long-established policy interest in preserving the stock of residential hotels and in preventing displacement of very low and extremely low income existing residents.

### **I. A. Residential hotel units defined**

**Residential Hotel** is defined in accordance with California Health and Safety Code Section 50519, and means any building built before 1960 containing six (6) or more Rooming Units, as defined in Section 17.09.040, intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests and where the entrances to the individual units are generally accessed via a shared lobby area.

**Residential Hotel Unit** means a Rooming Unit or Efficiency Dwelling Unit, as those terms are defined in Section 17.09.040 of the Oakland Planning Code, located within a Residential Hotel.

#### ***Related definitions***

Rooming units are units without private kitchens. They may or may not have in-unit bathrooms or sinks. Efficiency dwelling units have only one room, a combined living, eating, and sleeping room with in-unit bathrooms and kitchens/kitchenettes.

### **I. B. The function of residential hotel units in Oakland's housing inventory**

This section describes current conditions and trends for the inventory of residential hotels and residential hotel units in Oakland. The section includes description of the characteristics of units and of occupants of residential hotel units, identifying the particular function of this segment of the City's housing supply.

#### ***Characteristics of residential hotel units: existing inventory and trends***

Number of residential hotels. The City's current inventory of residential hotels identifies 31 buildings that are likely to meet the characteristics of residential hotels defined above. Not all have been finally determined to be residential hotels, and the City of Oakland acknowledges that there may be additional existing buildings not in the current inventory that could be classified as residential hotels at some time in the future. The City intends to implement a Residential Hotel Registry to formalize this designation as well as procedures to monitor the status of the inventory over time.

The buildings in the current inventory were identified from several sources. About half were identified and surveyed most recently in the September 2015 report, *Downtown Oakland's Residential Hotels* (2015 SRO Study), prepared by the City of Oakland

Housing and Community Development Department.<sup>3</sup> Others were identified from Alameda County Assessor's information and City of Oakland sources. For this latter group, little is known, aside from address, Assessor's Use Code, zoning designation, and ownership. The latter group includes buildings outside of the downtown area, in East Oakland, West Oakland, and North Oakland.

The following information on unit count, unit characteristics, and trends is based on information gathered about residential hotels in the downtown Oakland area over the last 30 years. The characteristics describe patterns that apply to Oakland's residential hotel units generally.

Number of units and changes over time. The 2015 SRO Study focused on residential hotels in downtown Oakland and the San Pablo corridor. The study identified 18 residential hotels representing 1,311 residential hotel units. Oakland first reported on residential hotels in 1985<sup>4</sup> focusing on the Chinatown and Central Community Development Districts, roughly the same area covered in the 2015 SRO Study. The City produced less extensive follow-up reports in 1995 and 2004, and conducted a survey in 2009 but did not release the results.

As noted in the 1985 report (page 4): "In recent years, there has been a growing perception that SROs constitute a significant and vital portion of the low income housing stock." In the middle of the 20<sup>th</sup> century, Federal housing programs defined SROs as substandard housing, and many residential hotel units were demolished and converted in the course of Federal urban renewal programs. In the 1970s and 1980s, concern shifted to placing value on the function of these units as a housing resource for low income individuals, and planners and policymakers began to highlight the importance of the remaining stock. At the same time, downtown revitalization efforts encouraged new investment where residential hotels were concentrated, leading to continued demolition and conversion through public and private redevelopment actions.

The 1985 report identified 2,003 residential hotel units in 25 residential hotels in the Central District. The report also marked the prior loss of about 800 units to make way for the City Center, Victorian Row, Convention Center, and Chinatown redevelopment projects and indicated that a number of other closings or conversions of residential hotels

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<sup>3</sup> *Downtown Oakland's Residential Hotels*, a report prepared by the City of Oakland, Housing and Community Development Department, September 2015.

<sup>4</sup> *Residential Hotels in Downtown Oakland*, a report prepared for Office of Community Development, City of Oakland, May 15, 1985.

were underway. Based on this information, one can infer that the inventory once was close to 3,000 units, of which about 1,300 remained in 2015.

The 1989 Loma Prieta earthquake resulted in structural damage to several residential hotels and temporary displacement of many residents. Some damaged buildings were returned to the active inventory after securing funding for repairs; others were renovated to provide apartments for low income households.

Policies to preserve the residential hotel housing stock adopted in the late 1980s achieved some success stabilizing the inventory in Oakland following the significant losses due to urban renewal and redevelopment. In a 2004 report, the City identified 27 residential hotels and approximately 2,285 residential hotel units in central Oakland.<sup>5</sup> The inventory of hotels and units is notably lower in the 2015 count, however. The 2015 SRO Study identifies 704 units in eight residential hotels operating in 2002/2003 (the dates for data collection reported in 2004) that had been lost to the inventory 13 years later. Reasons include demolition and conversion as well as rehabilitation to units serving a different (higher-rent) segment of the housing market. During this period, some former residential hotels were acquired by non-profit developers and converted to permanently affordable housing, others had been converted to market rate apartments or student housing. Of the remaining inventory, the 2015 SRO Study found continuity at many of the hotels still in operation; the majority of hotels remained in the same ownership since 2004.

Size of residential hotel buildings. Residential hotels continue to come in many sizes. In the 2015 survey, unit counts ranged from 20 up to 197. The average unit count was 73. Many of the losses since 1985 have been the larger residential hotel buildings—a number of them converted to affordable apartments.

Occupancy and vacancy. Vacancy rates have remained fairly constant over time, although there is substantial variance from the average in some buildings, with outliers showing large counts of vacant units for a variety of reasons. The 1985, 2004, and 2015 surveys each identified a number of units not available due to renovation or repair. On average, rooms for rent as a share of rooms available ranges from eight percent (2004) to 12 percent in 2015. Nonetheless, more than half of the residential hotels in the 2015 SRO survey reported occupancy rates of 95 – 100 percent. In some buildings, higher vacancy rates are related to the fact that tenants may only be able to pay rent in smaller weekly increments so they are not able to retain permanent occupancy for longer periods.

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<sup>5</sup> *Residential Hotels in Central Oakland*, Community and Economic Development Agency, City of Oakland, January 2004.

Room size. The 2004 survey provides information on the sizes of rooms in residential hotels. Rooms are small, ranging from 80 square feet to 350 square feet. The average room size is 176 square feet and the median is 144 square feet.

Kitchens and bathrooms. The same survey (and the 1985 SRO Study) describe the prevalence of kitchen and bath facilities. Most residential hotels do not have rooms with a private kitchen. The 2004 survey reported about 36 percent of hotels with private kitchens in the units—an increase from the situation in 1985. The 2004 survey reported about 40 percent of hotels providing community kitchen facilities—also an increase from the situation described in 1985. From this information, it appears that about 25 percent of residential hotels offer no cooking facilities. (Note that these descriptive characteristics are available with respect to the number of residential hotels, not the number of residential hotel units.)

Private baths are more common than kitchen facilities, although most residents use shared hallway bathrooms. In the 2004 survey, about 70 percent of the hotels indicated a private bathroom in at least one room, as was the case in the 1985 survey. In each survey, 25 – 40 percent of rooms had private baths, and many rooms have small sinks.

Other services and facilities. The services and facilities provided to residential hotels tenants have remained fairly consistent over time. The residential hotels remaining in operation are privately owned. Most residential hotels have management staff, generally a desk clerk. All of the hotels surveyed offer mail delivery service, either through private mail boxes or with mail slots maintained by the desk clerk. The 2004 and 1985 studies indicated that the majority of residential hotels also provided housekeeping and linen services, as well as routine repair, maintenance, and janitorial services. Most residential hotels do not provide on-site supportive services.

Terms of occupancy. Historically, residential hotels have served the housing needs of the semi-transient (sales people, construction workers, merchant seamen) and those without savings or a steady source of income. As something of a hybrid between a visitor hotel and a studio apartment, residential hotels met the housing needs of a certain segment of the housing market. By offering rooms at daily and weekly rates, without need for application or credit check, residential hotels offered shelter to those unable to commit to longer-term tenancies and without the savings for security deposits. Residential hotels offered low rents in exchange for “bare bones” housing services.

In Oakland today, policies for length of stay vary: some residential hotels rent only by the day and week and others rent only by the month. In the 2015 SRO Study, two-thirds of the residential hotels accepted monthly rentals, one-third accepted weekly rentals, about 20 percent accepted daily rentals. About 30 percent only accepted new tenants for stays

of *less than 28 days* (although longer-term residents must be grandfathered and allowed to stay as permanent residents). This policy, designed to limit the legal protections available to permanent residents (those whose tenancy exceeds 30 days), requires tenants to move between different hotels every month.

Rental rates. The three surveys have tracked asking rental rates over time for daily, weekly, and monthly rentals. **Table 1** presents the detail for daily, weekly, and monthly rates with the 1985 and 2002 rates adjusted for inflation to 2015 dollars. Asking rents have increased substantially above inflation since 1985, most notably the daily and weekly rates. Monthly rates in 2015 were lower than monthly rates in 2002 after adjusting for inflation. As noted below, many residents of residential hotel units are long-term permanent residents in rent-stabilized units paying less than these asking rents.

**Table 1**  
**Trends in Asking Rents for Downtown Residential Hotels: 1985 - 2015**

Asking Rents	Adjusted for Inflation to 2015			Percent Change		
	1985 Rents (2015 \$)	2002 Rents (2015 \$)	2015 Rents (Nominal)	1985- 2002	2002- 2015	1985- 2002
Average Daily Rate	\$44	\$47	\$62	7%	32%	41%
Average Weekly Rate	\$184	\$267	\$251	45%	-6%	36%
Average Monthly Rate	\$588	\$729	\$676	24%	-7%	15%
<i>Citywide Median Asking Rent – Studio Apartment</i>	<i>\$775</i>	<i>\$1,032</i>	<i>\$1,475</i>	<i>33%</i>	<i>43%</i>	<i>90%</i>

*Sources: Residential Hotels in Downtown Oakland, a report prepared for Office of Community Development, City of Oakland, May 15, 1985; Residential Hotels in Central Oakland, Community and Economic Development Agency, City of Oakland, January 2004; Downtown Oakland's Residential Hotels, City of Oakland Housing and Community Development Department, September 2015, U.S. Department of Commerce, Bureau of Labor Statistics, Consumer Price Index, All Items – All Urban Consumers, San Francisco – Oakland- Hayward CA, and Hausrath Economics Group.*

The table also compares inflation-adjusted trends for residential hotel units to median asking rents for studio apartments generally in the City of Oakland. Through 2002, monthly asking rental rates for residential hotel units were about 25 percent below the median asking rent for studio units citywide. More recently the gap has widened as Oakland's market rate rents have experienced striking increases. In 2015, residential hotel unit asking rates for monthly rents were less than half of the median rent for a studio apartment. In 2015, the effective monthly rate (based on a weekly rental of \$251)

was just over \$1,000 per month—still 30 percent lower than the median rent for a studio apartment.

### ***Characteristics of residents***

Demographics. A significant majority of the residents of residential hotel rooms are single men (70 – 75 percent across all three surveys). There are very few children living in residential hotels. The race and ethnicity of residents has not been tracked as closely as some other resident characteristics. The available data indicate that 50 percent or more of residents are Black, 15 – 35 percent are White, 10 – 20 percent are Asian, and up to 10 – 12 percent are Latino, Other, or Multiracial. Since the 1985 survey, African-Americans have been the predominant racial/ethnic group among residential hotel residents overall. Each of the three surveys identified hotels with large majorities of one or another ethnic group, such as hotels exclusively occupied by a Chinese-American population or hotels with 75 percent or more African-American residents. It is clear that people of color are a substantial component of the population residing in residential hotels.

Length of residency. Consistently across the surveys, most residents are permanent residents. In the 2015 SRO Study, 85 percent of residents had tenancies of greater than one month and 65 percent had been tenants for at least one year. One-quarter of residents had been living in the same residential hotel for five years or more. While the surveys note that these patterns vary across the hotels, depending on individual residential hotel policies and populations served, the surveys are also clear in the conclusion that the large majority of occupants are using the hotels as housing rather than temporary lodging while away from home.

Employment status and income. The 2015 SRO Study does not provide information on the employment status of residential hotel tenants. The 1985 and 2004 surveys described substantial variation among hotels, with about half of the responding residential hotels indicating more than half of the units were occupied by people who were employed and the other half showing more residents unemployed or out of the labor force. The variation is most likely due to rental rates and affordability.

All three surveys indicate that most residential hotel occupants rely on some form of public assistance—most commonly Social Security, Supplemental Security Income (SSI), and disability benefits. Households living on these sources of income, generally not more than about \$24,000 per year for a single household, are categorized as extremely low income households in the City of Oakland.

Residents at risk of homelessness. The 2017 point-in-time Homeless Count and Survey<sup>6</sup> counted 2,761 individuals experiencing homelessness in Oakland. The survey concluded that economic hardship was the primary cause of homelessness: “money issues” were the primary cause for about 60 percent of survey respondents in Oakland, far outweighing mental health issues, personal relationship issues, physical health issues, and substance abuse issues. Rent payments are ever-more burdensome to people at the low end of the income distribution, and almost all of the survey respondents (99 percent) reported they were interested in housing and did not choose to live on the streets. Rent assistance to help retain permanent housing was the most often cited resource that would help prevent homelessness.

Almost 90 percent of the 2017 point-in-time survey respondents in Oakland were living in Alameda County when they became homeless and most had lived in the county for 10 years or more. Before becoming homeless, most survey respondents lived in a rented unit or house (43 percent) or with friends/relatives (30 percent). In Oakland, six percent indicated they had been living in a motel or hotel. While the survey does not specifically identify respondents as displaced residents of residential hotel units, it does indicate that the surveyed homeless had most recently been housed in situations such as those offered by the stock of residential hotel units.

### **I. C. Policy framework**

Policies to preserve residential hotels in Oakland followed closely on the release of the 1985 SRO Study. Policy 5.4 of the Oakland Housing Element establishes City policy to preserve single room occupancy hotels because they “provide housing of last resort for extremely low income households”. To implement this policy, Oakland requires a conditional use permit to convert a residential hotel facility to a non-residential use (exceptions for commercial hotel uses) or to demolish a residential hotel.

Other Housing Element policies address preservation of the existing housing stock occupied by seniors, people with disabilities, and low-income populations generally (Policy 4.3 Housing Preservation and Rehabilitation). Action 4.3.8 Mitigate the Loss of Units Demolished by Public or Private Actions supports development of regulations such as this proposed impact fee.

Consider developing a new policy to comply with the spirit of Government Code 65583(c)(4) that states: “Conserve and improve the condition of the existing affordable

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<sup>6</sup> *City of Oakland 2017 Homeless Census and Survey Jurisdictional Report*, produced by Applied Survey Research, part of EveryOne Counts! 2017 Homeless Count and Survey, conducted by EveryOne Home, Alameda County coordinating body for ending homelessness in Alameda County.

housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.”

The Housing Element also addresses displacement in Policy 4.4 Anti-displacement of City of Oakland Residents. Actions include strengthening tenant relocation policies under ordinances regulating landlord actions in condo conversions, SRO conversions, Ellis Act withdrawals of rental units from the market, and Just Cause evictions. The City has recently adopted standardized regulations with increased landlord payments required. Oakland has also allocated Measure KK funding to acquire residential hotel buildings for use as housing for extremely low income and homeless individuals.

In 2015, the City published *A Roadmap Toward Equity: Housing Solutions for Oakland, California*. The paper focuses many of the same policies adopted in the City’s Housing Element through a more specific action plan to address the manifestations of the region’s housing affordability crisis in the City of Oakland. With the emphasis on equity and repairing disparities in opportunity that have disproportionately impacted Oakland’s residents of color, the action plan prioritizes preservation of existing non-subsidized affordable housing stock (which would include the residential hotel inventory) to prevent displacement of long-time City residents. The strategies addressing displacement and housing insecurity are a counterbalance to housing production policies that are also a necessary part of the response to unprecedented regional housing market demand pressures. Mitigating the loss of residential hotel units whose residents are mostly people of color is an important component of the housing equity strategy.

In December 2016, the Oakland City Council adopted an urgency measure establishing a temporary moratorium on the conversion, demolition, reconfiguration, and rehabilitation of residential hotels. Initially established for a 45-day period, the moratorium was extended in January 2017 through December 11, 2018 or whenever permanent regulations are adopted (whichever occurs first). In the findings for the moratorium, the City Council established that residential hotel units are an “essential component of the City’s affordable housing supply as a flexible and easily accessible form of housing that provide low, very low, and extremely low-income residents the ability to remain in Oakland and to avoid homelessness.”

The City of Oakland is a partner with other sponsoring agencies and stakeholders in Alameda County’s EveryOne Home Plan—a program to end homelessness in Alameda County. The *2018 Strategic Plan Update* affirms the critical role of maintaining the existing supply of housing affordable to low income people.

Only preventing the loss of housing and creating more homes that are affordable and targeted to homeless people will reduce the number of people living in emergency

shelters and on our streets. The goal is not more shelters, rather fewer people who need shelters.

