City of Emeryville

Planning Regulations

Emeryville Municipal Code
Title 9

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TITLE 9

PLANNING REGULATIONS

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CHAPTER 2 USE CLASSIFICATION

CHAPTER 3 ZONING DISTRICTS

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ARTICLE 1. BASIC PROVISIONS

9-1.101 Title.

Title 9 of the Emeryville Municipal Code shall be known and may be cited as the "City of Emeryville Planning Regulations", the "Planning Regulations", "these Planning Regulations" or "this Title".

9-1.102 Purpose.

The purpose of these Planning Regulations is to implement the Emeryville General Plan and to protect and promote the public health, safety, peace and general welfare. More specifically, these Regulations are intended to:

(a) Provide a precise guide for the physical development of Emeryville in a manner consistent with the guiding principles, goals and policies of the General Plan.

(b) Foster a harmonious, convenient, efficient and workable relationship among land uses and ensure compatible development.

(c) Support economic development, job creation and prosperity.

(d) Provide for the housing needs of all economic segments of the community.

(e) Provide a balance of regional and local amenities that meet the daily needs of the community.

(f) Promote high quality architecture and design that emphasizes a walkable environment.

(g) Promote the stability of existing neighborhoods, protecting them from inharmonious influences and harmful intrusions.

(h) Promote a safe and efficient multi-modal transportation system, with emphasis on bicycle, pedestrian and public transit amenities, while providing adequate facilities for motor vehicles including off-street parking and loading.

(i) Promote the development of community facilities, parks, open space and recreational areas.

(j) Promote environmental quality and sustainable development patterns.

(k) Preserve and enhance the physical appearance of Emeryville.

(l) Define duties and powers of administrative bodies and officers responsible for implementation of these Regulations.

9-1.103 Applicability.

(a) **Applicability to Property.** These Regulations shall apply, to the extent permitted by law, to all uses, structures, land, water and right-of-way within the City of Emeryville, including those owned by any private person, firm, corporation or organization, or the City of Emeryville or other local, State or federal agencies.

(b) **Compliance with Regulations Required.** All land shall be used, and all structures shall be constructed, occupied, enlarged, altered, demolished or moved only in accordance these Regulations.

(c) **Provisions Interpreted as Basic Requirements.** In interpreting and applying these Regulations, they shall be held to be the basic requirements for the promotion of the public health, safety and general welfare. To the extent permitted by law, administrative bodies and officers responsible for implementation of these Regulations may impose additional requirements as necessary to meet the intent of these Regulations and the General Plan.

(d) **Relation to Other Regulations.**

(1) General. These Regulations and requirements or conditions imposed pursuant to these Regulations shall not supersede any other regulations or requirements adopted or imposed by the State of California or any federal agency that has jurisdiction by law over uses and development authorized by these Regulations. All uses and development authorized by these Regulations shall comply with all other such regulations and requirements.

(2) Conflicts. Where conflict occurs between the provisions of these Regulations and any existing provisions of law or any rules or regulations, the more restrictive provisions shall control, unless otherwise specified.

(e) **Relation to Private Agreements.** These Regulations shall not interfere with or annul any recorded easement, covenant, or other agreement now in effect, provided that where these Regulations impose greater restriction than imposed by an easement, covenant, or agreement, these Regulations shall control.

(f) **Relation to Prior Ordinances and Laws.** The provisions of these Regulations supersede all prior Zoning Ordinances and Subdivision and Parcel Map Laws of the City of Emeryville. No provision of these Regulations shall validate any land use or structure established, constructed or maintained in violation of prior Ordinances and Laws, unless such validation is specifically authorized by these Regulations and is in conformance with all other regulations.

(g) **Relation to Prior Approvals.** Any project which has been approved prior to the adoption of these Regulations may be completed in accordance with the plans for which the planning approval was granted, provided the planning approval has not expired.

(h) **Formal Rules of Evidence.**

(1) Formal Rules of Evidence Do Not Apply. Except as otherwise expressly provided in this Title, formal rules of evidence or procedure which must be followed in a court of record in this State shall not apply to hearings conducted pursuant to this Title.

(2) No Presumption Regarding Error. There shall be no presumption that error is prejudicial or that injury was done if error is shown.

(i) **Application During Local Emergency.** The City Council may authorize a deviation from a provision of these Regulations by resolution, without notice or public hearing,

during a local emergency declared and ratified under Chapter 2 of Title 4 of the Emeryville Municipal Code.

9-1.104 Interpretation of Planning Regulations.

The Director of Planning and Building shall have the authority to interpret the content and applicability of these Regulations. An interpretation of these Regulations by the Director may be appealed to the Planning Commission in accordance with the appeal procedures in Article 14 of Chapter 7.

9-1.105 Consistency of Planning Regulations with General Plan.

These Regulations are intended to be consistent with the General Plan. Should any provisions of these Regulations be determined inconsistent with the General Plan, the General Plan shall prevail. The Director of Planning and Building shall have the authority to determine the extent of any such inconsistency and issue a decision to resolve the matter. The Director's decision may be appealed to the Planning Commission in accordance with the appeal procedures in Article 14 of Chapter 7.

9-1.106 Severability.

If any Chapter, Article, Section, subsection, sentence, clause or phrase of these Regulations is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of these Regulations, it being hereby expressly declared that these Regulations, and each Chapter, Article, Section, subsection, sentence, clause, and phrase hereof would have been prepared, proposed, adopted, approved, and ratified irrespective of the fact that any one or more other Chapters, Articles, Sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

ARTICLE 2. RULES FOR LANGUAGE AND NUMBERS

9-1.201 Purpose.

The purpose of this Article is to provide precision in the interpretation of these Regulations. The meaning and construction of words and phrases and the rules for rounding numbers defined in this Article apply throughout these Regulations, except as otherwise defined.

9-1.202 Rules for Construction of Language.

In interpreting the various provisions of the Ordinance, the following rules of construction shall apply:

(a) The particular controls the general.

(b) Unless the context clearly indicates the contrary, the following conjunctions shall be interpreted as follows:

  (1) "And" indicates that all connected words or provisions shall apply.

  (2) "And/or" indicates that the connected words or provisions may apply singly or in any combination.

  (3) "Or" indicates that the connected words or provisions may apply singly or in any combination.

  (4) "Either . . . or" indicates that the connected words or provisions shall apply singly but not in combination.

(c) In case of conflict between the text and a diagram or graphic, the text controls.

(d) All references to departments, committees, commissions, boards, or other public agencies are to those of the City of Emeryville, unless otherwise indicated.

(e) All references to public officials are to those of the City of Emeryville, and include designated deputies of such officials, unless otherwise indicated.

(f) All references to the Director are to the Director of Planning and Building of the City of Emeryville, and include designees of the Director, unless otherwise indicated.

(g) All references to days are to calendar days, unless otherwise indicated. If a deadline falls on a weekend or City holiday, or any other day when the City offices are closed, it shall be extended to the next business day. The end of a time period shall be the close of business on the last day of the period.

(h) The words "shall," "will," "must" and "is to" are mandatory and not discretionary. The words "should" or "may" are permissive.

(i) The present tense includes the past and future tenses.

(j) The singular number includes the plural, and the plural number includes the singular.

(k) Chapter, Article, Section, and subsection headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of any provision of these Regulations.

9-1.203 Rules for Rounding of Numbers.

Whenever these Regulations require consideration of dwelling units, parking spaces, floor area ratio or other aspects of development or the physical environment expressed in numerical quantities, and the result of a calculation contains a fraction, the results will be rounded as prescribed in this Section.

(a) **Rounding to Whole Numbers.** When quantities in these Regulations are expressed as whole numbers (e.g. dwelling units or parking spaces), fractions of 0.5 or greater shall be rounded up to the nearest whole number and fractions of less than 0.5 shall be rounded down to the nearest whole number.

(b) **Rounding to Tenths.** When quantities in these Regulations are expressed as tenths of whole numbers (e.g. floor area ratio), fractions of 0.05 or greater shall be rounded up to the nearest tenth and fractions of less than 0.05 shall be rounded down to the nearest tenth.

(c) **Exception for State Affordable Housing Density Bonus.** For projects eligible for bonus density pursuant to California Government Code Section 65915, any fractional number of permitted bonus density units shall be rounded up to the next whole number.

(d) **Linear Dimensions.** Linear dimensions that do not require computation, such as heights, setbacks, and parking space dimensions, shall not be rounded.

ARTICLE 3. RELATED MUNICIPAL CODE PROVISIONS

9-1.301 Related Municipal Code Provisions.

In addition to the provisions of this Title, the following planning-related matters are addressed elsewhere in the Emeryville Municipal Code as indicated below. This list is provided for convenience, is not intended to be regulatory, and might not be comprehensive, complete, or up-to-date.

Advertising: Chapter 2 of Title 5

Air Pollution: Chapter 3 of Title 5

Ambulance Service: Chapter 12 of Title 4

Animals and Fowl: Chapter 1 of Title 6

Auction Sales: Chapter 16 of Title 5

Bingo Games: Chapter 21 of Title 5

Building Regulations: Title 8

Business Licenses: Chapter 1 of Title 3

Cabarets and Dance Halls: Chapter 4 of Title 5

Card Rooms: Chapter 5 of Title 5

Community Events: Chapter 23 of Title 5

Construction Waste and Demolition Debris: Chapter 19 of Title 8

Curbs and Driveways: Chapter 3 of Title 7

Dance Halls: Chapter 4 of Title 5

Driveways: Chapter 3 of Title 7

Farmers Markets: Chapter 35 of Title 5

Firearms Dealers: Chapter 30 of Title 5

Firearms and Other Weapons: Chapter 20 of Title 5

Food Establishments: Chapter 3 of Title 6

Food Service Waste Reduction: Chapter 14 of Title 6

Fortunetelling: Chapter 7 of Title 5

Gaming: See Card Rooms

Grading: Chapter 5 of Title 7

Hotels, Motels, and Lodging Houses: Chapter 25 of Title 5

Laundries: Chapter 5 of Title 6

Limousines: Chapter 8 of Title 4

Litter and Refuse: Chapters 2 and 10 of Title 6

Live Aboard Boats: Section 10-1.17 of Chapter 1 of Title 10

Live Music: See Cabarets and Dance Halls

Marina: Chapter 1 of Title 10

Massage Establishments: Chapter 11 of Title 5

Medical Marijuana Dispensaries: Prohibited pursuant to Chapter 28 of Title 5

Mobile Food Vendors ("Sidewalk and Street Vendors"): Chapter 27 of Title 5 and Chapter 3 of Title 6

Mobile Non-food Vendors ("Peddlers and Solicitors"): Chapter 27 of Title 5

Motels: Chapter 25 of Title 5

Motor Vehicles, Abandoned: Chapter 1 of Title 5

Motor Vehicles, Maintenance on Public Streets: Chapter 19 of Title 5

Motor Vehicles, Parked in Required Yards: Chapter 11 of Title 6

Newsracks: Chapter 33 of Title 5

Noise: Chapter 13 of Title 5

Parking in Required Yards: Chapter 11 of Title 6

Parking, On-Street Parking and Vehicular Traffic: Chapter 9 of Title 4

Parking, Restrictions on Off-Street Parking in the Vicinity of Powell Street and Christie Avenue: Chapter 12 of Title 6

Parks: Chapter 24 of Title 5

Patrol Services: Chapter 15 of Title 5

Pawnbrokers, Secondhand Jewelry Dealers and Auction Sales: Chapter 16 of Title 5

Peddlers ("Sidewalk and Street Vendors"): Chapter 27 of Title 5

Poolrooms: Chapter 18 of Title 5

Property Maintenance: Chapters 2 and 11 of Title 6

Recreational Vehicles: Chapter 10 of Title 4

Recycling: Chapter 4 of Title 6

Refuse: Chapters 2 and 10 of Title 6

Secondhand Jewelry Dealers: Chapter 16 of Title 5

Sewers: Chapter 8 of Title 7

Sidewalk and Street Vendors: Chapter 27 of Title 5

Sidewalks, Curbs and Driveways: Chapter 3 of Title 7 (see also Streets)

Signs Adjacent to Landscaped Freeways: Chapter 12 of Title 8

Signs on Public Sidewalks: Chapter 34 of Title 5

Signs for Farmers' Markets: Chapter 35 of Title 5

Smoking: Chapter 29 of Title 5

Solicitors ("Sidewalk and Street Vendors"): Chapter 27 of Title 5

Solid Waste: Chapter 4 of Title 6

Stormwater Management: Chapter 13 of Title 6

Street Trees: see Trees

Street Vendors: Chapter 27 of Title 5

Streets and Sidewalks, Maintenance and Damage: Chapter 19 of Title 5 and Chapter 10 of Title 6

Streets and Sidewalks, Obstructions: Chapter 14 of Title 5

Streets, Excavation and Encroachments: Chapter 2 of Title 7

Streets, Public Improvements: Chapter 6 of Title 7

Taxicabs and Limousines: Chapter 8 of Title 4

Tidelands: Chapter 2 of Title 10

Tobacco Shops: Section 5-29.10 of Chapter 29 of Title 5

Trash: see Solid Waste

Trees: Street Trees and Other Trees on City Property: Chapter 10 of Title 7

Utility Undergrounding: Chapter 4 of Title 7

Vehicles, Abandoned: Chapter 1 of Title 5

Vehicles, Maintenance on Public Streets: Chapter 19 of Title 5

Vehicles, Parked in Required Yards: Chapter 11 of Title 6

Vending Machines (Food): Chapter 3 of Title 6

Vendors, Mobile: Chapter 27 of Title 5 and Chapter 3 of Title 6

Vessel Habitation: Section 10-1.17 of Chapter 1 of Title 10

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ARTICLE 1. GENERAL PROVISIONS

9-2.101 Purpose.

This Chapter establishes the Use Classification System. The purpose of these provisions is to classify uses of land according to common characteristics, thereby providing a basis for regulation of such uses in accordance with criteria that are in the public interest and consistent with the General Plan. These provisions shall apply throughout this Title.

9-2.102 Rules for Classification.

(a) **Use Classifications.** All uses shall be classified according to the use classifications described in this Chapter. The names of these use classifications are capitalized throughout this Title. The "typical uses" described for various use classifications are not intended to limit the uses in the use classifications for which they are examples.

(b) **Authority to Classify.** The Director of Planning and Building shall have the authority to classify uses according to the use classifications described in this Chapter. The Director's classification of any particular use shall be based on the description of the use classification that most closely resembles the characteristics of the use in question.

(c) **Combinations of Uses.**

(1) Individual Establishments. If the uses conducted on a lot by an individual establishment resemble two or more use classifications, the principal use shall be the one that most closely portrays the overall nature of the establishment. All other uses conducted by the establishment shall be considered accessory uses except as specified in Article 7 of this Chapter.

(2) Multiple Establishments. On a lot containing multiple establishments, the principal use of each such establishment shall be classified separately in accordance with subsection (1) above.

(d) **Uses Not Listed.** When no use classification description appears to closely resemble the characteristics of a particular use, the Director may consult other reference sources to assist in determining the appropriate use classification for the use in question. Such other sources may include, but are not limited to, the Land Based Classification Standards (LBCS) of the American Planning Association and the North American Industry Classification System (NAICS).

(e) **Right of Appeal.** The Director's classification of a particular use into a use classification, pursuant to the provisions of this Chapter, may be appealed to the Planning Commission in accordance with the appeal procedures in Article 14 of Chapter 7.

9-2.103 Principal and Accessory Uses.

All uses shall be classified as either principal or accessory. Subject to the Rules for Classification in Section 9-2.102, and except as specified in Article 7 of this Chapter, any use may be either a principal use or an accessory use.

9-2.104 Permanent and Temporary Uses.

Except as otherwise provided in this Title, any use may be permanent or temporary, as defined in this Section. Temporary uses shall be subject to the applicable provisions for Temporary Use Permits in Article 6 of Chapter 7.

(a) **Permanent Use.** A use that is intended to be continuously ongoing at the same location for more than 60 days.

(b) **Temporary Use.** A use that is either not intended be ongoing for more than 60 days, or that is not intended to be continuously ongoing.

(1) One-Time Temporary Use. A use that is intended to be ongoing at the same location for 60 days or less. Typical uses include carnivals, Halloween pumpkin lots, and Christmas tree lots.

(2) Recurring Temporary Use. A use that is intended to recur at the same location at regular or irregular intervals, where each occurrence lasts for seven days or less, the interval between occurrences is at least twice the length of each occurrence, and the total number of occurrences may or may not be limited. The lengths of individual occurrences and the intervals between them shall be measured in whole days. Typical uses include farmers markets and similar recurring events. If an occurrence lasts for more than seven days, each such occurrence shall be considered a separate One-Time Temporary Use pursuant to subsection (b)(1) above. If the interval between occurrences is less than twice the length of each occurrence, the use shall be considered a Permanent Use pursuant to subsection (a) above.

9-2.105 Regulations and Standards for Specific Uses and Activities.

The descriptions of use classifications in this Chapter do not include any regulatory provisions. See Chapter 5 for regulations and standards that apply to specific uses and activities. Regulatory provisions are referenced as appropriate following various use classification descriptions in this Chapter.

ARTICLE 2. RESIDENTIAL USE TYPES

9-2.201 General Description of Residential Use Types.

Residential use types include the occupancy of living accommodations on a wholly or primarily non-transient basis.

9-2.203 Single Unit.

One dwelling unit located on a single lot, whether detached from or attached to dwelling units on abutting lots.

9-2.205 Two Unit.

Two dwelling units located on a single lot that may be either attached or detached. This use type is distinguished from a Secondary Residential Unit, which is an accessory residential unit as defined by State law and Article 7 of this Chapter.

9-2.207 Multi-Unit.

Three or more dwelling units on a single lot that may be either attached or detached. Typical uses include townhouses, condominiums, and apartment buildings. See also Article 20 of Chapter 5.

9-2.209 Domestic Violence Shelter.

A facility where victims of domestic violence or sexual abuse are provided temporary housing, food, and other specialized services in compliance with California Welfare and Institutions Code Section 18290 *et seq*.

9-2.211 Group Residential.

Accommodations generally offered on a weekly or longer basis consisting of shared living quarters or single room occupancy (SRO) housing with more than one room or unit sharing kitchen and/or bathroom facilities. This classification includes boarding houses and dormitories. This use type excludes Residential Care Facilities, Supportive housing, Transitional Housing, Emergency Shelters, and Lodging use types.

(a) **Small.** A Group Residential facility for six or fewer persons.

(b) **Large.** A Group Residential facility for seven or more persons.

9-2.213 Mobile Home Park.

A development designed to be occupied by mobile homes including facilities and amenities used in common by occupants who rent, lease, or own spaces for mobile homes through a subdivision, cooperative, condominium or other form of resident ownership.

9-2.215 Residential Care Facility.

A facility licensed by the State of California to provide 24-hour living accommodations and care for persons in need of personal services, supervision, protection, or assistance for sustaining the activities of daily living or for the protection of the individual. Accommodations generally

consist of shared living quarters with more than one room or unit sharing kitchen and/or bathroom facilities. Typical uses include hospices, nursing homes, convalescent facilities, and group homes for minors, persons with disabilities, and people in addiction recovery. This use type excludes Domestic Violence Shelters, Group Residential, Supportive Housing, Transitional Housing, Emergency Shelters, and Lodging use types. See also Sections 9-5.211 and 9-5.212.

(a) **Limited.** A Residential Care Facility providing care for six or fewer persons.

(b) **General.** A Residential Care Facility providing care for more than six persons.

9-2.217 Supportive Housing.

Housing with no limit to the length of stay that is linked to supportive services, either on or off-site, to assist residents in retaining the housing, improving their health status, and maximizing their ability to live and, when possible, work in the community. This use classification includes assisted living facilities. See also Section 9-5.214.

9-2.219 Transitional Housing.

Temporary housing, of six to 24 months, with supportive services. Accommodations may consist of shared living quarters with more than one room or unit sharing kitchen and/or bathroom facilities. Self-sufficiency development services are provided with the goal of moving residents to permanent housing. This use type excludes Group Residential, Residential Care Facilities, Supportive Housing, Emergency Shelters, and Lodging use types. See also Section 9-5.214.

ARTICLE 3. COMMERCIAL AND INSTITUTIONAL USE TYPES

9-2.301 General Description of Commercial and Institutional Use Types.

Commercial and Institutional use types include offices, retailers, services, and public, educational, cultural, and medical institutions.

9-2.303 Adult Oriented Businesses.

Adult entertainment businesses as further defined in Article 3 of Chapter 5.

(a) **Retail.** Adult Oriented Businesses engaged in retail sales or rentals of books, videos, or other adult oriented materials as defined in Article 3 of Chapter 5.

(b) **Performance.** Adult Oriented Businesses engaged in live or recorded performances as defined in Article 3 of Chapter 5.

9-2.305 Animal Care and Sales.

Animal-related sales and services, excluding the cremation and burial of animals.

(a) **Grooming.** Grooming or bathing of animals.

(b) **Kennel/Animal Care.** Training, boarding, care, or exercising of animals. Typical uses include animal shelters, dog day care and pet boarding. See also Section 9-5.202.

(c) **Pet Stores.** Animal and animal-related sales and services. If animals are not sold, the selling of animal-related products shall be considered Retail.

(d) **Veterinary Services.** Medical and health services for animals. Typical uses include veterinary offices, pet clinics and animal hospitals. This use type excludes kennels.

9-2.307 Arts and Entertainment.

Art and entertainment related services or products.

(a) **Gallery.** Display and selling of art. Typical uses include art galleries and show rooms. This use type excludes Community Assembly and Cultural Institutions.

(b) **Indoor Entertainment.** Dedicated entertainment venues in which the audience is generally seated indoors. Typical uses include movie theaters, rehearsal spaces, concert halls, and playhouses. This use type excludes Adult Oriented Businesses, Community Assembly and Recreation use types.

(c) **Outdoor Entertainment.** Dedicated entertainment venues in which the audience is generally seated outdoors. Typical uses include outdoor theaters. This use type excludes Major Public Services and Recreation use types.

9-2.309 Banks and Financial Institutions.

Financial and banking services primarily serving walk-in clients.

(a) **Traditional Financial Institutions.** Establishments engaged in deposit banking in which customers typically open and maintain long-term accounts, and which perform closely

related functions such as making loans, investments, and fiduciary activities. Typical uses include banks, credit unions, and savings and loan institutions.

(b) **Nontraditional Financial Institutions.** Establishments engaged in short-term lending and buy-back activities in which customers typically take part in one-time or infrequent transactions and do not open long-term accounts or deposit funds. Typical uses include check cashing services, pay day lenders (also known as deferred deposit originators), pawnbrokers, cash for gold dealers, and similar activities.

9-2.311 Business Services.

Goods and services provided to other businesses on a fee or contract basis, including printing and copying, blueprint services, advertising and mailing, equipment rental and leasing, office security, photo finishing, model building, and taxi or delivery services with two or fewer fleet vehicles on-site. This use type excludes Offices use types and fleets included in Light Fleet under the Transportation and Delivery Services use classification.

9-2.313 Colleges and Trade Schools.

Institutions of higher education primarily focused on post-secondary school training and education that usually offer higher degrees or certifications. This use type generally includes facilities with multiple classrooms and may include accessory uses including offices, gymnasiums, and auditoriums. Typical uses include adult schools, colleges, technical and trade schools, and universities. This use type excludes the Instructional Services use type.

9-2.315 Community Assembly.

Facilities for public or private meetings including community centers, banquet centers, religious assembly facilities, multi-purpose rooms, civic and private auditoriums, union halls and meeting halls for clubs and other membership organizations. Community Assembly facilities may be used for a variety of accessory functions including classes, rites of passage, dancing, eating, and events. Related facilities including kitchens, multi-purpose rooms, and storage are included. This use type excludes Indoor Entertainment, Indoor Recreation, Day Care Centers, Colleges and Trade Schools, and Major Public Services.

(a) **Small.** Community Assembly facilities with 1,500 square feet or less of gross floor area.

(b) **Large.** Community Assembly facilities with over 1,500 square feet of gross floor area.

9-2.317 Day Care Centers.

Facilities for the daytime caring of people. Typical uses include day care centers, pre-schools, nursery schools, after-school care and adult day care. This use excludes use types described under Instructional Services and Family Day Care Home.

9-2.319 Eating and Drinking Establishments.

Establishments primarily engaged in the sale of prepared food and beverages.

(a) **Bars/Nightclubs/Lounges.** Establishments primarily engaged in the preparation and sale of alcoholic beverages, including beer, wine and mixed-drinks, for on-premises consumption with little or no food pursuant to an appropriate license from the California

Department of Alcoholic Beverage Control, including but not limited to license types 40, 42 and 48. Typical uses include bars, taverns, cocktail lounges, and similar uses that are not classified as Restaurants.

(b) **Restaurants.** Establishments primarily engaged in the preparation of food and beverages for on or off-premises consumption. This use type includes the on-site sale of alcoholic beverages as a secondary or accessory service pursuant to an appropriate license from the California Department of Alcoholic Beverage Control, including but not limited to license types 01, 02, 23, 41, 47, 49, 59, and 75. Typical uses include restaurants, cafes, delicatessens, coffee shops and catering businesses or bakeries that have a storefront retail component.

(c) **Mobile Food Vendors.** Establishments that sell food and beverages from trucks, carts, or other staffed mobile devices that are not located in the public right of way. See also Section 9-5.208.

9-2.321 Emergency Shelters.

Housing with minimal supportive services for homeless persons that is limited to occupancy of six months or less by a homeless person or family. Medical assistance, counseling, and meals may be provided. See also Article 18 of Chapter 5.

9-2.323 Funeral Homes, Mortuaries and Mausoleums.

The care, preparation, or keeping of the dead. This use type includes space for services and assembly. This use type excludes crematories, which are included in the Crematory use type, and cemeteries, which are included in the Major Public Facilities use type.

9-2.325 Health Care.

(a) **Clinics and Medical Offices.** Outpatient health care services. Typical uses include dialysis clinics, blood donation centers, medical offices and specialized care services such as chiropractors, acupuncturists, naturopaths, and holistic medicine.

(b) **Hospitals.** Establishments that provide medical, psychiatric, or surgical services to sick or injured persons primarily on an inpatient basis. Hospitals may include outpatient, emergency, and other health care related services.

(c) **Medical Laboratories (non research).** Laboratories specializing in the collection and routine analysis of bodily fluid or tissue samples for medical purposes. Medical Laboratories excludes the Research and Development use type.

9-2.327 Instructional Services.

Services for the purpose of personal enrichment. Typical uses include classes or instruction in music, health, athletics, art, or academics. Instructional Services includes rehearsal studios as an accessory use. This use type excludes Colleges and Trade Schools.

(a) **Individual/Small Group Instruction.** Instructional Services for five or fewer students.

(b) **Group Instruction.** Instructional Services provided for six or more students.

9-2.329 Libraries and Museums.

Institutions primarily engaged in public access to, and preservation of, items that have historical or societal value. Libraries and Museums may include related gatherings, events and performances as well as accessory uses including gift shops, cafes and auditoriums. This use type excludes Arts and Entertainment.

9-2.331 Live/Work Unit.

A unit that combines a work space and incidental residential occupancy that is occupied and used by a single household in a structure that has been constructed for such use or is converted from commercial or industrial use and altered to accommodate residential occupancy and work activity in compliance with the Building Code. See also Article 9 of Chapter 5.

(a) **Heavy.** A live/work unit in which the work activity may be objectionable because it produces offensive order, dust, noise, bright lights or vibration or involves the storage of hazardous materials or products, including activities such as manufacturing, welding or assembly.

(b) **Light.** Any live/work unit not classified as heavy live/work.

9-2.333 Lodging.

Establishments engaged in the provision of commercial sleeping accommodations on a primarily short-term basis to the general public. This use type excludes Residential use types.

(a) **Hotels.** Sleeping accommodations that are not in a residential unit for stays generally less than two weeks in duration, where access to rooms is primarily from interior lobbies, courts, or halls. Typical uses include hotels, extended stay hotels, and hostels. This use type includes related facilities such as restaurants, meeting rooms and spas.

(b) **Motels.** Sleeping accommodations that are not in a residential unit for stays generally less than two weeks in duration, where access to rooms is primarily from the exterior of the building. This use type includes related facilities such as restaurants, meeting rooms and spas.

(c) **Bed and Breakfast.** A commercial lodging establishment that is part of a residential unit. See also Section 9-5.206.

9-2.335 Major Public Services.

Large-scale uses not described in other use types. Typical uses include airports, stadiums, cemeteries, golf courses, prisons, and bus yards.

9-2.337 Marinas.

Facilities for the docking of boats and related accessory uses including boat rentals, boat repairs, boat fueling facilities, and a harbor masters office.

9-2.339 Motor Vehicle Sales and Services.

Businesses that sell, rent, or service motorized vehicles such as automobiles, boats, and motorcycles.

(a) **Cleaning.** Washing, waxing, and polishing of vehicles. The cleaning of a vehicle's interior may be included. Typical uses include full-service and self-serve car washes.

(b) **Rentals.** Rentals of motor vehicles stored on-site. Typical uses include car and truck rental agencies. This use type excludes car-sharing.

(c) **Sales and Leasing.** Automobile, recreational vehicle, boat, and motorcycle dealers, including incidental storage and maintenance.

(d) **Repair and Service.** Repair and servicing of vehicles, including the sale and installation of parts. Typical uses include muffler shops, tire sales and installation, repair garages, maintenance services, touch-ups and painting, and automotive glass shops.

(e) **Service Station.** Motor vehicle fuel sales, including alternative fueling stations for electric or hybrid vehicles or other alternative fueling (e.g. hydrogen). Accessory uses may include minor repair services and the sale of packaged food, motor oils, replacement parts, and accessories.

(f) **Towing and Impounding.** Towing, impounding and storage of operable motor vehicles. Accessory services may include vehicle storage and emergency road repair. Typical uses include storage lots and towing services. Towing and Storage excludes Parking, Salvaging and Wrecking, Storage and Distribution, and Business Services use types.

9-2.341 Offices.

Executive, management, administrative, design, professional, or other similar services. Office use types may include accessory storage. Office use types exclude Banks and Financial Institutions and Clinics and Medical Offices use types.

(a) **General.** General, non-governmental offices with only incidental walk-in clientele. Typical uses include corporation headquarters, administrative offices, high technology offices, and software development firms.

(b) **Government.** Administrative, clerical, or public contact offices of a government agency. Typical uses include, post offices, city halls, social services and government administration. Accessory storage and vehicle maintenance may be included.

(c) **Walk-in Clientele.** A business office primarily serving walk-in clientele located on the ground floor. Typical uses include employment agencies, insurance offices, tax preparation, and real estate offices.

9-2.343 Parking.

Operable motor vehicle parking on a temporary basis within a privately or publicly owned off-street parking area with or without a fee.

9-2.345 Personal Services.

Personal improvement and non-medical care services. Typical uses include beauty salons, massage studios, self-service laundries, dry cleaners with drop off facilities, and barber shops.

(a) **Small.** Personal Services facilities with 1,500 square feet or less of gross floor area.

(b) **Large.** Personal Services facilities with over 1,500 square feet of gross floor area.

9-2.347 Public Safety Facilities.

Emergency and safety services and facilities. Typical uses include police, fire and ambulance service facilities with accessory storage, training and maintenance facilities.

9-2.349 Recreation.

Services and facilities for participatory sports and recreation. The Recreation use type includes instruction as an accessory use.

(a) **Gaming.** Gaming activities conducted within an enclosed building compliant with federal, state, and local laws. See also Section 9-5.210.

(b) **Indoor.** Recreation within a building. Typical uses include sports clubs, gymnasiums, indoor swimming pools and bowling alleys with the accessory sale or rental of related equipment and sale of food.

(c) **Outdoor.** Recreation outside of a building. Typical uses include parks, outdoor swimming pools, miniature golf, and sports courts with the accessory sale or rental of related equipment and sale of food.

9-2.351 Repair Services.

Establishments primarily engaged in the provision of on-site repairs with accessory sales. Typical uses include appliance, apparel, computer and instrument repair shops. This use type excludes Retail use types that have accessory repair services as well as Motor Vehicle Sales and Services use types.

9-2.353 Retail.

The sale or rental of merchandise not specifically listed under other use types. Typical uses include department stores, secondhand stores, wholesale stores, clothing stores, furniture stores, electronic stores, bicycle shops, hardware stores and other specialty retailers and may include accessory repair services. This use type excludes Adult Oriented Businesses, Pet Stores that sell animals, Galleries, Eating and Drinking Establishments, Motor Vehicle Sales and Services, Offices, Personal Services, and Repair Services.

(a) **Fire Arms and Ammunition.** Establishments engaged in the business of selling, leasing, or otherwise transferring any firearm or ammunitions. See also Article 6 of Chapter 5.

(b) **Liquor Sales.** Establishments selling alcoholic beverages for off-premises consumption pursuant to an appropriate license from the California Department of Alcoholic Beverage Control, including but not limited to license types 20 and 21. This use type excludes use types that sell alcohol for on-premises consumption. Accessory tasting facilities are permitted. Typical uses include liquor stores, grocery stores that sell alcohol, and beverage specialty shops.

(c) **Tobacco Shops.** Establishments specializing in the sale or distribution of tobacco and tobacco related products. See also Section 9-5.213(b).

(d) **Small Stores.** Retail stores, including Food and Beverage Sales, with gross floor area of 5,000 square feet or less.

(e) **Medium Stores.** Retail stores with gross floor area of more than 5,000 square feet and less than 40,000 square feet.

(f) **Large Stores.** Retail stores with gross floor area of 40,000 or more square feet.

(g) **Outdoor Sales.** Retail stores in which storage and sales areas are primarily outdoors. This use type may include salvaged goods and materials other than Motor Vehicles. See also Section 9-5.213(a).

(h) **Food and Beverage Sales.** Retail stores with gross floor area of more than 5,000 square feet primarily selling food and beverages for off-site preparation and consumption. Typical uses include grocery stores and food markets. This use type excludes Eating and Drinking Establishments and Liquor Sales. Accessory uses may include prepared food, eating and drinking, florist, banks, pharmacist, cafes and similar uses.

9-2.355 Schools.

Kindergarten through twelfth grade public or private educational facilities. Typical uses include elementary schools, middle schools, high schools, or any combination thereof.

9-2.357 Social Service Facilities.

Noncommercial facilities providing basic necessities including meals, showers, clothing, groceries laundry facilities, job referrals and housing placement. This use classification may include the on-site preparation and storage of meals and groceries. This classification excludes Residential uses and Emergency Shelters.

ARTICLE 4. INDUSTRIAL USE TYPES

9-2.401 General Description of Industrial Use Types.

Industrial use types include the on-site production of goods by methods not agricultural in nature, and other businesses of an industrial nature not typically serving walk-in clients.

9-2.403 Arts-Industrial.

Work space for practicing an art or craft.

(a) **Studio-Light.** Small scale art production that is generally of a low impact. Typical uses include painting, photography, jewelry, glass, textile, and pottery studios. Accessory sales are permitted.

(b) **Studio-Heavy.** Art production on a medium or large scale generally using heavy equipment. Typical uses include large scale metal and wood working studios.

(c) **Recording Studios.** Studios designed for the purpose of recording, editing, producing or broadcasting live and/or recorded music or videos.

9-2.405 Commercial Kitchens.

Kitchens used for the preparation of food to be delivered and consumed off-site. Typical uses include catering facilities. This use type excludes Food Production and Assembly as well as Eating and Drinking Establishments.

9-2.407 Construction and Maintenance.