## **II. Real Estate Market Trends and Development Actions Resulting in the Loss of Residential Hotel Units in Oakland**

Cities have a long-standing interest in attracting higher revenue generating uses to downtowns and transit corridors. These development trends conflict with the need to provide housing for the city's most vulnerable residents—residents for whom residential hotel units are uniquely suited to meet their limited resources and needs. Displacement of residential hotel tenants as a result of demolition and conversion of the existing inventory as well as rehabilitation seeking higher income tenants who will pay higher rents contributes to the increase in people experiencing homelessness in Oakland.

### **II. A. Real estate market trends affecting the supply of residential hotel units in Oakland**

Oakland is experiencing a surge of new investment in real estate development centered on the downtown. Regional market factors—the Bay Area is one of the strongest economies in the U.S.—have combined with Oakland's locational advantages to create conditions for Oakland's current development pipeline and plans. With city, regional, and state land use planning and development policies favoring downtown and transit-oriented locations, residential hotel properties are susceptible to another version of the development pressure that reduced the inventory in the 1960s and 1970s. In 2016, before the imposition of the temporary moratorium on conversion, demolition, and rehabilitation of residential hotels, City of Oakland staff identified 712 residential hotel units—more than half of the remaining inventory—as at risk of being lost “due to market pressures and the lack of regulatory control”.<sup>7</sup>

Real estate market conditions for residential rental housing and visitor lodging are particularly relevant to the future of the residential hotel inventory in Oakland.

#### ***Rental housing market: supply deficit and affordability crisis***

Market rents for housing in Oakland have increased at some of the fastest rates in the nation in recent years. Throughout the region and most of the state, new housing production lags by a large amount the strong demand due to an unprecedented surge in economic activity and associated employment growth. The supply deficit pushes rents to record-breaking levels. Adding to this pressure in Oakland, the city remains an affordable alternative to San Francisco and Silicon Valley for many renters and home buyers, with good regional transit connections to those locations.

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<sup>7</sup> City of Oakland, Agenda Report to Members of the City Council, *Emergency Moratorium on Conversion or Demolition of Residential Hotels*, December 1, 2016.

Housing market analysis prepared by the U.S. Department of Housing and Urban Development in 2017<sup>8</sup> describes the following characteristics and trends in the Oakland-Hayward-Berkeley Housing Market Area:

- ◆ 3.3 percent vacancy rate (December 2016)
- ◆ Average apartment rent: \$2,066 for the market area—higher in Oakland/Berkeley at \$2,550
- ◆ Oakland was the fifth most expensive city in the country for one-bedroom rental apartments, behind San Jose (#4) and San Francisco (#1)
- ◆ Rents remained 15 percent lower than rents in San Jose and 31 percent lower than average rents in San Francisco

Against this backdrop, the residential hotel stock is at risk on several fronts. The inventory sits in prime locations for new development: downtown and along transit corridors. Furthermore, faced with significant increases in new construction costs, investors look to rehabilitation options. In Oakland and other larger cities throughout California, such as San Francisco, Los Angeles, and San Diego, residential hotels, generally located in downtowns being revitalized, have been prime targets for rehabilitation and renovation targeting higher income renters.

#### ***Hotel development trends favor downtown locations***

The Bay Area is one of the strongest lodging markets in the country, attracting increasing numbers of international and domestic visitors as well as business and convention travel. International passenger volume through the Oakland airport has almost doubled in recent years with the addition of new airlines and services, and domestic passenger volume has also increased. Oakland has been the beneficiary of positive coverage in the national and international press as a visitor destination and has also seen spillover demand from San Francisco where hotel demand has grown while hotel inventory had been stagnant until recently.

Visitor industry projections and increases in room rates and occupancy rates in the Oakland and greater East Bay hotel market have generated a significant supply pipeline for the market area. As of the second quarter of 2017, CBRE Hotels counted a pipeline of 27 properties representing 3,700 rooms—a 20 percent increase in supply—in various stages of planning and construction in the Oakland market area, consisting of most of Alameda and Contra Costa counties.<sup>9</sup> About two-thirds of that supply pipeline was in the Oakland-Berkeley-Hayward submarket. There have been a number of proposals for hotel development in and around downtown Oakland over the last few

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<sup>8</sup> U.S. Department of Housing and Urban Development, Office of Policy Development and Research, *Comprehensive Housing Market Analysis: Oakland-Hayward-Berkeley, California*, January 1, 2017.

<sup>9</sup> CBRE Hotels, *Hotel Horizons, Oakland*, Volume XI, Issues III, September – November 2017.

years, some of which have involved residential hotels; existing residential hotel buildings are well located to appeal to investors attracted by the potential for conversion to boutique hotel use.

## **II. B. Development actions that result in the loss of residential hotel units and the displacement of existing tenants**

The real estate market trends described above mean that there are incentives to replace residential hotel activity with higher revenue generating development types. This typically occurs by one of three types of development actions. These are the types of building owner actions that would result in the loss of a residential hotel unit. The actions and the proposed impact fee apply to both vacant and occupied residential hotel units. The impact fee applies to actions affecting vacant units because, even though unoccupied, those units may have recently housed very low and extremely low income individuals and they retain the relevant characteristics and potential to house people in that segment of the housing market. The three types of development actions are the following:

1. **Conversion** means any action that converts one or more existing residential hotel unit to another use.
2. **Demolition** means any action that eliminates an existing residential hotel unit, by complete or partial demolition, combining two or more existing residential hotel units to make a larger new unit, or any other action.
3. **Rehabilitation** means reconfiguration, reconstruction, renovation, or other improvements to all or part of a residential hotel or a residential hotel unit, which results in units marketed to higher-rent paying and higher income tenants.

## **III. Justified Impact Fee to Produce Equivalent Units and Provide One-For-One Mitigation for Loss of Residential Hotel Units**

This section identifies the characteristics of the new development that would be considered equivalent replacement for residential hotel units lost. These features are the basis for new development prototypes for which development costs are estimated. The calculation of the justifiable impact fee subtracts from development cost the capitalized value of net operating income of this replacement inventory. The result is an impact fee assessed per unit demolished, converted, or rehabilitated adequate to mitigate the loss of residential hotel units and prevent displacement and resultant increases in homelessness.

### **III. A. Equivalent replacement unit defined**

The impact fee would be used to produce new residential hotel units equivalent to the units lost, as measured by the following parameters:

- ◆ affordability,
- ◆ unit size (square feet per unit or room),
- ◆ services and facilities offered, and
- ◆ located within two miles of the subject facility.

Each of these parameters is discussed below. In each case, the analysis defines equivalent characteristics for replacement units and buildings. These parameters are used in the development cost analysis in the next section and for estimating the fee obligation.

### *Affordability*

Residential hotel units have evolved to fill a specific niche in the local housing market, as indicated by the preceding descriptions of unit characteristics and resident characteristics. Residential hotel units remaining in the private market—that have not been subsumed into the system of subsidized affordable housing—offer housing to those on the fringe of the normal housing market. Affordable housing programs typically target low and very low income households. Existing residential hotel units provide options for individuals in the very low and extremely low income categories.

Not only are rent levels low, but the absence of other tenancy pre-requisites also enhances residential hotel unit affordability. Rents are often assessed on a weekly basis. No security deposit or first or last month's rent is required. No credit checks are required.

**Table 2** presents the 2018 income limits and associated 2018 rent limits for these income categories, published by the City of Oakland Housing and Community Development Department for use in City of Oakland Housing Programs. The monthly rent limits assume rents at 30 percent of household income. Each income category is defined by a minimum household income and associated monthly rent per unit and a maximum household income and associated monthly rent per unit. This analysis assumes that the rents for replacement residential hotel units would be consistent with the City standards for affordable housing, using the calculated midpoint monthly rent per unit.

**Table 2**  
**2018 Income Limits and Monthly Rent Limits Applicable to Residential Hotel Units**

Household Income Category			Monthly Rent by Unit Type	
			SRO Units	Efficiency Units
<b>Extremely low income - one person household</b>				
Minimum	\$20,350	25% of area median income	\$381	\$509
Maximum	\$24,400	30% of area median income	\$458	\$610
Midpoint			\$420	\$560
<b>Very low income - one person household</b>				
Minimum	\$28,490	35% of area median income	\$534	\$712
Maximum	\$40,700	50% of area median income	\$763	\$1,017
Midpoint			\$649	\$865

Source: City of Oakland, Housing and Community Development, "Area Median Income and Rent Limits for Affordable Housing", 2018, See [rent-and-income-limits-for-affordable-housing](#).

For purposes of this nexus analysis, we developed a scenario of monthly rents for replacement residential hotel units that reflects a mix of resident incomes at the extremely low and very low income levels applicable to SRO units and efficiency units. For this analysis, a mix of 50 percent extremely low income households and 50 percent very low income households is assumed.

**Table 3** shows the resultant monthly rent scenario for each unit type.

**Table 3**  
**Scenario of Monthly Rents per Unit by Unit Type, 2018**

	SRO Units	Efficiency Units
Monthly Rent at Minimum	\$458	\$611
Monthly Rent at Maximum	\$611	\$814
Monthly Rent at Midpoint	\$535	\$713

Source: Hausrath Economics Group. Nexus analysis scenario of monthly rents for replacement residential hotel units reflects a mix of resident incomes (50% extremely low and 50% very low income) and City of Oakland income and rent limits for unit types in residential hotels (see Table 2).

The monthly rent scenarios above for existing residents in residential hotels are not directly comparable to the asking rents for Downtown residential hotels shown in an earlier table. Most existing rents are below asking rents due to the effects of rent stabilization.

### ***Unit size***

Residential hotel units, particularly rooming units without kitchens or bathrooms, are typically less than 200 square feet in size. Efficiency units (included in the class of residential hotel units) also have one room but include a bathroom and kitchen/kitchenette in each unit.

The residential hotel unit prototypes defined to estimate development costs for equivalent units in this analysis assume a unit size of 175 square feet of net floor area for SRO rooming units and 200 square feet of net floor area for efficiency units.

### ***Services and facilities offered***

As noted in the descriptions above, existing residential hotels offer a mix of rooming units with and without in-unit bathrooms, shared hallway bathrooms, and some efficiency units with both in-unit bathroom and kitchen. Utility costs are typically included in the rental payment. Existing residential hotels in the private market offer only basic services to keep operating expenses low. For the purposes of defining comparable equivalent units for this impact fee analysis, no on-site social, health, or other resident services are assumed. Comparable equivalent services include: routine maintenance, repair, and safety services; trash and recycling services; staffing (desk clerk, janitorial); and basic administrative overhead for taxes, insurance, advertising, and bookkeeping.

### ***Located within two miles of the subject facility***

Most residential hotel units in Oakland are located in and around the downtown area. Those more distant from the downtown are located along historic transit corridors. City staff mapped the inventory of residential hotels and determined that a two-mile radius centered on 14<sup>th</sup> and Broadway captured most of the existing inventory. Land cost assumptions used in the prototype development cost analysis reflect land values for new multi-family residential development in this downtown area.

## **III. B. Calculation of justified impact fee to mitigate loss of residential hotel units**

The fee calculation considers both development cost for a replacement unit and the value of rental income from the new unit as represented by capitalized net operating income. Development cost minus the value of the new unit is the justifiable impact fee.

### ***Development cost analysis***

Prototypical equivalent replacement units and buildings were defined for the development cost analysis. Cost estimates were prepared based on input provided by developers currently active in Oakland residential development. Cost estimates considered current costs for micro-living units as the primary examples of current, small living unit development and adjusted for differences

for residential hotel use. Costs for conventional and modular construction techniques were evaluated.<sup>10</sup>

Two prototypes were defined as residential hotel projects with 70-75 units in mid-rise, Type III construction. One prototype reflects 75 SRO rooming units averaging 175 square feet, some in-unit bathrooms, some hallway bathrooms, no in-unit kitchens (may have shared cooking facilities), and no parking. The other prototype reflects 70 efficiency units averaging 200 square feet with in-unit bathrooms and kitchens/kitchenettes, and no parking.

The cost to develop the SRO rooming unit prototype is estimated at \$230,000 per unit (2018 dollars). The cost to develop the efficiency unit prototype is estimated at \$270,000 per unit (2018 dollars). Both of these costs assume basic construction and finishes to provide equivalent replacement units. The costs include land acquisition and site preparation, hard construction costs, project design and engineering, permits and fees (excluding Oakland impact fees<sup>11</sup>), legal and accounting services, title, taxes, insurance, development overhead and fees, contingency, and construction period financing (as appropriate). **Table 4** presents the costs to produce equivalent residential hotel units of each type.

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<sup>10</sup> Zoning Code amendments for the Broadway/Valdez Specific Plan added a “micro living quarters” facility type defined as follows: one or more rooms having an average net floor area of 175 square feet, but a minimum size of 150 square feet of net floor area; bathroom facilities are required in each unit; cooking facilities are not allowed in each unit, but shared kitchen facilities are required on the same building floor. These types of projects, existing and under development, were considered in the development cost analysis.

<sup>11</sup> The replacement units are assumed to be exempt from City of Oakland impact fees.

**Table 4**  
**Residential Hotel Development Prototypes and Costs**

Type III, Mid-rise Construction No parking 175 sf (rooming unit) - 200 sf (efficiency unit) 7,000 sf land/site 70 - 75 units Approx. 426 units/acre density				
Development Costs (2018 dollars)	SRO Rooming Units: 75 units @ 175 sf /a/		Efficiency Units: 70 units @ 200 sf /b/	
	Per Unit	Per SF Unit	Per Unit	Per SF Unit
Hard Construction Costs	\$117,000	\$669	\$140,000	\$700
Soft Costs /c/	50,000	286	60,000	300
Land Cost /d/	33,000	188	35,000	175
Contingency	30,000	171	35,000	175
<b>TOTAL</b>	<b>\$230,000</b>	<b>\$1,314</b>	<b>\$270,000</b>	<b>\$1,350</b>

/a/ Some with in-unit bathrooms, some hallway bathrooms, no in-unit kitchens; may have shared cooking facilities.

/b/ With in-unit bathrooms and kitchens/kitchenettes.

/c/ Includes costs for design/engineering/other consultants, permits and fees (excluding Oakland impact fees), legal and accounting, title, taxes, insurance, development overhead and fees, contingency, and construction period finance (as appropriate).

/d/ Land cost of \$350 per square foot land in downtown area

Source: Hausrath Economics Group based on input from developers currently active in Oakland residential development.

For this nexus analysis, we developed a scenario for a mix of SRO rooming units and efficiency units generally representative of the current inventory. The development scenario includes two-thirds SRO rooming units (67 percent) and one-third efficiency units (33 percent). The weighted average development cost for that scenario is \$243,000 per unit. That average development cost per unit provides the basis for an “average” impact fee to be applied to different individual projects over time.

***Value of new units***

Analysis of rental income for the new affordable units minus operating expenses (based on operating budgets for existing residential hotels) indicates positive net operating income and a modest value for the new units. **Table 5** identifies the weighted average capitalized value per replacement unit based on the minimum, maximum, and midpoint monthly rents. The analysis indicates that, on average, rental revenue from the replacement units, assuming midpoint rents, could support approximately \$35,000 capitalized value per unit.

**Table 5**  
**Rent, Net Operating Income, and Capitalized Value Scenarios for Replacement Units,**  
**2018 dollars**

Development Scenario: 67% SRO Rooming Units 33% Efficiency Units				
Weighted Average Per Unit				
Rents	Monthly Rent /a/	Annual Rent with Vacancy /b/	Net Operating Income /c/	Capitalized Value /d/
Rents at Minimum	\$508	\$5,788	\$788	\$16,000
Rents at Maximum	\$677	\$7,718	\$2,718	\$54,000
Rents at Midpoint	\$593	\$6,758	\$1,758	\$35,000

/a/ Mix of rents shown for two-thirds SRO units and one-third efficiency units in Table 3.

/b/ Assumes 5 percent vacancy.

/c/ Assumes \$5,000 per year per unit operating costs.

/d/ Assumes 5.0% cap rate.

Source: Hausrath Economics Group

***Justified impact fee to be assessed per residential hotel unit lost***

Comparison of the cost of developing a replacement unit (weighted average \$243,000 per unit) and the capitalized value per unit supported by rental income (weighted average \$35,000 per unit) identifies the “gap” of development cost per unit less value per unit supported by rents that requires additional funding ( $\$243,000 - \$35,000 = \$208,000$  per unit). That amount identifies a justifiable impact fee to replace equivalent units of \$208,000 per unit. The calculations are presented in **Table 6**.

It is appropriate to add a percentage to the fee to account for necessary administrative and management costs for the fee program. Impact fee documentation studies typically include a percentage factor, in this case a factor of two percent consistent with other Oakland impact fees.

With the administrative cost, the **justified impact fee totals \$212,000 per residential hotel unit lost.**

**Table 6**  
**Calculation of Justified Impact Fee to Replace Equivalent Units**

Development Cost per Unit (see Table 4)	
67% SRO Rooming Units	\$230,000
33% Efficiency Units	\$220,000
Weighted Average Cost	\$243,000
Capitalized Value of New Unit (see Table 5)	
Weighted Average at Midpoint Rents	\$35,000
Gap: Development Cost per Unit Less Value of New Unit	\$208,000
<b>Justifiable Impact Fee to Replace Equivalent Units</b>	<b>\$208,000 per unit</b>
<b>Impact Fee with Administrative Cost of 2%</b>	<b>\$212,000 per unit</b>

Source: Hausrath Economics Group

Once adopted, per-unit fees would be adjusted on an annual basis to ensure that fee revenue keeps up with increases in the cost of new development.