Upkeep, custodial and construction services. Typical uses include janitorial, landscaping, contractor and window cleaning services. This use type includes on-site offices, as well as storage for off-site services.

9-2.409 Crematories.

Human or animal cremation facilities.

9-2.411 Food Production and Assembly.

The preparation, manufacturing, and/or packaging of food for off-site consumption, using automated equipment. Typical uses include food production factories including bakeries, canners, roasters, breweries, wineries, and frozen food manufacturers. Accessory sales and tastings of items produced on-site are permitted. This use type excludes Commercial Kitchens, as well as Eating and Drinking Establishments.

(a) **Small.** Food Production and Assembly facilities with gross floor area of 10,000 square feet or less.

(b) **Large.** Food Production and Assembly facilities with gross floor area of more than 10,000 square feet.

9-2.413 Hazardous Waste Facilities.

Facilities that collect, store, transfer, treat or dispose of hazardous wastes. See also Article 7 of Chapter 5.

(a) **Small Scale Waste Transfer and Storage.** Off-site hazardous waste facilities with waste streams small enough to be exempt from manifest requirements under California Health and Safety Code, Division 20, Chapter 6.5, Article 6. Wastes from any single generator must not exceed a total volume of five gallons or a total weight of 50 pounds per shipment and must meet the requirements of California Health and Safety Code Section 25163(c). Such facilities include household hazardous waste collection facilities.

(b) **Industrial Hazardous Waste Transfer/Storage/Treatment.** Any hazardous waste facility that is not a Small Scale Hazardous Waste Transfer and Storage Facility.

9-2.415 Laundry and Dry Cleaning Services.

Laundry and dry cleaning facilities not serving walk-in clients. Typical uses include laundry agencies, diaper services, and linen supply services. This use type excludes Personal Services.

9-2.417 Manufacturing.

The transformation of materials or substances into new products by hand, machine, and/or chemical processes, including the fabrication of parts from raw materials, the assembling of component parts, and the blending of materials.

(a) **Pharmaceutical.** Manufacture and/or production of pharmaceuticals.

(b) **Custom.** Production of goods generally made by hand using hand tools, or equipment that is generally low impact, such as a single kiln or hand held power tools. Typical uses include the customized production of clothes, signs, furniture, and cabinetry or goods made to client specification. Accessory sales are permitted. Custom Manufacturing excludes the Arts-Industrial, Commercial Kitchens, Food Production and Assembly, and other Manufacturing use types.

(c) **Light.** The manufacture of finished products or parts using predominantly previously prepared or processed materials, including the processing, assembly, fabrication, packaging, welding, storing, and warehousing of such products, as well as accessory storage, sales, and distribution of such products. Typical activities include the operation of power driven machine tools for mechanical processing and the assembly of materials into a final product.

(d) **General.** The manufacture of finished products or parts using predominantly unprepared or unprocessed raw materials. Typical activities include the operation of power driven machine tools for mechanical processing and the assembly of materials into a final product.

(e) **Heavy.** The manufacture or compound processes that may heavily impact surrounding uses and may necessitate the storage of toxic, flammable, or explosive materials in large volumes. This use type includes the manufacturing of chemicals, other than pharmaceuticals, including synthetic materials, paints, coatings, adhesives and fertilizers. Typical uses include refining, forging, compounding, foundry, punch press, drop

hammer, and large scale heat treating. This use type excludes Pharmaceutical Manufacturing.

9-2.419 Recycling Facilities.

Collection or processing of recyclable materials or items.

(a) **Collection Facilities.** A drop-off/collection and sorting point for recyclable materials such as paper, metal, plastic, and glass.

(b) **Processing Facilities.** An industrial facility where recycled materials are processed into new materials or products.

9-2.421 Research and Development.

Research of an industrial or scientific nature, including associated office space. Typical uses include indoor laboratories and testing facilities. This use type may include fabrication and small scale-up facilities as part of the research function, but excludes Manufacturing use types.

9-2.423 Salvage and Wrecking.

Storage and dismantling of salvaged goods and materials, not including motor vehicles, for sale of parts, as well as their collection, storage, exchange or sale of goods.

9-2.425 Storage and Distribution.

The storage and distribution of materials. This use type excludes the storage or distribution of live animals and motor vehicles.

(a) **Indoor.** The indoor storage of items, and facilities related to their distribution.

(b) **Outdoor.** The outdoor storage of items, and facilities related to their distribution. See also Section 9-4.506.

(c) **Personal.** Storage services primarily for personal and household goods within enclosed storage areas that provide individual access.

ARTICLE 5. AGRICULTURAL USE TYPES

9-2.501 General Description of Agricultural Use Types.

Agricultural use classifications include uses dealing with the cultivation of soil, production of crops, or raising of animals for human use and consumption.

9-2.503 Community Gardens.

The cultivation of plants by multiple gardeners. This use type includes the accessory sale of goods produced on-site.

9-2.505 Indoor Agriculture.

Indoor areas used for the cultivation of plants. This use type includes the accessory sale of goods produced on-site.

9-2.507 Outdoor Agriculture.

Outdoor areas used for the cultivation of plants. This use type includes the accessory sale of goods produced on-site.

9-2.509 Animal Husbandry.

Breeding and raising of small domesticated animals for sale, or in order to use or sell products such as meat, honey, milk, eggs, and fibers. See also Chapter 1 of Title 6.

ARTICLE 6. COMMUNICATION, TRANSPORTATION AND UTILITIES USE TYPES

9-2.601 General Description of Communication, Transportation and Utilities Use Types.

Basic services and functions such as transportation, communications, and utilities.

9-2.603 Communication Facilities.

(a) **Transmission Towers.** Broadcasting and other communication services accomplished through electronic or telephonic mechanisms, as well as structures designed to support one or more reception or transmission systems. Typical uses include wireless telecommunication towers, radio towers, television towers, telephone exchange/microwave relay towers, and cellular telephone transmission/ personal communications systems towers. See also Article 17 of Chapter 5.

(b) **Equipment within Buildings.** Indoor facilities containing primarily communication equipment and storage devices such as computer servers.

9-2.605 Transportation and Delivery Services.

Services and facilities related to the transportation and delivery of goods and people.

(a) **Bus/Rail Passenger Stations.** Bus and rail passenger stations. Typical uses include ticket purchasing and waiting areas out of the public right of way, restrooms, and accessory uses such as cafes.

(b) **Truck/Rail Freight Terminals.** Facilities for freight, courier, and other services by truck or rail. This classification excludes local messenger and local delivery services as described in the Human-Powered and Light Fleet use types.

(c) **Human-Powered.** Local delivery passenger transportation services that rely on human-powered or primarily human-powered vehicles such as electrical-assist bicycles. Typical uses include bicycle delivery services and pedicabs.

(d) **Light Fleet.** Passenger transportation services, local delivery services, medical transport, and other businesses that rely on fleets of three or more motorized vehicles with rated capacities of less than 10,000 lbs. Typical uses include parking, dispatching, and offices for taxicab and limousine operations, ambulance services, non-emergency medical transport, local messenger and document delivery services, home cleaning services, and similar businesses. This use classification excludes other uses listed under the Motor Vehicle Sales use type. Fleets of three or fewer vehicles are included in the Business Services use type.

9-2.607 Utility Services.

Infrastructure related to the provision, distribution, collection, transmission, disposal or treatment of water, storm and sanitary sewage, gas, power, information, telecommunications and telephone cable, fiber optic cable, and other similar facilities including those used for the generation of electricity.

ARTICLE 7. PRINCIPAL AND ACCESSORY USES

9-2.701 Uses of Special Concern.

The following uses are of special concern because of their potential to adversely affect surrounding uses. Such uses shall always be considered principal uses, regardless of whatever other principal uses may exist on the same site, and shall be subject to the regulations for such principal uses.

(a) Adult Oriented Businesses

- (1) Retail
- (2) Performance

(b) Banks and Financial Institutions

- (1) Nontraditional Financial Institutions

(c) Eating and Drinking Establishments

- (1) Bars/Nightclubs/Lounges
- (2) Mobile Food Vendors

(d) Funeral Homes, Mortuaries, and Mausoleums

(e) Lodging

- (1) Motels

(f) Major Public Services

(g) Motor Vehicle Sales and Services

- (1) Cleaning
- (2) Repair and Service
- (3) Service Stations
- (4) Towing and Impound

(h) Recreation

- (1) Gaming

(i) Retail

- (1) Fire Arms and Ammunition
- (2) Liquor Sales
- (3) Tobacco Shops

(j) Crematories

(k) Hazardous Waste Facilities

- (1) Small Scale Waste Transfer and Storage
- (2) Industrial Hazardous Waste Transfer/Storage/ Treatment

(l) Laundry and Dry Cleaning Services

(m) Manufacturing

(1) General

(2) Heavy

(n) Recycling Facilities

(o) Salvage and Wrecking

(p) Communication Facilities

(1) Transmission Towers

9-2.702 Uses That Are Always Accessory Uses.

Accessory use classifications are limited to uses that are subordinate, incidental to, or serve a principal use. Accessory use classifications may not function as primary uses. The following uses shall always be considered accessory to a principal use.

(a) **One or Two Residential Units with Other Non-Residential Use.** A single-unit or two-unit dwelling, either attached or detached, located on the same lot as another non-residential use.

(b) **Secondary Residential Unit.** A single, attached or detached, dwelling unit located on a lot with an existing Single-Unit. This use type is distinguished from the Two-Unit use classification, which is not an accessory use. See also Article 14 of Chapter 5.

(c) **Family Day Care Home.** A home in which a resident of the unit regularly provides the care, protection, and supervision of children for less than 24 hours a day and is licensed by the State of California.

(1) **Small.** A family day care home providing care for eight or fewer children, including children less than ten years of age who reside in the home.

(2) **Large.** A family day care home providing care for seven to fourteen children, including children less than ten years of age who reside in the home.

(d) **Home Occupation.** A business conducted in a dwelling unit by the inhabitant of the unit, which is incidental and secondary to the residential use of the dwelling. See also Article 8 of Chapter 5.

(e) **Live Aboard Boat.** A boat used as a dwelling unit. See also Section 10-1.17 of Chapter 1 of Title 10.

(f) **Resident Manager or Caretaker Quarters.** A dwelling unit in connection with a principal nonresidential use on the same lot, to be occupied by a person who must be present on the site for managerial or security reasons and who is the owner, lessee, or an employee of the owner or lessee of the nonresidential use.

(g) **Tasting Rooms.** Facilities for samples or small servings of alcoholic beverages to promote and provide for the sales of beverages or services including wine tours pursuant to an appropriate license from the California Department of Alcoholic Beverage Control,

including but not limited to license types 01, 02, 20, and 21. Tasting Rooms may also include samples or small servings of food.

(h) **Alcohol Sales and Service.** Sale or service of alcoholic beverages to patrons of a restaurant; members and guests of private clubs, organizations, and events; registered guests of bed and breakfast inns; and guests of motels and hotels and their invitees pursuant to an appropriate license from the California Department of Alcoholic Beverage Control, including but not limited to license types 01, 02, 23, 41, 47, 49, 51, 52, 57, 59, 67, 70, 75, and 80.

(i) **Animal Keeping.** Keeping of small domesticated animals as pets or for personal use of products such as meat, honey, milk, eggs, and fibers, as contrasted with the principal use of Animal Husbandry described in Section 9-2.509. See also Chapter 1 of Title 6.

(j) **Sidewalk Cafe.** An area of the sidewalk used exclusively for eating, drinking, and related pedestrian circulation and located adjacent to, and operated in conjunction with, a street-level Restaurant. See also Article 15 of Chapter 5.

(k) **Off Street Parking.** Off street parking, with or without a fee, that is intended to meet the parking requirements of Article 4 of Chapter 4. Parking in excess of such requirements may be operated as the principal use of Parking described in Section 9-2.343.

(l) **Car Sharing Pod.** A parking location for one or more vehicles of a car sharing organization, whose members may arrange to use the vehicles for short periods of time.

(m) **Private Antennas**. Small antennas and satellite dishes mounted on or adjacent to residential and nonresidential structures for the exclusive use of the occupants of those structures.

(n) **Fuel Dispensing.** Dispensing of gasoline and other motor fuels, with or without a fee, in conjunction with a principal use on the same site such as a marina or fleet vehicle operation. This use is distinguished from Service Stations, as defined in Section 9-2.339(e), which are always principal uses pursuant to Section 9-2.701.

(o) **Collection Bins.** Freestanding bins for the collection of clothing, household goods, and recyclable materials such as paper, metal, plastic, and glass, typically found in the parking lots of stores and other facilities. This use is distinguished from Recycling Collection Facilities, as defined in Section 9-2.419(a), which are always principal uses pursuant to Section 9-2.701.

ARTICLE 8. MIXED USE GROUPS

9-2.801 Purpose.

For purposes of regulating development in the Mixed Use Zones, as stipulated in Section 9-3.303, use classifications are divided into the following mixed use groups: Residential, Retail, Office, Hotel, Recreational, and Industrial and Agricultural. These groups are defined as stipulated in this Article.

9-2.802 Residential Mixed Use Group.

This group is characterized by multiple dwelling units in a single structure or group of structures, and includes the following use classifications:

Multi-Unit
Residential Care Facility
Supportive Housing
Live/Work Units

9-2.803 Retail Mixed Use Group.

This group is characterized by establishments whose primary function is to serve walk-in customers, with or without advance appointments, and includes the following use classifications:

- Animal Care and Sales
  - Pet Stores
- Arts and Entertainment
  - Gallery
- Banks and Financial Institutions
  - Traditional Financial Institutions
- Eating and Drinking Establishments
  - Bars/Nightclubs/Lounges
  - Restaurants
- Libraries and Museums
- Offices
  - Walk-in Clientele
- Personal Services
  - Small
  - Large
- Repair Services
- Retail
  - Small Stores
  - Medium Stores
  - Large Stores
  - Food and Beverage Sales

9-2.804 Office Mixed Use Group.

This group is characterized by establishments whose employees spend all or most of the workday at assigned work stations in offices, laboratories, and similar environments whose primary function is not to serve walk-in customers, and includes the following use classifications:

Animal Care and Sales
- Veterinary Services

Health Care
- Clinics and Medical Offices

Offices
- General
- Government

Research and Development

9-2.805 Hotel Mixed Use Group.

This group is characterized by hotels and motels that provide commercial lodging services to the general public on a less than monthly basis, and includes the following use classification:

Lodging
- Hotels

9-2.806 Recreational Mixed Use Group.

This group is characterized by establishments that provide leisure activities to the general public on a walk-in basis, with or without advance appointments, and includes the following use classifications:

Arts and Entertainment
- Indoor Entertainment

Community Assembly
- Small
- Large

Recreation
- Indoor

9-2.807 Industrial and Agricultural Mixed Use Group.

This group is characterized by establishments engaged in low-impact industrial and agricultural activities suitable for a mixed use environment, and includes the following use classifications:

Arts-Industrial
- Studio-Light

Commercial Kitchens

Manufacturing
- Custom
- Light

Community Gardens

Indoor Agriculture

CHAPTER 3.
ZONING DISTRICTS

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ARTICLE 1. GENERAL PROVISIONS

9-3.101 Purpose.

The purpose of this Chapter is to establish "zoning districts" or "zones" consistent with the General Plan and to establish use and development regulations within those zoning districts.

9-3.102 Zoning Districts Established.

Base and overlay zones are hereby established consistent with the General Plan, with titles and purposes as set forth below.

(a) **Base Zones.**

(1) **RM Medium Density Residential.** The purpose of the RM zone is to implement the provisions of the General Plan applicable to the Medium Density Residential land use classification.

(2) **RMH Medium-High Density Residential.** The purpose of the RMH zone is to implement the provisions of the General Plan applicable to the Medium High Density Residential land use classification.

(3) **RH High Density Residential.** The purpose of the RH zone is to implement the provisions of the General Plan applicable to the High Density Residential land use classification.

(4) **MUR Mixed Use with Residential.** The purpose of the MUR zone is to implement the provisions of the General Plan applicable to the Mixed Use with Residential land use classification.

(5) **MURS Mixed Use with Residential South.** The purpose of the MURS zone is to implement the provisions of the General Plan applicable to the Mixed Use with Residential land use classification and the provisions of the Housing Element applicable to emergency shelters pursuant to Senate Bill 2, effective January 1, 2008.

(6) **MUN Mixed Use with Non-Residential.** The purpose of the MUN zone is to implement the provisions of the General Plan applicable to the Mixed Use with Non-Residential land use classification.

(7) **OT Office/Technology.** The purpose of the OT zone is to implement the provisions of the General Plan applicable to the Office/Technology land use classification.

(8) **OT/DH Office/Technology Doyle-Hollis North.** The purpose of the OT/DH zone is to implement the provisions of the General Plan applicable to the Office/Technology Doyle-Hollis North Area land use classification, and to allow a broader range of uses for existing property owners while still designating the area for future public park use pursuant to Resolution No. 10-152, adopted on September 21, 2010, and Ordinance No. 10-014, adopted on October 5, 2010.

(9) **INL Light Industrial.** The purpose of the INL zone is to implement the provisions of the General Plan applicable to the Industrial land use classification

in the areas east of Hollis Street north of 65th Street, and along Horton Street between Powell Street and Stanford Avenue.

(10) **INH Heavy Industrial.** The purpose of the INH zone is to implement the provisions of the General Plan applicable to the Industrial land use classification in the area west of Hollis Street and north of 65th Street.

(11) **P Public.** The purpose of the P zone is to implement the provisions of the General Plan applicable to the Public land use classification.

(12) **M Marina.** The purpose of the M zone is to implement the provisions of the General Plan applicable to the Marina land use classification.

(13) **PO Park/Open Space.** The purpose of the PO zone is to implement the provisions of the General Plan applicable to the Park/Open Space land use classification.

(14) **SM Shoreline Management.** The purpose of the SM zone is to implement the provisions of the General Plan applicable to the Park/Open Space land use classification and the Emeryville Shoreline Protection Ordinance of 1987.

(15) **PUD Planned Unit Development.** The purpose of the PUD zone is to encourage the creative development of large sites so as to permit flexibility in physical design, achieve attractive designs that encourage large-scale site planning, and ensure that the applicable provisions of the General Plan are established early in the formation of such development proposals, pursuant to the procedures in Article 10 of Chapter 7.

(16) **UT Utilities/Transportation.** The purpose of the UT zone is to establish use and development regulations consistent with the General Plan in the freeway and railroad corridors.

(b) **Overlay Zones.**

(1) **NH North Hollis Overlay.** The purpose of the NH overlay zone is to implement the North Hollis Area Urban Design Program, including its Design Guidelines, adopted by Resolution No. 02-052 on April 16, 2002.

(2) **PA Park Avenue District Overlay.** The purpose of the PA overlay zone is to implement the Park Avenue District Plan, including its Design Guidelines, adopted by Resolution No. 06-158 on August 15, 2006.

(3) **NR Neighborhood Retail Overlay.** The purpose of the NR overlay zone is to implement the provisions of the General Plan applicable to the Neighborhood Retail Overlay land use classification.

(4) **RR Regional Retail Overlay.** The purpose of the RR overlay zone is to implement the provisions of the General Plan applicable to the Regional Retail Overlay land use classification.

(5) **TH Transit Hub Overlay.** The purpose of the TH overlay zone is to implement the provisions of the General Plan applicable to Major Transit Hubs.

(6) **PP Pedestrian Priority Overlay.** The purpose of the PP overlay zone is to implement the provisions of the General Plan applicable to Pedestrian Priority Zones.

9-3.103 Zoning Maps.

The locations and boundaries of the zoning districts established by Section 9-3.102 are delineated on the following maps, which are made a part of these Regulations by this reference:

(a) **Base Zones.** Base zones are as shown on the Zoning Map in Figure 9-3.103(a).

(b) **Overlay Zones.** Overlay zones are as shown on the Zoning Overlay Map in Figure 9-3.103(b).

9-3.104 Interpretation of Zoning Maps.

(a) **Zoning Districts Include Streets and Rights-of-Way.** Where no zoning district is indicated on a public or private street or other right-of-way on the Zoning Map in Figure 9-3.103(a), the street or right-of-way shall be deemed to be included in the same zoning district as the closest abutting lot. If lots on opposite sides of the street or right-of-way are in the same zoning district, the street between them shall be deemed to be in that zoning district. If lots on opposite sides of the street or right-of-way are in different zoning districts, the zoning districts on each side of the street or right-of-way shall be deemed to extend to the center line of the street or right-of-way.

(b) **Lots Split by Zone Boundaries.** If a lot is in two or more base zones on the Zoning Map in Figure 9-3.103(a), the zones indicated on the map shall apply to each portion of the lot, except that the entire lot may be deemed to be in one of the zones shown on the map upon the granting of a conditional use permit pursuant to Article 5 of Chapter 7. Such a conditional use permit may be granted only if both of the following conditions are met:

(1) At least 50% of the lot area is already covered by the zone in question; and

(2) The entire lot could be included in said zone by shifting the zone boundary by not more than 50 feet as measured perpendicularly to said boundary at any point.

(c) **PUDs and Overlay Zones.** PUDs established prior to the adoption of these Regulations are not subject to the provisions of the overlay zones indicated on the Zoning Overlay Map in Figure 9-3.103(b). PUDs established following the adoption of these Regulations are subject to the provisions of the overlay zones indicated on the Zoning Overlay Map in Figure 9-3.103(b).

9-3.105 Site Development Regulations Applicable in All or Several Zones.

See Chapter 4 for site development regulations that apply in two or more zoning districts.

9-3.106 Additional Regulations Applicable in All or Several Zones.

See Chapter 5 for additional use and development regulations that apply in two or more zoning districts.

Figure 9-3.103(a). Zoning Map.

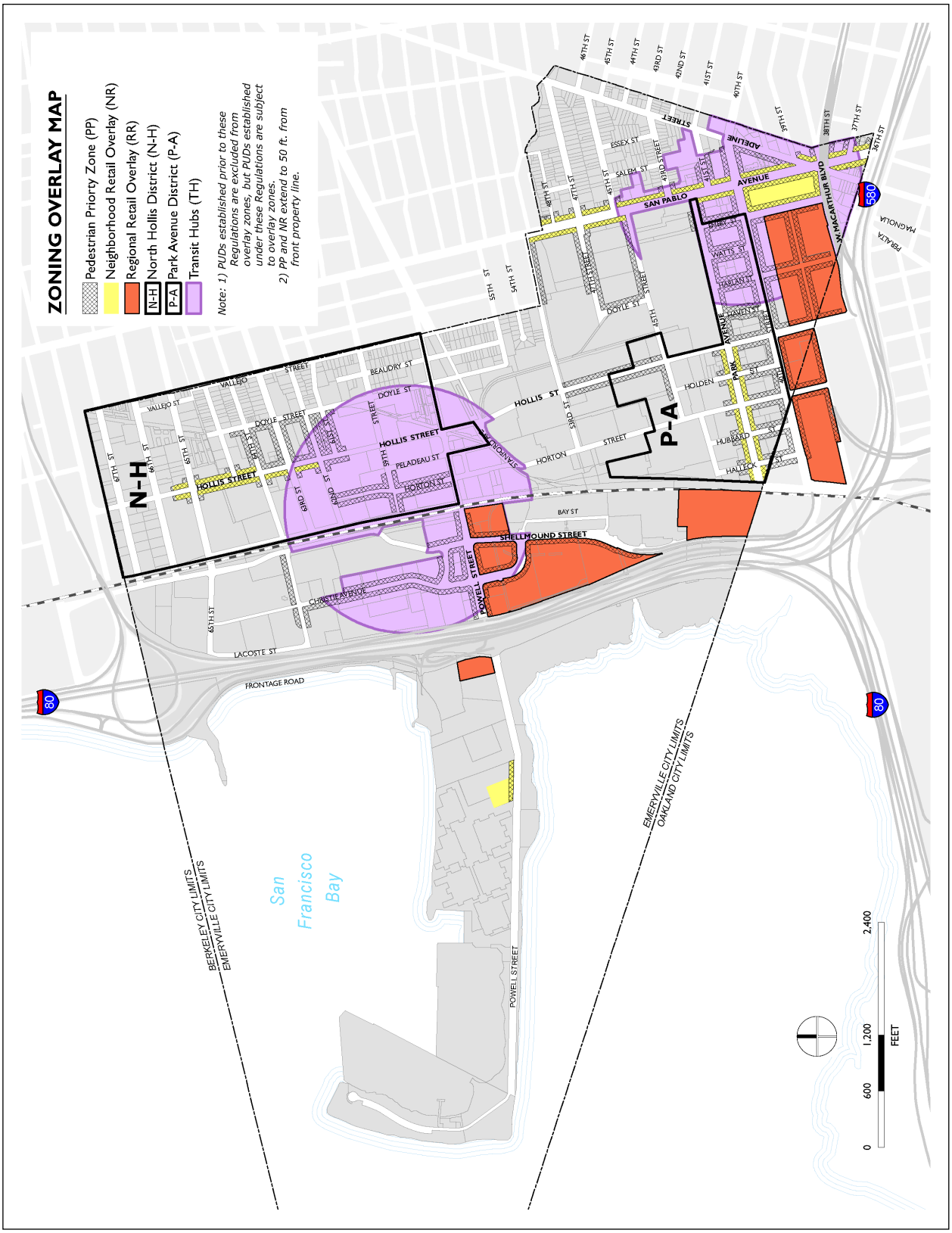

Figure 9-3.103(b). Zoning Overlay Map.

ARTICLE 2. USES PERMITTED, CONDITIONALLY PERMITTED, AND PROHIBITED

9-3.201 Purpose.

The purpose of this Article is to establish use regulations in the base and overlay zones, except in PUDs and the NH and PP overlay zones. Uses in PUDs are established in the relevant ordinances for each PUD; the NH and PP overlay zones do not include use regulations.

9-3.202 Uses Permitted, Conditionally Permitted and Prohibited.

Uses, as classified in Chapter 2, are permitted, conditionally permitted, or prohibited in base and overlay zones as indicated in Table 9-3.202. The regulations for each use in each zone are established by letter designations as follows:

"P" designates a permitted use.

"C" designates a conditionally permitted use normally requiring a Major Conditional Use Permit pursuant to Article 5 of Chapter 7. Under certain circumstances, as set forth in Article 5 of Chapter 7, such uses may require a Minor Conditional Use Permit.

"CM" designates a conditionally permitted use normally requiring a Minor Conditional Use Permit pursuant to Article 5 of Chapter 7. Under certain circumstances, as set forth in Article 5 of Chapter 7, such uses may require a Major Conditional Use Permit.

"T" designates a temporary use requiring a Temporary Use Permit pursuant to Article 6 of Chapter 7.

"X" designates a prohibited use.

Conditionally permitted uses are subject to the required findings in Article 5 of Chapter 7 and any additional findings for the zone that may be required by Articles 3 and 4 this Chapter. Temporary uses are subject to the required findings in Article 6 of Chapter 7 and any additional findings for the zone that may be required by Articles 3 and 4 this Chapter.

Use regulations in the overlay zones supersede those of the base zones. Where the indication in an overlay zone for a particular use is blank, the regulation of the base zone for that use is unchanged.

References to zone regulations applicable to specific uses are indicated by footnotes.

Table 9-3.202: Uses Permitted, Conditionally Permitted and Prohibited

	Base Zones															Overlay Zones			
Use Classifications	**RM**	**RMH**	**RH**	**MUR**	**MURS**	**MUN**	**OT**	**OT/DH**	**INL**	**INH**	**P**	**M**	**PO**	**SM**	**UT**	**PA**	**NR**	**RR**	**TH**
Residential																			
Single Unit	P	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Two Unit	P	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Multi-Unit[11]	CM	P	P	P	P	X	X	X	X	X	X	X	X	X	X				
Domestic Violence Shelter	C	C	C	C	C	X	X	X	X	X	X	X	X	X	X				

	Base Zones															Overlay Zones			
Use Classifications	**RM**	**RMH**	**RH**	**MUR**	**MURS**	**MUN**	**OT**	**OT/DH**	**INL**	**INH**	**P**	**M**	**PO**	**SM**	**UT**	**PA**	**NR**	**RR**	**TH**
Group Residential																			
Small	P	P	P	P	P	X	X	X	X	X	X	X	X	X	X				
Large	C	C	C	C	C	X	X	X	X	X	X	X	X	X	X				
Mobile Home Park	C	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Residential Care Facility																			
Limited	P	P	P	P	P	X	X	X	X	X	X	X	X	X	X				
General	C	C	C	C	C	X	X	X	X	X	X	X	X	X	X				
Supportive Housing																			
Single or Two Unit	P	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Multi-Unit	CM	P	P	P	P	X	X	X	X	X	X	X	X	X	X				
Transitional Housing																			
Single or Two Unit	P	X	X	X	X	X	X	X	X	X	X	X	X	X	X				
Multi-Unit	CM	P	P	P	P	X	X	X	X	X	X	X	X	X	X				
Commercial and Institutional																			
Adult Oriented Businesses																			
Retail	X	X	X	X	X	X	X	X	X	C[7]	X	X	X	X	X				
Performance	X	X	X	X	X	X	X	X	X	C[7]	X	X	X	X	X				
Animal Care and Sales																			
Grooming	X	X	X	P	P	P	CM	C	C	X	X	X	X	X	X				
Kennel/Animal Care	X	X	X	C	C	C	C	C	C	CM	X	X	X	X	X				
Pet Stores	X	X	X	C	C	CM	X	C	X	X	X	X	X	X	X		CM[12]		
Veterinary Services	X	X	X	C	C	P	CM	C	C	X	X	X	X	X	X				
Arts and Entertainment																			
Gallery[11]	X	C[1]	C[1]	P	P	P	C	C	C	X	C	X	X	X	X		P[12]		
Indoor Entertainment	X	X	X	C	C	P	C	C	C	X	C	X	X	X	X				
Outdoor Entertainment	X	X	X	X	X	C	C	C	X	X	C	C	C	C	X				
Banks and Financial Institutions																			
Traditional Financial Institutions	X	X	C[1]	P	P	P	P	P	C	X	X	X	X	X	X				
Nontraditional Financial Institutions	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			C	
Business Services	X	X	C[1]	P	P	P	P	P	P	C	X	X	X	X	X				
Colleges and Trade Schools	X	X	X	C	C	C	CM	C	C	X	C	X	X	X	X				
Community Assembly																			
Small	X	C[1]	C[1]	P	P	P	CM	C	C	X	P	X	X	X	X		P[12]		
Large	X	X	X	CM	CM	C	C	C	C	X	C	X	X	X	X				
Day Care Centers	X	C[1]	C[1]	C	C	P	C	C	C	X	P	X	X	X	X				
Eating and Drinking Establishments																			
Bars/Nightclubs/Lounges	X	X	X	C	C	C	C	C	C[6]	X	X	C[9]	X	X	X		C[12]		

	Base Zones															Overlay Zones			
Use Classifications	**RM**	**RMH**	**RH**	**MUR**	**MURS**	**MUN**	**OT**	**OT/DH**	**INL**	**INH**	**P**	**M**	**PO**	**SM**	**UT**	**PA**	**NR**	**RR**	**TH**
Restaurants	C	C	C	CM	CM	CM	CM	C	C[6]	X	X	C[9]	C[10]	X	X		P[12]		
Mobile Food Vendors	X	X	X	T	T	T	T	T	T	X	T	T	T	X	X				
Emergency Shelters	X	X	X	C	P	C	C	C	C	X	X	X	X	X	X				
Funeral Homes, Mortuaries and Mausoleums	X	X	X	C	C	C	C	X	C	X	X	X	X	X	X				
Health Care																			
Clinics and Medical Offices[11]	X	X	C[1]	P	P	P	CM	C	C	X	X	X	X	X	X				
Hospitals	X	X	X	C	C	C	C	C	X	X	X	X	X	X	X				
Medical Laboratories (non research) [11]	X	X	C[1]	P	P	P	P	C	CM	X	X	X	X	X	X				
Instructional Services																			
Individual/ Small Group Instruction	X	C[1]	C[1]	CM	CM	P	P	P	C	C	P	C	P	X	X				
Group Instruction	X	X	X	C	C	P	CM	P	C	C	P	C	P	X	X				
Libraries and Museums[11]	X	X	C[1]	P	P	P	C	C	X	X	P	C	C	X	X				
Live/Work Unit																			
Heavy	X	X	X	X	X	X	X	X	X	CM	X	X	X	X	X				
Light	C	C	C	C	C	C	C	X	C	X	X	X	X	X	X		X	X	
Lodging																			
Hotels	X	X	X	P	P	C	X	X	X	X	X	C	X	X	X				
Motels	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			C	
Bed & Breakfast	C	C	C	C	C	X	X	X	X	X	X	X	X	X	X				
Major Public Services	X	X	X	X	X	C	C	C	C	C	C	C	X	X	X				
Marina	X	X	X	X	X	X	X	X	X	X	X	C	X	X	X				
Motor Vehicle Sales and Services																			
Cleaning	X	X	X	X	X	C	X	C	CM	C	X	X	X	X	X			C	
Rentals	X	X	CM[1]	CM[2]	CM[2]	C	C	C	C	X	X	X	X	X	X				
Sales and Leasing	X	X	X	C	C	C	X	C	C	X	X	X	X	X	X				
Repair and Service	X	X	X	C	C	C	X	C	C	CM	X	X	X	X	X				
Service Station	X	X	X	X	X	C[3]	X	X	X	X	X	X	X	X	X	X	X	C[3]	X
Towing and Impounding	X	X	X	X	X	X	X	X	C	C	X	X	X	X	X				
Offices																			
General[11, 13]	X	X	C[1]	P	P	P	P	P	C[5]	X	X	C	X	X	X				
Government[11]	X	X	C[1]	P	P	P	P	P	C	X	P	C	X	X	X				
Walk-in Clientele[11]	X	C[1]	C[1]	P	P	P	P	P	X	X	X	C	X	X	X		P[12]		
Parking[11]	X	X	X	C	C	C	C	C	C	C	C	X	X	X	X				
Personal Services																			
Small	CM[1]	CM[1]	P[1]	P	P	P	CM	P	CM	X	X	X	X	X	X		P[12]		
Large	X	X	C[1]	P	P	P	CM	P	C	X	X	X	X	X	X		P[12]		
Public Safety Facilities	C	C	C	C	C	C	C	C	C	C	P	C	X	X	X				