***Fee revenue to be used to fund replacement units***

Payments of the fee would be deposited in a new account – the Residential Hotel Unit Replacement Account—established in the City’s Affordable Housing Trust Fund. Fee revenue would be disbursed from that account to develop replacement, residential hotel units, equivalent in affordability, size, facilities and services, and location characteristics to the residential hotel units lost.

## Community Engagement Summary

Staff has conducted extensive community outreach, with a wide range of stakeholders, in order to formulate a comprehensive understanding of the role residential hotels play for Oakland's residents, property owners, and activists.

### I. Summary of Resident Engagement

Throughout July and August of 2018, the City of Oakland's Planning and Building Department conducted a series of outreach activities in order to better understand the experiences, motivations, and concerns of residents of Residential Hotels. The team conducted two focus groups – one at San Pablo Hotel on July 27<sup>th</sup>, and one at Empyrean Towers on July 31<sup>st</sup> – with a total of two dozen attendees. The team also conducted twenty surveys, and conducted one in-depth resident interview. In addition to providing insight into the demographic composition of Residential Hotels, these efforts helped elucidate three themes of high importance – (1) *accessibility*, (2) *housing stability and security*, and (3) *common spaces*.

#### *Demographic Information:*

SRO residents are a specifically vulnerable population, as 80% of survey respondents have disabilities, and 85% over the age of 60. Only 25% of this high-need population has the support of a Section 8 voucher, and would thus face severe hardship were they to lose their current housing. Additionally, of the 20 respondents, 75% identify as people of color, 55% are male. Focus group attendees stated that SROs are an important source of long-term housing stability – the vast majority acknowledged that they had either been at their current SRO for over a year, planned to stay for an extended period of time, or had years-long stays at SROs in the past.

#### *Accessibility:*

Accessibility was consistently singled out as a chief complaint of SRO residents. Focus group and interview participants noted elevators and handrails as having a large impact on their quality of life; given the large percentage of seniors and persons with disabilities, daily life is a struggle without such infrastructure. Residents noted that they would avoid running errands or leaving their rooms because of the mobility challenges presented by their places of residence. Improving accessibility, participants said, would have a large impact on their quality of life, regardless of the state of the finishes, walls, rugs, and floors in their buildings.

#### *Housing Stability and Security:*

Throughout two focus groups and one interview, security and stability of housing consistently emerged as the issue of greatest importance to residents of Residential Hotels. Interview and focus group participants noted that they could not afford a significant rent increase, and would have no options other than homelessness were they to face one. While there was a general consensus that they would prefer to pay a small amount more each month for improved living conditions, they repeatedly emphasized that, although they would happily accept upgrades like having private bathrooms, kitchenettes or more reliable elevator service, their highest priority was housing security and assurance they would not be priced out or asked to move out of their units. Focus group and interview participants noted stability – not having to move – as the best aspect of their current housing situation.

#### *Common Spaces:*

Although common spaces were noted to be of less importance than affordability and accessibility, they play a large role in the lives of residents. Focus group and interview participants noted the common spaces as one of the best aspects of their living situation, as they provide an opportunity to interact with other residents and build community. They are of particular importance to residents with disabilities and those who serve as caretakers, as they are not able to venture far from their building. One resident in particular said she chose her SRO over an opportunity to move into her own one-bedroom unit whose building lacked community rooms.

## **II. SRO Property Owner Meeting Synopsis**

### *Summary:*

Staff hosted a meeting with the owners and representatives of Residential Hotels, which was attended by representatives of six (6) different Residential Hotels in Oakland. The meeting took place the evening of August 22<sup>nd</sup>, 2018. Three common themes consistently emerged throughout the meeting – (1) *burden and inflexibility of excessive regulation*, (2) *difficulty of operating a Residential Hotel*, (3) *difficulty of financing, developing, and bringing new units to market*. It should be noted that only two attending property owners had owned their respective properties for more than five years.

### *Burden and Inflexibility of Excessive Regulation:*

Owners consistently brought up the ways in which regulations hindered them from effectively managing, improving, and profiting from their buildings. They felt that regulations often become outdated by the market or economic conditions, and hold them accountable to antiquated requirements. Rather than being “regressive,” several owners claimed that regulations should be “progressive.” Several owners cited the seemingly counter-intuitive prohibition of adding bathrooms to a facility at the expense of Rooming Units. One attendee suggested clearly stipulating the goals of any forthcoming regulations, and reviewing them after a predetermined period of time to gauge their effectiveness in achieving the desired outcomes; if the regulations are not shown to effectively advance the goals, they would be repealed and replaced with different measures. This suggestion received support from other meeting attendees.

### *Difficulty of Operating a Residential Hotel:*

Over the course of the meeting, owners continuously stressed the difficulty of operating and maintaining a Residential Hotel. One major component of their difficulty is compliance with myriad ordinances and regulations. They feel it is impossible to keep abreast of each requirement necessary to remain in compliance with local and state regulations. They also noted the extensive paperwork required to prove said compliance. The other major challenge is the day-to-day operations of the Residential Hotels. Owners are faced with issues of crime, mental illness, and sanitation that are very financially and emotionally straining. Rather than being vilified for the condition of their buildings and their residents, property owners feel they should be thanked for providing the important service of housing this high-need population. The costs required of dealing with this population makes it such that they get very little revenue from the buildings.

*Difficulty Financing, Developing, and Bringing New Units to Market:*

Several of the property owners, especially those who purchased their buildings more recently, complained that excessive regulation makes it difficult to create new – or improve existing – housing stock. Fees, fines, and staff time required to stay on top of paperwork make it difficult for projects to be profitable enough to justify new development or improvement. Additionally, one owner noted that constricting regulations dissuade investors and lenders, making it difficult to secure the financing necessary to develop new or rehabilitate existing units.

*Key Question:*

Several property owners inquired as to whether they would be able to abide regulations – pertaining to conversion, rehabilitation, and demolition – of existing units, while building additional units above. They wanted to know what requirements would be ascribed to the new development, and if they would be subjected to standard new development fees and requirements, or if there would be anything additional due to the location of new units above existing SRO units.

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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

  
\_\_\_\_\_  
City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE No. \_\_\_\_\_ C.M.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and extremely low income persons; and

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

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

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

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

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

**Section 1. Recitals.** The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this Ordinance.

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

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

**Section 4. Applicability.** This Ordinance shall not apply to (a) building/construction related permits already issued and not yet expired or; (b) building permits that have been submitted but not yet issued if the associated zoning permits have been approved by the City and not yet expired and an associated Residential Hotel Moratorium Exception/Exemption Request was granted by the City.

**Section 5. Severability.** The provisions of this Ordinance are severable. If a court of competent

jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, Chapter or other provision is invalid, or that the application of any part of the provision to any person or circumstance is invalid, the remaining provisions of this Ordinance [that can be given effect without the invalid provision or application] and the application of those provisions to other persons or circumstances are not affected by that decision. The City Council declares that the City Council would have adopted this Ordinance irrespective of the invalidity of any particular portion of this Ordinance.

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

**Section 7. Record of Proceedings.** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based, are respectively: (a) Planning and Building Department –Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, One Frank H. Ogawa Plaza, 1st Floor, Oakland California.

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

As a separate and independent basis, the City Council further determines that the actions authorized by this Ordinance are exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), which exempts projects when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, and 15183, which exempts projects consistent with General Plan and Zoning.

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

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

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_

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

DATE OF ATTESTATION: \_\_\_\_\_

**NOTICE & DIGEST**

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

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

# EXHIBIT A: Proposed Planning Code Amendments

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

- Changes to Table of Contents..... page 2
- Changes to Chapter 17.10 (land use activities)..... page 3
- Changes to Chapter 17.54, 56, 74, 76 and 78 (references to 17.102.230)..... page 5
- Changes to Section 17.102.230 (existing regulations related to Rooming Units)..... page 8
- Changes to Section 17.134.020.A.3 (special situations requiring a Major Conditional Use Permit)..... page 10
- New Chapter 17.153 Demolition, Conversion and Rehabilitation Regulations for Residential Hotels..... page 11

**Title 17 PLANNING**

**Chapters:**

Chapter 17.138 - DEVELOPMENT AGREEMENT PROCEDURE

Chapter 17.140 - PLANNED UNIT DEVELOPMENT PROCEDURE

Chapter 17.142 - MINI-LOT AND PLANNED UNIT DEVELOPMENT REGULATIONS

Chapter 17.144 - REZONING AND LAW CHANGE PROCEDURE

Chapter 17.148 - VARIANCE PROCEDURE

Chapter 17.150 - FEE SCHEDULE

Chapter 17.152 - ENFORCEMENT

Chapter 17.153 - DEMOLITION, CONVERSION AND REHABILITATION OF RESIDENTIAL HOTELS

Chapter 17.154 - ZONING MAPS

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

Chapter 17.156 - DEEMED APPROVED ALCOHOLIC BEVERAGE SALE REGULATIONS

Chapter 17.157 - DEEMED APPROVED HOTEL AND ROOMING HOUSE REGULATIONS

Chapter 17.158 - ENVIRONMENTAL REVIEW REGULATIONS

**Chapter 17.10 USE CLASSIFICATIONS****Sections:****Article II - Activity Types****Part 1 - Residential Activity Types****Part 3 - Commercial Activity Types****Article II Activity Types****Part 1 Residential Activity Types****17.10.110 Permanent Residential Activities.****17.10.118 Emergency Shelter Residential Activities.****17.10.120 Semi-Transient Residential Activities.****17.10.125 Bed and Breakfast Residential Activities.****17.10.110 Permanent Residential Activities.**

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

**17.10.118 Emergency Shelter Residential Activities.**

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

**17.10.120 Semi-Transient Residential Activities.**

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

**17.10.125 Bed and Breakfast Residential Activities.**

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

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

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

**Part 3 Commercial Activity Types****17.10.440 Transient Habitation Commercial Activities.****17.10.440 Transient Habitation Commercial Activities.**

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

**Chapter 17.54 C-40 COMMUNITY THOROUGHFARE COMMERCIAL ZONE REGULATIONS****Sections:**

17.54.010 Title, purpose, and applicability.

17.54.040 Required design review process.

17.54.050 Permitted activities.

17.54.060 Conditionally permitted activities.

17.54.070 Permitted facilities.

17.54.080 Conditionally permitted facilities.

17.54.090 Special regulations applying to certain activities.

17.54.095 Reserved.

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

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

See Section 17.102.230.

**Chapter 17.56 C-45 COMMUNITY SHOPPING COMMERCIAL ZONE REGULATIONS****Sections:**

17.56.010 Title, purpose, and applicability.

17.56.040 Required design review process.

17.56.050 Permitted activities.

17.56.060 Conditionally permitted activities.

17.56.070 Permitted facilities.

17.56.080 Conditionally permitted facilities.

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

17.56.095 Special regulations regarding extensive agriculture.

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

17.56.105 Reserved.

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

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

See Section 17.102.230.

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

**Sections:**

17.74.010 Title, purpose, and applicability.

17.74.020 Required design review process.

17.74.030 Permitted activities.

17.74.040 Conditionally permitted activities.

17.74.050 Permitted facilities.

17.74.060 Conditionally permitted facilities.

17.74.070 Special regulations applying to certain Commercial Activities.

17.74.075 Special regulations applying to Extensive Agriculture.

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

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

See Section 17.102.230.

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

**Sections:**

17.76.010 Title, purpose, and applicability.

17.76.040 Required design review process.

17.76.050 Permitted activities.

17.76.060 Conditionally permitted activities.

17.76.070 Permitted facilities.

**17.76.080 Conditionally permitted facilities.**

**17.76.090 Special regulations applying to certain Commercial Activities.**

**17.76.095 Special regulations applying to Extensive Agriculture.**

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

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

See Section 17.102.230.

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

**Sections:**

17.78.010 Title, purpose, and applicability.

17.78.020 Required design review process.

17.78.030 Permitted activities.

17.78.040 Conditionally permitted activities.

17.78.050 Permitted facilities.

17.78.060 Conditionally permitted facilities.

17.78.065 Special regulations applying to Extensive Agriculture.

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

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

See Section 17.102.230.

## Chapter 17.102 REGULATIONS APPLICABLE TO CERTAIN ACTIVITIES AND FACILITIES

### Sections:

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

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

A. ~~Conditional Use Permit Requirement. The demolition of a facility containing, or intended to contain, rooming units, or the conversion of a living dwelling unit, other than those considered Residential Hotel Units per Chapter 17.153, from its present or last previous use by a Permanent Residential Activity, or a Semi-Transient Residential Activity, or a Transient Habitation Commercial Activity to its use by a Nonresidential Activity other than Transient Habitation Commercial is only permitted in a Nonresidential Zone upon the granting of a conditional use permit~~Conditional Use Permit pursuant to the ~~conditional use permit~~Conditional Use Permit procedure in Chapter 17.134. The only ~~exceptions~~exception to this requirement are conversions in the HBX Zones, and units in a One-Family or Two-Family Residential Facility. Such permit may be granted only upon determination that the proposed demolition or conversion conforms to the general use permit criteria set forth in the ~~conditional use permit~~Conditional Use Permit procedure and to at least one of the following additional use permit criteria:

- ~~1. That the facility proposed for demolition or the living~~The dwelling unit proposed for conversion is unoccupied and is, or is situated in, a residential building that has been found, determined, and declared to be substandard or unsafe pursuant to Subsection 15.08.350.(B) of the Oakland Municipal Code; or
- ~~2. That a~~A replacement rental unit, ~~comparable~~equivalent in affordability and type to each unit proposed for demolition or conversion, will be added to the City's housing supply prior to the proposed demolition or conversion taking place; or
- ~~3. That the benefits to the City resulting from the proposed demolition or conversion will outweigh the loss of a unit from the City's housing supply; or~~
- ~~4. That the conversion will be an integral part of a rehabilitation project involving both Residential and Nonresidential Activities, and that the rehabilitation project would not be economically feasible unless some Nonresidential Activity were permitted within it.~~

B. ~~Tenant Assistance. Upon the granting of a conditional use permit~~Conditional Use Permit for the demolition of a facility containing rooming units or for the conversion of a living dwelling unit to a Nonresidential Activity, the actual demolition or conversion cannot take place until the following have occurred:

1. ~~If a dwelling unit is to be converted, the~~Any tenant has been given a one hundred twenty (120) day written notice of the conversion. ~~If a rooming unit is to be demolished or converted, the tenant, if a permanent tenant, has been given a seventy five (75) day written notice of the demolition or conversion. All such written notices shall comply with the legal requirements for service by mail.~~
2. ~~If a dwelling unit is to be converted, the tenant has been provided with a relocation allowance equal to one (1) month's rent or five hundred dollars (\$500.00), whichever is greater. If a rooming unit is to be demolished or converted, the~~The owner of the building containing the dwelling unit to be demolished or converted has referred the tenant (if a permanent tenant) to a comparable to an equivalent, available unit; if a comparable unit is the tenant chooses not available, the permanent to live in the equivalent dwelling unit, the tenant has been provided with a relocation allowance, as specified in Section 8.22.450 of the Oakland Municipal Code, including any additional payments for tenant has been provided with a relocation allowance equal to one (1) month's rent or five hundred dollars (\$500.00), whichever is greater. households that contain members who qualify as lower income, elderly, disabled and/or minor children, as set forth in Oakland Municipal Code Section 8.22.450(B).
3. The Director of City Planning has been provided with proof that the above actions have been taken. ~~(As used in this Section, a permanent tenant of a rooming unit is defined as a tenant maintaining occupancy for six (6) months or more at a hotel or motel where the innkeeper does not retain a right of access and control of the unit and where the hotel or motel does not provide or offer all of the following services to all of the residents: safe deposit boxes for personal property; central telephone service; central dining; maid, mail, room, and recreational service; and occupancy for periods of less than seven (7) days.)~~

**Chapter 17.134 CONDITIONAL USE PERMIT PROCEDURE****17.134.020 Definition of Mmajor and Mminor Conditional Use Permits.**

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

**3. Special Situations.** Any project requiring a Conditional Use Permit that involves any of the following situations:

- a. A project requiring development of an Environmental Impact Report (EIR);
- b. A single establishment containing a Commercial or Industrial Activity, or portion thereof, which is located in any Residential Zone and occupies more than five thousand (5,000) square feet of floor area, except where the proposal involves only the resumption of a nonconforming activity;
- c. Off-Street Parking Facilities in the C-40, CBD-P, CBD-C, CBD-X, S-2, and D-LM Zones serving fifty (50) or more vehicles;
- d. Monopole Telecommunications Facilities in, or within three hundred (300) feet of the boundary of, any Residential or HBX Zone;
- e. A project in the OS Zone listed as requiring a Mmajor Conditional Use Permit in Chapter 17.11;
- f. An Electroplating Activity as defined in Section 17.09.040 subject to the provisions of Section 17.102.340;
- g. A Telecommunications Facility in or within one hundred (100) feet of the boundary of any Residential Zone, HBX Zone, or the D-CE-3 or D-CE-4 Zone;
- h. A Telecommunications Facility whose antennas and equipment are not fully concealed from view within three hundred (300) feet of the boundary of the RH, RD, RM, RU-1, or RU-2 Zones, HBX Zones, or the D-CE-3 or D-CE-4 Zone;
- i. A project requiring a Conditional Use Permit as set forth under Section 17.153.050 for any demolition or conversion of Residential Hotel Units or a Residential Hotel.

Chapter 17.153 DEMOLITION, CONVERSION AND REHABILITATION REGULATIONS FOR RESIDENTIAL HOTELS

Sections:

17.153.010 Title, purpose and findings

17.153.020 Definitions

17.153.030 Status determination

17.153.040 Restrictions

17.153.050 Conditional Use Permit requirement

17.153.060 Exceptions to restrictions and the Conditional Use Permit requirement

17.153.070 Waivers determination and appeals process

17.153.080 Administrative regulations

17.153.090 Conflicting provisions

17.153.010 Title, purpose and findings

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

B. Purpose. The purpose of this Chapter is to minimize adverse impact on the housing supply and on low income, elderly, and disabled persons resulting from the loss of Residential Hotel Units as a naturally affordable housing option. This is to be accomplished by establishing a process for identifying and preparing a registry of known existing Residential Hotel Units, and by regulating the demolition, conversion and rehabilitation of Residential Hotel Units.

C. Findings. The City Council finds that:

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

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

5. The loss of Residential Hotels in Oakland would exacerbate the already overwhelming burden on public and non-profit agencies that provide protective, social, health, psychological, nutritional, and other important and necessary services to the tenant population of such hotels.
6. The City Council has determined that Residential Hotels are an essential component of the City's supply of Naturally Occurring Affordable Housing (NOAH) as they are a flexible and easily accessible form of housing that provides very low, and extremely low-income residents the ability to remain in Oakland and to avoid homelessness.
7. The City of Oakland Housing and Community Development Department prepared a report in September of 2015 which states that from 1985 through 2015, the City lost approximately 799 Residential Hotel units in Downtown Oakland, and many more units are at-risk of being lost or are already lost to the supply of NOAH units.
8. The California State Legislature has recognized the need for retaining Residential Hotels to provide housing for low, very low, and extremely low-income individuals in legislation, and in justifying such legislation:  
  
*The Legislature finds and declares that the need for decent housing among individuals of very low and low income is great, and that residential hotels are often the only form of housing affordable to these individuals. Many residential hotels are in poor condition and in need of rehabilitation, and many are being demolished or converted to other uses. California Health and Safety Code § 50519(a)*
9. The unrestricted demolition, conversion or rehabilitation of Residential Hotels exacerbates the housing crisis by making such units unaffordable to low, very low, and extremely low-income Oakland residents, and may result in the displacement of Oakland residents from their homes and communities.
10. Based on the previous findings, the City finds that there is a current and immediate threat to the public health, safety, and/or welfare associated with the Demolition, Conversion and Rehabilitation of Residential Hotels.

### **17.153.020 Definitions**

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

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

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

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

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

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

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

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

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

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

“Residential Hotel” is defined in accordance with California Health and Safety Code Section 50519, and means any building built before 1960 containing six (6) or more Rooming Units, as defined in Section 17.09.040, intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests, and where the entrances to the individual units are generally accessed via a shared lobby area. See also the process for Status Determination in Section 17.153.030. Any building or units that are constructed to satisfy the requirements of Section 17.153.050(A) shall be subject to the provisions of this Chapter.

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

### 17.153.030 Status determination

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

- A. Timelines for notices and filing. Within thirty (30) days of the adoption of this ordinance, the Planning and Building Department shall mail out a summary of this Chapter and a notice to property owners preliminarily determined by the city to be operating a Residential Hotel. Each property owner notified of such shall be required to file an Initial Usage Report or Statement of Exemption, as described in Section 17.153.030(B) below. Buildings that do not meet the definition of a Residential Hotel as set forth in Section 17.153.020 may be considered for an exemption, as stated in Section 17.153(B)(2) below. If the owner or operator intends to file a Statement of Exemption, they must file it with the Planning and Building Department within ninety (90) calendar days of the mailing date of the notice; otherwise, the owner or operator shall file an Initial Usage Report within one hundred eighty (180) calendar days. All filings shall be accompanied by supporting evidence. However, upon application by an owner or operator and upon showing a good cause, the Director may grant an extension of time not to exceed thirty (30) days for filing either the Statement of Exemption or the Initial Usage Report.
- B. Filing for status determination. All properties notified by the Planning and Building Department of their preliminary Residential Hotel status must file an Initial Usage Report or a Statement of Exemption to determine the legal status of the subject property as of December 13, 2016.
1. Initial Usage Report. The Initial Usage Report shall be filed in accordance with the timelines set forth in Section 17.153.030, and be accompanied by evidence, such as a certified copy of the Residential Hotel's tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, to confirm the following required information:
    - a. Floor plans showing all the legal units, communal facilities such as bathrooms, kitchens, laundry facilities or other shared amenities, as well as any ground floor commercial space and lobby area, as of the effective date of these regulations.

- b. The floor plans shall also indicate the legal number and location of private bathrooms, and the number and location of communal bathrooms, including shower, toilet and sink facilities, as of the effective date of these regulations.
- 2. Statement of Exemption.** The provisions of this Chapter shall not apply to a building that does not meet the definition of Residential Hotel nor to units that do not meet the definition of a Residential Hotel Unit, as set forth in Section 17.153.020. In order to be considered for an exemption, property owners notified by the Planning and Building Department of their property's preliminary status as a Residential Hotel must file a Statement of Exemption, in accordance with the timelines set forth in Section 17.153.030 and shall be accompanied by evidence, such as a certified copy of the property's tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, floor plans, or any other evidence necessary to prove the property does not meet the afore-mentioned definition of Residential Hotel or that individual units do not meet the definition of a Residential Hotel Unit, as set forth in Section 17.153.020.
- C. Insufficient Filing.** If the Director determines that additional information is needed to make a determination, the Director shall request the additional information in writing. The owner shall furnish the requested information within thirty (30) calendar days upon receipt of the written request. If the requested information is not furnished, the Director will issue the Certificate of Status confirming that the building is a Residential Hotel that is composed entirely of individual Residential Hotel Units.
- D. Failure to File Statement of Exemption or Initial Usage Report.** If a presumed Residential Hotel that received notice of their preliminary Residential Hotel status and of a requirement to file a Statement of Exemption or Initial Usage Report, does not submit one within the time set forth in Section 17.153.030(A), the Director shall mail a notice to the owner of record by registered or certified mail stating that the owner has ten (10) calendar days to submit the Initial Usage Report or Statement of Exemption. If these are not filed within ten (10) calendar days, the Director will issue the Certificate of Status, confirming that the building is a Residential Hotel that is composed entirely of individual Residential Hotel Units.
- E. Certificate of Status.** The Director shall review the information provided in the Initial Usage Report or Statement of Exemption, and accompanying supporting data. If, in the opinion of the Director, the Initial Usage Report or Statement of Exemption is supported by adequate evidence, the Director shall certify the information provided in the Initial Usage Report or certify an Exemption. If the property is deemed a Residential Hotel, the Certificate of Status, including a graphic floor plan, shall be posted permanently in the lobby or entranceway of the Residential Hotel.
- F. Appeal of Certificate of Status.** An owner or operator, or any interested party, may appeal the Certificate of Status issued by the Director, provided that there was no challenge pursuant to the provisions of Section 17.153.070 below, and further provided

that an appeal is filed within ten (10) calendar days of the mailing of the Certificate of Status and will follow the administrative appeal procedures set forth in Chapter 17.132.

#### 17.153.040 Restrictions

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

- A. Any amenity rehabilitation of Residential Hotel Units or a Residential Hotel; or
- B. Conversion or demolition of a Residential Hotel Unit or a Residential Hotel, if there have been any verified cases of tenant harassment or illegal evictions during the immediately preceding five (5) years.

#### 17.153.050 Conditional Use Permit requirements

Except as set forth in Section 17.153.060, any demolition or conversion of Residential Hotel Units or a Residential Hotel, shall only be permitted upon the granting of a Conditional Use Permit pursuant to the Conditional Use Permit procedure in Chapter 17.134 and upon determination that the proposal conforms to the general use permit criteria described in Chapter 17.134 and if, prior to the demolition or conversion, the Residential Hotel owner shall do each of the following:

- A. Comply with one of the following provisions:
  - 1. Add to the City's housing supply replacement rental units equivalent in affordability, size, services and facilities offered to each unit proposed for demolition or conversion, and within two (2) miles of the subject facility, that must obtain a certificate of occupancy for such units prior to the proposed demolition or conversion taking place; or
  - 2. Pay the impact fee as set forth in Oakland Municipal Code Chapter 15.70.
- B. Whenever a Residential Hotel Unit is to be converted or demolished, and will result in tenant displacement, the Residential Hotel Owner shall:
  - 3. Provide the tenant(s) a one hundred twenty (120) day written notice of the conversion or demolition. All such written notices shall comply with the legal requirements for service by mail; and
  - 4. Submit a list of the names of any tenants residing in the Residential Hotel, and any tenants who have moved, been removed, or evicted during the preceding 180 calendar days and the reasons for the move, removal, or eviction.
  - 5. Refer the tenant(s) to an equivalent, available unit; and if the tenant(s) chooses not to live in the equivalent unit, then provide the tenant(s) with a relocation allowance, as specified for studio units in Section 8.22.450 of the Oakland Municipal Code, including any additional payments for tenant households that contain members who

qualify as lower income, elderly, disabled and/or minor children, as set forth in Oakland Municipal Code Section 8.22.450(B); and

6. Satisfy the requirements of any other tenant relocation programs, such as those set forth in Oakland Municipal Code Chapter 15.60 related to code enforcement cases; and
7. Offer any displaced tenant a first right of refusal to rent the replacement units built to satisfy requirements in Section 17.153.050(A).

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

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

The following are not subject to the restrictions set forth in Section 17.153.040 nor do they require the granting of a Conditional Use Permit as set forth in Section 17.153.050; all other Conditional Use Permit requirements set forth in other Chapters of Title 17 shall still apply; and the requirements set forth in Section 17.153.050 (B) related to tenants shall still apply:

A. Any Residential Hotel that is an Affordable Housing Project as defined in Section 17.153.020, and complies with the following additional criteria:

1. The units are restricted to occupancy by extremely low and/or very low-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106. However, in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%) of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and
2. The Project shall have an executed written agreement with the City or other public agency setting forth the number, type, location, approximate size and construction schedule of all units, restricting the occupancy and rent or sale price of such units, and setting forth other terms and conditions as required for ensuring compliance with the requirements of this Section. Said agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the Project for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the

- financing of the Affordable Housing units would be infeasible without said subordination; and
3. The executed written agreement with the City or other public agency shall extend for at least another twenty-five (25) years beyond the date of application for an Exception; and
  4. The proposed actions minimize the reduction in number of units by only allowing new unit types to be Rooming Units, Efficiency Units or one-bedroom units; and
  5. For a newly created Affordable Housing Project, the executed written agreement with the City or other public agency shall require that the new rental units remain affordable for at least fifty-five (55) years.
- B. Any Residential Hotel that is converted to a Transitional Housing Activity, as defined in Oakland Municipal Code 17.10.116 and per State of California Government Code 65582.
- C. Any Residential Hotel that has been completely vacant and unoccupied continuously for more than ten (10) years, as demonstrated by the applicant, is not subject to restrictions on amenity rehabilitation; but these properties remain subject to restrictions on conversion and demolition; or
- D. Any amenity rehabilitation, which: (1) is determined by the Chief Building Official to be necessary for health and safety purposes; and (2) does not result in temporary displacement of any tenant for more than sixty (60) days or permanent displacement of any tenant; or
- E. Any demolition, which is determined by the Chief Building Official to be necessary for health and safety purposes; or
- F. A proposed project that will create or retain at the property a number of units equal to the number of Residential Hotel units in the existing property as Affordable Housing and complies with the following additional criteria:
1. The affordable units are restricted to occupancy by extremely low and/or very low-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106. However, in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%) of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and
  2. The Project shall have an executed written agreement with the City or other public agency setting forth the number, type, location, approximate size and construction

schedule of all units, restricting the occupancy and rent or sale price of such units, and setting forth other terms and conditions as required for ensuring compliance with the requirements of this Section. Said agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the Project for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the Affordable Housing units would be infeasible without said subordination; and

3. The executed written agreement with the City or other public agency shall require that the new rental units remain affordable for at least fifty-five (55) years.

#### 17.153.070 Waiver determination and appeals process

- A. Waiver determinations may be granted by the Director to the restrictions set forth in Section 17.153.040 or the Conditional Use Permit requirements set forth in Section 17.153.050 under any one of the following scenarios:
  1. The requirements of this Chapter have been incorrectly applied; or
  2. Application of the requirements of this Chapter is unlawful under and/or conflict with federal, state, or local law and/or regulation, including constituting an unlawful taking of property without just compensation.
- B. Applications for waiver determinations. Applications for waiver determinations must be made no later than the date of application for a building or planning permit on a form provided by the City, and shall include payment of fees as established in the Master Fee Schedule. The burden of establishing by satisfactory factual proof the applicability and elements of this Section shall be on the Applicant. The Applicant must submit full information in support of their submittal as requested by the Director. Failure to raise each and every issue that is contested in the application and provide appropriate supporting evidence will be grounds to deny the application and will also preclude the Applicant from raising such issues in court. Failure to submit such an application shall preclude such person from challenging the Residential Hotel regulations in court. The Director may require, at the expense of the Applicant, review of the submitted materials by a third party.
- C. The Director shall mail the Applicant a written determination on the application for a waiver.
- D. If an applicant for a waiver determination set forth in Section 17.153.070(A) that has been denied seeks to challenge the written determination of the Director, the Appellant must appeal to the City Planning Commission, and such appeal must be filed within ten

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

#### 17.153.080 Sale of Residential Hotel.

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

- A. Provide to the Director by first class mail at least 180 days' notice of the proposed sale or transfer of the property; and
- B. Allow the City or its authorized representative or representatives 180 days following the date of notice to tender an offer to purchase the property; and
- C. Upon receiving any such offer, engage in good-faith negotiations, during the remaining portion of the 180-day period towards a purchase and sale agreement with the City or a non-profit or affordable housing organization identified by the City.

#### 17.153.090 Administrative regulations.

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

#### 17.153.100 Conflicting provisions.

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

# EXHIBIT A: Proposed Planning Code Amendments

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

- Changes to Table of Contents ..... page 2
- Changes to Chapter 17.10 (land use activities)..... page 3
- Changes to Chapter 17.54, 56, 74, 76 and 78 (references to 17.102.230)..... page 5
- Changes to Section 17.102.230 (existing regulations related to Rooming Units)..... page 8
- Changes to Section 17.134.020.A.3 (special situations requiring a Major Conditional Use Permit)..... page 10
- New Chapter 17.153 Demolition, Conversion and Rehabilitation Regulations for Residential Hotels..... page 11

**Title 17 PLANNING**

**Chapters:**

Chapter 17.138 - DEVELOPMENT AGREEMENT PROCEDURE

Chapter 17.140 - PLANNED UNIT DEVELOPMENT PROCEDURE

Chapter 17.142 - MINI-LOT AND PLANNED UNIT DEVELOPMENT REGULATIONS

Chapter 17.144 - REZONING AND LAW CHANGE PROCEDURE

Chapter 17.148 - VARIANCE PROCEDURE

Chapter 17.150 - FEE SCHEDULE

Chapter 17.152 - ENFORCEMENT

Chapter 17.153 - DEMOLITION, CONVERSION AND REHABILITATION OF RESIDENTIAL HOTELS

Chapter 17.154 - ZONING MAPS

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Chapter 17.156 - DEEMED APPROVED ALCOHOLIC BEVERAGE SALE REGULATIONS

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**Chapter 17.10 USE CLASSIFICATIONS****Sections:****Article II - Activity Types****Part 1 - Residential Activity Types****Part 3 - Commercial Activity Types****Article II Activity Types****Part 1 Residential Activity Types****17.10.110 Permanent Residential Activities.****17.10.118 Emergency Shelter Residential Activities.****17.10.120 Semi-Transient Residential Activities.****17.10.125 Bed and Breakfast Residential Activities.****17.10.110 Permanent Residential Activities.**

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

**17.10.118 Emergency Shelter Residential Activities.**

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

**17.10.120 Semi-Transient Residential Activities.**

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

**17.10.125 Bed and Breakfast Residential Activities.**

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

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

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

**Part 3 Commercial Activity Types****17.10.440 Transient Habitation Commercial Activities.****17.10.440 Transient Habitation Commercial Activities.**

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

**Chapter 17.54 C-40 COMMUNITY THOROUGHFARE COMMERCIAL ZONE REGULATIONS****Sections:**

17.54.010 Title, purpose, and applicability.

17.54.040 Required design review process.

17.54.050 Permitted activities.

17.54.060 Conditionally permitted activities.

17.54.070 Permitted facilities.

17.54.080 Conditionally permitted facilities.

17.54.090 Special regulations applying to certain activities.

17.54.095 Reserved.

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

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

See Section 17.102.230.