	Base Zones															Overlay Zones			
Use Classifications	**RM**	**RMH**	**RH**	**MUR**	**MURS**	**MUN**	**OT**	**OT/DH**	**INL**	**INH**	**P**	**M**	**PO**	**SM**	**UT**	**PA**	**NR**	**RR**	**TH**
Recreation																			
Gaming	X	X	X	C	C	X	X	X	X	X	X	X	X	X	X		C[12]		
Indoor	X	X	X	C	C	CM	C	C	C	C	C	X	C	X	X				
Outdoor[11]	X	X	X	C	C	C	X	C	C	X	C	CM[9]	P	C	C				
Repair Services	X	CM[1]	CM[1]	P	P	P	P	P	P	P	X	X	X	X	X				
Retail																			
Fire Arms and Ammunition	X	X	X	X	X	X	X	X	X	C[8]	X	X	X	X	X				
Liquor Sales	C[1]	C[1]	C[1]	C	C	C	X	X	C[6]	X	X	X	X	X	X		C[12]		
Tobacco Shops	X	X	X	C	C	C	X	X	X	X	X	X	X	X	X				
Small Stores	C[1]	CM[1]	P[1]	P	P	P	C[4]	C	C[6]	X	X	C[9]	C[10]	X	X		P[12]	P	
Medium Stores	X	X	X	CM	CM	CM	X	C	C[6]	X	X	X	X	X	X		C[12]	P	
Large Stores	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			C[14]	
Outdoor Sales	X	X	X	C	C	C	X	X	C[6]	C[6]	X	X	X	X	X				
Food and Beverage Sales	X	X	X	C	C	C	X	C	C[6]	X	X	X	X	X	X	CM	C[12]		
Schools	C	C	C	C	C	C	C	C	X	X	C	X	X	X	X				
Social Service Facilities	X	X	X	C	C	C	C	C	C	C	C	X	X	X	X				
Industrial																			
Arts-Industrial																			
Studio-Light	C[1]	C[1]	C[1]	P	P	P	CM	P	P	X	C	X	X	X	X				
Studio- Heavy	X	X	X	X	X	C	C	C	CM	P	X	X	X	X	X		X	X	
Recording Studios	X	X	X	C	C	CM	CM	C	P	P	X	X	X	X	X		X		
Commercial Kitchens	X	X	X	C	C	CM	C	C	P	P	X	X	X	X	X				
Construction and Maintenance	X	X	X	C	C	P	C	C	P	P	C	X	X	X	X				
Crematories	X	X	X	X	X	X	X	X	C	C	X	X	X	X	X		X		
Food Production and Assembly																			
Small	X	X	X	C	C	CM	C	C	P	P	X	X	X	X	X				
Large	X	X	X	X	X	X	X	C	C	C	X	X	X	X	X		X		
Hazardous Waste Facilities																			
Small Scale Waste Transfer and Storage	X	X	X	X	X	X	C	C	C	C	X	X	X	X	X	X	X		
Industrial Hazardous Waste Transfer/Storage/ Treatment	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			
Laundry and Dry Cleaning Services	X	X	X	X	X	X	X	C	C	P	X	X	X	X	X		X		
Manufacturing																			
Pharmaceutical	X	X	X	X	X	C	CM	C	CM	P	X	X	X	X	X		X		
Custom[11]	X	X	X	CM	CM	CM	CM	P	P	P	X	X	X	X	X				
Light	X	X	X	C	C	C	CM	C	P	P	X	X	X	X	X				
General	X	X	X	X	X	X	X	X	C	CM	X	X	X	X	X		X		
Heavy	X	X	X	X	X	X	X	X	X	C	X	X	X	X	X		X		

	Base Zones															Overlay Zones			
Use Classifications	**RM**	**RMH**	**RH**	**MUR**	**MURS**	**MUN**	**OT**	**OT/DH**	**INL**	**INH**	**P**	**M**	**PO**	**SM**	**UT**	**PA**	**NR**	**RR**	**TH**
Recycling Facilities																			
Collection Facilities	X	X	X	X	X	C	X	X	CM	CM	X	X	X	X	X		X		
Processing Facilities	X	X	X	X	X	X	X	X	C	CM	X	X	X	X	X		X		
Research and Development	X	X	X	X	X	CM	P	C	P	C	X	X	X	X	X				
Salvage and Wrecking	X	X	X	X	X	X	X	X	X	C	X	X	X	X	X		X		
Storage and Distribution																			
Indoor	X	X	X	X	X	C	C[4]	C	P	P	C	X	X	X	X		X		
Outdoor	X	X	X	X	X	X	X	X	C	CM	C	X	X	X	X		X		
Personal	X	X	X	C	C	C	X	C	P	P	X	X	X	X	X	X	X		
Agriculture																			
Community Gardens	CM	CM	CM	CM	CM	CM	X	C	C	X	C	CM	CM	X	X				
Indoor Agriculture	CM	CM	CM	CM	CM	CM	C	C	P	P	X	X	X	X	X				
Outdoor Agriculture	CM	C	C	C	C	C	X	X	CM	C	X	X	X	X	X				
Animal Husbandry	X	X	X	X	X	C	X	X	C	C	X	X	X	X	X				
Communication, Transportation, and Utilities																			
Communication Facilities																			
Transmission Towers	X	X	X	X	X	X	X	X	C	C	C	X	X	X	X				
Equipment within Buildings	X	X	X	X	X	C	P	C	P	P	X	X	X	X	X		X		
Transportation and Delivery Services																			
Bus/Rail Passenger Stations	X	X	X	C	C	C	C	C	X	X	X	X	X	X	CM				P
Truck/Rail Freight Terminals	X	X	X	X	X	X	C	C	C	C	X	X	X	X	CM		X		
Human-Powered	X	CM	CM	CM	CM	P	P	P	P	P	X	X	X	X	X				
Light Fleet	X	X	X	C	C	CM	CM	C	P	P	X	X	X	X	X				
Utility Services	C	C	C	C	C	C	C	C	C	C	C	C	C	X	C				

Notes:
1. See Section 9-3.302(b).
2. See Section 9-3.303(b)(1)a.
3. See Sections 9-3.303(b)(1)a and 9-3.405(a)(2).
4. See Section 9-3.304(b)(1).
5. See Sections 9-3.305(b)(1).
6. See Sections 9-3.305(b)(2).
7. See Sections 9-3.305(b)(3) and Article 3 of Chapter 5.
8. See Sections 9-3.305(b)(4) and Article 6 of Chapter 5.
9. See Section 9-3.307(a).
10. See Section 9-3.308(a).
11. For properties in the PA overlay zone, see Section 9-3.403(a)(2).
12. See Section 9-3.404(a).
13. For properties in the NR overlay zone, see Section 9-3.404(a)(3).
14. See Section 9-3.405(a)(1).

ARTICLE 3. BASE ZONE REGULATIONS

9-3.301 Purpose.

The purpose of this Article is to establish use and development regulations and conditional use permit findings unique to each base zone or group of base zones.

9-3.302 Residential Zones.

(a) **Zones Included.** For purposes of these Regulations, the Residential zones include the following zoning districts:

RM Medium Density Residential
RMH Medium-High Density Residential
RH High Density Residential

(b) **Zone Regulations.** The following use classifications, if permitted or conditionally permitted pursuant to Section 9-3.202, are only allowed on the ground floor in the Residential zones. This restriction does not apply to Home Occupations or other accessory uses, or to Office uses in the RH zone where it is combined with the NR overlay zone (see Section 9-3.404(a)(3)).

Commercial and Institutional

- Arts and Entertainment
  - Gallery
- Banks and Financial Institutions
- Business Services
- Community Assembly
  - Small
- Day Care Centers
- Eating and Drinking Establishments
  - Restaurants
- Health Care
  - Clinics and Medical Offices
  - Medical Laboratories (non research)
- Instructional Services
  - Individual/ Small Group Instruction
- Libraries and Museums
- Motor Vehicle Sales and Services
  - Rentals
- Offices
  - General
  - Government
  - Walk-In Clientele
- Personal Services
  - Small
  - Large
- Repair Services

Retail

Liquor Sales
Small Stores

Industrial

Arts-Industrial

Studio-Light

(c) **Findings.** There are no special findings for the Residential zones.

9-3.303 Mixed Use Zones.

(a) **Zones Included.** For purposes of these Regulations, the Mixed Use zones include the following zoning districts:

MUR Mixed Use with Residential
MURS Mixed Use with Residential South
MUN Mixed Use with Non-Residential

(b) **Zone Regulations.**

(1) Limitations on Certain Uses.

a. In the MUR and MURS zones Motor Vehicle Sales and Services, Rentals are allowed only on the ground floor.

b. Motor Vehicle Sales and Services, Service Station uses are only allowed where the MUN zone is combined with the RR zone.

(2) Mix of Uses, When Required.

a. Sites of Less Than One Acre. Developments on sites of less than one acre in the Mixed Use zones may be comprised of a single use, as prescribed in Section 9-3.202.

b. Sites of One to Five Acres. Developments on sites of at least one acre but less than five acres in the Mixed Use zones must be approved pursuant to the Conditional Use Permit procedure at Article 5 of the Chapter 7, or, at the applicant's option, pursuant to the Planned Unit Development Procedure at Article 10 of Chapter 7. A mix of use groups is required pursuant to subsection (b)(2)d. of this Section, except that a single use, as prescribed in Section 9-3.202, may be allowed upon the granting of a conditional use permit pursuant to Article 5 of Chapter 7 and the additional finding required by subsection (c) of this Section.

c. Sites of Five Acres or More. On sites of five acres or more in the Mixed Use zones, a mix of use groups is required pursuant to subsection (b)(2)d. of this Section. Such developments must be approved pursuant to the Planned Unit Development Procedure at Article 10 of Chapter 7. Notwithstanding that establishment of a PUD constitutes a rezoning of the site from a Mixed Use zone to a PUD zone, the uses permitted in the PUD shall conform to the uses permitted or conditionally permitted in the

Mixed Use zone in which the site was located prior to establishment of the PUD, as indicated in Table 9-3.202.

d. Mix of Use Groups. As used in subsections (b)(2)b. and (b)(2)c. above, a "mix of use groups" means:

i. MUR and MURS zones. The development must include uses from two or more of the Mixed Use Groups defined in Article 8 of Chapter 2, one of which must be the Residential Mixed Use Group. Additional uses, as prescribed in Section 9-3.202, are also allowed.

ii. MUN zone. The development must include uses from two or more of the Mixed Use Groups defined in Article 8 of Chapter 2, one of which may not be the Residential Mixed Use Group. Additional uses, as prescribed in Section 9-3.202, are also allowed.

The exact mix of uses shall be determined through the Conditional Use Permit or Planned Unit Development approval process.

(c) **Findings.** To grant a conditional use permit for a single use on a site of at least one acre but less than five acres in the Mixed Use zones, pursuant to subsection (b)(2)b. of this Section, the following finding must be made in addition to the findings required by Article 5 of Chapter 7:

(1) That the applicant has convincingly demonstrated that it is infeasible to develop a project with a mix of use groups on the site.

9-3.304 Office/Technology Zones.

(a) **Zones Included.** For purposes of these Regulations, the Office/Technology zones include the following zoning districts:

OT Office/Technology
OT/DH Office/Technology Doyle-Hollis North

(b) **Zone Regulations.**

(1) Retail, Small Stores and Storage and Distribution, Indoor uses in the OT zone are limited to those primarily intended to serve the immediate surrounding area. This limitation does not apply in the OT/DH zone.

(2) Uses in existence in the OT/DH zone as of November 12, 2009 are deemed to be conforming uses and may continue in existence until such time as the property is acquired by or dedicated to the City for park use.

(c) **Findings.** To grant a conditional use permit for a Retail, Small Stores or Storage and Distribution, Indoor use in the OT zone, pursuant to subsection (b)(1) of this Section, the following finding must be made in addition to the findings required by Article 5 of Chapter 7:

(1) That the use will primarily serve the immediate surrounding area.

9-3.305 Industrial Zones.

(a) **Zones Included.** For purposes of these Regulations, the Industrial zones include the following zoning districts:

INL Light Industrial
INH Heavy Industrial

(b) **Zone Regulations.**

(1) In the INL zone Offices, General are only allowed in existing buildings.

(2) The following Commercial and Institutional use classifications, if permitted or conditionally permitted pursuant to Section 9-3.202, are limited to those primarily intended to serve the immediate surrounding area. This restriction does not apply where the NR overlay zone is combined with an Industrial zone.

Eating and Drinking Establishments
- Bars/Nightclubs/Lounges
- Restaurants

Retail
- Liquor Sales
- Small Stores
- Medium Stores
- Outdoor Sales
- Food and Beverage Sales

(3) Adult Oriented Businesses are allowed only in the INH zone, subject to the provisions of Article 3 of Chapter 5.

(4) Retail, Firearms and Ammunition uses are allowed only in the INH zone, subject to the provisions of Article 6 of Chapter 5.

(c) **Findings.**

(1) To grant a conditional use permit for an Office use pursuant to subsection (b)(1) of this Section, the following finding must be made in addition to the findings required by Article 5 of Chapter 7:

a. That the use is designed and will be operated so as not to interfere with other nearby uses that are permitted or conditionally permitted in the INL zone.

(2) To grant a conditional use permit for certain Commercial and Institutional uses, pursuant to subsection (b)(2) of this Section, the following finding must be made in addition to the findings required by Article 5 of Chapter 7:

a. That the use is primarily intended to serve the immediate surrounding area.

9-3.306 P Public Zone.

(a) **Zone Regulations.** There are no special regulations in the P zone.

(b) **Findings.** There are no special findings in the P zone.

9-3.307 M Marina Zone.

(a) **Zone Regulations.** The following Commercial and Institutional use classifications are only allowed if they have a waterfront orientation:

Eating and Drinking Establishments
- Bars/Nightclubs/Lounges
- Restaurants

Recreation
- Outdoor

Retail
- Small Stores

(b) **Findings.** To grant a conditional use permit for a use listed in subsection (a) of this Section, the following finding must be made in addition to the findings required by Article 5 of Chapter 7:

(1) That the use has a waterfront orientation.

9-3.308 PO Park/Open Space Zone.

(a) **Zone Regulations.** The following Commercial and Institutional use classifications are only allowed if they are oriented to park users, and are limited to a total floor area of no more than ten percent of the park area:

Eating and Drinking Establishments
- Restaurants

Retail
- Small Stores

(b) **Findings.** To grant a conditional use permit for a use listed in subsection (a) of this Section, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(1) That the use is oriented to park users.

(2) That the use has a total floor area of no more than ten percent of the park area.

9-3.309 SM Shoreline Management Zone.

(a) **Zone Regulations.**

(1) Uses. All uses, including accessory uses, shall comply with the Emeryville Shoreline Protection Ordinance of 1987.

(2) Structures. Structures are not permitted.

(b) **Findings.** There are no special findings in the SM zone.

9-3.310 PUD Planned Unit Development Zone.

(a) **Zone Regulations.** Uses and development regulations in PUDs shall be as stipulated in the various ordinances establishing the PUDs, as listed below. PUDs established prior to the adoption of these Regulations are not subject to these Regulations, but are subject to the regulations that were in effect at the time of their establishment, except that minor

exterior changes and signs may be approved pursuant to the procedures for Minor Design Review in Article 4 of Chapter 7, and final development plans shall be processed in accordance with the PUD procedures in Article 10 of Chapter 7.

(1) Pixar Animation Studios. Created by Ordinance No. 94-014 passed on December 6, 1994 and subsequently amended by Ordinance No. 98-003 passed on May 19, 1998, Ordinance No. 98-005 passed on May 19, 1998, and Ordinance No. 04-004 passed on June 1, 2004.

(2) Novartis (Chiron) Life Sciences Center. Created by Ordinance No. 95-006 passed on August 15, 1995 and subsequently amended by Ordinance No. 01-001 passed on June 5, 2001.

(3) Promenade Retail Project (Emery Village Center). Created by Ordinance No. 94-014 passed on December 6, 1994 and subsequently amended by Ordinance No. 98-003 passed on May 19, 1998, Ordinance No. 98-005 passed on May 19, 1998, and Ordinance No. 99-003 passed on April 20, 1999.

(4) Watergate Office Tower Complex. Created by Ordinance No. 99-007 passed on July 20, 1999.

(5) Bay Street (South Bayfront Retail/Mixed Use Project). Created by Ordinance No. 99-009 passed on September 21, 1999.

(6) Marketplace Redevelopment Project. Created by Ordinance No. 08-004 passed on August 5, 2008.

(b) **Findings.** To establish a new PUD, the findings required by Article 10 of Chapter 7 must be made.

9-3.311 UT Utilities/Transportation Zone.

(a) **Zone Regulations.** Uses in the UT zone must be compatible with the primary transportation functions of the freeway and railroad corridor.

(b) **Findings.** To grant a conditional use permit for a use that is conditionally permitted pursuant to Section 9-3.202, the following finding must be made in addition to the findings required by Article 5 of Chapter 7:

(1) That the use is compatible with the primary transportation function of the freeway or railroad corridor in which it is located.

ARTICLE 4. OVERLAY ZONE REGULATIONS

9-3.401 Purpose.

The purpose of this Article is to establish use and development regulations and conditional use permit findings unique to each overlay zone. Use and development regulations in overlay zones supplement, or, if so indicated, supersede the use and development regulations of the base zones with which they are combined.

9-3.402 N-H North Hollis Overlay Zone.

(a) **Zone Regulations.**

(1) North Hollis Area Urban Design Program. The North Hollis Area Urban Design Program, including the Design Guidelines, adopted by Resolution No. 02-52 on April 16, 2002, shall apply to all properties and public rights-of-way in the N-H North Hollis Overlay Zone.

(2) Design Guidelines. All development proposals in the N-H North Hollis Overlay Zone shall be subject to the Design Guidelines in the North Hollis Area Urban Design Program, as required by Section 9-7.406 of these Regulations, in addition to the applicable provisions of the Emeryville Design Guidelines, as required by Article 4 of Chapter 7.

(b) **Findings.** There are no special findings in the N-H overlay zone.

9-3.403 P-A Park Avenue District Overlay Zone.

(a) **Zone Regulations.**

(1) Park Avenue District Plan. The Park Avenue District Plan, including the goals, policies, street standards, and development and design guidelines, adopted by Resolution No. 06-157 on August 15, 2006, shall apply to all properties and public rights-of-way in the P-A Park Avenue District Overlay Zone.

(2) Design Guidelines. All development proposals in the P-A Park Avenue District Overlay Zone shall be subject to the Design Guidelines in the Park Avenue District Plan, as required by Section 9-7.406 of these Regulations, in addition to the applicable provisions of the Emeryville Design Guidelines, as required by Article 4 of Chapter 7.

(b) Findings. There are no special findings in the P-A overlay zone.

9-3.404 NR Neighborhood Retail Overlay Zone.

(a) **Zone Regulations.**

(1) Permitted Uses. Uses indicated as permitted in the NR Neighborhood Retail Overlay Zone in Section 9-3.202 are only permitted if they have all of the following characteristics:

a. Are local-serving.

b. Are located on the ground floor.

c. Have a gross floor area of 5,000 square feet or less.

d. Have a pedestrian orientation with a main entrance facing the public sidewalk that will remain open to the general public during normal business hours.

e. Do not include alcoholic beverage sales, except Restaurants.

f. Do not include check cashing services.

g. Have hours of operation no earlier than 7:00 a.m. and no later than 11:00 p.m.

h. Provide at least one bicycle parking rack accommodating a total of at least two bicycles on the sidewalk near the main entrance.

(2) Conditionally Permitted Uses. In addition to uses indicated as conditionally permitted in Section 9-3.202, any uses indicated as permitted but not having all of the characteristics listed in subsection (a)(1) above shall require a conditional use permit.

(3) Offices, General are not allowed on the ground floor.

(4) Off-street Parking and Loading. Local-serving uses having a gross floor area of 5,000 square feet or less are exempt from the off-street parking and loading requirements stipulated in Article 4 of Chapter 4.

(5) Design Guidelines. All development proposals in the NR Neighborhood Retail Overlay Zone shall be subject to the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to the Neighborhood Retail Overlay and Neighborhood Centers, as required by Article 4 of Chapter 7.

(b) **Findings.** To grant a conditional use permit for a use that is conditionally permitted pursuant to Section 9-3.202 or subsection (a)(2) of this Section, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(1) That the use will enhance the area's role as a neighborhood center.

(2) That the use will provide a pedestrian orientation, including consideration of a main entrance facing the public sidewalk that will remain open to the general public during normal business hours.

(3) That the proposal will conform in all significant respects with any applicable area plan which has been adopted by the City Council.

9-3.405 RR Regional Retail Overlay Zone.

(a) **Zone Regulations.**

(1) Retail, Large Stores may occupy 100% of the building area provided that they are regional-serving.

(2) Motor Vehicle Sales and Services, Service Station uses are only allowed where the RR zone is combined with the MUN zone.

(3) Design Guidelines. All development proposals in the RR Regional Retail Overlay Zone shall be subject to the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to the Regional Retail Overlay, as required by Article 4 of Chapter 7.

(b) **Findings.** To grant a conditional use permit for a use that is conditionally permitted pursuant to Section 9-3.202, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(1) That the use will enhance Emeryville's role as a regional retail destination.

(2) That the use will provide adequate access for all travel modes, including automobiles, pedestrians, bicycles, and public transit.

(3) That the proposal will conform in all significant respects with any applicable area plan which has been adopted by the City Council.

9-3.406 TH Transit Hub Overlay Zone.

(a) **Zone Regulations.**

(1) Parking Reduction. Minimum and maximum parking requirements shall be reduced to 50% of the requirements set forth in Article 4 of Chapter 4. Minimum parking requirements may be further reduced or eliminated upon the granting of a conditional use permit pursuant to the requirements of Article 4 of Chapter 4 and subsection (b) of this Section.

(2) Design Guidelines. All development proposals in the TH Transit Hub Overlay Zone shall be subject to the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to Transit Hubs, as required by Article 4 of Chapter 7.

(b) **Findings.** To grant a conditional use permit to reduce or eliminate minimum parking requirements for uses in the TH overlay zone pursuant to subsection (a)(1) of this Section, the following finding must be made in addition to the findings required by Article 5 of Chapter 7 and Article 4 of Chapter 4:

(1) That the use includes significant amenities to encourage transit use and increase pedestrian comfort.

9-3.407 PP Pedestrian Priority Overlay Zone.

(a) **Zone Regulations.**

(1) Design Guidelines. All development proposals in the PP Pedestrian Priority Overlay Zone shall be subject to the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to Pedestrian Priority Zones, as required by Article 4 of Chapter 7.

(b) **Findings.** There are no special findings in the PP overlay zone.

CHAPTER 4.
SITE DEVELOPMENT REGULATIONS

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ARTICLE 1. GENERAL PROVISIONS

9-4.101 Purpose and Applicability.

The purpose of this Chapter is to set forth site development regulations that apply throughout the City. These site development regulations are applicable to all new and existing uses unless otherwise specified. Existing uses that do not conform to these regulations are subject to the provisions for Nonconforming Uses and Structures in Article 10 of Chapter 5.

9-4.102 Additional Regulations.

See Chapter 5 for additional use and development regulations that apply throughout the City. All new and existing uses are subject to the applicable performance standards in Article 11 of Chapter 5.

ARTICLE 2. BUILDING INTENSITY, HEIGHT AND RESIDENTIAL DENSITY

9-4.201 Building Intensity (Floor Area Ratio).

(a) **Maximum Building Intensity (Floor Area Ratio).** The maximum intensity of buildings, expressed as a maximum floor area ratio (FAR), shall be as prescribed on the General Plan Floor Area Ratio Map (General Plan Figure 2-3, entitled "Maximum Floor Area Ratios"), which is made a part of these Regulations by this reference and is shown in Figure 9.4.201(a). The floor area ratio districts are delineated by numbers on this map and the corresponding limits for the maximum permitted FAR and bonus FAR that may be granted under Section 9-4.204 are as shown in Table 9-4.201(a):

Table 9-4.201(a): Maximum Floor Area Ratio

	Maximum Permitted Building Intensity (FAR)	
Map Designation	**Base**	**Bonus**
0.5/1.0	Up to 0.5	Up to 1.0
1.0	Up to 1.0	None
1.0/1.6	Up to 1.0	Up to 1.6
1,5/3.0	Up to 1.5	Up to 3.0
2.0/4.0	Up to 2.0	Up to 4.0
3.0/6.0	Up to 3.0	Up to 6.0

(b) **Determining Floor Area Ratio.** The floor area ratio (FAR) is the ratio of the floor area of all principal buildings on a lot to the lot area, rounded to the nearest tenth in accordance with Section 9-1.203(b). Examples of floor area ratio are shown in Figure 9-4.201(b). Note that floor area, as defined in Chapter 8, does not include parking or loading areas.

(c) **Interpretation of Floor Area Ratio Map.** If a lot is in two or more floor area ratio districts on the General Plan Floor Area Ratio Map, the floor area ratio indicated on the map shall apply to each portion of the lot, except that the floor area ratio for the entire lot may be increased up to the maximum floor area ratio applicable to any portion of the lot upon the granting of a conditional use permit pursuant to Article 5 of Chapter 7. Such a conditional use permit may be granted only if both of the following conditions are met:

(1) At least 50% of the lot area is already covered by the district with the maximum floor area ratio; and

(2) The entire lot could be included in said district by shifting the floor area ratio district boundary by not more than 50 feet as measured perpendicularly to said boundary at any point.

If subsections (c)(1) and (c)(2) above do not apply, the maximum permissible floor area for the lot shall be calculated based on the floor area ratios that apply to each portion of the lot. However, the resulting floor area may be located anywhere on the lot, subject to applicable height limits, setbacks, and any other dimensional requirements for each portion of the lot.

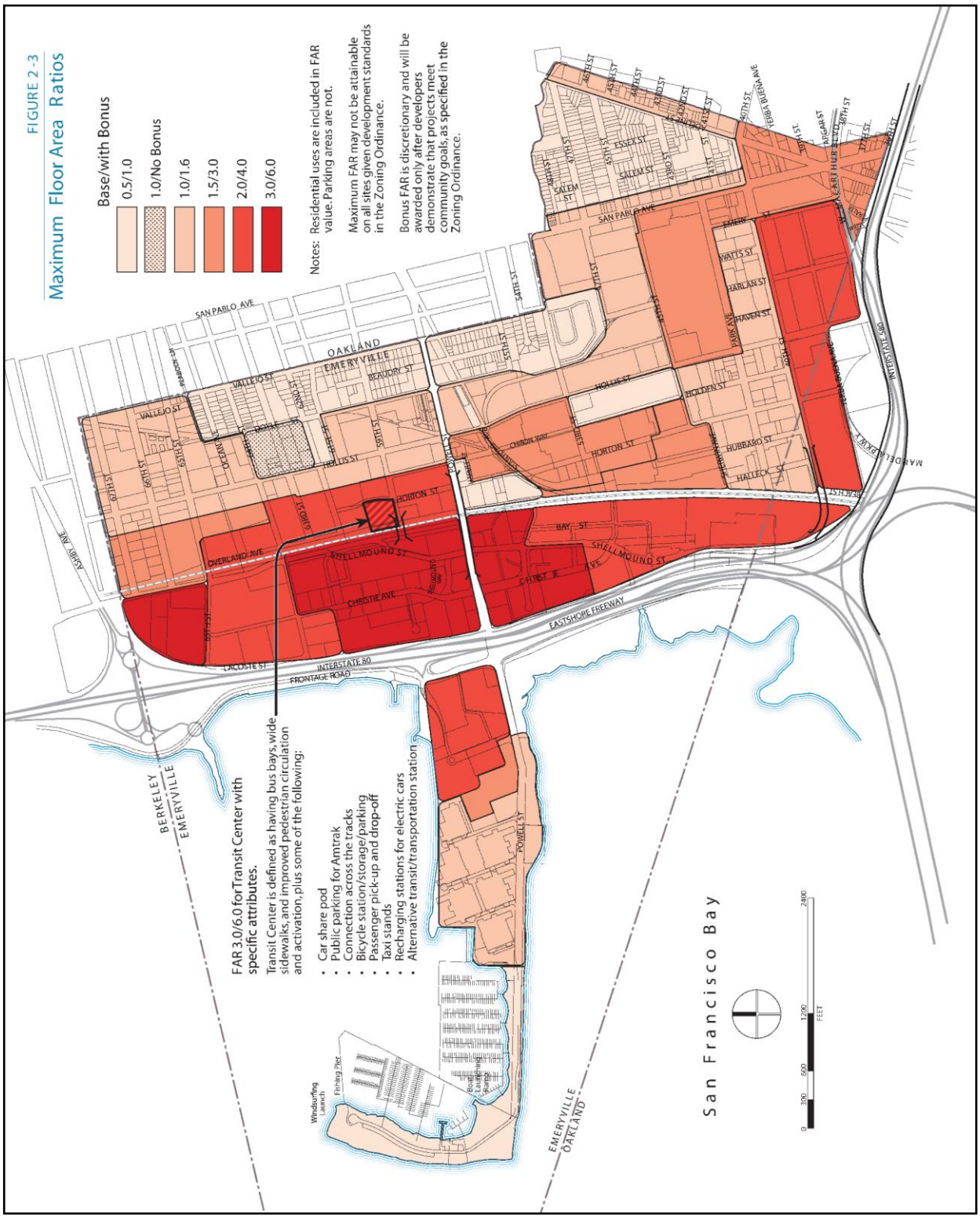

Figure 9-4.201(a). Maximum Floor Area Ratios.

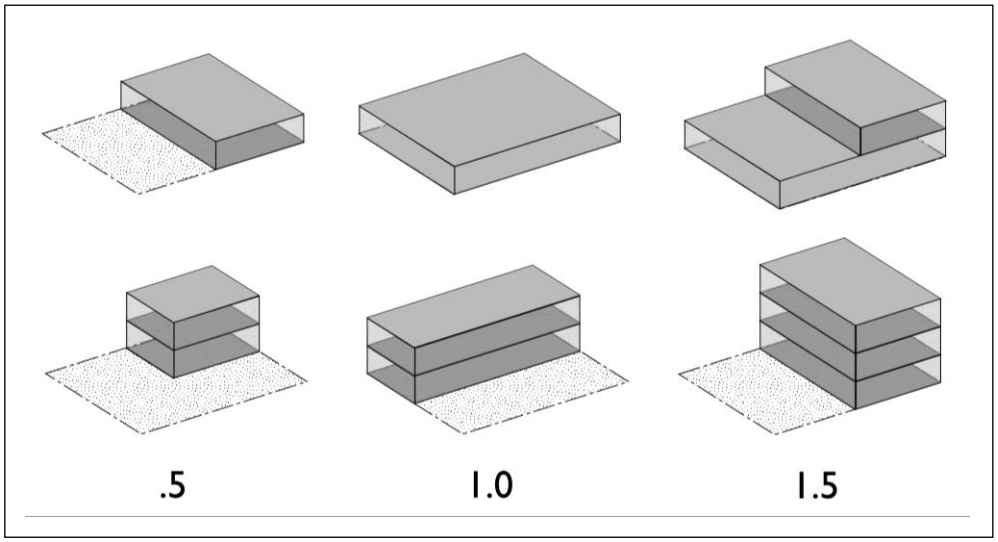

Figure 9-4.201(b). Examples of Floor Area Ratio.

9-4.202 Height and Bulk.

(a) **Maximum Height.** The maximum height of buildings and structures shall be as prescribed on the General Plan Height Map (General Plan Figure 2-4, entitled "Maximum Building Heights"), which is made a part of these Regulations by this reference and is shown in Figure 9-4.202(a). The height districts are delineated on this map and the corresponding limits for the maximum permitted height and bonus height that may be granted under Section 9-4.204 are as shown in Table 9-4.202(a):

Table 9-4.202(a): Maximum Height

	Maximum Permitted Height (Feet)	
Map Designation	**Base**	**Bonus**
30	Up to 30	None
30/55	Up to 30	Up to 55
40/75	Up to 40	Up to 75
50/100	Up to 50	Up to 100
75/100+	Up to 75	75 to over 100

(b) **Measuring Height.**

(1) Buildings. Building height is measured from the average level of the highest and lowest points of finished grade surrounding the building to the highest point of the roof, not including parapets. The height of a stepped or terraced building is the maximum height of any segment of the building.

(2) Other Structures. The height of other structures is the vertical distance from the average ground level immediately under the structure to the top of the structure, with the following special provisions for fences and decks, as illustrated in Figure 9-4.202(b):

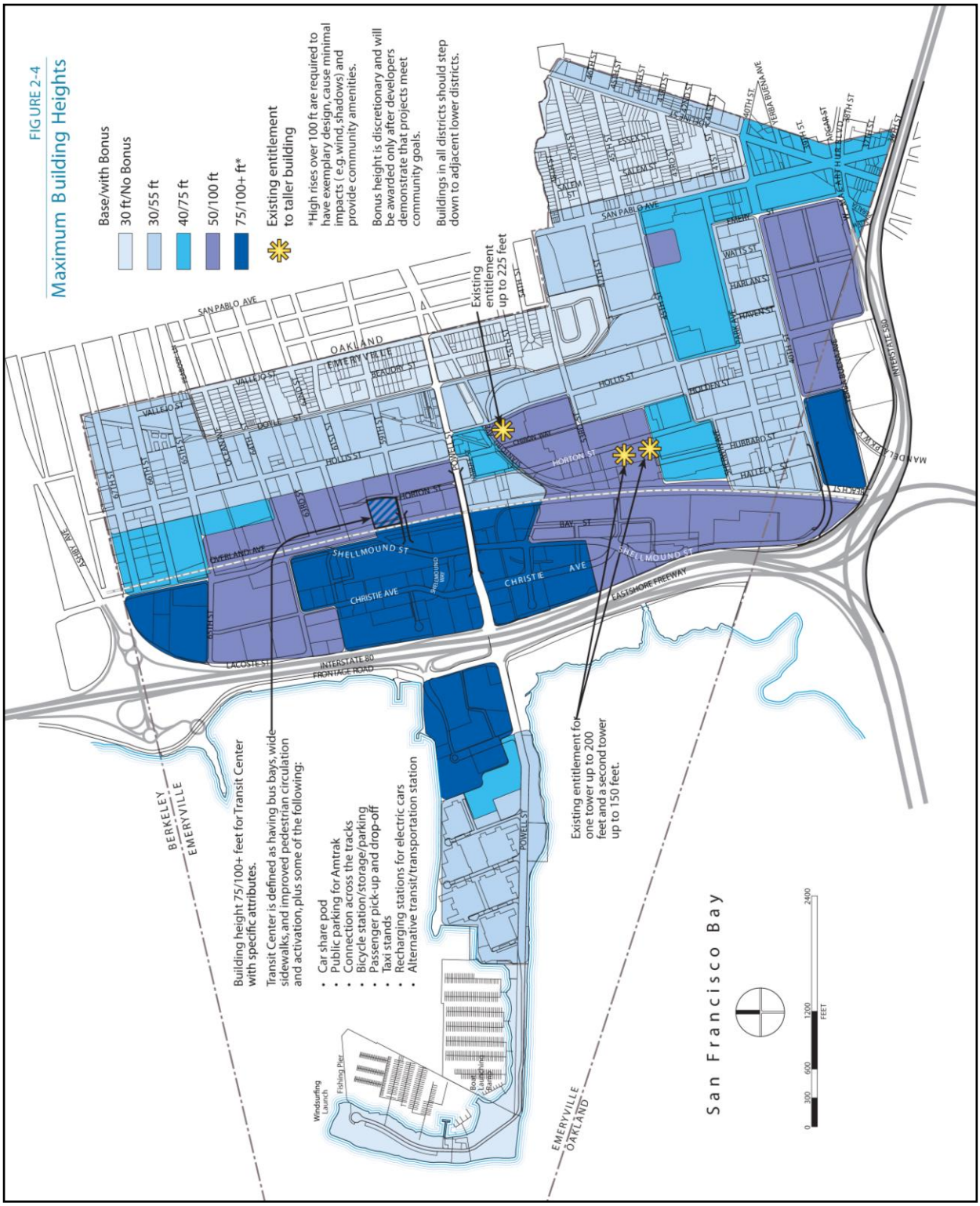

Figure 9-4.202(a). Maximum Building Heights.

a. Fences on Retaining Walls. The height of a fence that is on top of a retaining wall is measured from the ground level on the highest side of the fence and wall. See also Section 9-4.505(c).

b. Decks and Balconies. Deck and balcony height is determined by measuring from the ground adjacent to the building to which the deck or balcony is attached to the top of the floor of the deck or balcony.