**Chapter 17.56 C-45 COMMUNITY SHOPPING COMMERCIAL ZONE REGULATIONS****Sections:**

17.56.010 Title, purpose, and applicability.

17.56.040 Required design review process.

17.56.050 Permitted activities.

17.56.060 Conditionally permitted activities.

17.56.070 Permitted facilities.

17.56.080 Conditionally permitted facilities.

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

17.56.095 Special regulations regarding extensive agriculture.

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

17.56.105 Reserved.

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

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

See Section 17.102.230.

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

##### **Sections:**

17.74.010 Title, purpose, and applicability.

17.74.020 Required design review process.

17.74.030 Permitted activities.

17.74.040 Conditionally permitted activities.

17.74.050 Permitted facilities.

17.74.060 Conditionally permitted facilities.

17.74.070 Special regulations applying to certain Commercial Activities.

17.74.075 Special regulations applying to Extensive Agriculture.

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

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

See Section 17.102.230.

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

##### **Sections:**

**17.76.010 Title, purpose, and applicability.**

**17.76.040 Required design review process.**

**17.76.050 Permitted activities.**

**17.76.060 Conditionally permitted activities.**

**17.76.070 Permitted facilities.**

**17.76.080 Conditionally permitted facilities.**

**17.76.090 Special regulations applying to certain Commercial Activities.**

**17.76.095 Special regulations applying to Extensive Agriculture.**

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

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

See Section 17.102.230.

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

#### **Sections:**

17.78.010 Title, purpose, and applicability.

17.78.020 Required design review process.

17.78.030 Permitted activities.

17.78.040 Conditionally permitted activities.

17.78.050 Permitted facilities.

17.78.060 Conditionally permitted facilities.

17.78.065 Special regulations applying to Extensive Agriculture.

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

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

See Section 17.102.230.

## Chapter 17.102 REGULATIONS APPLICABLE TO CERTAIN ACTIVITIES AND FACILITIES

### Sections:

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

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

A. Conditional Use Permit Requirement. ~~The demolition of a facility containing, or intended to contain, rooming units, or the conversion of a living dwelling unit, other than those considered Residential Hotel Units per Chapter 17.153, from its present or last previous use by a Permanent Residential Activity, or a Semi-Transient Residential Activity, or a Transient Habitation Commercial Activity to its use by a Nonresidential Activity other than Transient Habitation Commercial is only permitted in a Nonresidential Zone upon the granting of a conditional use permit~~ Conditional Use Permit pursuant to the conditional use permit Conditional Use Permit ~~procedure in Chapter 17.134. The only exception~~ exception ~~to this requirement are conversions in the HBX Zones, and units in a One-Family or Two-Family Residential Facility. Such permit may be granted only upon determination that the proposed demolition or conversion conforms to the general use permit criteria set forth in the conditional use permit~~ Conditional Use Permit ~~procedure and to at least one of the following additional use permit criteria:~~

1. ~~That the facility proposed for demolition or the living~~ The dwelling unit proposed for conversion is unoccupied and is, or is situated in, a residential building that has been found, determined, and declared to be substandard or unsafe pursuant to Subsection 15.08.350-(B) of the Oakland Municipal Code; or
2. ~~That a~~ A replacement rental unit, comparable equivalent ~~in affordability and type to each unit proposed for demolition or conversion, will be added to the City's housing supply prior to the proposed demolition or conversion taking place;~~ or
3. ~~That the benefits to the City resulting from the proposed demolition or conversion will outweigh the loss of a unit from the City's housing supply; or,~~
4. ~~That the conversion will be an integral part of a rehabilitation project involving both Residential and Nonresidential Activities, and that the rehabilitation project would not be economically feasible unless some Nonresidential Activity were permitted within it.~~

B. Tenant Assistance. ~~Upon the granting of a conditional use permit~~ Conditional Use Permit ~~for the demolition of a facility containing rooming units or for the conversion of a living dwelling unit to a Nonresidential Activity, the actual demolition or conversion cannot take place until the following have occurred:~~

1. ~~If a dwelling unit is to be converted, the~~Any tenant has been given a one hundred twenty (120) day written notice of the conversion. ~~If a rooming unit is to be demolished or converted, the tenant, if a permanent tenant, has been given a seventy-five (75) day written notice of the demolition or conversion. All such written notices shall comply with the legal requirements for service by mail.~~
2. ~~If a dwelling unit is to be converted, the tenant has been provided with a relocation allowance equal to one (1) month's rent or five hundred dollars (\$500.00), whichever is greater. If a rooming unit is to be demolished or converted, the~~The owner of the building containing the dwelling unit to be demolished or converted has referred the tenant (if a ~~permanent tenant~~) to a comparable to an equivalent, available unit; if a comparable unit is the tenant chooses not available, the ~~permanent~~to live in the equivalent dwelling unit, the tenant has been provided with a relocation allowance, as specified in Section 8.22.450 of the Oakland Municipal Code, including any additional payments for tenant ~~has been provided with a relocation allowance equal to one (1) month's rent or five hundred dollars (\$500.00), whichever is greater.~~households that contain members who qualify as lower income, elderly, disabled and/or minor children, as set forth in Oakland Municipal Code Section 8.22.450(B).
3. The Director of City Planning has been provided with proof that the above actions have been taken. ~~(As used in this Section, a permanent tenant of a rooming unit is defined as a tenant maintaining occupancy for six (6) months or more at a hotel or motel where the innkeeper does not retain a right of access and control of the unit and where the hotel or motel does not provide or offer all of the following services to all of the residents: safe deposit boxes for personal property; central telephone service; central dining; maid, mail, room, and recreational service; and occupancy for periods of less than seven (7) days.)~~

**Chapter 17.134 CONDITIONAL USE PERMIT PROCEDURE****17.134.020 Definition of Mmajor and Mminor Conditional Use Permits.**

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

**3. Special Situations.** Any project requiring a Conditional Use Permit that involves any of the following situations:

- a. A project requiring development of an Environmental Impact Report (EIR);
- b. A single establishment containing a Commercial or Industrial Activity, or portion thereof, which is located in any Residential Zone and occupies more than five thousand (5,000) square feet of floor area, except where the proposal involves only the resumption of a nonconforming activity;
- c. Off-Street Parking Facilities in the C-40, CBD-P, CBD-C, CBD-X, S-2, and D-LM Zones serving fifty (50) or more vehicles;
- d. Monopole Telecommunications Facilities in, or within three hundred (300) feet of the boundary of, any Residential or HBX Zone;
- e. A project in the OS Zone listed as requiring a Mmajor Conditional Use Permit in Chapter 17.11;
- f. An Electroplating Activity as defined in Section 17.09.040 subject to the provisions of Section 17.102.340;
- g. A Telecommunications Facility in or within one hundred (100) feet of the boundary of any Residential Zone, HBX Zone, or the D-CE-3 or D-CE-4 Zone;
- h. A Telecommunications Facility whose antennas and equipment are not fully concealed from view within three hundred (300) feet of the boundary of the RH, RD, RM, RU-1, or RU-2 Zones, HBX Zones, or the D-CE-3 or D-CE-4 Zone;
- i. A project requiring a Conditional Use Permit as set forth under Section 17.153.050 for any demolition or conversion of Residential Hotel Units or a Residential Hotel.

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

**Sections:**

17.153.010 Title, purpose and findings

17.153.020 Definitions

17.153.030 Status determination

17.153.040 Restrictions

17.153.050 Conditional Use Permit requirement

17.153.060 Exceptions to restrictions and the Conditional Use Permit requirement

17.153.070 Waivers determination and appeals process

17.153.080 Administrative regulations

17.153.090 Conflicting provisions

**17.153.010 Title, purpose and findings**

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

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

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

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

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

5. The loss of Residential Hotels in Oakland would exacerbate the already overwhelming burden on public and non-profit agencies that provide protective, social, health, psychological, nutritional, and other important and necessary services to the tenant population of such hotels.
6. The City Council has determined that Residential Hotels are an essential component of the City's supply of Naturally Occurring Affordable Housing (NOAH) as they are a flexible and easily accessible form of housing that provides very low, and extremely low-income residents the ability to remain in Oakland and to avoid homelessness.
7. The City of Oakland Housing and Community Development Department prepared a report in September of 2015 which states that from 1985 through 2015, the City lost approximately 799 Residential Hotel units in Downtown Oakland, and many more units are at-risk of being lost or are already lost to the supply of NOAH units.
8. The California State Legislature has recognized the need for retaining Residential Hotels to provide housing for low, very low, and extremely low-income individuals in legislation, and in justifying such legislation:  
  
*The Legislature finds and declares that the need for decent housing among individuals of very low and low income is great, and that residential hotels are often the only form of housing affordable to these individuals. Many residential hotels are in poor condition and in need of rehabilitation, and many are being demolished or converted to other uses. California Health and Safety Code § 50519(a)*
9. The unrestricted demolition, conversion or rehabilitation of Residential Hotels exacerbates the housing crisis by making such units unaffordable to low, very low, and extremely low-income Oakland residents, and may result in the displacement of Oakland residents from their homes and communities.
10. Based on the previous findings, the City finds that there is a current and immediate threat to the public health, safety, and/or welfare associated with the Demolition, Conversion and Rehabilitation of Residential Hotels.

### **17.153.020 Definitions**

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

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

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

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

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

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

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

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

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

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

“Residential Hotel” is defined in accordance with California Health and Safety Code Section 50519, and means any building built before 1960 containing six (6) or more Rooming Units, as defined in Section 17.09.040, intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests, and where the entrances to the individual units are generally accessed via a shared lobby area. See also the process for Status Determination in Section 17.153.030. Any building or units that are constructed to satisfy the requirements of Section 17.153.050(A) shall be subject to the provisions of this Chapter.

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

#### 17.153.030 Status determination

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

A. Timelines for notices and filing. Within thirty (30) days of the adoption of this ordinance, the Planning and Building Department shall mail out a summary of this Chapter and a notice to property owners preliminarily determined by the city to be operating a Residential Hotel. Each property owner notified of such shall be required to file an Initial Usage Report or Statement of Exemption, as described in Section 17.153.030(B) below. Buildings that do not meet the definition of a Residential Hotel as set forth in Section 17.153.020 may be considered for an exemption, as stated in Section 17.153(B)(2) below. If the owner or operator intends to file a Statement of Exemption, they must file it with the Planning and Building Department within ninety (90) calendar days of the mailing date of the notice; otherwise, the owner or operator shall file an Initial Usage Report within one hundred eighty (180) calendar days. All filings shall be accompanied by supporting evidence. However, upon application by an owner or operator and upon showing a good cause, the Director may grant an extension of time not to exceed thirty (30) days for filing either the Statement of Exemption or the Initial Usage Report.

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

1. Initial Usage Report. The Initial Usage Report shall be filed in accordance with the timelines set forth in Section 17.153.030, and be accompanied by evidence, such as a certified copy of the Residential Hotel's tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, to confirm the following required information:

a. Floor plans showing all the legal units, communal facilities such as bathrooms, kitchens, laundry facilities or other shared amenities, as well as any ground floor commercial space and lobby area, as of the effective date of these regulations.

b. The floor plans shall also indicate the legal number and location of private bathrooms, and the number and location of communal bathrooms, including shower, toilet and sink facilities, as of the effective date of these regulations.

2. Statement of Exemption. The provisions of this Chapter shall not apply to a building that does not meet the definition of Residential Hotel nor to units that do not meet the definition of a Residential Hotel Unit, as set forth in Section 17.153.020. In order to be considered for an exemption, property owners notified by the Planning and Building Department of their property's preliminary status as a Residential Hotel must file a Statement of Exemption, in accordance with the timelines set forth in Section 17.153.030 and shall be accompanied by evidence, such as a certified copy of the property's tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, floor plans, or any other evidence necessary to prove the property does not meet the afore-mentioned definition of Residential Hotel or that individual units do not meet the definition of a Residential Hotel Unit, as set forth in Section 17.153.020.

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

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

E. Certificate of Status. The Director shall review the information provided in the Initial Usage Report or Statement of Exemption, and accompanying supporting data. If, in the opinion of the Director, the Initial Usage Report or Statement of Exemption is supported by adequate evidence, the Director shall certify the information provided in the Initial Usage Report or certify an Exemption. If the property is deemed a Residential Hotel, the Certificate of Status, including a graphic floor plan, shall be posted permanently in the lobby or entranceway of the Residential Hotel.

F. Appeal of Certificate of Status. An owner or operator, or any interested party, may appeal the Certificate of Status issued by the Director, provided that there was no challenge pursuant to the provisions of Section 17.153.070 below, and further provided

that an appeal is filed within ten (10) calendar days of the mailing of the Certificate of Status and will follow the administrative appeal procedures set forth in Chapter 17.132.

#### 17.153.040 Restrictions

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

- A. Any amenity rehabilitation of Residential Hotel Units or a Residential Hotel; or
- B. Conversion or demolition of a Residential Hotel Unit or a Residential Hotel, if there have been any verified cases of tenant harassment or illegal evictions during the immediately preceding five (5) years.

#### 17.153.050 Conditional Use Permit requirements

Except as set forth in Section 17.153.060, any demolition or conversion of Residential Hotel Units or a Residential Hotel, shall only be permitted upon the granting of a Conditional Use Permit pursuant to the Conditional Use Permit procedure in Chapter 17.134 and upon determination that the proposal conforms to the general use permit criteria described in Chapter 17.134 and if, prior to the demolition or conversion, the Residential Hotel owner shall do each of the following:

- A. Comply with one of the following provisions:
  - 1. Add to the City's housing supply replacement rental units equivalent in affordability, size, services and facilities offered to each unit proposed for demolition or conversion, and within two (2) miles of the subject facility, that must obtain a certificate of occupancy for such units prior to the proposed demolition or conversion taking place; or
  - 2. Pay the impact fee as set forth in Oakland Municipal Code Chapter 15.70.
- B. Whenever a Residential Hotel Unit is to be converted or demolished, and will result in tenant displacement, the Residential Hotel Owner shall:
  - 3. Provide the tenant(s) a one hundred twenty (120) day written notice of the conversion or demolition. All such written notices shall comply with the legal requirements for service by mail; and
  - 4. Submit a list of the names of any tenants residing in the Residential Hotel, and any tenants who have moved, been removed, or evicted during the preceding 180 calendar days and the reasons for the move, removal, or eviction.
  - 5. Refer the tenant(s) to an equivalent, available unit; and if the tenant(s) chooses not to live in the equivalent unit, then provide the tenant(s) with a relocation allowance, as specified for studio units in Section 8.22.450 of the Oakland Municipal Code, including any additional payments for tenant households that contain members who

qualify as lower income, elderly, disabled and/or minor children, as set forth in Oakland Municipal Code Section 8.22.450(B); and

6. Satisfy the requirements of any other tenant relocation programs, such as those set forth in Oakland Municipal Code Chapter 15.60 related to code enforcement cases; and

7. Offer any displaced tenant a first right of refusal to rent the replacement units built to satisfy requirements in Section 17.153.050(A).

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

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

The following are not subject to the restrictions set forth in Section 17.153.040 nor do they require the granting of a Conditional Use Permit as set forth in Section 17.153.050; all other Conditional Use Permit requirements set forth in other Chapters of Title 17 shall still apply; and the requirements set forth in Section 17.153.050 (B) related to tenants shall still apply:

A. Any Residential Hotel that is an Affordable Housing Project as defined in Section 17.153.020, and complies with the following additional criteria:

1. The units are restricted to occupancy by extremely low and/or very low-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106. However, in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%) of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and
2. The Project shall have an executed written agreement with the City or other public agency setting forth the number, type, location, approximate size and construction schedule of all units, restricting the occupancy and rent or sale price of such units, and setting forth other terms and conditions as required for ensuring compliance with the requirements of this Section. Said agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the Project for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the

- financing of the Affordable Housing units would be infeasible without said subordination; and
3. The executed written agreement with the City or other public agency shall extend for at least another twenty-five (25) years beyond the date of application for an Exception; and
  4. The proposed actions minimize the reduction in number of units by only allowing new unit types to be Rooming Units, Efficiency Units or one-bedroom units; and
  5. For a newly created Affordable Housing Project, the executed written agreement with the City or other public agency shall require that the new rental units remain affordable for at least fifty-five (55) years.
- B. Any Residential Hotel that is converted to a Transitional Housing Activity, as defined in Oakland Municipal Code 17.10.116 and per State of California Government Code 65582.
- C. Any Residential Hotel that has been completely vacant and unoccupied continuously for more than ten (10) years, as demonstrated by the applicant, is not subject to restrictions on amenity rehabilitation; but these properties remain subject to restrictions on conversion and demolition; or
- D. Any amenity rehabilitation, which: (1) is determined by the Chief Building Official to be necessary for health and safety purposes; and (2) does not result in temporary displacement of any tenant for more than sixty (60) days or permanent displacement of any tenant; or
- E. Any demolition, which is determined by the Chief Building Official to be necessary for health and safety purposes; or
- F. A proposed project that will create or retain at the property a number of units equal to the number of Residential Hotel units in the existing property as Affordable Housing and complies with the following additional criteria:
1. The affordable units are restricted to occupancy by extremely low and/or very low-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106. However, in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%) of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and
  2. The Project shall have an executed written agreement with the City or other public agency setting forth the number, type, location, approximate size and construction

schedule of all units, restricting the occupancy and rent or sale price of such units, and setting forth other terms and conditions as required for ensuring compliance with the requirements of this Section. Said agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the Project for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the Affordable Housing units would be infeasible without said subordination; and

3. The executed written agreement with the City or other public agency shall require that the new rental units remain affordable for at least fifty-five (55) years.