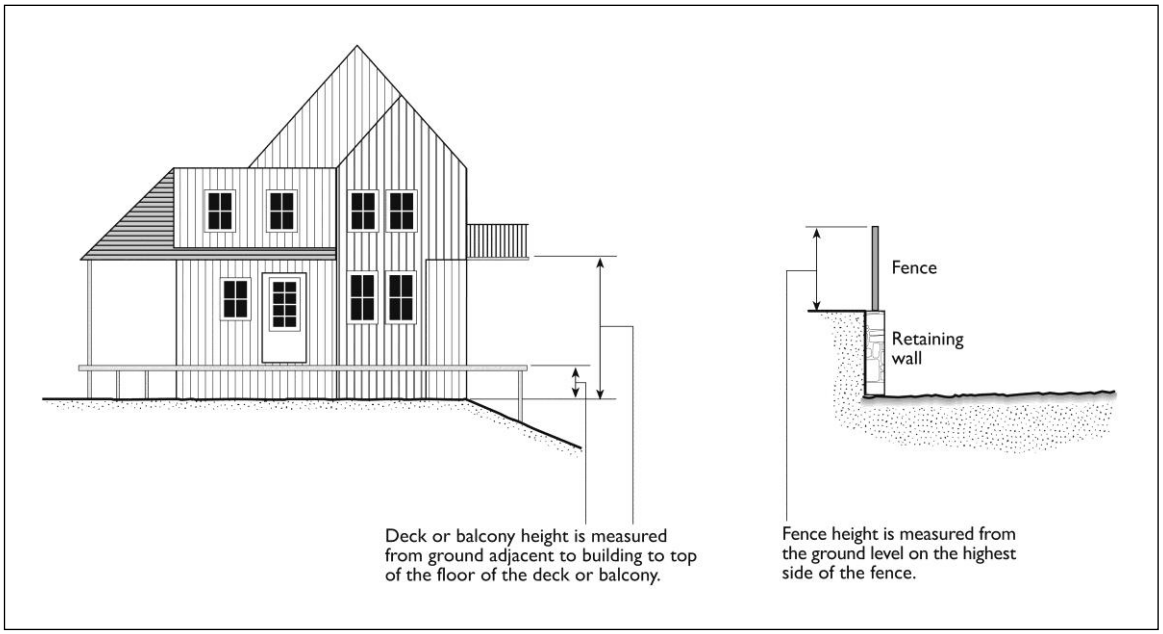

Figure 9-4.202(b). Measuring Height of Decks, Balconies, and Fences.

(c) **Allowed Projections above Top of Building.**

(1) Allowed Projections. The height limits for the various height districts do not apply to spires, belfries, cupolas, domes, or other architectural projections not used for human habitation, nor to chimneys, ventilators, skylights, parapet walls, cornices, solar energy systems, mechanical equipment, or other appurtenances usually located on the roof level, provided that such features are limited to the height necessary for their proper functioning.

(2) Height of Projections. Except for parapet walls, such features may project up to 15 feet above the roof of the building in the 30-foot height district, and up to 25 feet above the roof of the building in all other height districts. Parapet walls may extend up to three feet above the roof of the building in the 30-foot height district, and up to five feet above the roof of the building in all other height districts.

(3) Coverage of Projections. Except as provided in subsection (4) below, all of the above mentioned features which project more than five feet above the roof of the building shall be limited to a maximum aggregate coverage of ten percent of the building's horizontal roof area. For projections of five feet or less, including parapet walls, there is no limitation on coverage. Rooftop equipment shall be set back from the edge of the roof to the maximum extent feasible to minimize

visibility from below and shall be screened as required by Section 9-4.507. Architectural features that are intended to be visible need not be set back from the edge of the roof or screened.

(4) Mechanical Penthouses. Allowed projections that are completely enclosed in a mechanical penthouse shall be limited to a maximum aggregate coverage of 20% of the building's horizontal roof area. Such penthouses shall be compatible with the architectural design of the building; shall be completely roofed except for cooling towers and any other equipment that cannot properly function if roofed; and are eligible for development bonuses pursuant to item (17) in Table 9-4.204(c).

(5) Exceeding Height and Coverage Limits. The limits listed in this Section, related to both projection height and horizontal area coverage, may be exceeded upon the granting of a minor conditional use permit pursuant to Article 5 of Chapter 7.

(6) Solar Panels. The limitations set forth in this Section do not apply to solar panels.

(d) **Interpretation of Height Map.** If a lot is in two or more height districts on the General Plan Height Map, the height limit indicated on the map shall apply to each portion of the lot, except that the height limit for the entire lot may be increased up to the maximum height limit applicable to any portion of the lot upon the granting of a conditional use permit pursuant to Article 5 of Chapter 7. Such a conditional use permit may be granted only if both of the following conditions are met:

(1) At least 50% of the lot area is already covered by the district with the maximum height limit; and

(2) The entire lot could be included in said district by shifting the height district boundary by not more than 50 feet as measured perpendicularly to said boundary at any point.

If subsections (d)(1) and (d)(2) above do not apply, the maximum height for each portion of the lot shall be as indicated on the General Plan Height Map, provided that the height limit shall step down from higher height limits to lower height limits as required by subsection (e) below.

(e) **Height Limits Adjacent to Lower Height Districts.** Where a height district abuts a lower height district, the maximum permitted height shall step down at a 45-degree angle, as measured perpendicular to the boundary between the height districts, to the bonus height of the adjacent height district at the height district boundary, or, if the adjacent height district has no bonus height, to the base height of the adjacent height district at the height district boundary, as illustrated in Figure 9-4.202(e). This regulation does not apply where different height districts are on opposite sides of a public street or railroad right-of-way, nor in the 100+ height district, which has no absolute bonus height.

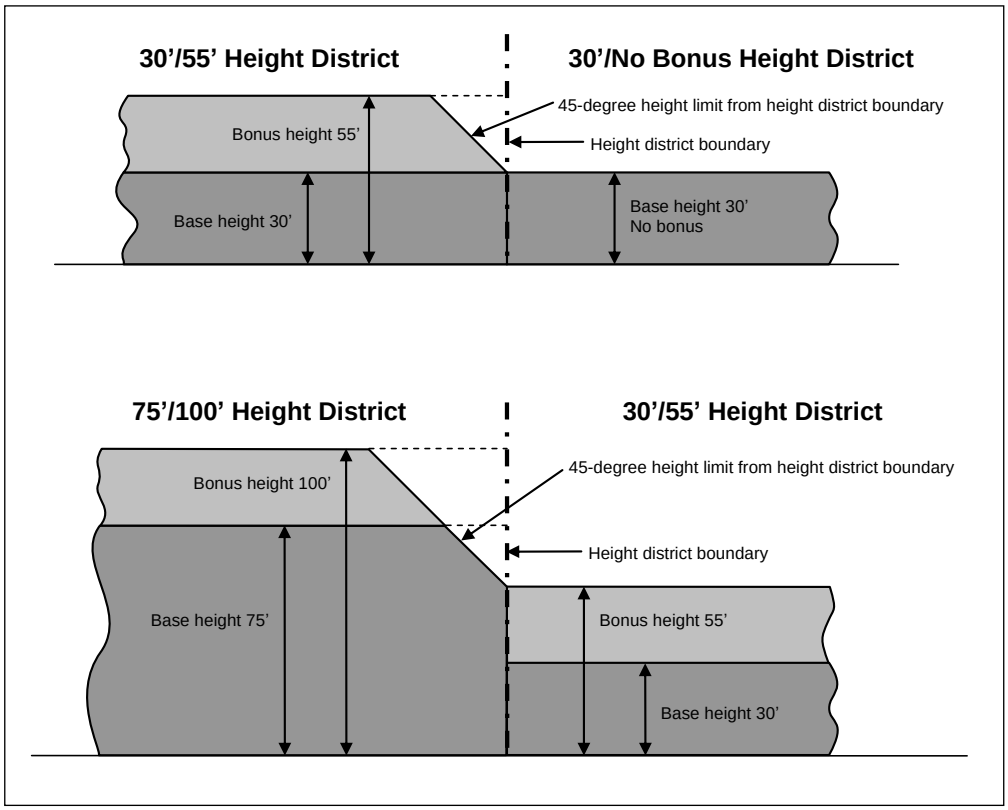

Figure 9-4.202(e). Examples of Height Limits Adjacent to Lower Height Districts.

(f) **Tower Separation.** In the 100+ height district, buildings over 100 feet in height shall be separated from each other by a minimum horizontal distance equal to no less than the height of the taller building.

(g) **Building Bulk.** All development proposals are subject to design review pursuant to the design review procedures in Article 4 of Chapter 7, including the provisions of the Emeryville Design Guidelines pertaining to Building Massing.

9-4.203 Residential Density.

(a) **Maximum Residential Density.** The maximum density of residential uses, expressed as units per acre, shall be as prescribed on the General Plan Residential Density Map (General Plan Figure 2-6, entitled "Maximum Residential Densities"), which is made a part of these Regulations by this reference and is shown in Figure 9-4.203(a). The residential density districts are delineated by numbers on this map and the corresponding limits for the maximum permitted residential density and bonus residential density that may be granted under Section 9-4.204 are as shown in Table 9-4.203(a):

Table 9-4.203(a): Maximum Residential Density

	Maximum Permitted Residential Density (Units per Acre)	
Map Designation	**Base**	**Bonus**
20/35	Up to 20	Up to 35
35/60	Up to 35	Up to 60
50/100	Up to 50	Up to 100
70/135	Up to 70	Up to 135
85/170	Up to 85	Up to 170

(b) **Determining Residential Density.** The residential density is the ratio of the number of dwelling units on a lot to the lot area in acres, rounded to the nearest whole number in accordance with Section 9-1.203(a). (One acre equals 43,560 square feet.)

(c) **Interpretation of Residential Density Map.** If a lot is in two or more residential density districts on the General Plan Residential Density Map, the residential density indicated on the map shall apply to each portion of the lot, except that the residential density for the entire lot may be increased up to the maximum residential density applicable to any portion of the lot upon the granting of a conditional use permit pursuant to Article 5 of Chapter 7. Such a conditional use permit may be granted only if both of the following conditions are met:

(1) At least 50% of the lot area is already covered by the district with the maximum residential density; and

(2) The entire lot could be included in said district by shifting the residential density district boundary by not more than 50 feet as measured perpendicularly to said boundary at any point.

If subsections (c)(1) and (c)(2) above do not apply, the maximum permissible residential density for the lot shall be calculated based on the residential densities that apply to each portion of the lot. However, the resulting dwelling units may be located anywhere on the lot, subject to applicable height limits, setbacks, and any other dimensional requirements for each portion of the lot.

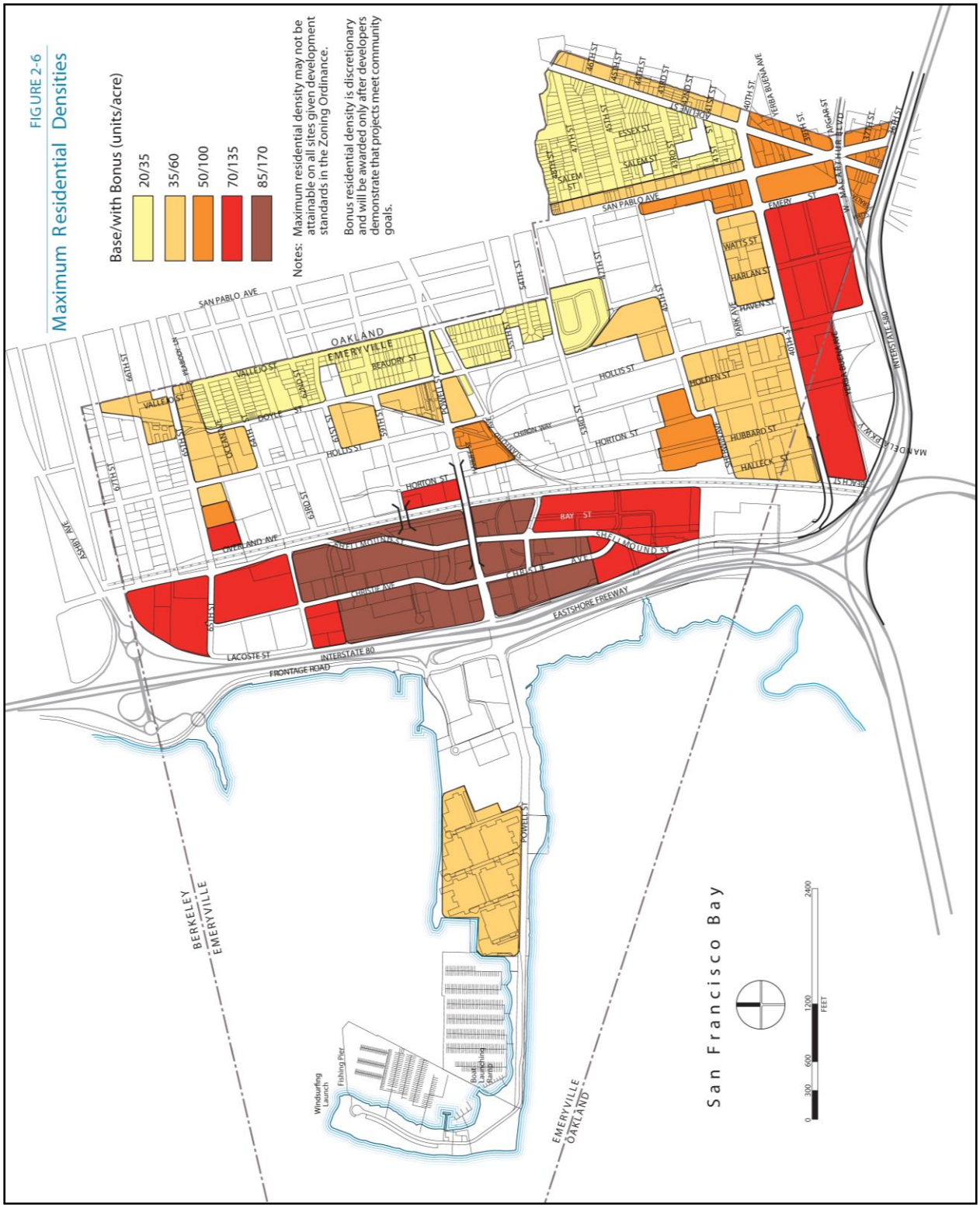

Figure 9-4.203(a). Maximum Residential Densities.

9-4.204 Development Bonuses.

(a) **State Density Bonus Not Available.** If a developer chooses to request development bonuses pursuant to the provisions of this Section, density bonuses pursuant to the State Density Bonus requirements in Article 5 of Chapter 5 are not available.

(b) **Procedure.** Bonus floor area ratio, height, and/or residential density, as specified in this Article, may be permitted upon the granting of a conditional use permit pursuant to Article 5 of Chapter 7 and the additional findings required by subsection (f) of this Section. Projects seeking bonus points for the Flexible Community Benefit pursuant to item (7) in Table 9-4.204(e) shall require approval of a conditional use permit by the City Council upon a recommendation of the Planning Commission. For Planned Unit Developments, development bonuses shall comply with the requirements of this Section, but shall not require a conditional use permit and shall be considered as part of the PUD approval process pursuant to Article 10 of Chapter 7.

(1) RM Medium Density Residential Zone.

a. Multi-Unit Residential projects of 10 units or more must provide affordable units and community benefits as specified in this Section. The findings in subsections (f)(1) and (f)(2) below must be made.

b. For all other projects, community benefits are not required. The findings in subsection (f)(1) below must be made.

(2) In all other zones affordable housing and other community benefits as specified in this Section must be provided sufficient to earn the number of points required for the bonus amount requested, pursuant to subsections (c), (d) and (e) below. The findings in subsection (f)(2) below must be made.

(3) For bonus height over 100 feet, affordable housing and other community benefits as specified in this Section must be provided sufficient to earn at least 100 points pursuant to subsections (d) and (e) below. The findings in subsections (f)(2) and (f)(3) below must be made.

To qualify for a bonus, a community benefit must be significant and clearly beyond what would otherwise be required for the project under applicable code provisions, conditions of approval, and/or environmental review mitigation measures.

(c) **Determination of Bonuses.** Bonus floor area ratio, height, and/or residential density shall be calculated in accordance with the following procedures.

(1) Points Required. The number of bonus points required, up to a maximum of 100, is calculated according to the following formula:

$$\frac{\text{Bonus Requested}}{\text{Bonus Increment}} \times 100 = \text{Points Required}$$

Variables used in bonus point calculation:

a. Bonus Requested. The amount of FAR, height, or residential density requested for the project above the base level as specified in Tables 9-4.201(a), 9-4.202(a), and 9-4.203(a), respectively.

b. Bonus Increment. The difference between the maximum bonus amount and the maximum base amount for FAR, height, and residential density as specified in Tables 9-4.201(a), 9-4.202(a), and 9-4.203(a), respectively.

(2) Points Count Toward All Bonuses. The points awarded for the provision of affordable housing and other community benefits pursuant to subsections (d) and (e) of this Section may be counted towards FAR, height, and residential density. It is not necessary to earn separate points for each of these bonuses.

(3) Height Over 100 Feet. To qualify for bonus height over 100 feet in the 75/100+ height district, affordable housing and other community benefits worth at least 100 points must be provided pursuant to subsections (d) and (e) of this Section.

(4) Modifications.

a. Prior to Issuance of Building Permit. No community benefit for which a bonus has been granted may be eliminated or reduced in size without the approval of the Planning Commission or City Council, whichever approved the project. To grant such approval, the Commission or Council must find that there is a corresponding reduction in intensity, height, and/or density, a substitution of an equivalent community benefit, or a combination of the two.

b. Prior to Issuance of Certificate of Occupancy. Before a certificate of occupancy is issued for a project, the applicant shall certify to the Director that the bonus points upon which the project's floor area ratio, height, and/or residential density were based have, in fact, been achieved. If the number of bonus points achieved by the completed project is less than required, the applicant shall contribute 0.1% of construction valuation per point of shortfall to the Citywide Parks Fund. Such contribution shall be made before a certificate of occupancy is issued.

(d) **Affordable Housing.** No fewer than half of the bonus points required for the project, as calculated pursuant to subsection (c)(1) above, up to 50 points, shall be earned through the provision of affordable housing as specified below. If half of the bonus points required for the project is not a multiple of five, it shall be rounded up to the next multiple of five for the purposes of the provision of affordable housing.

(1) Residential Projects. Multi-Unit Residential developments of 10 units or more shall provide affordable units in the development in accordance with the applicable requirements of Article 4 of Chapter 5. The number of bonus points awarded shall be determined for providing affordable units at various income levels in accordance with Table 9-4.204(d)(1) below.

Table 9-4.204(d)(1): Bonus Points for Affordable Units in Project

Bonus Points Awarded	Rental Projects				Ownership Projects
	TOTAL	Very Low Income	Low Income	Moderate Income	Moderate Income
5	12.5%	2.8%	4.3%	5.3%	20.5%
10	13.0%	2.9%	4.5%	5.5%	21.0%
15	13.5%	3.1%	4.7%	5.8%	21.5%
20	14.0%	3.2%	4.9%	6.0%	22.0%
25	14.5%	3.3%	5.0%	6.2%	22.5%
30	15.0%	3.4%	5.2%	6.4%	23.0%
35	15.5%	3.5%	5.4%	6.6%	23.5%
40	16.0%	3.6%	5.6%	6.8%	24.0%
45	16.5%	3.7%	5.7%	7.0%	24.5%
50	17.0%	3.9%	5.9%	7.2%	25.0%

(2) Nonresidential Projects. Nonresidential developments shall pay an additional affordable housing impact fee in accordance with Table 9-4.204(d)(2) below. The increase shall be based on the applicable fee in effect when the fee is due. For use types that are normally exempt from the affordable housing impact fee, the increased fee shall be based on the fee for nonexempt uses.

Table 9-4.204(d)(2): Bonus Points for Non-Residential Uses

Bonus Points Awarded	Additional Fee
5	10%
10	20%
15	30%
20	40%
25	50%
30	60%
35	70%
40	80%
45	90%
50	100%

For example, if the current fee for nonexempt uses were $4.00 per square foot, to earn 30 points, an additional fee of $2.40 per square foot would be required (60% of $4.00) for a total of $6.40 per square foot. A use type that is normally exempt from the affordable housing impact fee would not pay the base fee of $4.00 per square foot, but would pay the fee increase of $2.40 per square foot.

(e) **Community Benefits.** No more than half of the bonuses points required for the project, as calculated pursuant to subsection (c)(1) above, may be earned through the provision of community benefits. The maximum number of points that may be awarded for each community benefit, the calculation method, and other requirements are as shown in Table 9-4.204(e):

Table 9-4.204(e): Community Benefits and Bonus Points

Community Benefit	Maximum Points	Point Calculation	Requirements
(1) Public Open Space	50	15% of site area or 2,000 square feet, whichever is greater: 50 points	Must be in addition to what is required by Article 3 of this Chapter. Design must comply with applicable provisions of the Emeryville Design Guidelines and be approved as part of Design Review for the project. Open space must be accessible to the general public at all times. Provision must be made for ongoing operation and maintenance in perpetuity.
		10% of site area or 1,500 square feet, whichever is greater: 35 points	
		5% of site area or 1,000 square feet, whichever is greater: 20 points.	
		Contribution to Citywide Parks Fund: 10 points for every 1% of project construction valuation up to 50 points.	Contribution must be made prior to issuance of building permit.
(2) Zero Net Energy	50	100% of energy load (zero net energy): 50 points	Percent of total building energy load measured as kilowatt per square foot provided by solar panels, wind turbines, or other renewable sources.
(3) Public Improvements	50	10 points for every 1% of project construction valuation up to 50 points	Does not include improvements along project frontage that are normally required. Examples include curb, gutter, and sidewalk; pedestrian and bicycle paths; sanitary and storm sewers; and street trees, beyond what would normally be required.
(4) Utility Undergrounding	50	Contribution to Citywide Underground Utility Fund: 10 points for every 1% of project construction valuation up to 50 points	Does not include utility undergrounding that is normally required.
(5) Additional Family Friendly Units	50	5 points for each additional 5 percent of total units that have two or more bedrooms, of which at least 1 percent of total units must have three or more bedrooms.	Two- and three-bedroom units are in addition to those required by Section 9-5.2003, and must comply with the applicable provisions of the Emeryville Design Guidelines pertaining to Family-Friendly Residential Unit Design.

Community Benefit	Maximum Points	Point Calculation	Requirements
(6) Small Businesses	50	Contribution to Citywide Fund to Support Small Local-Serving Businesses: 10 points for every 1% of project construction valuation up to 50 points.	Contribution must be made prior to issuance of building permit.
(7) Flexible Community Benefit	50	The City Council shall determine the number of points to grant for the proposed community benefit based on10 points for every 1% of project construction valuation.	Currently undefined community benefit proposed by the applicant that is significant and substantially beyond normal requirements. An example would be Universal Design features beyond those required by applicable building codes.

(f) **Findings.** To grant a conditional use permit for bonus floor area ratio, height, or residential density, as prescribed in this Article, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(1) In the RM Medium Density Residential zone:

a. That the proposed project is compatible with the surrounding neighborhood with regard to building scale, form, and materials, and street orientation.

b. That the proposed project has been designed to minimize the appearance from the street of driveways, parking spaces, maneuvering aisles, and garage doors as much as possible given the size and shape of the lot, and that at least 70% of the street frontage is devoted to active non-parking related uses, except that a driveway of up to ten feet in width shall be allowed.

(2) In all other zones:

a. That the proposed project will provide community benefits sufficient to earn the number of points required for the bonus amount requested, pursuant to subsections (c), (d), and (e) of this Section.

b. That the proposed community benefits for the project are significant and clearly beyond what would otherwise be required for the project under applicable code provisions, conditions of approval, and/or environmental review mitigation measures.

c. That the proposed community benefits for the project are acceptable and appropriate in this case, and will provide tangible benefits to the community.

(3) Bonus height over 100 feet:

a. That the proposed project will provide community benefits sufficient to earn at least 100 points pursuant to subsections (d) and (e) of this Section.

b. That the proposed project will minimize impacts on public views, wind, and shadows at the street level.

c. That the proposed project will be separated by an adequate distance from any other building with a height greater than 100 feet as specified in Section 9-4.202(f).

ARTICLE 3. SETBACKS , COURTS AND OPEN SPACE

9-4.301 Setbacks.

(a) **Minimum Setbacks.** The minimum setbacks of buildings from lot lines shall be as prescribed in Table 9-4.301(a).

Table 9-4.301(a): Minimum Setbacks

<table>
<tr><th colspan="2" rowspan="2">Minimum Setback:</th><th colspan="2">Residential Zones:</th><th colspan="2">All Other Zones:</th></tr>
<tr><th>RH High Density Residential and RMH Medium High Density Residential</th><th>RM Medium Density Residential</th><th>Abutting a Lot in a Residential Zone</th><th>Not Abutting a Lot in a Residential Zone</th></tr>
<tr><td rowspan="4">Front</td><td>If the 2 adjacent lots are developed:[1]</td><td colspan="2">Average of front setbacks on the adjacent lots.</td><td rowspan="5">Where street frontage abuts a lot in a residential zone, setback from street line shall be the same as required on the adjacent residential lot.[2]</td><td rowspan="5">None.</td></tr>
<tr><td>If only 1 of the adjacent lots is developed:[1]</td><td>Same as front setback on developed lot but not less than 5 feet.</td><td>Same as front setback on developed lot but not less than 10 feet.</td></tr>
<tr><td>If neither of the adjacent lots is developed:</td><td>5 feet</td><td>10 feet</td></tr>
<tr><td>Corner lot, whether or not adjacent lots are developed:</td><td>5 feet</td><td>10 feet</td></tr>
<tr><td colspan="2">Street Side</td><td colspan="2">3 feet</td></tr>
<tr><td colspan="2">Interior Side</td><td colspan="2">3 feet</td><td>3 feet, plus an additional 2 feet for each 1 foot by which the height of the building on the nonresidential lot exceeds 30 feet.</td><td rowspan="2">None.</td></tr>
<tr><td colspan="2">Rear</td><td colspan="2">15 feet</td><td>10 feet, plus an additional 2 feet for each 1 foot by which the height of the building on the nonresidential lot exceeds 30 feet.</td></tr>
</table>

Notes:
1. Detached garages and accessory buildings shall not be considered in determining existing front setbacks.
2. Where a lot has frontage on two streets, and both such frontages are adjacent to property in a residential zone, the setback from the street line on each frontage shall be the same as required on the adjacent residential lot.

(b) **Determination of Minimum Setbacks and Required Yards.** Minimum setbacks and required yards shall be determined in accordance with the following definitions.

(1) Setbacks and Yards are as defined below and illustrated in Figure 9-4.301(b)(1).

a. Lot Line. Any boundary of a lot, as further defined in Chapter 8.

b. Minimum Setback. The minimum setback distance prescribed in Table 9-4.301(a).

c. Setback Line. A line in the interior of a lot parallel to the lot line at a distance from the lot line equal to the minimum setback.

d. Required Yard. The area between the lot line and the setback line.

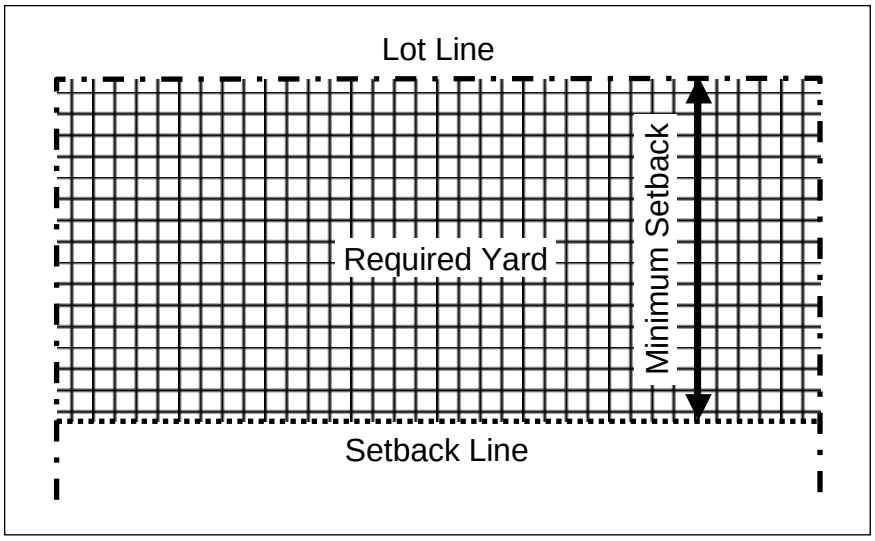

Figure 9-4.301(b)(1): Setbacks and Yards.

(2) Front, Rear, and Side Lot Lines are as defined below and illustrated in Figure 9-4.301(b)(2).

a. Front. The lot line abutting a public street, with the following caveats:

i. Through Lot. A through lot that extends across a block has two front lot lines, one on each abutting street, and no rear lot line.

ii. Corner Lot. The front lot line of a corner lot shall be determined based on the development patterns of the lot and adjacent lots, and on the characteristics of the abutting streets. Where no Planning Commission or City Council approval is required, the Director shall determine the front lot line; the Director's determination may be appealed to the Planning Commission in accordance with the appeal procedures in Article 14 of Chapter 7. Where Planning Commission or City Council approval is required, the Commission or Council, as the case may be, shall determine the front lot line based on a recommendation from the Director.

b. Rear. The lot line most distant from and most closely parallel to the front lot line.

c. Side. A lot line that is neither front nor rear, as follows:

i. Interior Side. A side lot line that does not abut a street.

ii. Street Side. A side lot line that abuts a street.

A corner lot has an interior side lot line and a street side lot line. A non-corner lot has two interior side lot lines.

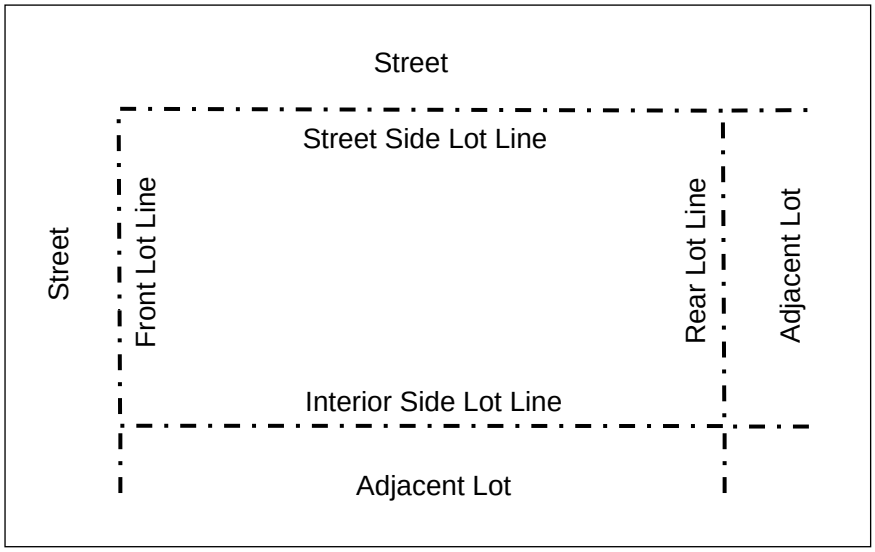

Figure 9-4.301(b)(2): Front, Side, and Rear Lot Lines.

(3) Required Yards. Required front, rear, and side yards are as defined below and illustrated in Figure 9-4.301(b)(3).

(a) Front Yard, Required. The area bounded by the front lot line, side lot lines, and front setback line.

(b) Rear Yard, Required. The area bounded by the rear lot line, side lot lines, and rear setback line.

(c) Side Yard, Required. The area bounded by the side lot line, side setback line, and front and rear setback lines. Note that a required side yard does not extend to the front or rear lot lines, and does not overlap the required front or rear yards. A required side yard may be either street side or interior side.

(c) **Openness of Required Yards.** All required yards shall have pervious surfaces and shall be open and unobstructed from the ground to the sky, except as provided in subsections (d) and (e) below.

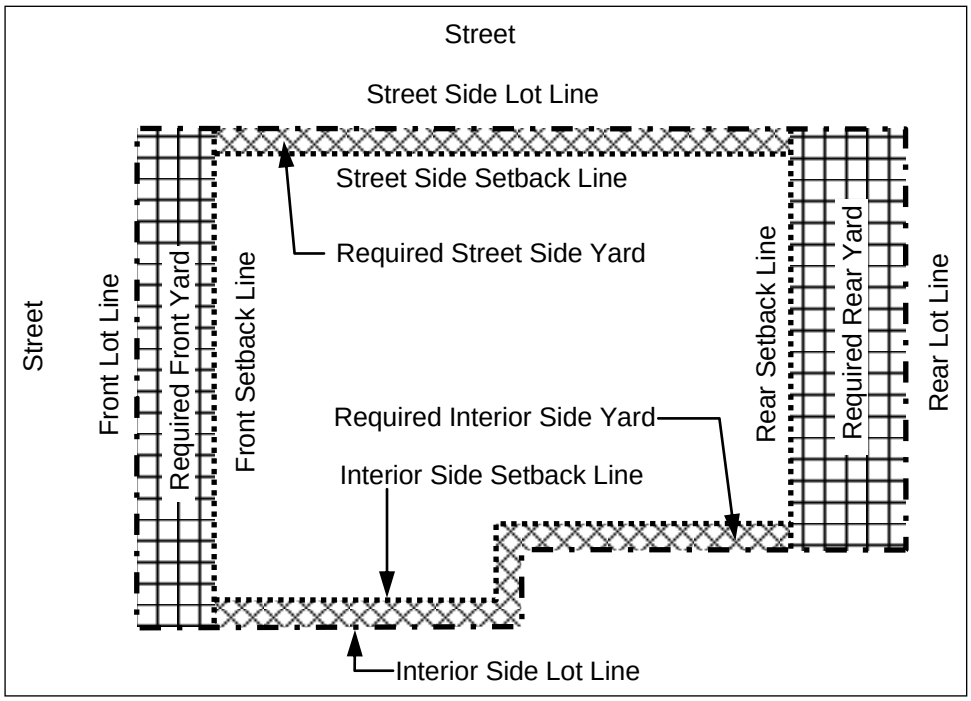

Figure 9-4.301(b)(3): Required Yards.

(d) **Features Allowed in Required Yards Without Restriction.** The following features are allowed anywhere in any required yard without restriction:

(1) Plant material including trees, shrubs, vines, hedges, and groundcover.

(2) Uncovered landscape features such as paths, benches, patios, flagpoles, sculptures and similar decorative features.

(3) Trellises and arbors to support vines and planting.

(4) Retaining walls, berms, earthen mounds, embankments, and other fill.

(5) Irrigation, drainage, and lighting systems.

(6) Utility poles, wires, and pipes.

(7) Stormwater treatment features required by Chapter 13 of Title 6.

(8) Disabled access features, including, but not limited to, ramps and mechanical lifts, if such features are in compliance with applicable requirements of the California Building Code and/or Americans with Disabilities Act.

(9) Entry features such as gates, arbors, and similar entry features not exceeding 8 feet in height, 10 feet in width, and 6 feet in depth.

(e) **Features Allowed in Required Yards With Restrictions.** Certain features are allowed in required yards with restrictions as indicated in Table 9-4.301(e). The restrictions imposed by this subsection may be modified, and additional features my be allowed in required yards, upon the granting of a minor conditional use permit pursuant to Article 5 of Chapter 7.

Table 9-4.301(e): Features Allowed in Required Yards With Restrictions

Feature	Distances that features may extend over setback line into required yard.			
	Front Setback	Street Side Setback	Interior Side Setback	Rear Setback
(1) Eaves; awnings, louvers, and similar shading devices; sills, cornices, and chimneys; and similar architectural projections from a building	3 feet	2 feet	2 feet	4 feet
(2) Patio roofs and similar structures if such structures do not exceed 12 feet in height and if each has open, unwalled sides along not less than 50% of its perimeter.	4 feet	2 feet	2 feet	No restriction.
(3) Breezeways and similar roofed passageways if they do not exceed 12 feet in height and 8 feet in width and are not enclosed on the sides.	4 feet	2 feet	2 feet	No restriction.
(4) Bay windows, if the aggregate width of bay windows on any one story does not exceed 50% of the length of the wall containing them, no individual bay window exceeds 15 feet in width, and all such windows are cantilevered only.	3 feet, but not to within 5 feet of the front lot line for a Single Unit or Two Unit Dwelling.		Not allowed.	5 feet
(5) Uncovered balconies or decks, including access stairs or ramps to balconies, decks, or doors.	6 feet, but not to within 5 feet of the front lot line for a Single Unit or Two Unit dwelling.	2 feet	2 feet	6 feet. No restriction for decks no higher than 30 inches from the ground.
(6) Exterior access facilities leading to the second or higher story of a building, including open or enclosed fire escapes and open, unroofed outside stairways, and landings.	4 feet	2 feet	Not allowed.	6 feet
(7) Covered porches, including access stairs and ramps.	8 feet, but not to within 3 feet of the front lot line for a Single Unit or Two Unit dwelling.	2 feet	2 feet	Allowed anywhere, but not to within 5 feet of the rear lot line.

<table>
<tr><th rowspan="2">Feature</th><th colspan="4">Distances that features may extend over setback line into required yard.</th></tr>
<tr><th>Front Setback</th><th>Street Side Setback</th><th>Interior Side Setback</th><th>Rear Setback</th></tr>
<tr><td>(8) Air conditioners, compressors, hot tub motors, and similar devices if emitting noise readily noticeable by the average person at or beyond the lot line, whether or not the devices are attached to a building.</td><td colspan="3">Not allowed.</td><td>Any distance, but not to within 5 feet of the rear lot line.</td></tr>
<tr><td>(9) Play structures, clotheslines, compost bins.</td><td colspan="2">Not allowed.</td><td colspan="2">No restriction.</td></tr>
<tr><td>(10) Detached or attached garages, carports, sheds, trash and recycling enclosures, and other accessory structures no more than 10 feet in height and with no habitable space.</td><td colspan="2">Not allowed.</td><td>Allowed anywhere, provided that the horizontal dimension parallel to the lot line is no more than 20 feet.</td><td>Allowed anywhere, provided that the horizontal dimension parallel to the lot line is no more than 20 feet, but not to within 3 feet of a street side lot line.</td></tr>
<tr><td>(11) Covered, underground or partially excavated structures including, but not limited to garages, wine cellars, and basements.</td><td colspan="4">Allowed anywhere, provided that the surfaces of such structures are landscaped or developed as patios or terraces and do not extend more than 30 inches above finished grade.</td></tr>
<tr><td>(12) Fences and walls.</td><td colspan="4">Allowed anywhere, subject to the requirements of Section 9-4.505.</td></tr>
<tr><td>(13) Short-term bicycle parking.</td><td colspan="4">Allowed anywhere, subject to the requirements of Section 9-4.408(e)(2).</td></tr>
<tr><td>(14) Signs.</td><td colspan="4">Allowed anywhere, subject to the requirements of Article 16 of Chapter 5.</td></tr>
<tr><td>(15) Radio or television antennas, including dishes.</td><td>Not allowed</td><td colspan="3">Allowed anywhere but not to within 1 foot of the lot line, and subject to the requirements of Article 17 of Chapter 5.</td></tr>
<tr><td>(16) Secondary Residential Units.</td><td colspan="3">Not allowed.</td><td>Up to 5 feet from the rear lot line, and 3 feet from the side lot lines, subject to the dimensional requirements of Section 9-5.1408.</td></tr>
</table>

9-4.302 Courts.

Courts shall be provided between facing exterior walls of residential buildings on the same lot in accordance with the requirements of this Section. See Figure 9-4.302 for a general illustration.

(a) **Opposite Living Room Windows.** The minimum width of a court opposite a living room window shall equal the height of the opposite wall, but need not exceed 50 feet, and shall not be less than 20 feet if there is a required window of a habitable room, as defined in the Building Code, in the opposite wall.

(b) **Opposite Other Habitable Rooms.** The minimum width of a court opposite a window of a habitable room other than a living room shall equal the height of the opposite wall, but need not exceed 50 feet, and shall not be less than 14 feet if there is a required window of a habitable room other than a living room in the opposite wall.

(c) **Dimensions of Courts.** Required courts shall extend horizontally ten feet in both directions from the centerline of a required window, and shall extend upward from the lowest floor level of the exterior wall containing the window.

(d) **Design.** Courts shall be designed to provide adequate light and air to the adjacent residential units. To the maximum extent feasible, courts shall be landscaped and designed to provide amenities for residents such as patios, play areas, barbeques, and swimming pools, and may be counted towards the private and common open space requirements of Section 9-4.303.

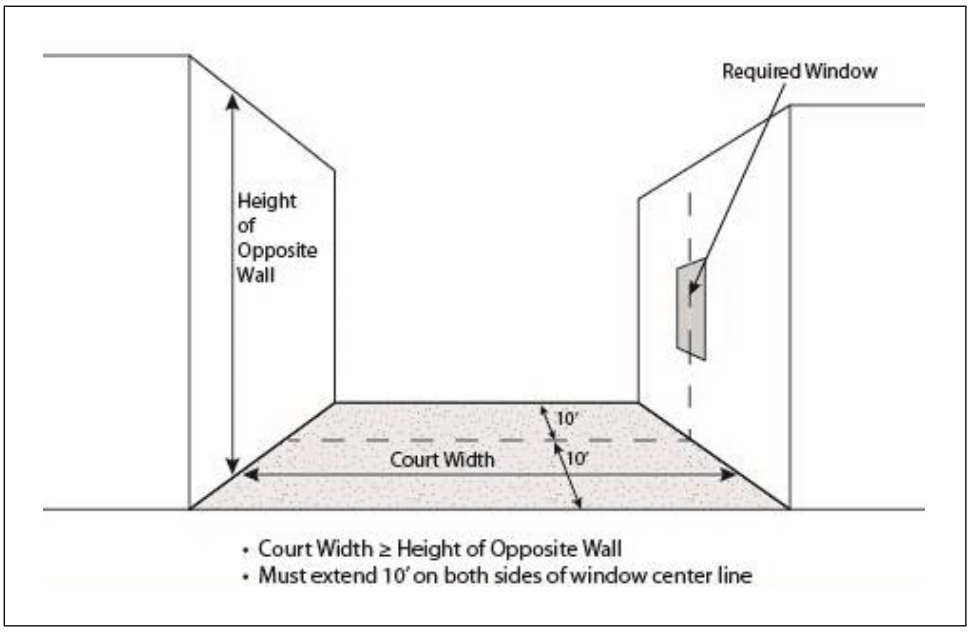

Figure 9-4.302: Courts

9-4.303 Open Space.

(a) **Open Space Requirements.**

(1) Purpose. These requirements are intended to provide high quality open spaces for active and passive recreation. They establish minimum standards for the amount and type of open spaces required, the size of such spaces, and provisions for security and privacy.

(2) Multi-Unit Residential and Live/Work Uses.

a. Applicability and General Standards. A minimum of 60 square feet of required open space shall be provided per dwelling or live/work unit, consisting of 40 square feet of private open space and 20 square feet of common open space, except as stipulated below.

i. To the maximum extent feasible, each unit shall be provided with a private open space.

ii. Where infeasible to provide private open space, common open space may be substituted for private open space at the ratio of 2:1 (i.e. 80 square feet of common open space may substitute for 40 square feet of required private open space).

b. Driveways, loading, and service areas. Required open spaces may not be located in driveways, loading, and service areas, except in projects of ten units or less, and as permitted by a minor conditional use permit with the following provisions:

i. Driveways may constitute up to 50% of the total common required open space for a given project.

ii. A minor conditional use permit shall only be granted with the finding that the driveway was designed in such a way that is usable and pleasant, and minimizes conflict with parked vehicles.

iii. Suggested surface treatments include unit pavers, supported turf, and painted play courts.

iv. Vehicular access shall not infringe upon residents' use of the open space. The driveway must be clearly designed as common open space and include adequate traffic calming measures.

v. No surface parking may be placed within 15 feet of the edge of a play court.

(3) All Other Uses.

a. Applicability and General Standards. These provisions apply to new buildings or additions of 10,000 square feet of gross floor area or greater.

i. Residential Uses Other Than Multi-Unit Uses. Except as provided in Section 9-4.303(a)(5)a below, new buildings or additions that exceed 10,000 square feet shall provide a minimum area of

common open space and/or Privately Owned Public Open Space (POPOS) that totals at least five percent of the gross floor area.

ii. Commercial and Institutional Uses.

1. New buildings or additions that exceed 10,000 square feet but are less than 100,000 square feet shall provide a minimum area of common open space and/or Privately Owned Public Open Space (POPOS) that totals at least five percent of the gross floor area.

2. New buildings or additions that exceed 100,000 square feet shall provide a minimum area of common open space and/or Privately Owned Pubic Open Space (POPOS) that totals at least five percent of the gross floor area. Included in this requirement, the developer shall provide a minimum area of POPOS that totals at least one percent of the gross floor area.

iii. Industrial, Agricultural, and Communication, Transportation and Utilities Uses. New buildings or additions that exceed 10,000 square feet shall provide a minimum area of common open space that totals at least two percent of the gross floor area.

b. Open Space In-Lieu Fees for Nonresidential Projects. Instead of providing required open space pursuant to this Section, applicants for nonresidential projects may provide a payment of an open space in-lieu fee to allow the City to acquire sites for open space to meet the open space needs that cannot be supplied on site. An open space in-lieu fee shall be provided for nonresidential uses only as follows:

i. Open Space In-Lieu Fee Amount. The amount of the open space in-lieu fee shall be as set forth in the Master Fee Schedule

ii. Deposit of Funds. Open space in-lieu fees shall be deposited with the City of Emeryville prior to issuance of a building permit in the Citywide Parks Fund and shall be used for open space facilities, including property acquisition and development of open space facilities in Emeryville.

iii. Refund of Fee. An open space in-lieu fee may be refunded, without interest, to the person who made such payment, or his assignee or designee, if the project provides the required open space. To obtain a refund, the required open space must be in place prior to issuance of a certificate of occupancy and before funds are spent or committed by the City.

(4) Mixed Uses. Open space requirements for mixed use projects shall be the sum of the requirements of individual uses as provided in this Section.

(5) Exemptions. The requirements of this Section do not apply to the following situations:

a. Uses Exempted. The following uses shall be exempt from the requirements of this Section:

Residential Use Types
- Single Unit
- Two Unit

Commercial and Institutional Use Types
- Arts and Entertainment
  - Outdoor Entertainment
- Community Assembly
  - Small
  - Large
- Eating and Drinking Establishments
  - Mobile Food Vendors
- Lodging
  - Bed & Breakfast
- Marina
- Major Public Services
- Parking
- Recreation
  - Outdoor
- Retail
  - Outdoor Sales

Industrial Use Types
- Storage and Distribution
  - Outdoor

Agriculture Use Types
- Community Gardens
- Outdoor Agriculture
- Animal Husbandry

Communication, Transportation and Utilities Use Types
- Communication Facilities
  - Transmission Towers
  - Equipment within Buildings
- Transportation and Delivery Services
  - Human-Powered

b. The reconstruction of an existing building of which 50% or less of the floor area was destroyed or ruined by flooding, fire, wind storm, or some other natural disaster provided that reconstruction will not result in an increase in building size.

c. Any use, building, or structure for which only a change of use is requested and which requires no structural modifications that increase its floor area by more than 10,000 square feet.

(b) **Open Space Standards.**

(1) All Open Spaces.

a. Required open space must comply with the Emeryville Design Guidelines and any other applicable design guidelines.

b. Required open space must comply with relevant provisions in this Code including but not limited to: Landscaping and Screening (Title 9, Chapter 4, Article 5), Water Use (Title 9, Chapter 4, Article 6), Lighting and Illumination (Title 9, Chapter 4, Article 7) and Stormwater Treatment Design, Management, and Discharge Control Program (Title 6, Chapter 13).

c. Dimensions. All required open spaces except for private open spaces shall meet or exceed the following dimensional standards.

i. At least one open space within the project shall accommodate a square laid flat with minimum dimensions as specified in Table 9-4.303(b):

Table 9-4.303(b): Minimum Open Space Dimensions

Total Required Square Feet of Open Space	Dimensions of Square (in feet)
40-199	6 x 6
200-299	10 x 10
300-599	15 x 15
600-899	20 x 20
900 and up	25 x 25

ii. A six foot by six foot square, laid flat, must fit within every part of the open space, as illustrated in Figure 9-4.303(b).

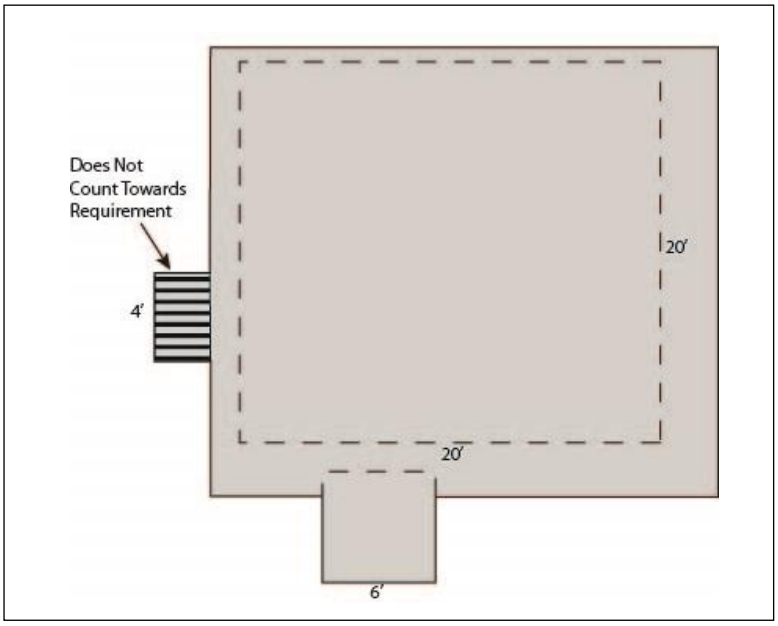

Figure 9-4.303(b): Illustration of Minimum Open Space Dimensions.

d. Sun Exposure. Open space shall be located and designed to maximize exposure to the sun. Required open space must be 75% open to the sky, balconies and patios excepted. This does not preclude the use of removable shade features such as table umbrellas or retractable awnings.

e. Surface materials. Surface materials shall contribute to usability, be dust free, and be as pervious as possible. Examples include ground cover, flagstone, wood planking, unit pavers or other serviceable surfacing.

(2) Private Residential Open Space.

a. Definition. Private open space is an individual yard, patio, porch, or balcony directly accessible from the dwelling unit for which the open space provides an opportunity for private outdoor recreation and relaxation.

b. Dimensions, access, and placement.

i. In order for private open space to count toward the minimum required open space, a five foot by six foot rectangle, laid flat, must fit within every part. This requirement includes balconies.

ii. A private open space may not be more than 36 inches above or below the threshold of the doorway serving as its primary access.

c. Screening of private open space.

i. Acceptable screening materials include wood, painted or anodized metal, vegetation, masonry, ceramic and other materials deemed acceptable by the Director.

ii. If a private open space is located adjacent to a common open space or public right-of-way, it shall be screened with a barrier, such as a decorative wall, hedge, or landscaping, which is at least three feet tall and at least 50% solid.

iii. Balconies, patios, and porches. No more than 50% of the perimeter of balconies, patios, and porches not abutting the building may be enclosed by anything more than four feet tall. Anything more than four feet tall shall be transparent.

d. Each private open space greater than 40 square feet shall only count as 40 square feet toward private open space requirements.

e. Required private open space may not be located in required front yards.

(3) Common Open Space.

a. Definition. Common open spaces are courtyards, sport courts, play areas, and gardens for communal use within a development.

b. Access and Placement, Residential Development.

i. When feasible, the primary route to an interior unit shall be through common open space.

ii. When feasible, a common open space should be directly visible and accessible from all of the units it is intended to serve.

c. Screening. Ground level common open space shall be enclosed by buildings, or have partially transparent screening or landscaping, such as a fence, decorative wall, hedge, or tall grasses.

d. Required open spaces may be located on rooftops.

e. A planted area shall be provided within the common open space that consists of at least 25% of the required common open space.

f. All required common open spaces shall include one seat or 30 inches of bench or seat wall for every 100 square feet of required open space.

g. All required common open spaces shall provide one tree per 1,000 square feet of required open space.

(4) Privately Owned Public Open Space (POPOS)

a. Definition. Privately owned public open space are courtyards, plazas, parks, walkways and gardens for use by the public on privately owned land.

b. Dimensions, access, and placement.

i. A minimum of 25% of the perimeter of all POPOS must abut a sidewalk or a publicly accessible pathway.

ii. POPOS shall not be more than three feet above or below an adjacent sidewalk or, if not, shall be served by a publicly accessible pathway.

iii. Privately owned public open spaces shall include signage that is located in a publicly conspicuous place stating that the open space is available for public use and the hours of use. If the POPOS is within three feet above or below the sidewalk level, a sign must be located at the sidewalk level. If the POPOS is more than three feet above or below sidewalk level, a sign must be located at both the public access level and at the sidewalk level. There shall be a sign at each public access point with a minimum of one sign per street frontage. Each sign shall be at least two square feet.

iv. Required open space shall be directly and conveniently accessible to the general public at least during all hours that City of Emeryville parks are open pursuant to Chapter 24 of Title 5.

c. POPOS may be located on rooftops provided that they meet all of the other requirements of this Section.

d. A planted area shall be provided within the POPOS that consists of at least 25% of the required open space.

e. All POPOS shall include one seat or 30 inches of bench or seat wall for every 100 square feet of required open space.

f. All POPOS shall provide one tree per 1,000 square feet of required open space.

ARTICLE 4. PARKING AND LOADING

9-4.401 Purpose.

The purposes of the off-street parking and loading regulations are to:

(a) Ensure that adequate off-street parking and loading facilities are provided for new uses and major alterations to existing uses;

(b) Avoid the negative impacts associated with spillover parking into adjacent neighborhoods, and minimize the negative environmental and urban design impacts that can result from parking lots, driveways, and drive aisles within parking lots;

(c) Address the circulation and access needs of bicyclists and pedestrians by requiring bicycle parking facilities and promoting parking lot designs that offer safe and attractive pedestrian routes;

(d) Establish standards and regulations for safe and well-designed parking, loading, and vehicle circulation areas that minimize conflicts between pedestrian and vehicles within parking lots and, where appropriate, create buffers from surrounding land uses;

(e) Offer flexible means of minimizing the amount of land area devoted to parking of automobiles by allowing reductions in the number of required parking spaces in transit-served locations, for shared parking facilities, and for other situations expected to have lower vehicle parking demand; and

(f) Reduce urban stormwater run-off and heat island effect.

9-4.402 Applicability.

(a) **New Developmen**t. Unless otherwise specified, the parking and loading requirements of this Article apply to all new buildings and to all new conditionally permitted uses in existing buildings.

(b) **Enlargements and Expansions.** Unless otherwise specified, the parking and loading requirements of this Article apply whenever an existing building or use is enlarged or expanded to include additional dwelling units, floor area, seating capacity, employees or other units of measurement used for establishing off-street parking and loading requirements for that use. Additional off-street parking and loading spaces are required only to serve the enlarged or expanded area.

(c) **Damage or Destruction.** When a use that has been involuntarily damaged or destroyed is re-established, off-street parking and loading facilities must also be re-established or continued in operation in an amount equal to the number maintained at the time of such damage or destruction. It is not necessary, however, to restore or maintain parking or loading facilities in excess of those required by this Article. Also see the Nonconforming Use Regulations at Article 10 of Chapter 5.

(d) **Exceptions.**

(1) Neighborhood Retail Overlay Zone. Pursuant to Section 9-3.404(a)(4), in the NR Neighborhood Retail Overlay Zone local-serving uses having a gross floor area of

5,000 square feet or less are exempt from the off-street parking and loading requirements of this Article.

(2) Transit Hub Overlay Zone. Pursuant to Section 9-3.406(a)(1), in the TH Transit Hub Overlay Zone minimum and maximum parking requirements shall be reduced to 50% of the requirements set forth in this Article, and minimum parking requirements may be further reduced or eliminated upon the granting of a conditional use permit pursuant to the requirements of this Article and Section 9-3.406(b).

(3) Alternative Parking Plans. If an alternative parking plan is approved pursuant to Section 9-4.407, the off-street parking requirements shall be subject to the provisions of said plan.

9-4.403 General Regulations and Standards.

(a) **No Reduction in Off-Street Parking and Loading Spaces.** Off-street parking and loading spaces established as of the effective date of this Article shall not be reduced in number during the life of such building or land use below that which would be required for a new building or use of a similar type under the requirements of this Article. All such off-street parking and loading spaces shall remain permanently available and accessible for the parking or loading of vehicles by occupants of the property, as intended by the requirements of this Article, except that any surplus spaces may be rented out to non-occupants with the provision that such spaces must be vacated on 30 days' notice if they become needed by occupants of the property.

(b) **Separate Parking and Loading Spaces.** No area may be utilized and counted both as a required parking space and a required loading space. However, maneuvering aisles and driveways may serve both required parking spaces and loading spaces if they meet the requirements specified in this Article for both parking and loading facilities.

(c) **Disabled Parking.** Parking spaces for the disabled shall be provided as required by the Building Regulations in Title 8. Such spaces may be counted towards the parking requirements of this Article.

(d) **Nonconforming Parking Facilities.** Existing buildings whose off-street parking and loading facilities do not conform to the requirements of this Article may be enlarged or expanded, provided that additional parking and loading facilities shall be added so that the enlarged or expanded portion of the building conforms to the requirements of this Article, subject to the applicable provisions for Nonconforming Uses and Structures in Article 10 of Chapter 5.

(e) **Unbundled Parking.** The following rules shall apply to the sale or rental of parking spaces in new Multi-Unit Residential Uses of ten units or more:

(1) All off-street parking spaces shall be leased or sold separately from the rental or purchase fees for dwelling units for the life of the dwelling units, such that potential renters or buyers have the option of renting or buying a residential unit at a price lower than would be the case if there were a single price for both the residential unit and the parking space(s).

(2) In cases where there are fewer parking spaces than dwelling units, the parking spaces shall be offered first to the potential buyers or renters of three-bedroom or more units, second to potential buyers or renters of two bedroom units, and then to potential buyers and renters of other units.

(3) Potential buyers and renters of affordable units shall have an equal opportunity to buy or rent a parking space on the same terms and conditions as offered to potential buyers and renters of market rate units, at a price proportional to the sale or rental price of their units as compared to comparable market rate units. This stipulation shall be included in any agreement recorded between the City and developer pertaining to the affordable housing units pursuant to Article 4 of Chapter 5.

(4) Parking spaces shall be offered only to residents of the dwelling units served by the off-street parking, except that any surplus spaces may be rented out to non-residents with the provision that such spaces must be vacated on 30 days' notice if they become needed by residents. Required visitor spaces shall not be rented out.

The Director may grant an exception from the requirements of this subsection for affordable units which include financing for affordable housing that requires that costs for parking and housing be bundled together.

(f) **Surface Parking Lots.** Surface parking lots shall be subject to the following restrictions and standards. The area of a surface parking lot shall include all features within the lot's outer edges, including all parking spaces, maneuvering aisles, access driveways, and perimeter and interior landscaping, walkways, and other features.

(1) Large Parking Lots. New or expanded surface parking lots of more than two acres are prohibited. Such parking facilities shall be provided within buildings or parking structures, or shall be otherwise covered by a structure that serves a non-parking function such as solar panels, recreational facilities, roof deck, or green roof.

(2) Medium Parking Lots. New or expanded surface parking lots of greater than one-half acre but not more than two acres may be allowed with a conditional use permit. To grant such a conditional use permit, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

a. That the applicant has convincingly demonstrated that it is infeasible to provide the parking within a building or parking structure, or to otherwise cover it.

b. That the applicant has convincingly demonstrated that every reasonable effort has been made to minimize the size of the parking lot.

c. That the parking spaces comply with the requirements of this Article including the design standards of Section 9-4.406.

d. That the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to Parking and Access, have been met.

(3) Small Parking Lots. New or expanded surface parking lots of no more than one-half acre are permitted subject to the requirements of this Article including the design standards of Section 9-4.406.

(4) Pedestrian Circulation. Parking lots containing 50 or more spaces shall have walkways separated from motor vehicle maneuvering aisles and driveways connecting the principal building or buildings served by the lot to the farthest point of the lot from the main pedestrian entrance of such building or buildings.

a. Materials and Width. Walkways shall provide at least four feet of unobstructed width and be hard-surfaced.

b. Identification. Pedestrian walkways shall be clearly differentiated from driveways, parking aisles, and parking and loading spaces through the use of elevation changes, different paving material, or similar method.

c. Separation. Where a pedestrian walkway is parallel and adjacent to an auto travel lane, it must be raised and separated from the auto travel lane by a raised curb at least six inches high, bollards, or other physical barrier.

9-4.404 Calculation of Parking Requirement.

The minimum number of parking spaces required and the maximum number of parking spaces allowed shall be based on the estimated parking demand by use type as listed in Table 9-4.404. The following rules apply when calculating the estimated parking demand:

(a) **Multiple Uses.** When two or more principal uses are located on the same lot, the estimated parking demand shall be the sum of the estimated demand of the various individual uses computed separately, in accordance with this Section, unless shared parking is approved pursuant to Section 9-4.405.

(b) **Area-Based Estimates.** All area-based estimated parking demands shall be computed on the basis of gross square footage, as defined in Chapter 8, which does not include parking or loading areas.

(c) **Exclusion of First 1,500 Square Feet.** For all non-residential uses with area-based estimated parking demands, the first 1,500 square feet shall be subtracted from the gross square footage of the use when calculating the estimated parking demand. When there are multiple principal uses on the same lot with separate estimated parking demands, pursuant to subsection (a) above, the first 1,500 square feet shall be subtracted from each such use. Any use that occupies 1,500 square feet or less is not required to provide off-street parking.

(d) **Parking Credit for Reuse of Significant Structures.** Projects that convert a significant structure that has a legal nonconforming parking deficiency to a different use shall receive a credit equal to the number of required automobile parking spaces unmet by the previous use.

(e) **Motorcycle Parking.** There shall be a credit of one automobile parking space for every four motorcycle parking spaces provided, not to exceed five percent of the total number of automobile parking spaces required. Motorcycle parking spaces shall be no less than

four feet wide by eight feet long with an aisle width of no less than ten feet and shall be clearly marked.

(f) **If Estimated Parking Demand is "To be Determined".**

(1) If Table 9-4.404 indicates that the estimated parking demand is to be determined ("TBD"), the estimated parking demand shall be determined based on the characteristics of the specific use in question and other similar uses. Where no Planning Commission or City Council approval is required, the Director shall determine the estimated parking demand; the Director's determination may be appealed to the Planning Commission in accordance with the appeal procedures in Article 14 of Chapter 7. Where Planning Commission or City Council approval is required, the Commission or Council, as the case may be, shall determine the estimated parking demand based on a recommendation from the Director.

(2) If the Director has classified a use not listed pursuant to Section 9-2.102(d), the estimated parking demand may be determined pursuant to subsection (e)(1) above.

(g) **Minimum and Maximum Parking Requirements.** Except as otherwise provided in this Section, no less than the minimum number of parking spaces, and no more than the maximum number of parking spaces, as required by this subsection, shall be provided for each use.

(1) Minimum. The minimum number of parking spaces required shall be 33% less than the estimated parking demand as indicated in Table 9-4.404.

(2) Maximum. The maximum number of parking spaces allowed shall be ten percent more than the estimated parking demand as indicated in Table 9-4.404.

(h) **Parking Spaces Below the Minimum or Above the Maximum.** Parking spaces less than the required minimum or more than the allowed maximum may be provided upon the granting of a conditional use permit as set forth below.

(1) Parking Spaces Less Than the Minimum. To grant a conditional use permit to provide less than the minimum number of parking spaces required by Section 9-4.404(f), including elimination of all parking spaces, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

a. That adequate measures will be put in place to reduce parking demand such as promoting use of public transit, bicycling, and walking, and allowing modified working hours and telecommuting.

b. That the reduction or elimination of the required parking spaces will not result in parking impacts on adjacent uses due to overflow parking.

(2) Parking Spaces More Than the Maximum. To grant a conditional use permit to provide more than the maximum number of parking spaces allowed by Section 9-4.404(f), the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

a. That the applicant has convincingly demonstrated that the additional parking is required to meet the anticipated parking demand of the proposed uses.

b. That the provision of the additional parking will not result in an over dependence on automobiles and will not adversely affect transit, bicycle, or pedestrian access to the site or other adjacent uses.

Table 9-4.404: Estimated Parking Demand

Use Type	Number of spaces	Per
Residential Use Types		
Single Unit	1	dwelling unit
Two Unit and Multi-Unit		
All except senior[2] and low-income housing[3]		
Resident parking	1	dwelling unit
Guest parking for developments with five or more dwelling units	0.2	dwelling unit
Senior[2] and low-income housing[3]		
Resident parking	0.5	dwelling unit
Guest parking for developments with five or more dwelling units	0.2	dwelling unit
Domestic Violence Shelter	0.25	bed
Group Residential		
Small	none	
Large	0.25	bed
Mobile Home Park	1	mobile home
Residential Care Facility		
Limited	none	
General	0.25	bed
Supportive Housing	0.25	bed
Transitional Housing	0.25	bed
Commercial and Institutional Use Types		
Adult Oriented Businesses		
Retail	3	1,000 gross square feet
Performance	5	1,000 gross square feet
Animal Care and Sales		
Grooming	TBD[1]	
Kennel/Animal Care	TBD[1]	
Pet Stores	3	1,000 gross square feet
Veterinary Services	3	1,000 gross square feet
Arts and Entertainment		
Gallery	1	1,000 gross square feet
Indoor and Outdoor Entertainment		
With fixed seats	0.2	seat[4]
Without fixed seats	10	1,000 gross square feet of indoor assembly area
Banks and Financial Institutions	3	1,000 gross square feet

Use Type	Number of spaces	Per
Business Services	3	1,000 gross square feet
Colleges and Trade Schools	0.5	maximum school population on-site at any one time, including students, teachers, and staff
Community Assembly		
Small	none	
Large		
With fixed seats	0.2	seat[4]
Without fixed seats	10	1,000 gross square feet of indoor assembly area
Day Care Centers	3	1,000 gross square feet
Eating and Drinking Establishments		
Bars/Nightclubs/Lounges	8	1,000 gross square feet
Restaurants	8	1,000 gross square feet
Mobile Food Vendors	TBD[1]	
Emergency Shelters	TBD[1]	
Funeral Homes, Mortuaries and Mausoleums		
With fixed seats	0.2	seat[4]
Without fixed seats	10	1,000 gross square feet of indoor assembly area
Health Care		
Clinics and Medical Offices	3	1,000 gross square feet
Hospitals	3	1,000 gross square feet
Medical Laboratories (non research)	4	1,000 gross square feet
Instructional Services		
Individual/ Small Group Instruction	none	
Group Instruction	0.2	student
Libraries and Museums		
Libraries	2.3	1,000 gross square feet
Museums	1	1,000 gross square feet
Live/Work Unit - *All*		
The greater of	1.5	live/work unit
or	1.5	1,000 gross square feet
Lodging		
Hotels and Motels	0.5	room
Bed & Breakfast	TBD[1]	
Major Public Services	TBD[1]	
Marina	TBD[1]	
Motor Vehicle Sales and Services		
Cleaning	0.5	maximum number of employees on site at any one time
Rentals	1	maximum number of rental vehicles on site at any one time
plus	0.5	maximum number of employees on site at any one time
Sales and Leasing	1	1,000 gross square feet
Repair and Service	1	service bay[5]

Use Type	Number of spaces	Per
Service Station	1.2	fueling station[6]
Towing and Impounding	TBD[1]	
Offices - *All*	2.4	1,000 gross square feet
Parking	none	
Personal Services		
Small	none	
Large	2.4	1,000 gross square feet
Public Safety Facilities	TBD[1]	
Recreation		
Gaming	5	1,000 gross square feet
Indoor	TBD[1]	
Outdoor	TBD[1]	
Repair Services	3	1,000 gross square feet
Retail		
Fire Arms and Ammunition	3	1,000 gross square feet
Liquor Sales	3	1,000 gross square feet
Tobacco Shops	3	1,000 gross square feet
Small Stores	3	1,000 gross square feet
Medium Stores	3	1,000 gross square feet
Large Stores	4	1,000 gross square feet
Outdoor Sales	TBD[1]	
Food and Beverage Sales	3	1,000 gross square feet
Schools	0.08	student
Social Service Facilities	3	1,000 gross square feet
Industrial Use Types		
Arts-Industrial - *All*	1	1,000 gross square feet
Commercial Kitchens	1	1,000 gross square feet
Construction and Maintenance	1	1,000 gross square feet
Crematories	1	1,000 gross square feet
Food Production and Assembly - *All*	1	1,000 gross square feet
Hazardous Waste Facilities - *All*	TBD[1]	
Laundry and Dry Cleaning Services	1	1,000 gross square feet
Manufacturing		
Pharmaceutical	1	1,000 gross square feet
Custom	0.75	1,000 gross square feet
Light	0.75	1,000 gross square feet
General	1	1,000 gross square feet
Heavy	1	1,000 gross square feet
Recycling Facilities - *All*	TBD[1]	
Research and Development	1.5	1,000 gross square feet
Salvage and Wrecking	TBD[1]	
Storage and Distribution		
Indoor	0.5	1,000 gross square feet
Outdoor	TBD[1]	
Personal	0.15	1,000 gross square feet

Use Type	Number of spaces	Per
Agricultural Use Types		
Community Gardens	TBD[1]	
Indoor Agriculture	TBD[1]	
Outdoor Agriculture	TBD[1]	
Animal Husbandry	TBD[1]	
Communication, Transportation, and Utilities Use Types		
Communication Facilities		
Transmission Towers	none	
Equipment within Buildings	0.5	maximum number of employees on site at any one time
Transportation and Delivery Services		
Bus/Rail Passenger Stations	60	1,000 daily boardings
Truck/Rail Freight Terminals	0.5	maximum number of employees on site at any one time
Human-Powered	none	
Light Fleet	1	maximum number of fleet vehicles on site at any one time
plus	0.5	maximum number of employees on site at any one time
Utility Services	TBD[1]	

Notes:

1. TBD = To be determined. See Section 9-4.404(e).
2. Senior housing means housing that is restricted to older adults, in which at least one resident of each unit must be a "senior citizen" as defined in California Civil Code Section 51.3.
3. Low-income housing means housing that is restricted to low, very low, or extremely low income households, as defined for Alameda County by the California Department of Housing and Community Development.
4. Each 30 inches of a fixed bench or pew shall be considered one seat.
5. Service bays may not be counted towards this requirement.
6. Fueling stations may be counted towards this requirement.

9-4.405 Shared Parking.

(a) **Description.** Shared parking represents an arrangement in which two or more nonresidential uses on the same lot with different peak parking demand periods use the same off-street parking spaces to meet their off-street parking requirements.