#### 17.153.070 Waiver determination and appeals process

- A. Waiver determinations may be granted by the Director to the restrictions set forth in Section 17.153.040 or the Conditional Use Permit requirements set forth in Section 17.153.050 under any one of the following scenarios:
  1. The requirements of this Chapter have been incorrectly applied; or
  2. Application of the requirements of this Chapter is unlawful under and/or conflict with federal, state, or local law and/or regulation, including constituting an unlawful taking of property without just compensation.
- B. Applications for waiver determinations. Applications for waiver determinations must be made no later than the date of application for a building or planning permit on a form provided by the City, and shall include payment of fees as established in the Master Fee Schedule. The burden of establishing by satisfactory factual proof the applicability and elements of this Section shall be on the Applicant. The Applicant must submit full information in support of their submittal as requested by the Director. Failure to raise each and every issue that is contested in the application and provide appropriate supporting evidence will be grounds to deny the application and will also preclude the Applicant from raising such issues in court. Failure to submit such an application shall preclude such person from challenging the Residential Hotel regulations in court. The Director may require, at the expense of the Applicant, review of the submitted materials by a third party.
- C. The Director shall mail the Applicant a written determination on the application for a waiver.
- D. If an applicant for a waiver determination set forth in Section 17.153.070(A) that has been denied seeks to challenge the written determination of the Director, the Appellant must appeal to the City Planning Commission, and such appeal must be filed within ten

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

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

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

- A. Provide to the Director by first class mail at least 180 days' notice of the proposed sale or transfer of the property; and
- B. Allow the City or its authorized representative or representatives 180 days following the date of notice to tender an offer to purchase the property; and
- C. Upon receiving any such offer, engage in good-faith negotiations, during the remaining portion of the 180-day period towards a purchase and sale agreement with the City or a non-profit or affordable housing organization identified by the City.

#### **17.153.090 Administrative regulations.**

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

#### **17.153.100 Conflicting provisions.**

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

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APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

  
\_\_\_\_\_  
City Attorney

## OAKLAND CITY COUNCIL

ORDINANCE No. \_\_\_\_\_ C.M.S.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and extremely low income persons; and

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

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

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

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

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

**Section 1. Recitals.** The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this Ordinance.

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

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

**Section 4. Applicability.** This Ordinance shall not apply to (a) building/construction related permits already issued and not yet expired or; (b) building permits that have been submitted but not yet issued if the associated zoning permits have been approved by the City and not yet expired and an associated Residential Hotel Moratorium Exception/Exemption Request was granted by the City.

**Section 5. Severability.** The provisions of this Ordinance are severable. If a court of competent

jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, Chapter or other provision is invalid, or that the application of any part of the provision to any person or circumstance is invalid, the remaining provisions of this Ordinance [that can be given effect without the invalid provision or application] and the application of those provisions to other persons or circumstances are not affected by that decision. The City Council declares that the City Council would have adopted this Ordinance irrespective of the invalidity of any particular portion of this Ordinance.

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

**Section 7. Record of Proceedings.** That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based, are respectively: (a) Planning and Building Department –Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, One Frank H. Ogawa Plaza, 1st Floor, Oakland California.

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

As a separate and independent basis, the City Council further determines that the actions authorized by this Ordinance are exempt from CEQA pursuant to CEQA Guidelines Sections 15061(b)(3), which exempts projects when it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, and 15183, which exempts projects consistent with General Plan and Zoning.

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

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

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, and PRESIDENT KERNIGHAN

NOES-

ABSENT-

ABSTENTION-

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

DATE OF ATTESTATION: \_\_\_\_\_

**NOTICE & DIGEST**

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

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

# EXHIBIT A: Proposed Planning Code Amendments

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

- Changes to Table of Contents..... page 2
- Changes to Chapter 17.10 (land use activities)..... page 3
- Changes to Chapter 17.54, 56, 74, 76 and 78 (references to 17.102.230)..... page 5
- Changes to Section 17.102.230 (existing regulations related to Rooming Units)..... page 8
- Changes to Section 17.134.020.A.3 (special situations requiring a Major Conditional Use Permit)..... page 10
- New Chapter 17.153 Demolition, Conversion and Rehabilitation Regulations for Residential Hotels..... page 11

**Title 17 PLANNING**

**Chapters:**

Chapter 17.138 - DEVELOPMENT AGREEMENT PROCEDURE

Chapter 17.140 - PLANNED UNIT DEVELOPMENT PROCEDURE

Chapter 17.142 - MINI-LOT AND PLANNED UNIT DEVELOPMENT REGULATIONS

Chapter 17.144 - REZONING AND LAW CHANGE PROCEDURE

Chapter 17.148 - VARIANCE PROCEDURE

Chapter 17.150 - FEE SCHEDULE

Chapter 17.152 - ENFORCEMENT

Chapter 17.153 - DEMOLITION, CONVERSION AND REHABILITATION OF RESIDENTIAL HOTELS

Chapter 17.154 - ZONING MAPS

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

Chapter 17.156 - DEEMED APPROVED ALCOHOLIC BEVERAGE SALE REGULATIONS

Chapter 17.157 - DEEMED APPROVED HOTEL AND ROOMING HOUSE REGULATIONS

Chapter 17.158 - ENVIRONMENTAL REVIEW REGULATIONS

**Chapter 17.10 USE CLASSIFICATIONS****Sections:****Article II - Activity Types****Part 1 - Residential Activity Types****Part 3 - Commercial Activity Types****Article II Activity Types****Part 1 Residential Activity Types**

17.10.110 Permanent Residential Activities.

17.10.118 Emergency Shelter Residential Activities.

17.10.120 Semi-Transient Residential Activities.

17.10.125 Bed and Breakfast Residential Activities.

**17.10.110 Permanent Residential Activities.**

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

**17.10.118 Emergency Shelter Residential Activities.**

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

**17.10.120 Semi-Transient Residential Activities.**

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

**17.10.125 Bed and Breakfast Residential Activities.**

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

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

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

**Part 3 Commercial Activity Types****17.10.440 Transient Habitation Commercial Activities.****17.10.440 Transient Habitation Commercial Activities.**

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

**Chapter 17.54 C-40 COMMUNITY THOROUGHFARE COMMERCIAL ZONE REGULATIONS****Sections:**

17.54.010 Title, purpose, and applicability.

17.54.040 Required design review process.

17.54.050 Permitted activities.

17.54.060 Conditionally permitted activities.

17.54.070 Permitted facilities.

17.54.080 Conditionally permitted facilities.

17.54.090 Special regulations applying to certain activities.

17.54.095 Reserved.

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

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

See Section 17.102.230.

**Chapter 17.56 C-45 COMMUNITY SHOPPING COMMERCIAL ZONE REGULATIONS****Sections:**

17.56.010 Title, purpose, and applicability.

17.56.040 Required design review process.

17.56.050 Permitted activities.

17.56.060 Conditionally permitted activities.

17.56.070 Permitted facilities.

17.56.080 Conditionally permitted facilities.

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

17.56.095 Special regulations regarding extensive agriculture.

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

17.56.105 Reserved.

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

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

See Section 17.102.230.

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

**Sections:**

17.74.010 Title, purpose, and applicability.

17.74.020 Required design review process.

17.74.030 Permitted activities.

17.74.040 Conditionally permitted activities.

17.74.050 Permitted facilities.

17.74.060 Conditionally permitted facilities.

17.74.070 Special regulations applying to certain Commercial Activities.

17.74.075 Special regulations applying to Extensive Agriculture.

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

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

See Section 17.102.230.

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

**Sections:**

17.76.010 Title, purpose, and applicability.

17.76.040 Required design review process.

17.76.050 Permitted activities.

17.76.060 Conditionally permitted activities.

17.76.070 Permitted facilities.

**17.76.080 Conditionally permitted facilities.**

**17.76.090 Special regulations applying to certain Commercial Activities.**

**17.76.095 Special regulations applying to Extensive Agriculture.**

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

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

See Section 17.102.230.

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

**Sections:**

17.78.010 Title, purpose, and applicability.

17.78.020 Required design review process.

17.78.030 Permitted activities.

17.78.040 Conditionally permitted activities.

17.78.050 Permitted facilities.

17.78.060 Conditionally permitted facilities.

17.78.065 Special regulations applying to Extensive Agriculture.

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

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

See Section 17.102.230.

## Chapter 17.102 REGULATIONS APPLICABLE TO CERTAIN ACTIVITIES AND FACILITIES

### Sections:

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

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

A. ~~Conditional Use Permit Requirement. The demolition of a facility containing, or intended to contain, rooming units, or the conversion of a living dwelling unit, other than those considered Residential Hotel Units per Chapter 17.153, from its present or last previous use by a Permanent Residential Activity, or a Semi-Transient Residential Activity, or a Transient Habitation Commercial Activity to its use by a Nonresidential Activity other than Transient Habitation Commercial is only permitted in a Nonresidential Zone upon the granting of a conditional use permit~~ Conditional Use Permit pursuant to the conditional use permit Conditional Use Permit ~~procedure in Chapter 17.134. The only exceptions~~ exception ~~to this requirement are conversions in the HBX Zones, and units in a One-Family or Two-Family Residential Facility. Such permit may be granted only upon determination that the proposed demolition or conversion conforms to the general use permit criteria set forth in the conditional use permit~~ Conditional Use Permit ~~procedure and to at least one of the following additional use permit criteria:~~

1. ~~That the facility proposed for demolition or the living~~ The dwelling unit proposed for conversion is unoccupied and is, or is situated in, a residential building that has been found, determined, and declared to be substandard or unsafe pursuant to Subsection 15.08.350.(B) of the Oakland Municipal Code; or
2. ~~That a~~ A replacement rental unit, comparable equivalent ~~in affordability and type to each unit proposed for demolition or conversion, will be added to the City's housing supply prior to the proposed demolition or conversion taking place;~~ or
3. ~~That the benefits to the City resulting from the proposed demolition or conversion will outweigh the loss of a unit from the City's housing supply; or~~
4. ~~That the conversion will be an integral part of a rehabilitation project involving both Residential and Nonresidential Activities, and that the rehabilitation project would not be economically feasible unless some Nonresidential Activity were permitted within it.~~

B. ~~Tenant Assistance. Upon the granting of a conditional use permit~~ Conditional Use Permit ~~for the demolition of a facility containing rooming units or for the conversion of a living dwelling unit to a Nonresidential Activity, the actual demolition or conversion cannot take place until the following have occurred:~~

1. ~~If a dwelling unit is to be converted, the~~Any tenant has been given a one hundred twenty (120) day written notice of the conversion. ~~If a rooming unit is to be demolished or converted, the tenant, if a permanent tenant, has been given a seventy five (75) day written notice of the demolition or conversion. All such written notices shall comply with the legal requirements for service by mail.~~
2. ~~If a dwelling unit is to be converted, the tenant has been provided with a relocation allowance equal to one (1) month's rent or five hundred dollars (\$500.00), whichever is greater. If a rooming unit is to be demolished or converted, the~~The owner of the building containing the dwelling unit to be demolished or converted has referred the tenant (if a permanent tenant) to a comparable to an equivalent, available unit; if a comparable unit is the tenant chooses not available, the permanent to live in the equivalent dwelling unit, the tenant has been provided with a relocation allowance, as specified in Section 8.22.450 of the Oakland Municipal Code, including any additional payments for tenant has been provided with a relocation allowance equal to one (1) month's rent or five hundred dollars (\$500.00), whichever is greater. households that contain members who qualify as lower income, elderly, disabled and/or minor children, as set forth in Oakland Municipal Code Section 8.22.450(B).
3. The Director of City Planning has been provided with proof that the above actions have been taken. ~~(As used in this Section, a permanent tenant of a rooming unit is defined as a tenant maintaining occupancy for six (6) months or more at a hotel or motel where the innkeeper does not retain a right of access and control of the unit and where the hotel or motel does not provide or offer all of the following services to all of the residents: safe deposit boxes for personal property; central telephone service; central dining; maid, mail, room, and recreational service; and occupancy for periods of less than seven (7) days.)~~

**Chapter 17.134 CONDITIONAL USE PERMIT PROCEDURE****17.134.020 Definition of Mmajor and Mminor Conditional Use Permits.**

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

**3. Special Situations.** Any project requiring a Conditional Use Permit that involves any of the following situations:

- a. A project requiring development of an Environmental Impact Report (EIR);
- b. A single establishment containing a Commercial or Industrial Activity, or portion thereof, which is located in any Residential Zone and occupies more than five thousand (5,000) square feet of floor area, except where the proposal involves only the resumption of a nonconforming activity;
- c. Off-Street Parking Facilities in the C-40, CBD-P, CBD-C, CBD-X, S-2, and D-LM Zones serving fifty (50) or more vehicles;
- d. Monopole Telecommunications Facilities in, or within three hundred (300) feet of the boundary of, any Residential or HBX Zone;
- e. A project in the OS Zone listed as requiring a Mmajor Conditional Use Permit in Chapter 17.11;
- f. An Electroplating Activity as defined in Section 17.09.040 subject to the provisions of Section 17.102.340;
- g. A Telecommunications Facility in or within one hundred (100) feet of the boundary of any Residential Zone, HBX Zone, or the D-CE-3 or D-CE-4 Zone;
- h. A Telecommunications Facility whose antennas and equipment are not fully concealed from view within three hundred (300) feet of the boundary of the RH, RD, RM, RU-1, or RU-2 Zones, HBX Zones, or the D-CE-3 or D-CE-4 Zone;
- i. A project requiring a Conditional Use Permit as set forth under Section 17.153.050 for any demolition or conversion of Residential Hotel Units or a Residential Hotel.

Chapter 17.153 DEMOLITION, CONVERSION AND REHABILITATION REGULATIONS FOR RESIDENTIAL HOTELS

Sections:

17.153.010 Title, purpose and findings

17.153.020 Definitions

17.153.030 Status determination

17.153.040 Restrictions

17.153.050 Conditional Use Permit requirement

17.153.060 Exceptions to restrictions and the Conditional Use Permit requirement

17.153.070 Waivers determination and appeals process

17.153.080 Administrative regulations

17.153.090 Conflicting provisions

17.153.010 Title, purpose and findings

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

B. Purpose. The purpose of this Chapter is to minimize adverse impact on the housing supply and on low income, elderly, and disabled persons resulting from the loss of Residential Hotel Units as a naturally affordable housing option. This is to be accomplished by establishing a process for identifying and preparing a registry of known existing Residential Hotel Units, and by regulating the demolition, conversion and rehabilitation of Residential Hotel Units.

C. Findings. The City Council finds that:

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

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

5. The loss of Residential Hotels in Oakland would exacerbate the already overwhelming burden on public and non-profit agencies that provide protective, social, health, psychological, nutritional, and other important and necessary services to the tenant population of such hotels.
6. The City Council has determined that Residential Hotels are an essential component of the City's supply of Naturally Occurring Affordable Housing (NOAH) as they are a flexible and easily accessible form of housing that provides very low, and extremely low-income residents the ability to remain in Oakland and to avoid homelessness.
7. The City of Oakland Housing and Community Development Department prepared a report in September of 2015 which states that from 1985 through 2015, the City lost approximately 799 Residential Hotel units in Downtown Oakland, and many more units are at-risk of being lost or are already lost to the supply of NOAH units.
8. The California State Legislature has recognized the need for retaining Residential Hotels to provide housing for low, very low, and extremely low-income individuals in legislation, and in justifying such legislation:  
  
*The Legislature finds and declares that the need for decent housing among individuals of very low and low income is great, and that residential hotels are often the only form of housing affordable to these individuals. Many residential hotels are in poor condition and in need of rehabilitation, and many are being demolished or converted to other uses. California Health and Safety Code § 50519(a)*
9. The unrestricted demolition, conversion or rehabilitation of Residential Hotels exacerbates the housing crisis by making such units unaffordable to low, very low, and extremely low-income Oakland residents, and may result in the displacement of Oakland residents from their homes and communities.
10. Based on the previous findings, the City finds that there is a current and immediate threat to the public health, safety, and/or welfare associated with the Demolition, Conversion and Rehabilitation of Residential Hotels.

### **17.153.020 Definitions**

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

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

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

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

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

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

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

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

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

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

“Residential Hotel” is defined in accordance with California Health and Safety Code Section 50519, and means any building built before 1960 containing six (6) or more Rooming Units, as defined in Section 17.09.040, intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests, and where the entrances to the individual units are generally accessed via a shared lobby area. See also the process for Status Determination in Section 17.153.030. Any building or units that are constructed to satisfy the requirements of Section 17.153.050(A) shall be subject to the provisions of this Chapter.