(b) **Calculation of Parking Requirement for Shared Parking.** The estimated parking demand for each use shall be calculated for each hour of a 24-hour period, based on the percent of peak demand for each hour. The hourly demand for all uses shall be totaled for each hour, and the greatest resulting hourly demand shall be the required number of parking spaces. This required number may be reduced or increased pursuant to Sections 9-4.404, Calculation of Parking Requirement, and 9-3.406, TH Transit Hub Overlay Zone. The hourly demand for each use shall be based on the most recent edition of *Parking Generation* published by the Institute of Transportation Engineers or other equivalent information. See Table 9-4.405 for an example.

Table 9-4.405: Example of Shared Parking Calculation

Use	**Office**		**Retail**		**Hotel**		**TOTAL without shared parking**
Size	100,000 gross square feet		20,000 gross square feet		150 rooms		
Estimated Parking Demand	**240 spaces**		**60 spaces**		**75 spaces**		**375**
Hour Beginning	Percent of Peak Period	Parking Demand	Percent of Peak Period	Parking Demand	Percent of Peak Period	Parking Demand	**TOTAL with shared parking**
12:00-4:00 a.m.	--	--	--	--	--	--	--
5:00 a.m.	--	--	--	--	--	--	--
6:00 a.m.	--	--	--	--	**100%**	**75**	75
7:00 a.m.	19%	46	5%	3	96%	72	121
8:00 a.m.	64%	154	18%	11	90%	68	233
9:00 a.m.	91%	218	38%	23	87%	65	306
10:00 a.m.	99%	238	68%	41	82%	62	341
11:00 a.m.	99%	238	91%	55	77%	58	351
12:00 p.m.	98%	235	**100%**	**60**	77%	58	**353**
1:00 p.m.	96%	230	97%	58	75%	56	344
2:00 p.m.	**100%**	**240**	95%	57	73%	55	352
3:00 p.m.	96%	230	88%	53	70%	53	336
4:00 p.m.	90%	216	78%	47	71%	53	316
5:00 p.m.	58%	139	62%	37	70%	53	229
6:00 p.m.	--	--	64%	38	74%	56	94
7:00 p.m.	--	--	77%	46	75%	56	102
8:00 p.m.	--	--	70%	42	79%	59	101
9:00 p.m.	--	--	42%	25	85%	64	89
10:00 p.m.	--	--	--	--	87%	65	65
11:00 p.m.	--	--	--	--	97%	73	73

9-4.406 Design Standards for Parking Lots and Structures.

The parking area design standards of this Section apply to all off-street parking areas. All required parking spaces and associated maneuvering aisles, driveways, and other related features shall be designed and arranged so as to provide motor vehicles with adequate ingress to and egress from all required parking spaces, and to provide pedestrians with adequate access to parked vehicles. All parking areas shall be subject to the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to Parking and Access.

(a) **Parking Layout and Dimensions.** The layout and dimensions of off-street parking facilities shall be as set forth in Figure 9-4.406 and Table 9-4.406, as further provided below.

(1) Regulatory and Calculated Dimensions. Stall width, stall length, and aisle width, as shown in Table 9-4.406, are regulatory. Other dimensions shown in Table 9-4.406 are calculated from these required dimensions, and are provided for convenience.

(2) Stall Width and Length. As indicated in Table 9-4.406, the required minimum stall width and length for various parking angles are as set forth below. Compact spaces or other size spaces with less width or length are not permitted.

a. Width. For parking angles of more than 30° the required minimum stall width is 8’-6”. For parking angles of 30° or less, the required minimum stall width is 8’-0”.

b. Length. For all parking angles other than parallel parking, the required minimum stall length is 18’-0”. For parallel parking, the required minimum stall length is 22’-0”.

(3) Aisle Width for Parking Angles Not Shown. For parking angles not shown in Table 9-4.406, the required aisle width shall be interpolated from the values in the table. For example, for a parking angle of 70°, which is two-thirds of the increment between 60° and 75°, the required one-way aisle width is 18’-8”, which is two-thirds of the increment between the required aisle widths for 60° parking and 75° parking, 16’-0” and 20’-0”, respectively.

(4) Alternate Maneuvering Aisle and Parking Space Widths. For parking angles equal to or greater than 45° and less than 90°, one-way aisle width may be decreased by 3” for each 1” increase in stall width, up to a maximum stall width of 9’-2”. For 90° parking, one-way and two-way aisle width may be decreased by 3” for each 1” increase in stall width, up to a maximum stall width of 9’-2” and a minimum aisle width of 22’-0”.

(5) Two-Way Modules. Table 9-4.606 provides the dimensions for parking modules with one-way traffic. For parking modules with two-way traffic, add the difference in width between a two-way aisle and a one-way aisle. For example, for a two-way module with a parking angle of 45°, add 8’-0”, which is the difference between a two-way aisle (20’-0”) and a one-way aisle (12’-0”).

(6) Overhang. Parking stall lengths, except for parallel spaces, may be reduced by two feet where the parking stall is designed to abut a landscaped area a minimum of five feet wide, such that the front of the vehicle can overhang the landscaped area.

(7) Spaces Abutting Walls or Posts. For each side of a parking space abutting a wall or post, an additional foot of width shall be required.

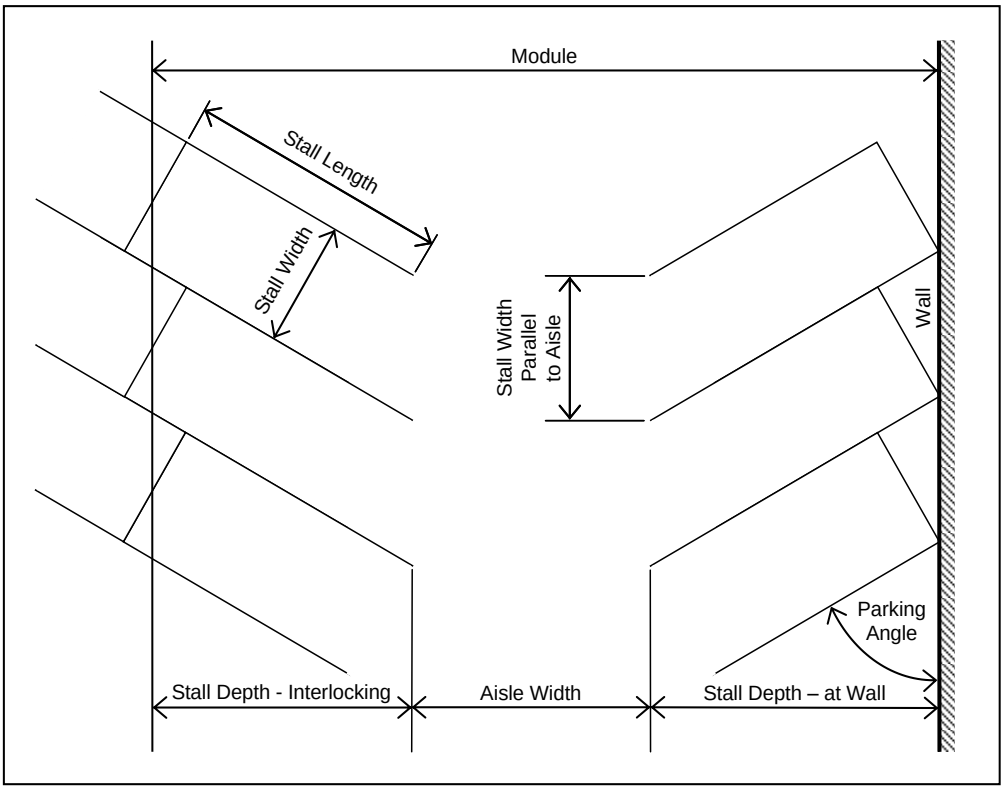

Figure 9-4.406. Parking Layout.

Table 9-4.406: Parking Dimensions

	Regulatory				Calculated for Reference					
Parking Angle	Stall Width	Stall Length	Aisle Width		Stall Width Parallel to Aisle	Stall Depth		Module (one-way)		
			One-Way	Two-Way		Inter-locking	At Wall	Non-Inter-locking	Inter-locking	Half Inter-locking[1]
Parallel	8’-0”	22’-0”	12’-0”	20’-0”	- -	- -	- -	28’-0”	- -	- -
30°	8’-0”	18’-0”	12’-0”	20’-0”	16’-0”	12’-6”	15’-11”	43’-10”	36’-11”	40’-5”
45°	8’-6”	18’-0”	12’-0”	20’-0”	12’-0”	15’-9”	18’-9”	49’-6”	43’-6”	46’-6”
60°	8’-6”	18’-0”	16’-0”	20’-0”	9’-10”	17’-9”	19’-10”	55’-8”	51’-5”	53’-7”
75°	8’-6”	18’-0”	20’-0”	20’-0”	8’-10”	18’-6”	19’-7”	59’-2”	57’-0”	58’-1”
90°	8’-6”	18’-0”	24’-0”	24’-0”	8’-6”	18’-0”	18’-0”	60’-0”	- -	- -

Notes: 1. One side is interlocking and the other side is non-interlocking, similar to the parking layout illustrated in Figure 9-4.406.

(b) **Location of Parking Areas.** Except as otherwise allowed by Section 9-4.407, required parking spaces must be located on the same lot as the use to be served by the parking. Additionally, parking areas shall be located in accordance with the following standards:

(1) No vehicle shall be required to cross a loading space or another parking space in order to gain access to a required parking space, except that tandem parking may be permitted pursuant to subsection (h) below.

(2) Except as provided in subsection (3) below, off-street parking shall not be located in required front yards or in required street side yards.

(3) No off-street parking spaces shall be located between the front lot line and the front wall of a building or its projection across the lot, except upon the granting of a conditional use permit. To grant such a conditional use permit, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

a. That the parking spaces are required by this Article.

b. That there is no other feasible way to provide the required parking.

c. That all applicable provisions of the design standards in this Section have been met.

d. That the applicable landscaping and screening requirements of Article 5 of this Chapter have been met.

e. That the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to Parking and Access, have been met.

(c) **Driveways and Access.**

(1) Driveway Width.

a. Parking facilities containing fewer than 15 required parking spaces shall have only a single driveway of no less than nine feet and no more than ten feet in width.

b. Parking facilities containing 15 or more required parking spaces may have one-lane driveways of no less than nine feet and no more than ten feet in width, and two-lane driveways of no less than 18 feet and no more than 20 feet in width. The number and width of driveways shall be the minimum necessary to efficiently serve the lot as determined by the Director.

(2) Vehicle Flow.

a. Except for those serving four or fewer residential units, all parking areas shall be designed so that a motor vehicle leaving the parking area will enter the public right-of-way traveling in a forward direction.

b. Parking areas shall be designed so that a vehicle will not have to enter a public right-of-way to move from one location to another within the parking area.

(d) **Surface.** All outdoor parking spaces, driveways, and maneuvering areas shall be designed, built and permanently maintained to avoid dust, mud and standing water and to

maximize permeability. These surfaces may include pervious pavements, sand-set pavers, supported turf systems and vegetation. A combination of surfaces may be used; for example, two-track driveways of concrete strips with pervious areas between the strips and on the edges.

(e) **Striping and Marking.** In all parking facilities containing four or more spaces, each parking space shall be clearly striped with paint or other similar distinguishable material, except that the Director may approve suitable alternate means of marking the spaces.

(f) **Vertical Clearance.** All covered parking shall have a minimum vertical clearance of 7'-6", except for spaces in parking lifts, and except that the minimum vertical clearance for disabled parking shall be as required by the Building Regulations in Title 8.

(g) **Slope.** The maximum slope of parking facilities shall be as set forth below unless the Director approves a greater slope based upon the advice of a civil engineer or other qualified professional.

(1) Parking Spaces. All parking spaces and abutting access aisles shall have a maximum slope of five percent measured in any direction.

(2) Driveways and Ramps. The maximum slope of any driveway or ramp shall be 20%. If the slope of such driveway or ramp exceeds 10%, transitions shall be provided at each end not less than eight feet in length and having a slope equal to one-half the driveway or ramp slope.

(h) **Tandem Parking.** Required parking may be arranged as tandem spaces provided that pairs of spaces in tandem are assigned to the same residential unit or to employees of the same non-residential establishment, or that a full time parking attendant supervises the parking arrangements at all times when the uses served are in active operation. The provisions of Figure 9-4.406 and Table 9-4.4.06 pertaining to required stall width, stall length, and aisle width shall apply to tandem spaces, except that the stall length shall be doubled for each pair of tandem spaces.

(i) **Parking Lifts.** Required parking may be provided in parking lifts provided that, if it is necessary to remove one vehicle from the lift to access another vehicle, the parking shall be subject to the provisions of subsection (h) above applicable to tandem parking. Parking lifts allowing each vehicle to be independently accessed have no such restrictions. The provisions of Figure 9-4.406 and Table 9-4.4.06 applicable to 90° parking shall apply to parking lifts, including the requirement for an aisle of 24'-0". Exterior parking lifts shall be adequately screened from public view as required by Section 9-4.503(g).

(j) **Landscaping and Screening.**

(1) Surface Parking. All open parking areas shall be landscaped and/or screened as required by Section 9-4.503(g).

(2) Structured Parking. Above-grade structured parking shall comply with the following:

a. Above-grade parking shall include space for ground-level uses with active street frontages where such uses are feasible. Where active ground-level uses are not feasible, as determined by the Director, the ground level of

structured parking shall be designed with architecturally attractive frontages. Such frontages may include unique designs or materials, such as glass, articulated masonry, art displays, murals, or landscaped setbacks.

b. Automobiles and direct light from interior fixtures shall not be visible from any public right-of-way.

(k) **Lighting.** Except for those serving four or fewer residential units, all open parking areas shall be provided with exterior lighting meeting the following minimums:

(1) The lighting system shall provide not less than 1.0 footcandle and not more than 5.0 footcandle overall average illumination with a minimum of .25 footcandles on the parking surface.

(2) All lighting shall be on a time clock or photo-sensor system so as to be turned off during daylight hours and during any hours when the parking area is not in use. This requirement does not apply to any lighting that is required for security.

(3) All parking area lighting shall meet any applicable energy efficiency requirements of the Building Regulations in Title 8.

(4) All lighting shall be designed to confine direct rays to the premises. No light fixture shall emit any direct light above a horizontal plane through the fixture. No spillover beyond the property line shall be permitted, except onto public thoroughfares; provided, however, that no such light shall cause a hazard to motorists.

(l) **Electric Vehicle Charging Stations.** In parking facilities containing 17 or more spaces serving Multi-Unit Residential and Lodging: Hotels and Motels uses, at least three percent of parking spaces shall be electric vehicle (EV) charging stations. Such spaces may be counted towards the parking requirements of this Article. For all other uses, EV charging stations are eligible for development bonuses pursuant to item (16) in Table 9-4.204(c).

(1) Size. Electric vehicle charging stations shall be the same size as other spaces, as specified in Section 9-4.406(a). The electric vehicle charging equipment shall not reduce the size of the space.

(2) Signage. Each electrical vehicle charging station shall be clearly marked with a sign reading “Electrical Vehicle Charging Station.”

(3) Equipment. Electrical vehicle charging stations shall be equipped with electrical outlets, and may also be equipped with card readers, controls, connector devices and other equipment as necessary for public use. All such equipment shall be in compliance with the Building Regulations in Title 8 and applicable provisions of the California Green Building Standards Code pertaining to electrical vehicle charging.

9-4.407 Alternative Compliance with Parking Requirements.

(a) **Alternative Parking Plan.** An alternative parking plan, as provided by this Section, may be permitted upon the granting of a conditional use permit. To grant such a conditional use permit, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(1) That the applicant has convincingly demonstrated that it is physically impossible to provide the required number of parking spaces in conformance with the design standards of Section 9-4.406 on the same lot as the principal use to be served by the parking.

(2) That a parking arrangement approved pursuant to this Section will be in place at all times during operation of the principal uses to be served by the parking.

(b) **Off-Site Parking.** The alternative parking plan may allow required off-street parking spaces to be located on a remote and separate lot from the lot on which the principal use is located, subject to the following standards:

(1) Zoning District. Off-site parking may not be located in a zoning district in which the principal use served by the parking is prohibited pursuant to Article 2 of Chapter 3.

(2) Distance. Unless a shuttle service is provided, the off-site parking shall be located within a reasonable walking distance of the principal use served, with consideration given to all relevant factors including, but not limited to, the characteristics of the use served by the parking and the quality of the walk.

(3) Other Jurisdiction. The off-site parking may be located in Oakland or Berkeley, subject to applicable regulations of that jurisdiction.

(c) **Valet Parking.** The alternative parking plan may allow valet parking as a means of satisfying all or a portion of the off-street parking requirement. Valet parking may be used to accommodate more parking spaces on the site of the principal use served by the parking than could be accommodated in conformance with the design standards of Section 9-4.406. It may also be used to provide off-site parking, subject to the requirements of subsections (b)(1) and (b)(3) above. Any valet parking shall not cause interference with the public use of rights-of-way or imperil public safety.

(d) **Parking In-Lieu Fees.** The alternative parking plan may allow for the payment of a parking in-lieu fee to allow the City to acquire sites for public parking to meet the parking needs that cannot be supplied on site, or for public transportation facilities, provided that the developer of a non-residential project contributes toward the acquisition and development of such facilities to the extent that the developer would have been obligated to provide required on-site parking. A parking in-lieu fee shall be provided for nonresidential uses only as follows:

(1) Parking In-Lieu Fee Amount. The amount of the parking in-lieu fee shall be as set forth in the Master Fee Schedule.

(2) Deposit of Funds. Parking in-lieu fees shall be deposited with the City of Emeryville prior to issuance of a building permit in a separate fund to be known as the Parking In-Lieu Fee Fund and shall be used for off-street parking facilities,

including property acquisition and development of parking facilities located in the general vicinity of the buildings for which the payments are made.

(3) Refund of Fee. A parking in-lieu fee may be refunded, without interest, to the person who made such payment, or his assignee or designee, if additional off-street parking spaces are provided for such building or use by others than the City, so as to satisfy the parking requirement for which the in-lieu payment was made. To obtain a refund, the required off-street parking spaces must be in place prior to issuance of a certificate of occupancy and before funds are spent or committed by the City.

9-4.408 Bicycle Parking.

(a) **Title and Purpose.** This Section establishes bicycle parking requirements. The purpose of these requirements is to ensure that adequate bicycle parking is provided and is conveniently located and sufficiently secure from theft and damage. These requirements are assumed to be minimums only. It is the responsibility of the developer, owner, or operator of any specific use to provide adequate bicycle parking facilities.

(b) **General Requirements.** Short-term publicly accessible bicycle parking for visitors, and long-term secured bicycle parking for building occupants, shall be required when:

(1) A building is constructed;

(2) An existing building, including a legal nonconforming structure, is enlarged for any purpose; or

(3) The use of any building or portion thereof is changed to one requiring the issuance of a conditional use permit and then only to that portion of the building subject to the change of use.

(c) **Exemptions.** No bicycle parking is required for Single Unit or Two Unit residential uses.

(d) **Standards for All Bicycle Parking.**

(1) Design and Installation.

a. A bicycle parking space shall be in a paved, level, drained, lighted area with access to a right-of-way without the use of stairs, and shall consist of either:

i One side of a securely fixed rack element that supports the bicycle upright by its frame, prevents the bicycle from tipping over, and allows the frame and at least one wheel to be locked to the rack element with one lock; or

ii A bicycle locker constructed of theft-resistant material with a lockable door which opens to the full width and height of the locker. Bicycle lockers shall be weather-proof if exposed to the elements; or

iii. For long-term bicycle parking only, wall-mounted racks or wall- or ceiling-mounted hooks so that bicycles may be hung vertically.

b. Each bicycle parking space shall be no less than 15 inches wide, by six feet deep, with an overhead clearance of no less than seven feet. This can be satisfied by placing racks, each of which supports two bicycles, 30 inches apart. See Figure 9-4.408(d)(1)b. Wedge-shaped spaces may be narrower than 15 inches at one end.

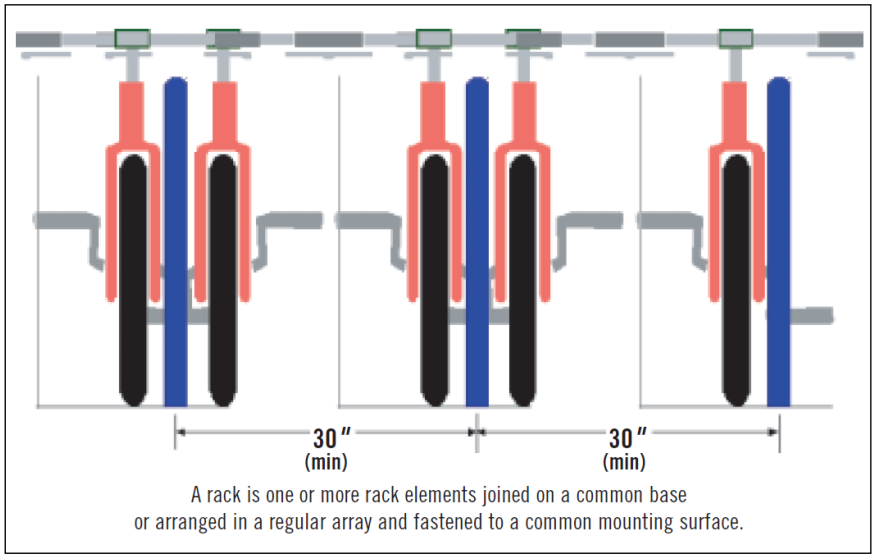

Figure 9-4.408(d)(1)b. Bicycle Racks.
Source: Association of Pedestrian and Bicycle Professionals

c. Each row of bicycle parking spaces shall be served by an aisle no less than four feet wide. Rack elements must be placed two feet from walls, fences or curbs. See Figure 9-4.408(d)(1)c. (Note: Each rack supports two bicycles, although, for clarity, only one bicycle per rack is shown in this illustration.)

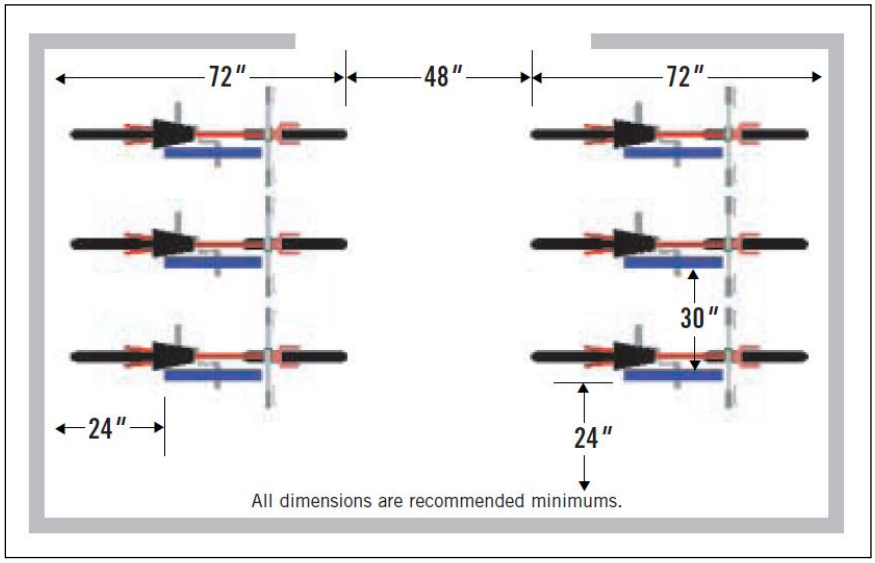

Figure 9-4.408(d)(1)c. Bicycle Parking Layout.
Source: Association of Pedestrian and Bicycle Professionals

d. Required bicycle parking may not be tandem; parking or removing a bicycle shall not require moving another parked bicycle.

e. Bicycle rack elements shall be fixed, securely anchored to the ground or to a structure by means that resist tampering or removal. Bicycle locker edges shall be secured with no exposed fittings or connectors. The Director may specify preferred installation methods, such as, but not limited to, embedded mounting in poured-in-place concrete, recessed bolt heads or grouted-in anchoring.

(2) Location.

a. Direct access from the bicycle parking to the public right-of-way shall be provided by means of access ramps, if necessary, and pedestrian access from the bicycle parking area to the building entrance shall also be provided.

b. Where bicycle parking is not directly visible and obvious from the right-of-way, signs shall be provided, except that directions to long-term bicycle parking may be posted or distributed by the building management, as appropriate.

c. Bicycle parking must be separated from automobile parking by a sufficient distance to prevent damage from moving automobiles or their loading and unloading. The Director may require a barrier or curb between bicycle and automobile parking areas on constrained sites.

d. Bicycle parking may be provided inside a building provided it is easily accessible from a building entrance and a bicyclist does not have to use stairs to reach it.

e. The placement of bicycle parking, bicycle rack elements and bicycle lockers shall not interfere with pedestrian circulation.

f. Required spaces may not be located within offices, commercial or industrial work areas, dwelling units or balconies.

(e) **Short-Term Bicycle Parking.**

(1) Short-term bicycle parking shall be provided within a convenient distance of, and clearly visible from, the main entrance to the building, as determined by the Director, and it shall not be farther than the closest automobile parking space, excluding disabled parking.

(2) At the discretion of the Director, some or all required short-term bicycle parking may be provided in a required yard.

(3) Minimum Short-Term Bicycle Parking Requirements.

a. All uses except Multi-Unit residential uses shall provide the greater of:

i. Two short-term bicycle parking spaces; or

ii. One short-term bicycle parking space for every ten required automobile parking spaces.

b. Multi-Unit residential uses shall provide one short-term bicycle parking space for every four visitor automobile parking spaces required by Section 9-4.404.

(4) Property owners shall remove abandoned bicycles from short-term bicycle parking associated with their property on a monthly basis, after posting a notice of removal on such bicycles for two weeks.

(f) **Long-Term Bicycle Parking.**

(1) To ensure security, long-term bicycle parking must be in an enclosed, covered, locked area, surrounded by a fence or wall at least seven feet tall, restricted to bicycle parking users, which includes fixed rack elements; or in bicycle lockers that are either weather-proof or covered. Bicycle lockers are eligible for development bonuses pursuant to item (8) in Table 9-4.204(c). Long-term bicycle parking may also be vertical, using either wall-mounted racks or wall- or ceiling-mounted hooks, installed per the manufacturer's specifications.

(2) Minimum Long-Term Bicycle Parking Requirements.

a. All uses except Multi-Unit residential uses shall provide the greater of:

i. Two long-term bicycle parking spaces; or

ii. One long-term bicycle parking space for every ten required automobile parking spaces.

b. Multi-Unit residential uses shall provide one covered long-term bicycle parking space for every one dwelling unit.

(3) Property owners shall remove abandoned bicycles from long-term parking associated with their property on a quarterly basis after posting a notice of removal warning on such bicycles for one month. This requirement shall not preclude provision of seasonal bicycle storage.

(4) Nonresidential uses are encouraged to provide showers and clothes lockers where bicycle parking is required. There shall be an automobile parking credit of one space per shower, up to one shower per 25 required bicycle parking spaces.

(g) **Definitions.** As used in this Section:

(1) "Abandoned bicycle" means a bicycle that has been parked continuously in one place for at least two weeks in short-term parking or at least one month in long-term parking, excluding seasonal bicycle storage as agreed upon between the property owner and the bicycle owner.

(2) "Bicycle" means a device propelled by human power upon which a person may ride, having two wheels one behind the other, at least one wheel being at least 13 inches in diameter.

(3) "Bicycle locker" means an enclosure that can be locked for the safe keeping of a bicycle, made of theft-resistant material, with a lockable door that opens the full width and height of the locker, with no exposed fittings or connectors.

(4) "Bicycle parking space" means a paved, level, drained, lighted area for the parking of one bicycle, having a minimum width of 15 inches, a minimum length of six feet, and a minimum overhead clearance of seven feet, with access to a right-of-way without use of stairs, which includes either a bicycle locker or one side of a fixed rack element. A wedge-shaped bicycle parking space may have one end narrower than 15 inches.

(5) "Fixed" means mounted so the rack element cannot be stolen; anchored in the pavement or a structure with vandal-resistant fasteners such as, but not limited to, embedded mounting in poured-in-place concrete, recessed bolt heads or grouted-in anchoring.

(6) "Long-term bicycle parking" means bicycle parking intended for the primary use of residents, employees and others who park bicycles for a duration of four hours or more.

(7) "Publicly accessible" means in an area that is visible from a right-of-way and open to the general public.

(8) "Rack element" means a fixed object that supports one or two bicycles upright by their frames in a stable position and enables the frame and at least one wheel of each bicycle to be locked.

(9) "Right-of-way" means a strip of land under the ownership or jurisdiction of the City of Emeryville and dedicated for use as a public way such as a path, street or park.

(10) "Secured bicycle parking" means an enclosed, covered, locked area, surrounded by a seven foot tall fence or wall, restricted to bicycle parking users, which includes fixed rack elements; or covered or weather-proof bicycle lockers.

(11) "Short-term bicycle parking" means bicycle parking intended for the primary use of customers, messengers, guests and others who park bicycles for less than four hours.

(12) "Tandem" means arranged so a bicycle must be removed to access another bicycle parking space.

9-4.409 Loading.

The requirements for off-street loading spaces for all uses shall be as specified in this Section.

(a) **Number of Spaces Required.**

(1) None Required. No off-street loading spaces are required for uses for which the estimated parking demand, as indicated in Table 9-4.404, is "none". In addition, no off-street loading spaces are required for the following residential use types:

Single Unit
Two Unit
Mobile Home Park

(2) Requirement "To be Determined". The off-street loading requirement for uses for which the estimated parking demand, as indicated in Table 9-4.404, is "To be determined" ("TBD"), shall be determined pursuant to Section 9-4.404(e) in the

same manner in which the estimated parking demand is determined. In addition, the off-street loading requirement shall be determined pursuant to Section 9-4.404(e) in the same manner in which estimated parking demand is determined for the following uses:

Residential Use Types:
- Domestic Violence Shelter
- Group Residential
- Residential Care Facility
- Supportive Housing
- Transitional Housing

Communication, Transportation, and Utilities Use Types:
- All

(3) All Other Uses. The off-street loading requirement for all other uses shall be as set forth in Table 9-4.409.

Table 9-4.409: Loading Requirements

Use Type	Number of spaces	Size
Residential Use Types		
Multi-Unit		
Less than 50 units	none	
50 to 149 units	1	small
150 to 300 units	2	small
Each additional 300 units or fraction of one-half or more thereof	1	medium
Commercial and Institutional Use Types		
Animal Care and Sales *Pet Stores* *Veterinary Services* Health Care *Clinics and Medical Offices* Offices - *All*		
Less than 25,000 gross square feet	none	
25,000 to less than 100,000 gross square feet	1	medium
100,000 to less than 200,000 gross square feet	2	medium
Each additional 100,000 gross square feet or fraction of one-half or more thereof	1	large

Use Type	Number of spaces	Size
All Other		
Less than 10,000 gross square feet	none	
10,000 to less than 20,000 gross square feet	1	medium
20,000 to less than 40,000 gross square feet	2	medium
40,000 to less than 80,000 gross square feet	2	large
Each additional 40,000 gross square feet or fraction of one-half or more thereof.	1	large
Industrial Use Types		
Research and Development		
Less than 25,000 gross square feet	none	
25,000 to less than 100,000 gross square feet	1	medium
100,000 to less than 200,000 gross square feet	2	medium
Each additional 100,000 gross square feet or fraction of one-half or more thereof	1	large
All Other		
Less than 10,000 gross square feet	none	
10,000 to less than 25,000 gross square feet	1	medium
25,000 to less than 50,000 gross square feet	1	large
50,000 to less than 100,000 gross square feet	2	large
100,000 to less than 200,000 gross square feet	3	large
Each additional 100,000 gross square feet or fraction of one-half or more thereof	1	large

(b) **Size of Spaces.** Size of loading spaces, as indicated in Table 9-4.409, shall be as follows:

(1) Small. Small loading spaces shall have a width of no less than ten feet, a length of no less than 25 feet and a vertical clearance of no less than eight feet.

(2) Medium. Medium loading spaces shall have a width of no less than 12 feet, a length of no less than 35 feet and a vertical clearance of no less than 14 feet.

(3) Large. Large loading spaces shall have a width of no less than 12 feet, a length of no less than 50 feet and a vertical clearance of no less than 14 feet.

(c) **Modifications.** In approving a project, the Director, Planning Commission, or City Council, as the case may be, may modify the number and size of loading spaces required pursuant to subsection (a) above because of the nature of the use or the design of the project.

(d) **Maneuvering Areas.** All off-street loading spaces for uses located on Transit Streets and Connector Streets, as defined in the General Plan, shall be designed and located so that there is sufficient off-street maneuvering area to accommodate vehicles using the loading

spaces. Maneuvering areas shall be designed to accommodate the largest vehicle intended to use the loading spaces and shall not be encumbered by parking stalls or physical obstructions. No vehicle shall back up or maneuver within the public right-of-way of a Transit Street or Connector Street to reach an off-street loading space.

(e) **Surface and Maintenance.** Loading spaces and the maneuvering areas and driveways serving them shall be paved and maintained with concrete, asphalt, or similar material of sufficient thickness and consistency to support anticipated traffic volumes and weights; properly graded for drainage; and maintained in good condition free of weeds, dust, trash, and debris.

(f) **Location.** Loading spaces shall be located on the same lot on which the use for which they are required is located, except that, upon the granting of a conditional use permit, loading spaces may be provided in a common loading area serving multiple adjacent uses and located on an adjacent lot within 300 feet of the lot on which the use requiring the loading spaces is located. To grant such a conditional use permit, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(1) That the common loading area results in a more efficient design than individual loading areas serving each use separately.

(2) That the total number of loading spaces provided in the common loading area is no less than the number of loading spaces that would be required if the uses served were located in a single facility.

(3) That the common loading area will be in place at all times during operation of the principal uses to be served by the loading spaces.

(g) **Access to Tenant Spaces Served by Loading Spaces.** Buildings served by loading spaces shall be designed such that there is a direct interior path of travel between the loading spaces and each tenant space served by the loading spaces of sufficient width and height to accommodate all material to be loaded and unloaded.

(h) **Availability and Utilization of Loading Spaces.** All loading spaces provided pursuant to the requirements of this Article shall be made readily available to pick-up and delivery vehicles during all hours when pick-ups and deliveries are allowed. Owners of property containing such loading spaces shall be responsible for advising drivers of pick-up and delivery vehicles of the location and hours of such loading spaces, shall require drivers to use such loading spaces, and shall not allow pick-up and delivery vehicles to be parked or loaded in the public right-of-way.

(i) **Landscaping and Screening.** All loadings spaces and the maneuvering areas and driveways serving them shall be landscaped and/or screened as required by Section 9-4.503(g).

(j) **Lighting.** All exterior loading spaces and the maneuvering areas and driveways serving them shall be provided with lighting meeting the following minimums:

(1) The lighting system shall provide not less than 1.0 footcandle and not more than 5.0 footcandle overall average illumination with a minimum of .25 footcandles on the surface.

(2) All lighting shall be on a time clock or photo-sensor system so as to be turned off during daylight hours and during any hours when the loading area is not in use and the lighting is not required for security.

(3) All loading area lighting shall meet any applicable energy efficiency requirements of the Building Regulations in Title 8.