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

### 17.153.030 Status determination

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

A. Timelines for notices and filing. Within thirty (30) days of the adoption of this ordinance, the Planning and Building Department shall mail out a summary of this Chapter and a notice to property owners preliminarily determined by the city to be operating a Residential Hotel. Each property owner notified of such shall be required to file an Initial Usage Report or Statement of Exemption, as described in Section 17.153.030(B) below. Buildings that do not meet the definition of a Residential Hotel as set forth in Section 17.153.020 may be considered for an exemption, as stated in Section 17.153(B)(2) below. If the owner or operator intends to file a Statement of Exemption, they must file it with the Planning and Building Department within ninety (90) calendar days of the mailing date of the notice; otherwise, the owner or operator shall file an Initial Usage Report within one hundred eighty (180) calendar days. All filings shall be accompanied by supporting evidence. However, upon application by an owner or operator and upon showing a good cause, the Director may grant an extension of time not to exceed thirty (30) days for filing either the Statement of Exemption or the Initial Usage Report.

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

1. Initial Usage Report. The Initial Usage Report shall be filed in accordance with the timelines set forth in Section 17.153.030, and be accompanied by evidence, such as a certified copy of the Residential Hotel's tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, to confirm the following required information:

a. Floor plans showing all the legal units, communal facilities such as bathrooms, kitchens, laundry facilities or other shared amenities, as well as any ground floor commercial space and lobby area, as of the effective date of these regulations.

- b. The floor plans shall also indicate the legal number and location of private bathrooms, and the number and location of communal bathrooms, including shower, toilet and sink facilities, as of the effective date of these regulations.
- 2. Statement of Exemption.** The provisions of this Chapter shall not apply to a building that does not meet the definition of Residential Hotel nor to units that do not meet the definition of a Residential Hotel Unit, as set forth in Section 17.153.020. In order to be considered for an exemption, property owners notified by the Planning and Building Department of their property's preliminary status as a Residential Hotel must file a Statement of Exemption, in accordance with the timelines set forth in Section 17.153.030 and shall be accompanied by evidence, such as a certified copy of the property's tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, floor plans, or any other evidence necessary to prove the property does not meet the afore-mentioned definition of Residential Hotel or that individual units do not meet the definition of a Residential Hotel Unit, as set forth in Section 17.153.020.
- C. Insufficient Filing.** If the Director determines that additional information is needed to make a determination, the Director shall request the additional information in writing. The owner shall furnish the requested information within thirty (30) calendar days upon receipt of the written request. If the requested information is not furnished, the Director will issue the Certificate of Status confirming that the building is a Residential Hotel that is composed entirely of individual Residential Hotel Units.
- D. Failure to File Statement of Exemption or Initial Usage Report.** If a presumed Residential Hotel that received notice of their preliminary Residential Hotel status and of a requirement to file a Statement of Exemption or Initial Usage Report, does not submit one within the time set forth in Section 17.153.030(A), the Director shall mail a notice to the owner of record by registered or certified mail stating that the owner has ten (10) calendar days to submit the Initial Usage Report or Statement of Exemption. If these are not filed within ten (10) calendar days, the Director will issue the Certificate of Status, confirming that the building is a Residential Hotel that is composed entirely of individual Residential Hotel Units.
- E. Certificate of Status.** The Director shall review the information provided in the Initial Usage Report or Statement of Exemption, and accompanying supporting data. If, in the opinion of the Director, the Initial Usage Report or Statement of Exemption is supported by adequate evidence, the Director shall certify the information provided in the Initial Usage Report or certify an Exemption. If the property is deemed a Residential Hotel, the Certificate of Status, including a graphic floor plan, shall be posted permanently in the lobby or entranceway of the Residential Hotel.
- F. Appeal of Certificate of Status.** An owner or operator, or any interested party, may appeal the Certificate of Status issued by the Director, provided that there was no challenge pursuant to the provisions of Section 17.153.070 below, and further provided

that an appeal is filed within ten (10) calendar days of the mailing of the Certificate of Status and will follow the administrative appeal procedures set forth in Chapter 17.132.

#### 17.153.040 Restrictions

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

- A. Any amenity rehabilitation of Residential Hotel Units or a Residential Hotel; or
- B. Conversion or demolition of a Residential Hotel Unit or a Residential Hotel, if there have been any verified cases of tenant harassment or illegal evictions during the immediately preceding five (5) years.

#### 17.153.050 Conditional Use Permit requirements

Except as set forth in Section 17.153.060, any demolition or conversion of Residential Hotel Units or a Residential Hotel, shall only be permitted upon the granting of a Conditional Use Permit pursuant to the Conditional Use Permit procedure in Chapter 17.134 and upon determination that the proposal conforms to the general use permit criteria described in Chapter 17.134 and if, prior to the demolition or conversion, the Residential Hotel owner shall do each of the following:

- A. Comply with one of the following provisions:
  - 1. Add to the City's housing supply replacement rental units equivalent in affordability, size, services and facilities offered to each unit proposed for demolition or conversion, and within two (2) miles of the subject facility, that must obtain a certificate of occupancy for such units prior to the proposed demolition or conversion taking place; or
  - 2. Pay the impact fee as set forth in Oakland Municipal Code Chapter 15.70.
- B. Whenever a Residential Hotel Unit is to be converted or demolished, and will result in tenant displacement, the Residential Hotel Owner shall:
  - 3. Provide the tenant(s) a one hundred twenty (120) day written notice of the conversion or demolition. All such written notices shall comply with the legal requirements for service by mail; and
  - 4. Submit a list of the names of any tenants residing in the Residential Hotel, and any tenants who have moved, been removed, or evicted during the preceding 180 calendar days and the reasons for the move, removal, or eviction.
  - 5. Refer the tenant(s) to an equivalent, available unit; and if the tenant(s) chooses not to live in the equivalent unit, then provide the tenant(s) with a relocation allowance, as specified for studio units in Section 8.22.450 of the Oakland Municipal Code, including any additional payments for tenant households that contain members who

qualify as lower income, elderly, disabled and/or minor children, as set forth in Oakland Municipal Code Section 8.22.450(B); and

6. Satisfy the requirements of any other tenant relocation programs, such as those set forth in Oakland Municipal Code Chapter 15.60 related to code enforcement cases; and
7. Offer any displaced tenant a first right of refusal to rent the replacement units built to satisfy requirements in Section 17.153.050(A).

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

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

The following are not subject to the restrictions set forth in Section 17.153.040 nor do they require the granting of a Conditional Use Permit as set forth in Section 17.153.050; all other Conditional Use Permit requirements set forth in other Chapters of Title 17 shall still apply; and the requirements set forth in Section 17.153.050 (B) related to tenants shall still apply:

A. Any Residential Hotel that is an Affordable Housing Project as defined in Section 17.153.020, and complies with the following additional criteria:

1. The units are restricted to occupancy by extremely low and/or very low-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106. However, in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%) of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and
2. The Project shall have an executed written agreement with the City or other public agency setting forth the number, type, location, approximate size and construction schedule of all units, restricting the occupancy and rent or sale price of such units, and setting forth other terms and conditions as required for ensuring compliance with the requirements of this Section. Said agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the Project for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the

- financing of the Affordable Housing units would be infeasible without said subordination; and
3. The executed written agreement with the City or other public agency shall extend for at least another twenty-five (25) years beyond the date of application for an Exception; and
  4. The proposed actions minimize the reduction in number of units by only allowing new unit types to be Rooming Units, Efficiency Units or one-bedroom units; and
  5. For a newly created Affordable Housing Project, the executed written agreement with the City or other public agency shall require that the new rental units remain affordable for at least fifty-five (55) years.
- B. Any Residential Hotel that is converted to a Transitional Housing Activity, as defined in Oakland Municipal Code 17.10.116 and per State of California Government Code 65582.
- C. Any Residential Hotel that has been completely vacant and unoccupied continuously for more than ten (10) years, as demonstrated by the applicant, is not subject to restrictions on amenity rehabilitation; but these properties remain subject to restrictions on conversion and demolition; or
- D. Any amenity rehabilitation, which: (1) is determined by the Chief Building Official to be necessary for health and safety purposes; and (2) does not result in temporary displacement of any tenant for more than sixty (60) days or permanent displacement of any tenant; or
- E. Any demolition, which is determined by the Chief Building Official to be necessary for health and safety purposes; or
- F. A proposed project that will create or retain at the property a number of units equal to the number of Residential Hotel units in the existing property as Affordable Housing and complies with the following additional criteria:
1. The affordable units are restricted to occupancy by extremely low and/or very low-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106. However, in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%) of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and
  2. The Project shall have an executed written agreement with the City or other public agency setting forth the number, type, location, approximate size and construction

schedule of all units, restricting the occupancy and rent or sale price of such units, and setting forth other terms and conditions as required for ensuring compliance with the requirements of this Section. Said agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the Project for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the Affordable Housing units would be infeasible without said subordination; and

3. The executed written agreement with the City or other public agency shall require that the new rental units remain affordable for at least fifty-five (55) years.

#### 17.153.070 Waiver determination and appeals process

- A. Waiver determinations may be granted by the Director to the restrictions set forth in Section 17.153.040 or the Conditional Use Permit requirements set forth in Section 17.153.050 under any one of the following scenarios:
  1. The requirements of this Chapter have been incorrectly applied; or
  2. Application of the requirements of this Chapter is unlawful under and/or conflict with federal, state, or local law and/or regulation, including constituting an unlawful taking of property without just compensation.
- B. Applications for waiver determinations. Applications for waiver determinations must be made no later than the date of application for a building or planning permit on a form provided by the City, and shall include payment of fees as established in the Master Fee Schedule. The burden of establishing by satisfactory factual proof the applicability and elements of this Section shall be on the Applicant. The Applicant must submit full information in support of their submittal as requested by the Director. Failure to raise each and every issue that is contested in the application and provide appropriate supporting evidence will be grounds to deny the application and will also preclude the Applicant from raising such issues in court. Failure to submit such an application shall preclude such person from challenging the Residential Hotel regulations in court. The Director may require, at the expense of the Applicant, review of the submitted materials by a third party.
- C. The Director shall mail the Applicant a written determination on the application for a waiver.
- D. If an applicant for a waiver determination set forth in Section 17.153.070(A) that has been denied seeks to challenge the written determination of the Director, the Appellant must appeal to the City Planning Commission, and such appeal must be filed within ten

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

#### 17.153.080 Sale of Residential Hotel.

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

- A. Provide to the Director by first class mail at least 180 days' notice of the proposed sale or transfer of the property; and
- B. Allow the City or its authorized representative or representatives 180 days following the date of notice to tender an offer to purchase the property; and
- C. Upon receiving any such offer, engage in good-faith negotiations, during the remaining portion of the 180-day period towards a purchase and sale agreement with the City or a non-profit or affordable housing organization identified by the City.

#### 17.153.090 Administrative regulations.

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

#### 17.153.100 Conflicting provisions.

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

# EXHIBIT A: Proposed Planning Code Amendments

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

- Changes to Table of Contents ..... page 2
- Changes to Chapter 17.10 (land use activities)..... page 3
- Changes to Chapter 17.54, 56, 74, 76 and 78 (references to 17.102.230)..... page 5
- Changes to Section 17.102.230 (existing regulations related to Rooming Units)..... page 8
- Changes to Section 17.134.020.A.3 (special situations requiring a Major Conditional Use Permit)..... page 10
- New Chapter 17.153 Demolition, Conversion and Rehabilitation Regulations for Residential Hotels..... page 11

**Title 17 PLANNING**

**Chapters:**

Chapter 17.138 - DEVELOPMENT AGREEMENT PROCEDURE

Chapter 17.140 - PLANNED UNIT DEVELOPMENT PROCEDURE

Chapter 17.142 - MINI-LOT AND PLANNED UNIT DEVELOPMENT REGULATIONS

Chapter 17.144 - REZONING AND LAW CHANGE PROCEDURE

Chapter 17.148 - VARIANCE PROCEDURE

Chapter 17.150 - FEE SCHEDULE

Chapter 17.152 - ENFORCEMENT

Chapter 17.153 - DEMOLITION, CONVERSION AND REHABILITATION OF RESIDENTIAL HOTELS

Chapter 17.154 - ZONING MAPS

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

Chapter 17.156 - DEEMED APPROVED ALCOHOLIC BEVERAGE SALE REGULATIONS

Chapter 17.157 - DEEMED APPROVED HOTEL AND ROOMING HOUSE REGULATIONS

Chapter 17.158 - ENVIRONMENTAL REVIEW REGULATIONS

**Chapter 17.10 USE CLASSIFICATIONS****Sections:****Article II - Activity Types****Part 1 - Residential Activity Types****Part 3 - Commercial Activity Types****Article II Activity Types****Part 1 Residential Activity Types****17.10.110 Permanent Residential Activities.****17.10.118 Emergency Shelter Residential Activities.****17.10.120 Semi-Transient Residential Activities.****17.10.125 Bed and Breakfast Residential Activities.****17.10.110 Permanent Residential Activities.**

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

**17.10.118 Emergency Shelter Residential Activities.**

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

**17.10.120 Semi-Transient Residential Activities.**

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

**17.10.125 Bed and Breakfast Residential Activities.**

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

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

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

**Part 3 Commercial Activity Types****17.10.440 Transient Habitation Commercial Activities.****17.10.440 Transient Habitation Commercial Activities.**

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

**Chapter 17.54 C-40 COMMUNITY THOROUGHFARE COMMERCIAL ZONE REGULATIONS****Sections:**

17.54.010 Title, purpose, and applicability.

17.54.040 Required design review process.

17.54.050 Permitted activities.

17.54.060 Conditionally permitted activities.

17.54.070 Permitted facilities.

17.54.080 Conditionally permitted facilities.

17.54.090 Special regulations applying to certain activities.

17.54.095 Reserved.

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

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

See Section 17.102.230.

**Chapter 17.56 C-45 COMMUNITY SHOPPING COMMERCIAL ZONE REGULATIONS****Sections:**

17.56.010 Title, purpose, and applicability.

17.56.040 Required design review process.

17.56.050 Permitted activities.

17.56.060 Conditionally permitted activities.

17.56.070 Permitted facilities.

17.56.080 Conditionally permitted facilities.

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

17.56.095 Special regulations regarding extensive agriculture.

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

17.56.105 Reserved.

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

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

See Section 17.102.230.

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

##### **Sections:**

17.74.010 Title, purpose, and applicability.

17.74.020 Required design review process.

17.74.030 Permitted activities.

17.74.040 Conditionally permitted activities.

17.74.050 Permitted facilities.

17.74.060 Conditionally permitted facilities.

17.74.070 Special regulations applying to certain Commercial Activities.

17.74.075 Special regulations applying to Extensive Agriculture.

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

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

See Section 17.102.230.

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

##### **Sections:**

**17.76.010 Title, purpose, and applicability.**

**17.76.040 Required design review process.**

**17.76.050 Permitted activities.**

**17.76.060 Conditionally permitted activities.**

**17.76.070 Permitted facilities.**

**17.76.080 Conditionally permitted facilities.**

**17.76.090 Special regulations applying to certain Commercial Activities.**

**17.76.095 Special regulations applying to Extensive Agriculture.**

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

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

See Section 17.102.230.

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

#### **Sections:**

17.78.010 Title, purpose, and applicability.

17.78.020 Required design review process.

17.78.030 Permitted activities.

17.78.040 Conditionally permitted activities.

17.78.050 Permitted facilities.

17.78.060 Conditionally permitted facilities.

17.78.065 Special regulations applying to Extensive Agriculture.

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

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

See Section 17.102.230.