(4) All lighting shall be designed to confine direct rays to the premises. No light fixture shall emit any direct light above a horizontal plane through the fixture. No spillover beyond the property line shall be permitted, except onto public thoroughfares; provided, however, that no such light shall cause a hazard to motorists.

ARTICLE 5. LANDSCAPING AND SCREENING

9-4.501 Purpose.

This Article establishes the landscaping and screening regulations. The purpose of these regulations is to enhance a pleasant visual character in the City that recognizes aesthetics and safety issues and to promote the planting of vegetation that supports human health and urban wildlife.

9-4.502 Applicability.

This section applies to any of the following:

(a) The construction or erection of any new building or structure for which a building permit is required.

(b) Any enlargement exceeding 1,000 square feet or ten percent in area, whichever is less, of the exterior dimensions of an existing building for which a building permit is required.

(c) Any construction of a new parking lot or expansion of an existing parking lot by more than 1,000 square feet or ten percent in area, whichever is less.

9-4.503 General Provisions.

(a) **Water Use and Irrigation.** All new or rehabilitated landscaping shall comply with the applicable provisions of Article 6 of this Chapter, Water Use. All required landscaping shall be provided with an irrigation system, including drip irrigation if appropriate, unless provisions are made for hand watering or the Director determines that an irrigation system is not required.

(b) **Composition of Required Landscaping.** All required landscaping shall include the installation and maintenance of some combination of trees, ground cover, shrubs, vines, flowers, lawns, and water features except swimming pools and spas.

(c) **Existing Trees.** For projects on private property that require discretionary City approval, the Director, Planning Commission, or City Council, as the case may be, may require that existing healthy on-site trees be preserved and incorporated into the project unless this is shown to be infeasible. An arborist report, prepared at the expense of the applicant, may be required. At the applicant's option, this may be prepared either by the City's arborist, or by an arborist selected by the applicant and peer-reviewed by the City's arborist.

(d) **Required Screening Materials.** Screening materials may include solid fences, walls, or hedges. When hedges of a specific height are required, the plant material shall be of a type which will provide a year-round solid visual barrier at the prescribed height.

(e) **Maintenance of Landscaping.**

(1) All planted areas shall be well maintained and kept free of weeds and debris.

(2) All plants shall be kept in a healthy and growing condition and, whenever necessary, replaced with new plants of the same species unless the Director approves a different species. Good horticultural practices shall be followed in all instances.

(3) Irrigation systems shall be kept in good working condition. Adjustments, replacements, repairs, and cleaning shall be a part of regular maintenance.

(4) Stakes and ties on trees shall be checked regularly for correct functions. Ties shall be adjusted to avoid creating abrasions or girdling on trunks or branches.

(5) All required fences and walls shall be permanently maintained in good condition and, whenever necessary, repaired or replaced.

(f) **Separation from Parking and Maneuvering Areas.** All landscaped areas shall be separated from parking and maneuvering areas.

(1) If the landscaped area is not used for stormwater drainage, a four-inch high curb shall be used to separate the landscaped area from parking and maneuvering areas.

(2) If the landscaped area is used for stormwater drainage, the landscaped area shall be separated from parking and maneuvering areas with either a concrete strip that is flush with the paved surface or with a curb or wall with cuts to allow water into the landscaped area. When using flush curbs, wheel stops fabricated from recycled material shall be used.

(g) **Screening of Open Parking and Loading Areas.** All open parking areas containing three or more spaces and all loading areas shall be screened by a fence, wall or hedge as follows:

(1) When parking is located within or adjacent to a required rear yard or a side yard not abutting a street, such screening shall be not less than five feet high nor more than six feet high, and shall be located along the entire length of the parking area.

(2) When such parking is adjacent to a street right-of-way, screening shall be located on the building setback line, or adjacent to the outside edge of any required boundary landscaping, and shall be not less than three feet, nor more than six feet in height.

(3) All loading areas adjacent to streets shall be screened from public view to the maximum extent possible.

(h) **Landscaping of Open Parking Areas.** For each open parking area containing 35 or more spaces, one large-canopy tree per four parking spaces, one medium-canopy tree per three parking spaces, or one small-canopy tree per two parking spaces shall be provided. Boundary planting may not be counted towards this requirement.

(1) Small-, medium-, and large-canopy trees shall be defined as follows:

a. Small-canopy trees have a canopy width of at least 15 feet and less than 25 feet and are at least 20 feet tall.

b. Medium-canopy trees have a canopy width of at least 25 feet and less than 35 feet.

c. Large-canopy trees have a canopy width of at least 35 feet.

(2) Measurement. Tree canopy width is the average diameter of the tree's canopy at maturity.

(i) **Unpaved or Undeveloped Area.** Unpaved or undeveloped sites shall be kept in a neat and weed-free condition and may be hydro-seeded with native plants or wildflowers.

9-4.504 Landscaping Requirements by Zoning District.

(a) **Industrial Zones.** Development Projects in the Industrial zones shall include landscaped areas consisting of at least five percent of the project site.

(b) **All Other Zones.** Development projects in any other zone shall include landscaped areas consisting of at least ten percent of the project site.

9-4.505 Fences and Walls.

(a) **Maximum Height.**

(1) Residential Zones.

a. Front Yards and Street Side Yards.

i. Solid. The maximum height of solid fences and walls in a required front yard or street side yard shall be three feet.

ii. Open. The maximum height of fences that are not less than 50% open in a required front yard or street side yard shall be four and one-half feet.

b. Rear Yards and Interior Side Yards. The maximum height of fences and walls in a required rear yard, including a rear yard abutting a street, or in an interior side yard shall be six feet.

c. Other Situations. A maximum six foot fence or wall may be located anywhere on a lot that is not within a required yard.

(2) All Other Zones. Fences or walls shall not exceed eight feet in height unless the Director determines that a taller fence or wall is appropriate for the use of the site. In no case, shall a fence or wall be taller than the base height limit for the site as set forth in Section 9-4.202. Any fence or wall that is more than six feet in height requires a building permit pursuant to Title 8 and design review pursuant to Article 4 of Chapter 7.

(b) **Materials.** Durable materials shall be used for fences, such as wood or wrought iron. Chain-link fencing visible from the public right-of-way is not permitted unless screened by solid landscaping or the Director determines that it is appropriate for the use of the site. Barbed wire and razor wire are prohibited if visible from the public right-of-way.

(c) **Measuring Height of Fences and Walls.** The heights of fences and walls shall be measured from the adjacent grade. If grade levels are different on either side of the fence or wall, the height shall be measured from the higher grade. See also Section 9-4.202(b)(2) and Figure 9-4.202(b).

9-4.506 Screening of Outdoor Storage (Principal Use) and Open Storage (Accessory Use).

All outdoor storage areas shall be screened such that they are not visible from the ground level of an adjacent property or public right-of-way. The requirement for screening to enclose storage areas between adjoining side and/or rear property lines may be removed by mutual agreement of the property owners involved.

9-4.507 Screening of Mechanical and Electrical Equipment.

All mechanical equipment, including electrical and gas meters; heating, ventilation, and air conditioning units; radio/TV antennas; satellite dishes; and all roof mounted mechanical equipment shall be visually and acoustically screened in such a manner so that it is not visible from an adjacent property at or below the level of the mechanical equipment, or from a public right-of-way, and so that it complies with the Performance Standards for noise at Section 9-5.1109. Electrical transformers and other utility boxes shall be either placed underground or appropriately screened.

ARTICLE 6. WATER USE

9-4.601 Purpose and Applicability.

The purpose of this Article is to set forth site development regulations related to the conservation and use of water. These regulations are applicable to all new and existing uses unless otherwise specified.

9-4.602 Water Efficient and Bay Friendly Landscaping.

(a) **Purpose.** This Section establishes water efficient landscaping requirements for new and rehabilitated landscapes. The purpose of the requirements is to foster efficient water use and prevent water waste while ensuring high quality landscapes.

(b) **Applicability.** This Section shall apply to new construction and rehabilitated landscapes for public agency projects and private development projects with a landscape area equal to or greater than 1,000 square feet.

(c) **Requirements for Smaller Landscapes.** New or rehabilitated landscaping between 1,000 square feet and 2,499 square feet of landscaped area shall comply with landscape requirements for smaller landscapes for planting, mulch, grading, and irrigation, as specified by the Director.

(d) **Requirements for Larger Landscapes.** New and rehabilitated landscapes with a landscape area equal to or greater than 2,500 square feet shall comply with landscape requirements for larger landscapes for planting, mulch, grading, and irrigation, as specified by the Director.

(e) **Water Waste, Stormwater Treatment and Recycled Water.** All projects subject to this Section shall comply with all other requirements of the Emeryville Municipal Code, including Chapter 36 of Title 5 prohibiting irrigation water waste, Chapter 13 of Title 6 regarding stormwater treatment, and Section 9-4.603 of this Article regarding recycled water.

(f) **Exceptions.** This Section shall not apply to the following:

  (a) Registered historical sites.

  (b) Ecological restoration projects that do not require a permanent irrigation system.

  (c) Plant collections, as part of botanical gardens and arboretums open to the public.

  (d) Cemeteries.

  (e) Projects with a landscape area less than 1,000 square feet.

9-4.603 Recycled Water

(a) **Purpose**. The use of potable water for certain uses when nonpotable water is available and feasible is a waste of water. The purpose of this Section is to implement state policies requiring the use of recycled water for nonpotable water uses within the designated recycled water use area when the City determines that there is not an alternative higher or better use for the recycled water, its use is economically justified and its use is financially and technically feasible for a project.

(b) **Use and Distribution of Recycled Water**. The use and distribution of recycled water shall be in accordance with applicable federal, state and local laws and regulations.

(c) **Requirement for Subdivisions in Recycled Water Area**. Projects involving subdivision of land for which a tentative map or parcel map is required pursuant to California Government Code Section 66426 and Chapter 6 of this Title 9 and which are within the recycled water project area shall be conditioned to provide a plumbing system to serve nonpotable uses in the common areas of the subdivision, including but not limited to golf courses, parks, greenbelts, landscaped streets and landscaped medians, if recycled water is available to the project site at a reasonable cost, is of adequate quality, will not be detrimental to public health, and will not adversely affect downstream water rights, degrade water quality or injure plants, fish and wildlife. The Director shall review all subdivision projects that are within the recycled water project area, confer with the recycled water provider, and determine requirements for recycled water plumbing. These requirements shall become conditions of approval.

(d) **Requirement for Non-Subdivision Projects and Projects Outside Recycled Water Area**. All projects within the recycled water project area that require Planning Commission or City Council approval, and all projects outside the recycled water project area that include one hundred thousand (100,000) square feet of non-residential space and require Planning Commission or City Council approval, shall be conditioned to require submittal of a letter from the recycled water provider stating requirements for recycled water plumbing, prior to issuance of building permit. In addition, if the project applicant is not complying with the requirements of the recycled water provider, the applicant shall provide a written explanation of its actions.

(e) **Agreement Between Recycled Water Producer and Water Supplier**. As set forth in California Water Code Section 65605(b)(5), recycled water service shall not commence in any service area of a private utility or public agency retail water supplier that is not a local agency, except in accordance with a written agreement between the recycled water producer and the private utility or public agency retail water supplier.

9-4.604 Water Reclaimed On-Site.

(a) **Purpose.** The purpose of this Section is to set forth standards for systems that reuse water on-site. Such systems help to conserve valuable water resources and are encouraged, provided that adequate safeguards are included to protect health.

(b) **Rainwater Capture Systems.** Systems that capture and store precipitation from roof areas and other above-ground impervious surfaces for landscape irrigation and/or indoor water use must comply with all applicable codes and regulations. Systems using rain barrels of up to 100 gallons and no pumps do not require a permit. Systems using cisterns of over 100 gallons and/or pumps require plumbing and/or electrical permits pursuant to the Emeryville Plumbing Code at Chapter 3 of Title 8 and/or the Emeryville Electrical Code at Chapter 4 of Title 8. Because the Emeryville Plumbing Code has no approved standards for rainwater capture systems, an Alternative Methods and Materials Request must accompany the permit application. Development bonuses may be available for such rainwater capture systems pursuant to Section 9-4.204.

(c) **Graywater Systems.** Systems that reuse domestic waste water from plumbing fixtures such as showers, dishwashers, and clothes washers for toilet flushing and irrigation must comply with the requirements for graywater systems of the Emeryville Plumbing Code in Chapter 3 of Title 8. Development bonuses may be available for such graywater reuse systems pursuant to Section 9-4.204.

(d) **Blackwater.** Waste water containing food, animal, or human waste, including but not limited to that from toilets and garbage disposals, shall not be reused on-site but shall be discharged directly into the sanitary sewer system.

9-4.605 Definitions.

As used in this Article, certain words and phrases are defined as follows:

(a) "Blackwater" means water polluted with food, animal, or human waste.

(b) "Cistern" means a precipitation storage device that holds over 100 gallons of rainwater, is installed above or below ground depending on site conditions, and which may utilize electrical pumps to move the rainwater.

(c) "Graywater" means untreated waste water which has not come into contact with toilet waste. Graywater includes used water from bathtubs, showers, bathroom sinks, clothes washing machines and laundry tubs. It does not include waste water from kitchen sinks, photo lab sinks, dishwashers or laundry water from soiled diapers.

(d) "Nonpotable water uses" means parks, highway landscaped areas, landscaped streets and medians, industrial and irrigation uses, landscaping, greenbelts, golf courses, floor trap priming, cooling towers, air conditioning devices, nonresidential toilet and urinal flushing, and subdivision common areas.

(e) "Potable water" means water which conforms to federal, state and local agency standards for human consumption.

(f) "Rain barrel" means a precipitation storage device that holds 100 gallons or less of rainwater and that captures flow directly from a downspout.

(g) "Rainwater capture" means collected precipitation from rooftops and other above-ground impervious surfaces that is stored in rain barrels or cisterns for later use.

(h) "Recycled water project area" means the portion in Emeryville of an area shown on the most recent recycled water project map from the recycled water provider, that can or may in the future use recycled water.

(i) "Recycled water" means water which, as a result of treatment, is suitable for beneficial use that would not otherwise occur.

(j) "Rehabilitated landscape" means any re-landscaping project in which more than 50% of the existing landscape material is replaced or modified within a 12-month period in more than 50% of the planting area.

ARTICLE 7. OTHER SITE DEVELOPMENT REGULATIONS

9-4.701 Minimum Lot Area and Width.

(a) **Minimum Lot Area.** No minimum lot area is prescribed except in the RM Medium Density Residential zone, in which the minimum lot area shall be 2,500 square feet.

(b) **Lot Width.**

(1) No minimum lot width is prescribed except in the RM Medium Density Residential zone, in which the minimum lot width shall be 25 feet.

(2) "Lot width" shall mean the narrowest distance between the side lot lines, measured at right angles to the lot depth.

9-4.702 Minimum Dwelling Unit Area.

(a) **RM Zone.** In the RM Medium Density Residential zone, each dwelling unit, except a Secondary Residential Unit, shall have a minimum floor area of not less than 500 square feet.

(b) **Other Zones.** In all other zones, no minimum dwelling unit area is prescribed. All dwelling units shall comply with applicable building code requirements in Title 8.

9-4.703 Pedestrian Access.

Unless the Director determines that this is infeasible due to site constraints or other compelling factors, the main pedestrian entrance to a nonresidential building shall be located on the public sidewalk; any entrances from parking areas shall be incidental or for emergency use only. The main pedestrian entrance shall be kept open to the public during all hours when the building is open for public access. To the extent feasible, the front doors of exterior ground floor residential dwelling units and live/work units shall be oriented to the public sidewalk.

9-4.704 Recycling and Trash Areas.

(a) **Applicability.** Residential projects of ten units or more and nonresidential projects of 10,000 square feet or more shall be subject to the requirements of this Section.

(b) **Standards.** Adequate dedicated storage and collection space shall be provided for trash, recyclables and compostables, subject to the following standards:

(1) The amount of space provided shall reflect the estimated volumes of trash and recyclable and compostable materials to be generated. Within this space, separate and dedicated containers shall be provided for trash and recyclable and compostable materials.

(2) Any chutes shall be separate, dedicated, and properly labeled, and shall be provided for each collected stream of materials (i.e. trash, recyclables and compostables).

(3) The amount of space provided for the collection and storage of recyclable materials shall be at least as large as the amount of space provided for the collection and storage of trash materials and the recycling area shall be at least as

accessible and convenient for tenants and collection vehicles as the trash collection and storage area.

(4) An appropriately sized and designed area for wastes banned from regular trash containers such as electronics, fluorescent lamps and batteries shall be designated.

(5) Residential properties shall provide an area for bulky item collection such as mattresses, furniture, tires and major appliances.

(6) Trash, recycling and composting storage areas shall include adequate space for the maintenance and servicing of containers for all materials that are provided by local hauling companies.

(7) Trash, recycling and composting storage areas shall be easily accessible for collection vehicle personnel and may be located either indoors or outdoors.

a. To the extent feasible, an indoor recycling and trash room or area shall be located on an exterior wall of the building with an adequately-sized door or gate access to the street so as to minimize distance for the collection vehicle personnel and eliminate temporary outdoor storage of containers on collection days.

b. An outdoor recycling and trash area shall be completely screened and covered from off-site view by a solid fence or masonry wall at least six feet high in harmony with the architecture of the building(s). A sewer drain, fire sprinklers, and roofing shall be provided per City standards.

c. If the day-to-day-use recycling and trash area cannot be located adjacent to the street, a service-day location easily accessible by the collection vehicle staff shall be provided in an area adjacent to the street, and shall be covered from off-site view by a solid fence or masonry wall at least six feet high in harmony with the architecture of the building(s) and covered by a roof.

9-4.705 Lighting and Illumination.

(a) **Applicability.** The provisions of this Section shall apply to all new and replacement outdoor lighting devices, not including signs.

(b) **Exemptions.** The following types of light fixtures shall be exempt from the provisions of this Section:

(1) Temporary emergency lighting needed by police, fire, and other emergency services.

(2) Temporary lights used for holiday decorations.

(3) Spotlights, searchlights, and lasers for special events subject to a temporary use permit. Restrictions on such lighting may be included in the conditions of approval of the temporary use permit.

(c) **General Regulations.**

(1) All exterior lighting shall be designed to confine direct rays to the premises. No light fixture shall emit any direct light above a horizontal plane through the

fixture. No spillover beyond the property line shall be permitted, except onto public thoroughfares; provided, however, that no such light shall cause a hazard to motorists.

(2) Exterior light fixtures attached to a building shall be designed as an integral part of the building and may highlight building forms and architectural details.

(3) All exterior lighting on a nonresidential property shall be on a time clock or photo-sensor system so as to be turned off during daylight hours and during any hours when the facility is not in use and the lighting is not required for security.

(4) All lighting shall meet any applicable energy efficiency requirements of the Building Regulations in Title 8.

(d) **Parking Lot Illumination.** Except for those serving four or fewer residential units, all open parking areas shall be provided with exterior lighting as required by Section 9-4.406(k).

(e) **Prohibitions.** Outdoor lighting fixtures shall not include flickering or flashing lights.

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CITYWIDE USE AND DEVELOPMENT REGULATIONS

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ARTICLE 1. GENERAL PROVISIONS

9-5.101 Purpose and Applicability.

The purpose of this Chapter is to set forth development regulations that apply throughout the city.

ARTICLE 2. MISCELLANEOUS USE REGULATIONS

9-5.201 Purpose.

The purpose of this Article is to consolidate in one location miscellaneous Citywide use and development regulations that pertain to the various Use Classifications in Chapter 2 and to other uses and situations, and that are so brief as not to warrant separate Articles.

9-5.202 Animal Care and Sales, *Kennel/Animal Care*.

Screening for any outdoor activities shall be provided in conformance with the requirements of Article 5 of Chapter 4.

9-5.203 Condominium Conversions.

See Article 7 of Chapter 6 for regulations pertaining to the conversion of rental housing to condominiums.

9-5.204 Drive-In and Drive-Through Facilities.

Drive-In and Drive-Through Facilities are prohibited. This prohibition does not apply to drive-in movies, which may be approved as temporary uses only, pursuant to the Temporary Use Permit procedure in Article 6 of Chapter 7.

9-5.205 Factory-Built Housing (Manufactured Homes).

Factory-built housing shall be treated the same as conventional site-built housing.

9-5.206 Lodging, *Bed and Breakfast*.

(a) **Separate Entry Required.** The residential unit containing the Bed and Breakfast establishment must have a separate private entry that is not shared with any other dwelling unit; shared entry, such as through a common lobby, hallway, pathway, or elevator, is not allowed.

(b) **Owner Occupancy Required.** The owner must reside in the residential unit containing the Bed and Breakfast establishment.

9-5.207 Medical Marijuana Dispensaries.

Medical marijuana dispensaries are prohibited pursuant to Section 5-28.04 of Chapter 28 of Title 5.

9-5.208 Mobile Food Vendors.

(a) **On the Public Right-of-Way.** Mobile Food Vendors to be located on the public right-of-way are not subject to these Planning Regulations, but are regulated pursuant to Chapter 27 of Title 5 and Chapter 3 of Title 6.

(b) **On Private Property.** Mobile Food Vendor to be located on private property or elsewhere not on the public right-of-way are subject to these Planning Regulations, and are eligible only for Temporary Use Permits pursuant to Article 6 of Chapter 7.

9-5.209 Mobile Homes on Individual Lots.

Mobile homes on individual lots shall be treated the same as Single Unit residential uses.

9-5.210 Recreation, *Gaming*.

Pursuant to Section 5-5.14 of Chapter 5 of Title 5, card rooms are only allowed on San Pablo Avenue south of Park Avenue.

9-5.211 Residential Care Facility, *Limited*.

Limited Residential Care Facilities, including group homes and Residential Care Facilities for the Elderly, which provide care for six or fewer persons shall be treated the same as Single Unit residential uses.

9-5.212 Residential Care Facilities for the Elderly.

(a) **Defined.** A Residential Care Facility for the Elderly is a Residential Care Facility, as defined in Section 9-2.215, that serves persons 60 years of age and older.

(b) **Building Intensity Bonus.** A Residential Care Facility for the Elderly shall receive a bonus of one percent of building intensity (floor area ratio or FAR) for each one percent of beds provided to persons eligible for Supplemental Security Income (SSI) as defined by the U.S. Social Security Administration, up to a maximum of 25%. This bonus is in addition to any bonuses available pursuant to Section 9-4.204.

(c) **Guarantee Required.** To be eligible for the bonus provided in subsection (b) above, the owner of the Residential Care Facility for the Elderly shall enter into an agreement with the City, in a form acceptable to the City Attorney, to guarantee the availability of such beds for persons eligible for SSI for a minimum of 55 years.

9-5.213 Retail.

(a) **Outdoor Sales.** Screening for any outdoor sales shall be provided in conformance with the requirements of Article 5 of Chapter 4.

(b) **Tobacco Shops.** Pursuant to Section 5-29.10 of Chapter 29 of Title 5, Tobacco Shops are prohibited from being located within 1,000 feet of public or private schools and parks, greenways and playgrounds.

9-5.214 Supportive Housing and Transitional Housing.

A Supportive Housing or Transitional Housing development shall be considered a residential use of property subject only to those same restrictions that apply to other residential uses of the same type (e.g. One Unit, Two Unit, or Multi-Unit) in the same zoning district.

ARTICLE 3. ADULT ORIENTED BUSINESSES

9-5.301 Purpose.

This Article establishes the adult entertainment regulations. The purpose of these regulations is to implement policies contained in the General Plan, particularly those relating to the conservation of existing neighborhoods and the compatibility of uses. In adopting this Article, it is recognized that certain types of adult entertainment businesses possess certain objectionable operational characteristics which, if such uses are allowed to concentrate, will have adverse effects upon the character of the areas in which they concentrate and adjacent neighborhoods. Special regulation of adult entertainment uses is therefore necessary to insure that these adverse effects of adult entertainment uses will not contribute to the blighting or downgrading of zoning districts in which they are permitted or of surrounding neighborhoods.

9-5.302 Effect.

This Article shall not be interpreted as legalizing or condoning the production, presentation, sale, advertisement, dissemination, or distribution of matter which is obscene as defined and regulated by applicable State and local laws; nor shall this Article be interpreted as legalizing or condoning participation in management, production, presentation, or exhibition of obscene live conduct in any public place or any place exposed to the public view as defined and regulated by applicable State and local law; nor shall this Article be interpreted as legalizing or condoning any other activity which is otherwise prohibited by State or local law.

9-5.303 Home Occupations.

It is unlawful to establish any adult entertainment business as defined in this Article as a Home Occupation as defined in Article 8 of this Chapter.

9-5.304 Districts Where Allowed.

It is unlawful to establish any adult entertainment business as defined in this Article in any district other than the INH Heavy Industrial zone.

9-5.305 Location Requirements.

Within the INH Heavy Industrial zone, no adult entertainment business shall be established in the following locations:

(a) Within 200 feet of any area zoned for residential use;

(b) Within 500 feet of any other adult entertainment business;

(c) Within 1,000 feet of any public park, religious institution or elementary or secondary school.

The distance between any two adult entertainment businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any adult entertainment business and any residential district, religious institution, school, or public park shall be measured in a straight line, without regard to intervening structures, from the closest property line of the residential zone, religious institution, school, or public park to the closest exterior structural wall of such adult entertainment business.

9-5.306 Conditional Use Permit Required.

It is unlawful to establish an adult entertainment business without first obtaining a conditional use permit as provided in this Article. No other use permit shall be required to operate an adult entertainment business. No final action may be taken by the Planning Commission until the Emeryville Police Department has issued an operating permit for the use or a statement that such permit is not required. To grant a conditional use permit for an adult entertainment business, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(a) That the proposed adult entertainment business meets all of the location requirements of Section 9-5.305.

(b) That the proposed adult entertainment business will not be open between 2:00 and 6:00 a.m. daily.

(c) That the proposed adult entertainment business will not use electronic amplification between midnight and 6:00 a.m. daily.

(d) That the proposed adult entertainment business will be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises.

(e) That the proposed adult entertainment business will comply with all applicable performance standards in Article 11 of this Chapter.

9-5.307 Conditions of Approval.

In approving a conditional use permit for an adult entertainment business, the Planning Commission may designate such conditions as it deems necessary in order to fulfill the purposes of this Article, and may require reasonable guarantees and evidence that such conditions are being, or will be, complied with. Such conditions shall not be less restrictive than the conditions attached to any operating permit issued by the Emeryville Police Department, and may include, but are not limited to, designating hours of operation more restrictive than those listed in Section 9-5.306(b).

9-5.308 Public Display of Certain Matter Prohibited.

All building openings, entries, and windows of adult entertainment businesses shall be located, covered, or screened in such a manner as to prevent a view into the interior from any public or semipublic area, including public sidewalks, streets, arcades, hallways, or passageways of any material which has as its primary or dominant theme matter depicting, illustrating, describing, or relating to “specified sexual activities” or “specified anatomical areas” as defined in this Article. Furthermore, such businesses may not have signs, graphics, or window displays which in any way present, depict, illustrate, or describe such material when such material has as its purpose or effect sexual arousal, gratification, or affront.

9-5.309 Definitions.

(a) For the purpose of this Article “adult entertainment businesses” includes all Adult Oriented Businesses as defined in Section 9-2.303, and more specifically refers to the following establishments:

(1) "Adult arcade" shall mean an establishment where, for any form of consideration, one or more motion picture projectors, slide projectors, or similar machines, for viewing by five or fewer persons each, are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

(2) "Adult bookstore" shall mean an establishment in which at least 30% of the business involves the sale, for any form of consideration, any one or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas," or

b. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities." This definition does not include a bona fide pharmacy.

c. For purposes of this definition, "at least 30% of the business" means at least 30% of the stock-in-trade, or at least 30% of the floor area of that portion of its total premises devoted to the display of its stock-in-trade, or the derivation of at least 30% of the gross income of the establishment.

(3) "Adult motion picture theater" shall mean an establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown to an audience of six or more persons, and in which a substantial portion of the total presentation time is devoted to the showing of material which is characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

(4) "Adult theater" shall mean a theater, concert hall, auditorium, or similar establishment which, for any form of consideration, regularly features live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(5) "Bathhouse" shall mean an establishment which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, during which "specified anatomical areas" are displayed or "specified sexual activities" occur. This section shall not apply to hydrotherapy practiced by, or under the supervision of, a medical practitioner, chiropractor, acupuncturist, or physical therapist, or a similar establishment where baths or hydrotherapy are offered as incidental or accessory services.

(b) For the purposes of this Article, "specified sexual activities" shall include the following:

(1) Human genitals in a state of sexual stimulation or arousal;

(2) Acts of human masturbation, sexual intercourse, or sodomy; or

(3) Fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

(c) For the purposes of this Article, "specified anatomical areas" shall include less than completely and opaquely covered: human genitals or pubic region; buttock; or female breast below a point immediately above the top of the areola.

(d) For the purposes of this Article, certain terms and words are defined as follows:

(1) "Establishment" shall mean the "establishment" of an adult entertainment business and shall mean and include any of the following:

a. The opening or commencement of any such business as a new business;

b. The conversion of an existing business, whether or not an adult entertainment business, or any of the adult entertainment businesses defined herein;

c. The addition of any of the adult entertainment businesses defined herein to any other existing adult entertainment business; or

d. The relocation of any such business.

(2) "Person" shall mean any person, firm, partnership, association, corporation, company, or organization of any kind.

(3) "Public park" shall mean a park, play-ground, swimming pool, beach, pier, or athletic field within the city which is under the control, operation, or management of the City.

(4) "Religious institution" shall mean a building which is used primarily for religious worship and related religious activities.

(5) "School" shall mean an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school, or a special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or any institution of higher education, such as a community or junior college, college or university.

ARTICLE 4. AFFORDABLE HOUSING PROGRAM

9-5.401 Created.

To lessen the shortage of housing affordable to moderate, median, low, and very low income households in the City of Emeryville as partial compliance with California Government Code Section 65583(c), there is hereby created an affordable housing program.

9-5.402 General Requirements for New Ownership Residential Projects of Ten or More Dwelling Units.

(a) Developers of new ownership residential projects (both new construction and conversion of nonresidential space to a residential use) of 10 or more dwelling units or lots, including but not limited to, single-family dwellings, or condominium developments, either partially or completely in Emeryville, shall be conditioned to provide a designated percentage of the dwelling units in the project as units affordable to moderate income households for a minimum period of 45 years from date of availability as more fully described below, unless the developer, in agreement with the City Council, elects to commit to a fixed percentage of the affordable units as being affordable to median income households in return for a reduction of the affordability percentage.

(b) Any development permit for new ownership residential projects (both new construction and conversion) of 10 or more dwelling units or parcels that provide affordable units pursuant to (a) above shall have conditions attached which will assure compliance with the provisions of this Article. The conditions shall require a written agreement to indicate the number, type, location, approximate size, and construction scheduling of all dwelling units, the appropriate price levels, provision for income certification and screening of potential occupants of affordable units, a resale control mechanism, a density bonus, if applicable, and such reasonable information as shall be required by the City for the purpose of determining the applicant's compliance with this Article.

(c) All affordable units in a project and phases of a project should be constructed concurrently with or prior to the construction of non-affordable units, unless the City determines that extenuating circumstances exist.

(d) All affordable units shall be occupied by moderate or median income households as certified by the City or its operating agent.

(e) Unless the City finds compelling reasons to the contrary, the affordable units shall be dispersed throughout the development, the mix and type of affordable units shall be proportionate to those of the project as a whole, and the affordable units shall be comparable with the design of the base level market rate units prior to purchaser-funded upgrades in terms of appearance, materials, and quality of finishes. Parking designated for the affordable units shall be provided in an equitable manner as that provided for the market rate units. The written agreement referred to in subsection (b) above shall include a breakdown of the types of units provided as affordable, which shall be directly proportionate to the types of units in the project as a whole under the provisions of this subsection (e).

(f) The applicant shall have the option, with the approval of the City, to transfer credit for affordable units constructed at one location within the City to satisfy the requirements of

this Article. The affordability requirement may be satisfied with construction of dwelling units up to 12 months prior to the approval of the project.

(g) Upon a finding by the City that the construction of the required affordable units is not feasible or appropriate as part of a larger development project, the applicant shall have the option to construct the affordable units on a site or sites not contiguous with the development, but within the Emeryville City limits.

(h) The applicant shall have the option, with the concurrence of the City, in a home ownership project, of constructing rental affordable units in a number sufficient to meet the requirements of this Article if the provision of the affordable units is consistent with Section 9-5.407.

(i) Where the applicant elects to initially rent all of the units in an ownership residential project, the applicant shall have the option of providing rental affordable units if the provision of the units is consistent with Section 9-5.407.

(j) Where units at a separate location are used to meet the affordability requirements under subsections (f), (g), and (h) of this Section, the affordability percentage shall be applied to the number of units at the two or more locations combined.

(k) Where the applicant is willing to commit to making a portion of the affordable units affordable to median income households for 45 years:

(1) The applicant can seek approval by the City under Section 9-5.402(a) above to reduce the number of units required; and

(2) The City may subsidize the cost of traffic impact fees, if any, building permit fees, and other fees and exactions that may be required of some or all of the project units.

(l) Prior to City approval of a lesser percentage of affordable units in return for targeting to median income under subsections (a) and (k) above, the City must find that the request provides at least an equivalent contribution toward City goals.

(m) Notwithstanding the other provisions of this Section, the owner of any rental residential project or the owner of any ownership residential project that is initially rented, whether constructed prior to or after the original adoption of Article 7 of Chapter 6 of these Planning Regulations, and that contains 10 or more dwelling units or lots, shall be required to notify City at least 120 days prior to a proposed change to the tenure of the residential project from rental units to for-sale, ownership units, as well as at least 120 days prior to any proposed transfer or assignment of project, such that the requirements of this Chapter that are effective as of the date of said notification to the City will be imposed on the ownership residential project through execution of a written agreement as referred to in Section 9-5.402(b) and any other agreements as required by the City (such as an Assignment and Assumption Agreement).

9-5.403 Affordable Unit Requirements for Ownership Residential Projects.

(a) In new ownership residential projects, 20 percent of the dwelling units shall be affordable to moderate income households as provided above. The housing unit sales prices corresponding to these income ranges shall be established by the City or its designee. In

ownership residential projects located partially in Emeryville, 20 percent of the units in Emeryville shall be affordable units or 10 percent of all of the units in the project shall be affordable units with all of the affordable units located in Emeryville, whichever is greater. In applying these percentages, any decimal fraction less than or equal to 0.50 may be disregarded and any decimal fraction greater than 0.50 shall be construed as requiring one dwelling unit.

(b) The developer shall offer to sell the affordable units required by this Article to eligible purchasers for a period of not less than 120 days from the date of the City's issuance of the certificate of occupancy for each particular affordable unit, with the sale being completed within 90 days thereafter. At the end of the 120-day marketing period, the City, in its sole discretion, may require developer to extend its sales efforts for an additional 60-day period. Developer shall actively market the units during this period and implement any suggestions provided by the City. Furthermore, in negotiating the agreement with the developer, City may require that the marketing periods be extended depending on the number of units to be constructed and marketed at that same time.

(c) If the developer is unable to sell some or all of the affordable units at the end of the marketing period described in subsection (b) above, the City shall be offered the opportunity to sell the units for a period of no less than 60 days, with sale being completed within 90 days thereafter. During this period, City or its designee may purchase the units.

(d) If the developer, City, or the City's operating agent are unable to sell some or all of the affordable units at the end of the marketing periods described in subsections (b) and (c) above, and the City or its designee does not purchase the units, then the developer may sell the affordable units at an unrestricted price to a bona fide purchaser for value and pay the City an amount equal to the difference between the sales price and the affordable cost established by the City. After payment of the required amount to the City, all sale and resale restrictions shall be removed from the affordable unit.