## Chapter 17.102 REGULATIONS APPLICABLE TO CERTAIN ACTIVITIES AND FACILITIES

### Sections:

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

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

A. Conditional Use Permit Requirement. ~~The demolition of a facility containing, or intended to contain, rooming units, or the conversion of a living dwelling unit, other than those considered Residential Hotel Units per Chapter 17.153, from its present or last previous use by a Permanent Residential Activity, or a Semi-Transient Residential Activity, or a Transient Habitation Commercial Activity to its use by a Nonresidential Activity other than Transient Habitation Commercial is only permitted in a Nonresidential Zone upon the granting of a conditional use permit~~ Conditional Use Permit pursuant to the conditional use permit Conditional Use Permit ~~procedure in Chapter 17.134. The only exception~~ exception ~~to this requirement are conversions in the HBX Zones, and units in a One-Family or Two-Family Residential Facility. Such permit may be granted only upon determination that the proposed demolition or conversion conforms to the general use permit criteria set forth in the conditional use permit~~ Conditional Use Permit ~~procedure and to at least one of the following additional use permit criteria:~~

1. ~~That the facility proposed for demolition or the living~~ The dwelling unit proposed for conversion is unoccupied and is, or is situated in, a residential building that has been found, determined, and declared to be substandard or unsafe pursuant to Subsection 15.08.350-(B) of the Oakland Municipal Code; or
2. ~~That a~~ A replacement rental unit, comparable equivalent ~~in affordability and type to each unit proposed for demolition or conversion, will be added to the City's housing supply prior to the proposed demolition or conversion taking place;~~ or
3. ~~That the benefits to the City resulting from the proposed demolition or conversion will outweigh the loss of a unit from the City's housing supply; or,~~
4. ~~That the conversion will be an integral part of a rehabilitation project involving both Residential and Nonresidential Activities, and that the rehabilitation project would not be economically feasible unless some Nonresidential Activity were permitted within it.~~

B. Tenant Assistance. ~~Upon the granting of a conditional use permit~~ Conditional Use Permit ~~for the demolition of a facility containing rooming units or for the conversion of a living dwelling unit to a Nonresidential Activity, the actual demolition or conversion cannot take place until the following have occurred:~~

1. ~~If a dwelling unit is to be converted, the~~Any tenant has been given a one hundred twenty (120) day written notice of the conversion. ~~If a rooming unit is to be demolished or converted, the tenant, if a permanent tenant, has been given a seventy-five (75) day written notice of the demolition or conversion. All such written notices shall comply with the legal requirements for service by mail.~~
2. ~~If a dwelling unit is to be converted, the tenant has been provided with a relocation allowance equal to one (1) month's rent or five hundred dollars (\$500.00), whichever is greater. If a rooming unit is to be demolished or converted, the~~The owner of the building containing the dwelling unit to be demolished or converted has referred the tenant (if a ~~permanent tenant~~) to a comparable to an equivalent, available unit; if a comparable unit is the tenant chooses not available, the ~~permanent~~to live in the equivalent dwelling unit, the tenant has been provided with a relocation allowance, as specified in Section 8.22.450 of the Oakland Municipal Code, including any additional payments for tenant ~~has been provided with a relocation allowance equal to one (1) month's rent or five hundred dollars (\$500.00), whichever is greater.~~households that contain members who qualify as lower income, elderly, disabled and/or minor children, as set forth in Oakland Municipal Code Section 8.22.450(B).
3. The Director of City Planning has been provided with proof that the above actions have been taken. ~~(As used in this Section, a permanent tenant of a rooming unit is defined as a tenant maintaining occupancy for six (6) months or more at a hotel or motel where the innkeeper does not retain a right of access and control of the unit and where the hotel or motel does not provide or offer all of the following services to all of the residents: safe deposit boxes for personal property; central telephone service; central dining; maid, mail, room, and recreational service; and occupancy for periods of less than seven (7) days.)~~

**Chapter 17.134 CONDITIONAL USE PERMIT PROCEDURE****17.134.020 Definition of Mmajor and Mminor Cconditional Uuse Ppermits.**

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

**3. Special Situations.** Any project requiring a Cconditional Uuse Ppermit that involves any of the following situations:

- a. A project requiring development of an Environmental Impact Report (EIR);
- b. A single establishment containing a Commercial or Industrial Activity, or portion thereof, which is located in any Residential Zone and occupies more than five thousand (5,000) square feet of floor area, except where the proposal involves only the resumption of a nonconforming activity;
- c. Off-Street Parking Facilities in the C-40, CBD-P, CBD-C, CBD-X, S-2, and D-LM Zones serving fifty (50) or more vehicles;
- d. Monopole Telecommunications Facilities in, or within three hundred (300) feet of the boundary of, any Residential or HBX Zone;
- e. A project in the OS Zone listed as requiring a Mmajor Cconditional Uuse Ppermit in Chapter 17.11;
- f. An Electroplating Activity as defined in Section 17.09.040 subject to the provisions of Section 17.102.340;
- g. A Telecommunications Facility in or within one hundred (100) feet of the boundary of any Residential Zone, HBX Zone, or the D-CE-3 or D-CE-4 Zone;
- h. A Telecommunications Facility whose antennas and equipment are not fully concealed from view within three hundred (300) feet of the boundary of the RH, RD, RM, RU-1, or RU-2 Zones, HBX Zones, or the D-CE-3 or D-CE-4 Zone;
- i. A project requiring a Conditional Use Permit as set forth under Section 17.153.050 for any demolition or conversion of Residential Hotel Units or a Residential Hotel.

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

**Sections:**

17.153.010 Title, purpose and findings

17.153.020 Definitions

17.153.030 Status determination

17.153.040 Restrictions

17.153.050 Conditional Use Permit requirement

17.153.060 Exceptions to restrictions and the Conditional Use Permit requirement

17.153.070 Waivers determination and appeals process

17.153.080 Administrative regulations

17.153.090 Conflicting provisions

**17.153.010 Title, purpose and findings**

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

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

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

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

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

5. The loss of Residential Hotels in Oakland would exacerbate the already overwhelming burden on public and non-profit agencies that provide protective, social, health, psychological, nutritional, and other important and necessary services to the tenant population of such hotels.
6. The City Council has determined that Residential Hotels are an essential component of the City's supply of Naturally Occurring Affordable Housing (NOAH) as they are a flexible and easily accessible form of housing that provides very low, and extremely low-income residents the ability to remain in Oakland and to avoid homelessness.
7. The City of Oakland Housing and Community Development Department prepared a report in September of 2015 which states that from 1985 through 2015, the City lost approximately 799 Residential Hotel units in Downtown Oakland, and many more units are at-risk of being lost or are already lost to the supply of NOAH units.
8. The California State Legislature has recognized the need for retaining Residential Hotels to provide housing for low, very low, and extremely low-income individuals in legislation, and in justifying such legislation:  
  
*The Legislature finds and declares that the need for decent housing among individuals of very low and low income is great, and that residential hotels are often the only form of housing affordable to these individuals. Many residential hotels are in poor condition and in need of rehabilitation, and many are being demolished or converted to other uses. California Health and Safety Code § 50519(a)*
9. The unrestricted demolition, conversion or rehabilitation of Residential Hotels exacerbates the housing crisis by making such units unaffordable to low, very low, and extremely low-income Oakland residents, and may result in the displacement of Oakland residents from their homes and communities.
10. Based on the previous findings, the City finds that there is a current and immediate threat to the public health, safety, and/or welfare associated with the Demolition, Conversion and Rehabilitation of Residential Hotels.

### **17.153.020 Definitions**

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

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

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

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

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

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

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

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

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

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

“Residential Hotel” is defined in accordance with California Health and Safety Code Section 50519, and means any building built before 1960 containing six (6) or more Rooming Units, as defined in Section 17.09.040, intended or designed to be used, or which are used, rented, or hired out, to be occupied, or which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests, and where the entrances to the individual units are generally accessed via a shared lobby area. See also the process for Status Determination in Section 17.153.030. Any building or units that are constructed to satisfy the requirements of Section 17.153.050(A) shall be subject to the provisions of this Chapter.

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

#### 17.153.030 Status determination

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

A. Timelines for notices and filing. Within thirty (30) days of the adoption of this ordinance, the Planning and Building Department shall mail out a summary of this Chapter and a notice to property owners preliminarily determined by the city to be operating a Residential Hotel. Each property owner notified of such shall be required to file an Initial Usage Report or Statement of Exemption, as described in Section 17.153.030(B) below. Buildings that do not meet the definition of a Residential Hotel as set forth in Section 17.153.020 may be considered for an exemption, as stated in Section 17.153(B)(2) below. If the owner or operator intends to file a Statement of Exemption, they must file it with the Planning and Building Department within ninety (90) calendar days of the mailing date of the notice; otherwise, the owner or operator shall file an Initial Usage Report within one hundred eighty (180) calendar days. All filings shall be accompanied by supporting evidence. However, upon application by an owner or operator and upon showing a good cause, the Director may grant an extension of time not to exceed thirty (30) days for filing either the Statement of Exemption or the Initial Usage Report.

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

1. Initial Usage Report. The Initial Usage Report shall be filed in accordance with the timelines set forth in Section 17.153.030, and be accompanied by evidence, such as a certified copy of the Residential Hotel's tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, to confirm the following required information:

a. Floor plans showing all the legal units, communal facilities such as bathrooms, kitchens, laundry facilities or other shared amenities, as well as any ground floor commercial space and lobby area, as of the effective date of these regulations.

b. The floor plans shall also indicate the legal number and location of private bathrooms, and the number and location of communal bathrooms, including shower, toilet and sink facilities, as of the effective date of these regulations.

2. Statement of Exemption. The provisions of this Chapter shall not apply to a building that does not meet the definition of Residential Hotel nor to units that do not meet the definition of a Residential Hotel Unit, as set forth in Section 17.153.020. In order to be considered for an exemption, property owners notified by the Planning and Building Department of their property's preliminary status as a Residential Hotel must file a Statement of Exemption, in accordance with the timelines set forth in Section 17.153.030 and shall be accompanied by evidence, such as a certified copy of the property's tax returns, transient occupancy tax records, residential landlord tax records, Planning and Building Permit records, Alameda County Assessor records, floor plans, or any other evidence necessary to prove the property does not meet the afore-mentioned definition of Residential Hotel or that individual units do not meet the definition of a Residential Hotel Unit, as set forth in Section 17.153.020.

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

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

E. Certificate of Status. The Director shall review the information provided in the Initial Usage Report or Statement of Exemption, and accompanying supporting data. If, in the opinion of the Director, the Initial Usage Report or Statement of Exemption is supported by adequate evidence, the Director shall certify the information provided in the Initial Usage Report or certify an Exemption. If the property is deemed a Residential Hotel, the Certificate of Status, including a graphic floor plan, shall be posted permanently in the lobby or entranceway of the Residential Hotel.

F. Appeal of Certificate of Status. An owner or operator, or any interested party, may appeal the Certificate of Status issued by the Director, provided that there was no challenge pursuant to the provisions of Section 17.153.070 below, and further provided

that an appeal is filed within ten (10) calendar days of the mailing of the Certificate of Status and will follow the administrative appeal procedures set forth in Chapter 17.132.

#### 17.153.040 Restrictions

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

- A. Any amenity rehabilitation of Residential Hotel Units or a Residential Hotel; or
- B. Conversion or demolition of a Residential Hotel Unit or a Residential Hotel, if there have been any verified cases of tenant harassment or illegal evictions during the immediately preceding five (5) years.

#### 17.153.050 Conditional Use Permit requirements

Except as set forth in Section 17.153.060, any demolition or conversion of Residential Hotel Units or a Residential Hotel, shall only be permitted upon the granting of a Conditional Use Permit pursuant to the Conditional Use Permit procedure in Chapter 17.134 and upon determination that the proposal conforms to the general use permit criteria described in Chapter 17.134 and if, prior to the demolition or conversion, the Residential Hotel owner shall do each of the following:

- A. Comply with one of the following provisions:
  - 1. Add to the City's housing supply replacement rental units equivalent in affordability, size, services and facilities offered to each unit proposed for demolition or conversion, and within two (2) miles of the subject facility, that must obtain a certificate of occupancy for such units prior to the proposed demolition or conversion taking place; or
  - 2. Pay the impact fee as set forth in Oakland Municipal Code Chapter 15.70.
- B. Whenever a Residential Hotel Unit is to be converted or demolished, and will result in tenant displacement, the Residential Hotel Owner shall:
  - 3. Provide the tenant(s) a one hundred twenty (120) day written notice of the conversion or demolition. All such written notices shall comply with the legal requirements for service by mail; and
  - 4. Submit a list of the names of any tenants residing in the Residential Hotel, and any tenants who have moved, been removed, or evicted during the preceding 180 calendar days and the reasons for the move, removal, or eviction.
  - 5. Refer the tenant(s) to an equivalent, available unit; and if the tenant(s) chooses not to live in the equivalent unit, then provide the tenant(s) with a relocation allowance, as specified for studio units in Section 8.22.450 of the Oakland Municipal Code, including any additional payments for tenant households that contain members who

qualify as lower income, elderly, disabled and/or minor children, as set forth in Oakland Municipal Code Section 8.22.450(B); and

6. Satisfy the requirements of any other tenant relocation programs, such as those set forth in Oakland Municipal Code Chapter 15.60 related to code enforcement cases; and

7. Offer any displaced tenant a first right of refusal to rent the replacement units built to satisfy requirements in Section 17.153.050(A).

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

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

The following are not subject to the restrictions set forth in Section 17.153.040 nor do they require the granting of a Conditional Use Permit as set forth in Section 17.153.050; all other Conditional Use Permit requirements set forth in other Chapters of Title 17 shall still apply; and the requirements set forth in Section 17.153.050 (B) related to tenants shall still apply:

A. Any Residential Hotel that is an Affordable Housing Project as defined in Section 17.153.020, and complies with the following additional criteria:

1. The units are restricted to occupancy by extremely low and/or very low-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106. However, in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%) of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and
2. The Project shall have an executed written agreement with the City or other public agency setting forth the number, type, location, approximate size and construction schedule of all units, restricting the occupancy and rent or sale price of such units, and setting forth other terms and conditions as required for ensuring compliance with the requirements of this Section. Said agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the Project for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the

- financing of the Affordable Housing units would be infeasible without said subordination; and
3. The executed written agreement with the City or other public agency shall extend for at least another twenty-five (25) years beyond the date of application for an Exception; and
  4. The proposed actions minimize the reduction in number of units by only allowing new unit types to be Rooming Units, Efficiency Units or one-bedroom units; and
  5. For a newly created Affordable Housing Project, the executed written agreement with the City or other public agency shall require that the new rental units remain affordable for at least fifty-five (55) years.
- B. Any Residential Hotel that is converted to a Transitional Housing Activity, as defined in Oakland Municipal Code 17.10.116 and per State of California Government Code 65582.
- C. Any Residential Hotel that has been completely vacant and unoccupied continuously for more than ten (10) years, as demonstrated by the applicant, is not subject to restrictions on amenity rehabilitation; but these properties remain subject to restrictions on conversion and demolition; or
- D. Any amenity rehabilitation, which: (1) is determined by the Chief Building Official to be necessary for health and safety purposes; and (2) does not result in temporary displacement of any tenant for more than sixty (60) days or permanent displacement of any tenant; or
- E. Any demolition, which is determined by the Chief Building Official to be necessary for health and safety purposes; or
- F. A proposed project that will create or retain at the property a number of units equal to the number of Residential Hotel units in the existing property as Affordable Housing and complies with the following additional criteria:
1. The affordable units are restricted to occupancy by extremely low and/or very low-income households, as those terms are defined California Health and Safety Code Sections 50079.5, 50093, 50105 and 50106. However, in the event of either a deed in lieu of foreclosure or foreclosure by a Project lender, or a termination, non-renewal or material reduction of project-based Section 8 or other project-based rental assistance for Assisted Units, the maximum tenant household income and maximum rent limitations for Assisted Units may be increased to amounts necessary to make operation of the Project financially feasible, including the payment of all required operating costs and debt service, but in no event may (a) the maximum tenant household income limitation exceed sixty percent (60%) of AMI, or (b) the maximum annual rent limitation exceed thirty percent (30%) of sixty percent (60%) of AMI; and
  2. The Project shall have an executed written agreement with the City or other public agency setting forth the number, type, location, approximate size and construction

schedule of all units, restricting the occupancy and rent or sale price of such units, and setting forth other terms and conditions as required for ensuring compliance with the requirements of this Section. Said agreement shall be recorded against the Affordable Housing units as covenants running with land, senior in priority to any private liens or encumbrances except as provided below, and shall be enforceable by the City against the Project for the full affordability term. Additional restrictions, deeds of trust, rights of first refusal, or other instruments may be required by the City Administrator as reasonably needed to enforce these restrictions. The City Administrator shall have the authority to subordinate such restrictions to other liens and encumbrances if he or she determines that the financing of the Affordable Housing units would be infeasible without said subordination; and

3. The executed written agreement with the City or other public agency shall require that the new rental units remain affordable for at least fifty-five (55) years.

#### 17.153.070 Waiver determination and appeals process

- A. Waiver determinations may be granted by the Director to the restrictions set forth in Section 17.153.040 or the Conditional Use Permit requirements set forth in Section 17.153.050 under any one of the following scenarios:
  1. The requirements of this Chapter have been incorrectly applied; or
  2. Application of the requirements of this Chapter is unlawful under and/or conflict with federal, state, or local law and/or regulation, including constituting an unlawful taking of property without just compensation.
- B. Applications for waiver determinations. Applications for waiver determinations must be made no later than the date of application for a building or planning permit on a form provided by the City, and shall include payment of fees as established in the Master Fee Schedule. The burden of establishing by satisfactory factual proof the applicability and elements of this Section shall be on the Applicant. The Applicant must submit full information in support of their submittal as requested by the Director. Failure to raise each and every issue that is contested in the application and provide appropriate supporting evidence will be grounds to deny the application and will also preclude the Applicant from raising such issues in court. Failure to submit such an application shall preclude such person from challenging the Residential Hotel regulations in court. The Director may require, at the expense of the Applicant, review of the submitted materials by a third party.
- C. The Director shall mail the Applicant a written determination on the application for a waiver.
- D. If an applicant for a waiver determination set forth in Section 17.153.070(A) that has been denied seeks to challenge the written determination of the Director, the Appellant must appeal to the City Planning Commission, and such appeal must be filed within ten

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

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

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

- A. Provide to the Director by first class mail at least 180 days' notice of the proposed sale or transfer of the property; and
- B. Allow the City or its authorized representative or representatives 180 days following the date of notice to tender an offer to purchase the property; and
- C. Upon receiving any such offer, engage in good-faith negotiations, during the remaining portion of the 180-day period towards a purchase and sale agreement with the City or a non-profit or affordable housing organization identified by the City.

#### **17.153.090 Administrative regulations.**

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

#### **17.153.100 Conflicting provisions.**

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