(e) The developer shall advertise the initial availability of all affordable units in a project to the Emeryville general public through a marketing program approved by the City. The developer shall seek qualified purchasers through a process involving community outreach and broad marketing efforts, informational workshops, an application, a lottery, and application review and processing. The City or its operating agent shall review the assets and income of prospective purchasers of the ownership affordable units on a project-by-project basis and shall make the final decision about income eligibility. Unless otherwise prohibited by law, preference will be given first to residents of Emeryville and second to people employed in Emeryville, or to other preferences as adopted by the City for a particular ownership residential project subject to this Article. As part of its review of the eligibility of prospective purchasers, the City or its operating agent shall advise all prospective purchasers of the resale restrictions applicable to ownership affordable units as specified in this Article and shall require all purchasers to participate in City-approved homebuyer education prior to the close of escrow of the purchaser's affordable unit.

(f) The City shall enter into recorded agreements with developers, and take other appropriate steps necessary to assure that the required moderate and median income ownership units are provided and that the units remain affordable to moderate or median income

households for a period of at least 45 years from the recordation of the purchase agreement.

9-5.404 Household Eligibility Requirements for Affordable Units.

(a) In establishing moderate, median, low or very low household income, the City or its designee shall consider, among other things, the median household income data provided periodically by the California Department of Housing and Community Development, household size and number of dependents, and all sources of household income and assets.

(b) Every purchaser of an affordable unit shall certify by a form acceptable to the City that the dwelling unit is being purchased for the purchaser's primary place of residence. The City or its operating agent shall verify this certification. Failure, by the purchaser, to maintain eligibility for homeowners' property tax exemption shall be construed to mean that the affordable unit is not the primary place of residence of the purchaser. Should the purchaser fail to make the unit his/her principal place of residence within six months following notice by the City of the failure to comply with this provision, such failure shall authorize the City to send a subsequent notice that it treats the failure as a sale which triggers a preemptive option for the City to purchase such unit consistent with the procedures set out in Section 9-5.405(b) below; provided that no sale is deemed to occur, no option periods are triggered, and no rights of the City are extinguished if it does not send the second written notice deeming the failure of the owner to comply as a sale.

(c) The policies governing the selection of home buyers for certification by the City or its operating agent under the provisions of this Article shall be established by the City. These shall include, but not be limited to, maximum income and asset limits, order of preference, and policy on first-time home buyers. The most recently established criteria shall be used by the City or its operating agent in selecting home buyers and in structuring any lottery.

9-5.405 Control of Resale of Ownership Affordable Units.

(a) In order to maintain the availability of the affordable units as may be constructed pursuant to the requirements of this Article, the City shall impose the following resale conditions for a minimum period of 45 years from the recordation of each grant deed, which 45 year period shall start over with each resale. The price received by the seller of an affordable unit shall be limited to the lesser of a bona fide offer to purchase or the price affordable to a moderate income household. If the affordable unit has been established for a median income household through an agreement with the developer as provided in Section 9-5.402(k), then the price of the unit shall be the lesser of the bona fide offer to purchase or the price affordable to a median income household, as applicable.

(b) Home ownership affordable units shall be sold and resold from the date of the original sale only to moderate and median income households as determined to be eligible for affordable units by the City or its operating agent according to the requirements of this Article. When an owner of an affordable unit desires to sell the unit, the owner shall notify the City. The owner shall market the unit to eligible purchasers for a period of not less than 90 days from the date of notification to the City of the desire to sell and of

initiation of marketing (unit is available for viewing and designated contact person available to respond to inquiries), with the sale being completed within 90 days thereafter. If the owner is unable to sell the unit to an eligible purchaser, then the City shall be offered the opportunity to sell the unit for a period of no less than 60 days, with sale being completed within 90 days thereafter. During this period, City or its designee may purchase the units. The seller shall not levy or charge any additional fees nor shall any finder's fee or other monetary consideration be allowed other than customary real estate commissions and closing costs.

(c) If the owner, City, or the City's operating agent are unable to sell the unit at the end of the marketing periods described in subsection (b) above, and the City or its designee does not purchase the units, then the owner may sell the affordable unit at an unrestricted price to a bona fide purchaser for value and pay the City an amount equal to the difference between the sales price and the affordable cost established by the City. After payment of the required amount to the City, all sale and resale restrictions shall be removed from the affordable unit.

(d) The owners of any affordable unit shall attach and legally reference in the grant deed conveying title of any such affordable ownership unit a declaration of restriction provided by the City or its operating agent stating the restrictions imposed pursuant to this Article. The grant deed shall afford the grantor and the City the right to enforce the attached declaration of restrictions. The declaration of restrictions shall include all applicable resale controls, occupancy restrictions, and prohibitions as required by this Article. Should the City provide subsidies or financing for any affordable unit, including down payment assistance loans, it will require the filing of a deferred payment subordinate deed of trust in favor of the City, having such terms as the City shall from time to time require, and that subordinate deed of trust shall incorporate and make further enforceable the declaration of restrictions referred to in this subsection.

(e) The City or its operating agent shall be given the responsibility of monitoring the resale of ownership affordable units. Any violation of the resale provisions shall be referred to the City for appropriate action.

9-5.406 New Rental Residential Projects – Affordable Housing Impact Fees.

(a) Rental residential projects shall pay affordable housing impact fees as prescribed by this Section to mitigate the project's impact on the need for affordable housing in the City, unless the applicant elects to provide on-site rental affordable units consistent with Section 9-5.407, or is granted a development bonus for the provision of on-site affordable housing pursuant to Section 9-4.204 or a density bonus for the provision of on-site affordable housing pursuant to Article 5 of this Chapter.

(b) Affordable housing impact fees for rental residential projects shall be established by resolution of the City Council and may be amended from time to time as required. Such fees shall not exceed the cost of mitigating the impact of market rate residential projects on the need for affordable housing in the City.

(c) Except as provided in Section 9-5.1906, the affordable housing impact fee shall be paid upon issuance of a building permit for each dwelling unit in the rental residential project. The amount of any affordable housing impact fee payable under this Section shall be

based upon the fee schedule in effect at the time of issuance of the building permit for the dwelling unit to which the fee relates.

(d) Affordable housing impact fees established pursuant to this Section shall be subject to the applicable provisions of Article 19 of this Chapter.

9-5.407 Rental Affordable Units Permitted If Consistent with Costa-Hawkins Act.

(a) As an alternative to paying the affordable housing impact fees as required by Section 9-5.406, or where an applicant elects to initially rent all of the units in an ownership residential project, an applicant may propose to provide 12 percent of the dwelling units in the residential project as affordable rental units, of which 8 percent shall be affordable to low income households and 4 percent shall be affordable to very low income households. In calculating the number of required rental affordable units, any decimal fraction less than or equal to 0.50 may be disregarded and any decimal fraction greater than 0.50 shall be construed as requiring one dwelling unit.

(b) To ensure compliance with the Costa-Hawkins Act (Chapter 2.7 of Title 5 of Part 4 of Division 3 of the Civil Code), the City may only approve a proposal to provide rental affordable units if the applicant agrees in a recorded agreement with the City to limit rents in consideration for a direct financial contribution or a form of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(c) Any development permit for a new residential project (both new construction and conversion) that provides rental affordable units pursuant to (a) above shall have conditions attached which will assure compliance with the provisions of this Article. The conditions shall require an agreement to be recorded prior to occupancy that indicates the number, type, location, approximate size, and construction scheduling of all dwelling units, the appropriate rent levels, provision for income certification and screening of potential occupants of affordable units, a density bonus, if applicable, compliance with the Costa Hawkins Act, and such reasonable information as shall be required by the City for the purpose of determining the applicant's compliance with this Article. The agreement shall require that the rental affordable units be rented to low income households for a period of at least 55 years from the date of recordation of the agreement, unless all of the units in the residential project are offered to the public for purchase. In that event, the applicant shall provide 20 percent of the dwelling units as ownership affordable units complying with Sections 9-5.402 through 9-5.405. The recorded agreement shall provide relocation benefits for tenants of the rental affordable units in the event of sale.

9-5.408 Requirements for Rental Affordable Units.

(a) All rental affordable units in a project and phases of a project should be constructed concurrently with or prior to the construction of non-affordable units, unless the City determines that extenuating circumstances exist.

(b) All rental affordable units shall be occupied by moderate, low or very low income households.

(c) Unless the City finds compelling reasons to the contrary, the rental affordable units shall be dispersed throughout the development, the mix and type of rental affordable units shall be proportionate to those of the project as a whole, and shall be comparable with the design of the base level market rate units prior to purchaser-funded upgrades in terms of appearance, materials, and quality of finishes. Parking designated for the rental affordable units shall be provided in an equitable manner as that provided for the market rate units. The written agreement referred to in Section 9-5.407(c) above shall include a breakdown of the rental affordable units, which shall be directly proportionate to the types of units in the project as a whole under the provisions of this subsection (c).

(d) The developer shall market the rental affordable units as required by this Article to eligible renters throughout the duration of the written agreement referred to in Section 9-5.407(c) above. No less than 120 days prior to the initial lease up of the affordable units, developer shall provide City for its review and approval a marketing program for the affordable units, which program shall be in conformance with City's affordable unit marketing program procedures promulgated by the City, as may be amended from time to time. During the initial lease up of the affordable units, Developer shall market the affordable units commencing upon approval of the marketing program by the City for a period of time no less than 120 days after the date of the City's issuance of the certificate of occupancy for the project. At the end of the 120-day marketing period, the City, in its sole discretion, may require developer to extend its marketing efforts for an additional 60 day period increments. Developer shall actively market the units during this period and implement any suggestions provided by the City. Furthermore, in negotiating the written agreement with the developer, City may require that the marketing periods be extended depending on the number of units to be constructed and marketed at that same time. On an annual basis, in coordination with its obligations to income certify occupants of affordable units, Developer shall review and revise, as necessary and as approved by the City, its marketing program in order to maintain conformance with the City's procedures or otherwise respond to market conditions.

(e) The developer shall advertise the initial availability of affordable units to the Emeryville general public through a marketing program approved by the City. Upon notification of the availability of rental dwelling units by the developer, the developer shall seek qualified renters through a process involving community outreach and broad marketing efforts, informational workshops, an application submittal, a lottery, and application review and processing.

(f) Unless otherwise prohibited by law, preference will be given first to residents of Emeryville and second to people employed in Emeryville, or to other preferences as adopted by the City for a particular rental residential project subject to this Article.

(g) The City or its operating agent shall monitor the affordable rental units. The developer or owner shall retain final discretion in the selection of the eligible households; provided that the same rental terms and conditions (except rent levels and income) are applied to tenants of affordable units as are applied to all other tenants, except as required to comply with government subsidy programs.

9-5.409 New Nonresidential Projects – Affordable Housing Impact Fees.

(a) Nonresidential projects shall pay affordable housing impact fees to mitigate the project's impact on the need for affordable housing in the City.

(b) Affordable housing impact fees for nonresidential projects shall be established by resolution of the City Council and may be amended from time to time as required. Such fees shall not exceed the cost of mitigating the impact of nonresidential projects on the need for affordable housing in the City. The City Council may from time to time adopt housing impact fees for different categories of nonresidential projects, specify the specific uses within each nonresidential land use category, and establish a list of nonresidential uses exempt from the payment of affordable housing impact fees.

(c) Except as provided in Section 9-5.1906, the affordable housing impact fee shall be paid upon issuance of a building permit for any nonresidential project for which the fee is due. The amount of any affordable housing impact fee payable under this Section shall be based upon the fee schedule in effect at the time of issuance of the building permit for the nonresidential project to which the fee relates.

(d) As an alternative to payment of the affordable housing impact fee set forth in this Section, an applicant for a nonresidential project may submit a request to mitigate the affordable housing impacts of such development through the construction of affordable units, either on-site or off-site, through the dedication of land, or through other means. The City Council may approve or conditionally approve such an alternative if the City Council determines, based on substantial evidence, that such alternative compliance will provide as much or more affordable housing at the same or lower income levels as will payment of the affordable housing impact fee, is consistent with the General Plan and Housing Element, and will otherwise provide as great a public benefit as would payment of the affordable housing impact fee. Any affordable units constructed on-site or off-site shall comply with the provisions contained in Sections 9-5.402 through 9-5.408, as applicable.

(e) Affordable housing impact fees established pursuant to this Section shall be subject to the applicable provisions of Article 19 of this Chapter.

9-5.410 Housing Fund.

(a) There is established in the City an affordable housing fund for the purpose of receiving and disbursing certain monies to address the housing needs of extremely low, very low, low, median and moderate income households. Separate accounts within such housing fund may be created from time to time to avoid commingling if required by law or as deemed appropriate to further the purposes of the housing fund.

(b) All affordable housing impact fees shall be deposited into the affordable housing fund.

(c) The fees collected under this Article and all earnings from investment of the fees shall be expended exclusively to provide or assure continued provision of affordable housing in the City to meet the housing needs of the City's workforce through acquisition, construction, development assistance, substantial rehabilitation, financing, rent or other subsidies, or other methods, and for costs of administering programs which serve those ends. The housing shall be of a type, or made affordable at a cost or rent, for which there

is a need in the City and which is not adequately supplied in the City by private housing development in the absence of public assistance and to the extent feasible shall be utilized to provide for moderate, median, low, very low, and extremely low income housing.

9-5.411 Availability of Government Subsidies.

It is the intent of this Article that the requirements for units affordable by moderate, median, low, and/or very low income families shall not be determined by the availability of government subsidies. This is not to preclude the use of such programs or subsidies. This Article is also not intended to be an undue burden on the developers of residential projects. Therefore, as detailed in succeeding sections of this Article, incentives are given to provide affordable units.

9-5.412 Density Bonus.

To avoid any undue economic burden or cost to the applicant providing affordable units required by the provisions of this Article, developers of affordable housing may apply for a density bonus and other incentives, if eligible, pursuant to either Section 9-4.204 or Article 5 of this Chapter, but not both.

9-5.413 Reduction of Amenity and Square Footage.

Upon a showing of economic hardship and necessity by the applicant:

(a) With City approval, the applicant may reduce the interior amenity level of the affordable units below that of the market-rate units, provided such dwelling units conform to the requirements of applicable building and housing codes; and

(b) With City approval, the applicant may reduce the square footage of the affordable units below that of the market-rate units, provided all dwelling units conform to the requirements of applicable building and housing codes.

9-5.414 Fees.

In the attempt to avoid any undue burden on developers who are required to provide affordable units under the provisions of this Article, the City may subsidize the cost of traffic impact fees, if any, building fees and other City fees applicable to the affordable units of a proposed housing development.

9-5.415 Technical Assistance.

In order to emphasize the importance of securing moderate, median, low and very low income housing as a part of this program, the City and/or designated consultants shall provide assistance on financial subsidy programs to applicants. During individual project review, consideration shall be given to an economic analysis which will indicate the most suitable methods for the terms of this Article to be implemented. This is to be done for the purpose of increasing the feasibility and lowering the cost of dwelling units affordable to moderate, median, low and very low income households.

9-5.416 Enforcement.

(a) The provisions of this Article shall apply to all agents, successors, and assignees of an applicant for development of the site. No building permit or occupancy permit shall be

issued, nor any development approval granted, which does not meet the requirements of this Article.

(b) In addition to, or in lieu of, the provisions of subsection (a) of this Section, the City shall institute injunction, mandamus, or any other appropriate legal actions or proceedings for the enforcement of this Article.

(c) Any person, firm, or corporation, whether as principal, agent, employee or otherwise, violating or causing the violation of any of the provisions of this Article, shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable for each offense by a fine of not more than $500.00, or by imprisonment in the County Jail for a term not exceeding six months, or by both fine and imprisonment. Such person, firm, or corporation shall be deemed to be guilty of a separate offense for each and every day during any portion of which any violation of this Article is commenced, continued, or permitted by such person, firm, or corporation, and shall be punishable as provided herein.

9-5.417 Waiver.

(a) As part of an application for the first approval of a residential project or nonresidential project, an applicant may apply for a reduction, adjustment, or waiver of the requirements of this Article based upon a showing that applying the requirements of this Article would result in an unconstitutional taking of property or would result in any other unconstitutional result. The applicant shall set forth in detail the factual and legal basis for the claim, including all supporting technical documentation, and shall bear the burden of presenting the requisite evidence to demonstrate the alleged unconstitutional result. The City may assume each of the following when applicable:

(1) The applicant will benefit from the incentives set forth in the City Code; and

(2) The applicant will provide the most economical affordable units feasible in terms of financing, construction, design, location and tenure.

(b) The City Council, based upon legal advice provided by or at the behest of the City Attorney, may approve a reduction, adjustment, or waiver if the approval authority determines that applying the requirements of this Article would effectuate an unconstitutional taking of property or otherwise have an unconstitutional application to the property. The reduction, adjustment, or waiver shall be approved only to the extent necessary to avoid an unconstitutional result, after adoption of written findings, and based on legal analysis and the evidence. If a reduction, adjustment, or waiver is granted, any change in the residential or nonresidential project shall invalidate the reduction, adjustment, or waiver, and a new application shall be required for a reduction, adjustment, or waiver pursuant to this section.

9-5.418 Annual Report.

The City shall prepare, or cause to be prepared, an annual report to the City Council on the status of the affordable units constructed under the provisions of this Article. The report shall include the number, size, type, tenure, and general location of the affordable units as well as the number of resales and rental vacancy rate. This report shall provide a basis for an evaluation of the overall effectiveness of this Article.

9-5.419 Definitions.

As used in this Article:

(a) "Affordable" shall be defined in accordance with California Health and Safety Code Section 50052.5 and in accordance with the following table, for moderate income, median income, low income, and very low income households in accordance with the following table, and in accordance with the project's being owner-occupied or renter-occupied:

Income Level	Owner-Occupied Project	Renter-Occupied Project
Moderate income	35% of 110% of the Area Median Income.	30% of 110% of the Area Median Income
Median income	30% of 90% of the Area Median Income	30% of 80% of the Area Median Income
Low income	30% of 70% of the Area Median Income	30% of 60% of the Area Median Income
Very Low income	30% of 50% of the Area Median Income	30% of 50% of the Area Median Income

The City shall publish the annual home-sale price and rents allowable under this program on an annual basis.

(b) "Affordable unit" shall mean an ownership or rental housing unit, as required by this Article, which is affordable to a household with moderate, median, low or very low income.

(c) "Applicant" shall mean any person, firm partnership, association, joint venture, corporation, or any entity or combination of entities which seeks City permits and approvals.

(d) "Area Median Income" or "median income" shall mean the area median income published annually by the California Department of Housing and Community Development for the County of Alameda.

(e) "At one location" shall mean all adjacent land owned or controlled by the applicant, the property lines of which are contiguous at any point, or the property lines of which are separated only by a public or private street, road or other public or private right-of-way, or separated only by other land of the applicant.

(f) "Bedroom(s)" shall mean the number of rooms available predominantly as sleeping quarters. The City has a history of providing live/work space and other unusually structured living arrangements. For that reason, the City retains discretion in determining how many bedrooms a particular dwelling unit will contain so as to determine what price or rent will be required for eligibility as an affordable unit.

(g) "Dwelling unit" shall mean a dwelling designed for occupancy by one household.

(h) "Housing costs" shall be defined in accordance with California Health and Safety Code Section 50052.5 and implementing regulations and shall generally mean the monthly mortgage principal and interest, property taxes and assessments, homeowners insurance,

homeowner association fees where applicable, an allowance for utilities and property maintenance and repairs, for ownership dwelling units; and the monthly rent, and allowance for utilities, fees or service charges charged to all tenants, for rental dwelling units.

(i) "Income eligibility" shall mean the gross annual household income, considering the household size and number of dependents, income of all wage earners, elderly or disabled family members and all other sources of household income. For self-employed households, net annual household income shall be used in determining income eligibility.

(j) "Market-rate unit" shall mean an ownership or rental housing dwelling unit which is not an affordable unit.

(k) "Moderate, median, low and very low income households" means those households whose maximum income does not exceed levels published annually by the California Department of Housing and Community Development for the County of Alameda. Generally, "moderate income" is defined as 101% to 120% of median income, "median income" is defined as 81% to 100% of median income, "low income" is defined as 51% to 80% of median income and "very low income" is defined as up to 50% of median income.

(l) "Nonresidential project" means any development of nonresidential uses in the City for which a discretionary permit or building permit is required, including an addition to an existing use, the new construction of gross square feet of nonresidential space, the conversion of residential use to a nonresidential use, or the conversion of one nonresidential use to another nonresidential use for which an affordable housing impact fee or larger affordable housing impact fee is required.

(m) "Operating agent of the City" shall mean a nonprofit organization, for-profit corporation, county or City agency chosen by the City to carry out some or all of the administrative provisions of this Article.

(n) "Ownership residential project" means any residential project that includes the creation of one or more residential dwelling units that may be sold individually. A residential ownership project includes the conversion of apartments to condominiums and residential rental projects having a recorded condominium plan.

(o) "Project" shall mean a housing development at one location including all dwelling units for which permits have been applied for or approved within a 12 month period.

(p) "Resale controls" shall mean legal restrictions by which the price of affordable units will be controlled to insure that the dwelling unit is affordable to moderate, low, and/or very low income households over time.

(q) "Rental residential project" means any residential project that creates residential dwelling units that cannot be sold individually.

(r) "Residential project" means any development for which a discretionary permit or building permit is required and that includes the creation of one or more additional dwelling units, conversion of nonresidential uses to dwelling units, or a condominium conversion.

(s) "Substantial rehabilitation" means rehabilitation, the value of which constitutes 25 percent of the after rehabilitation value of the dwelling, inclusive of the land value.

ARTICLE 5. DENSITY BONUS FOR AFFORDABLE HOUSING

9-5.501 Purpose.

The purpose of this Article is to establish procedures for implementing State Density Bonus requirements, as set forth in California Government Code Sections 65915-65918, and to increase the production of affordable housing, consistent with City policies. The bonuses for affordable housing in this Article are distinguished from, and are mutually exclusive of, other development bonuses available to projects that provide affordable housing and other community benefits pursuant to Section 9-4.204. Developers may apply for a density bonus and other incentives, if eligible, pursuant to either Section 9-4.204 or this Article, but not both.

9-5.502 Applicability.

The provisions of this Article shall apply to the following development categories:

(a) New residential development projects of five or more dwelling units, regardless of the type of dwelling units proposed. Applicant shall demonstrate that at least five residential units can be developed on the project site in compliance with all zoning and development regulations.

(b) Where permitted or conditionally permitted by the underlying zoning designation of a site, mixed use developments that include at least five dwelling units.

(c) Rehabilitation of one or more multiple unit residential structures containing at least five units that results in a net increase in the available residential units.

(d) Development that will change the use of an existing building from nonresidential to residential and that will provide at least five residential units.

(e) Development that includes the conversion of at least five residential units to ownership housing.

9-5.503 Projects Eligible for Density Bonus.

(a) The City shall grant one density bonus as described in Section 9-5.505, and incentives or concessions as described in Section 9-5.506, when an applicant for a residential development project agrees to construct at least any one of the following:

(1) At least ten percent of the total dwelling units of a residential development project for low income households.

(2) At least five percent of the total dwelling units of a residential development project for very low income households.

(3) A senior citizen housing development or a mobile home park that limits residency based on age requirements for housing older persons pursuant to California Civil Code Section 798.76 or 799.5.

(4) Ten percent of the total dwelling units in a common interest development as defined in California Civil Code Section 4100, for persons and families of moderate income, provided that all units in the development are offered to the public for purchase.

The applicant shall elect whether the density bonus shall be awarded on the bases of (1), (2), (3), or (4) above. A density bonus awarded under this Section allows a residential development to exceed the maximum residential density as provided by Section 9-4.203. The maximum residential density shall be the base density established in Table 9-4.203(a) and Figure 9-4.203(a). The granting of a density bonus, concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of dwelling units that is equal to five or ten percent of the total dwelling units.

For those projects that are subject to the provisions of the Affordable Housing Program in Article 4 of this Chapter, affordable units provided pursuant to that Article may be counted toward the requirements of this Section. To the extent that the provisions of this Section and the Affordable Housing provisions are in conflict, the provisions of the Affordable Housing Program prevail. However, if such affordable units are used to fulfill the requirements of Section 9-4.204, the density bonuses of this Article are not available.

(b) In addition, the following projects are eligible for a density bonus as provided in Section 9-5.505:

(1) Residential developments that include the donation of land.

(2) Residential developments that include child care facilities.

(3) Condominium conversions.

9-5.504 Application Requirements.

An applicant shall file a written application in accord with the application procedures under Article 2 of Chapter 7 and any specific application requirements established by the Director for this use.

(a) Application for density bonus shall be made concurrent with submittals required for the processing of associated discretionary permits. The request for density bonus shall be articulated as part of the description and justification for the development project. The request for the density bonus shall specify the percentage of density bonus sought, per Section 9-5.503 of this Article, and indicate how the affordable housing obligations will be met.

(b) The review process for a density bonus project shall be the same as that required for associated discretionary permits. Discretionary actions on density bonus projects shall be subject to the same appeal process applied to associated discretionary permits.

(c) The application and approval of a density bonus and any associated incentives or concessions shall not require a separate permit or approval process from that otherwise required for the same project without a density bonus request.

9-5.505 Amount of Density Bonus.

The amount of density bonus granted to a qualifying project shall be based on the category and percentage of affordable units proposed, as reflected in the following tables. The maximum bonus shall be 35%. The applicant may elect to accept a lesser percentage of density bonus. All

density calculations resulting in fractional units shall be rounded up to the next whole number. The calculations are in accordance with California Government Code Section 65915 and are subject to any subsequent amendments or revisions thereto.

(a) **Low Income Households.** For residential development projects providing at least ten percent of the total dwelling units for low income households the density bonus shall be calculated as follows:

Table 9-5.505(a)
Density Bonus for Low Income Units

Percentage Low Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

(b) **Very Low Income Households.** For residential development projects providing at least five percent of the total dwelling units for very low income households the density bonus shall be calculated as follows:

Table 9-5.505(b)
Density Bonus for Very Low Income Units

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(c) **Senior Citizen Housing.** For a senior citizen housing development or a mobile home park that limits residency based on age requirements for housing older persons pursuant to California Civil Code Section 798.76 or 799.5; the density bonus shall be 20% of the number of senior housing units.

(d) **Moderate Income Common Interest Development.** For a residential development that provides at least ten percent of the total dwelling units in a common interest development as defined in California Civil Code Section 4100, for persons and families of moderate income, provided that all units in the development are offered to the public for purchase, the density bonus shall be calculated as follows:

Table 9-5.505(d)
Density Bonus for Moderate Income Common Interest Development

Percentage Low Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(e) **Donation of Land.**

(1) When an applicant for a residential development that provides at least ten percent of the total dwelling units for very low income households donates land to the City in accordance with this Section, the applicant shall be entitled to a minimum 15% increase above the otherwise maximum allowable residential density for the entire development as follows:

Table 9-5.505(e)
Density Bonus for Donation of Land

Percentage Very Low Income Units	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) The density bonus for land dedication shall be in addition to any density bonus allowed under Section 9-5.503(a), up to a maximum combined increase of 35% if the applicant seeks an increase under this Section. Nothing in this Section shall be construed to enlarge or diminish the City's authority to require a developer to donate land as a condition of development.

(3) An applicant shall be eligible for the increased density bonus described in this Section if all the following criteria are met:

a. The applicant donates and transfers the land to the City no later than the date of the approval by the City of the final subdivision map, parcel map, or residential development application.

b. The developable land and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than ten percent of the residential units of the proposed development.

c. The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in California Government Code Section 65583.2, subdivision (c), paragraph 3, and is or will be served by adequate public facilities and infrastructure.

d. The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the City may subject the proposed development to subsequent design review to the extent authorized by California Government Code Section 65583.2(i), if the design is not reviewed by the City prior to the transfer.

e. The transferred land and the affordable units shall be subject to a deed restriction, which shall be recorded on the property upon dedication, ensuring continued affordability of the units for at least 30 years.

f. The land is transferred to the City or to a housing developer approved by the City.

g. The transferred land is within the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.

h. A proposed source of funding for the development of very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(f) **Child Care Facility.**

(1) When an applicant proposes to construct a residential development that conforms to the requirement of Section 9-5.503(a) and includes a child care facility that will be located on the premises of, as part of, or adjacent to the development, the City shall grant either the following:

a. An additional density bonus that is in an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

b. An additional concession or incentive designated by the City that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) In order to qualify for a density bonus as provided in this subsection the applicant shall submit for review and approval by the Director a financial report (pro forma)

for the proposed child care facility that includes sources of operating revenue to ensure that the center remains open and provides the promised services for the life of the project.

(3) The City shall require, as a condition of approving the development that:

a. The child care facility shall remain in operation as long as or longer that time during which the affordable housing units are required to remain affordable pursuant to this Section; and

b. Of the children who attend the childcare facility, the children of very low income households, low income households, or families of moderate income households shall equal a percentage that is equal to or greater than the percentage of dwelling units that are made affordable to very low income households, low income households, or moderate income households.

(4) Notwithstanding any requirement of this Section, the City need not provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that Emeryville has adequate child care facilities.

(g) **Condominium Conversion Developments.**

(1) When a development is the conversion of an existing apartment complex to a condominium complex and the applicant agrees to make at least 33% of the total units of the development affordable to moderate income households for 30 years, or 15% of the total units of the proposed development affordable to low income households for 30 years, and agrees to pay for the administrative costs incurred by the City to process the application and to monitor the continued affordability and habitability of the affordable housing units, the City shall either:

a. Grant a density bonus of 25%; or

b. Provide other incentives of equivalent financial value as determined by the City.

(2) Nothing in this Section shall be construed to require the City to approve a proposal to convert apartments to condominiums.

(3) An applicant shall be ineligible for a density bonus or other incentives under this Section if the apartments proposed for conversion are in a development for which a density bonus or other incentives were previously provided under Section 9-5.503 or Section 9-5.506 of this Article.

9-5.506 Concessions and Incentives.

(a) An applicant for a density bonus provided by this Article may request specific incentives or concessions and may request a meeting with the City.

(1) In addition to the applicable density bonus, qualifying projects shall receive the following number of incentives or concessions:

a. One incentive or concession for projects that propose at least ten percent of the total units for lower income households, at least five percent for

very low income households, or at least ten percent for persons and families of moderate income in a common interest development.

b. Two incentives or concessions for projects that propose at least 20% of the total units for lower income households, at least ten percent for very low income households, or at least 20% for persons and families of moderate income in a common interest development.

c. Three incentives or concessions for projects that propose at least 30% of the total units for lower income households, at least 15% for very low income households, or at least 30% for persons and families of moderate income in a common interest development.

(2) Proposals seeking concessions or incentives deemed necessary to exceed the base density allowance would not be subject to the otherwise required conditional use permit.

(3) For purposes of this Section, concessions or incentives shall include, without limitation:

a. A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in California Health and Safety Code Division 13, Part 2.5 (commencing with Section 18901), including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

b. Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the areas where the proposed housing project will be located.

c. A reduction in the ratio of vehicular parking spaces and/or configurations as set forth in California Government Code Section 65915(p).

d. Other regulatory incentives or concessions proposed by the developer or the City that result in identifiable, financially sufficient, and actual cost reductions.

(4) This section does not limit or require the City to provide direct financial incentives, including the provision of publicly owned land, or the waiver of fees or dedication requirements. However, the City will consider deferral of application processing fees on a case-by-case basis.

(5) The City shall grant the concession or incentive requested by the applicant unless the City makes a written finding, based upon substantial evidence, of any of the following:

a. The concession or incentive is not required in order to provide for affordable housing costs as defined in California Health and Safety Code Section 50052.5, or for rents for targeted units to be set as specified.

b. The concession or incentive would have a specific adverse impact, as defined in California Government Code Section 65589.5, subdivision (d), paragraph (2), upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, without rendering the development unaffordable to low or moderate income households.

c. The concession or incentive would be contrary to state or federal law.

9-5.507 Waiver of Reduction of Development Standards.

(a) An applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted under this Section, and may request a meeting with the City. Nothing in this Section shall be interpreted to require the City to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in California Government Code Section 65589.5, subdivision (d), paragraph (2), upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this Section shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historic Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(b) A proposal for the waiver or reduction of development standards pursuant to this Section shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to Section 9-5.506 of this Article.

9-5.508 Vehicular Parking Ratio.

(a) Upon request of the developer, the following maximum parking ratio, inclusive of handicapped and guest parking, shall apply, pursuant to California Government Code Section 65915:

(1) Zero to one bedroom: one on-site parking space.

(2) Two to three bedrooms: two on-site parking spaces.

(3) Four or more bedrooms: two-and-a-half parking spaces.

(b) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. A development may provide on-site parking through tandem parking or uncovered parking, but not through on-street parking. The applicant may also request a concession or an incentive pursuant to Section 9-5.506 of this Article to further lower the vehicle parking ratios from those described herein.

9-5.509 Requirements for Participation.

In order for a developer or property owner to be eligible for density bonus the following requirements must be met:

(a) Any development permit that receives density bonus under this Article shall have conditions attached which will assure compliance with the provisions of this Article. The conditions shall require a written agreement to indicate the number, type, location, approximate size, and construction scheduling of all dwelling units, the appropriate price levels, provision for income certification and screening of potential purchasers and/or renters of affordable units and senior units, a resale control mechanism, if applicable, and such reasonable information as shall be required by the City for the purposed of determining the applicant's compliance with this Article.

(b) All affordable units and senior units in a project shall be constructed concurrently with or prior to the construction any market-rate and non-senior housing units.

(c) Unless the City finds compelling reasons to the contrary, the affordable units or senior units shall be dispersed throughout the development and shall be proportionate to the mix and type of units in the project as a whole (with the exception that premium units such as penthouses, and top floor view units shall not be required to be available as affordable or senior housing units. Furthermore, the affordable units or senior units shall be comparable with the design of the base level market rate units prior to purchaser-funded upgrades in terms of appearance, materials, and finished quality.

(d) The time period of availability as affordable or senior housing shall be for at least thirty years. A longer period may be required for affordable housing units pursuant to Article 4 of this Chapter, or as required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.

(e) The maximum allowable rents for affordable units shall be as defined in California Health and Safety Code Section 50053.

(f) Owner-occupied units shall be available at affordable housing costs, as defined in California Health and Safety Code Section 50052.5.

(g) For-sale affordable units may be subject to an equity sharing agreement, in the event that public subsidies are involved in the construction and/or purchase of said units.

(h) The developer or property owner may not also seek development bonuses pursuant to Section 9-4.204.

9-5.510 Definitions.

As used in this Article:

(a) "Affordable" shall be as defined in Section 9-5.415.

(b) "Child care facility" means a facility installed, operated, and maintained for the nonresidential care of children as defined under applicable state licensing requirements for the facility.

(c) "Common interest development" as currently defined in California Civil Code Section 4100 and any subsequent amendments or revisions.

(d) "Concession" or "incentive" shall have the meaning set forth in California Government Code Section 65915(k).

(e) "Equivalent financial value" concerns a condominium conversion project and refers to the cost to the developer/property owner based on the land cost per dwelling unit. The land cost per dwelling unit is determined by the difference in the value of the land with and without the density bonus.

(f) "Senior citizen housing development" as currently defined by California Civil Code Sections 51.3 and 51.12 and any subsequent amendments or revisions.

ARTICLE 6. FIREARMS AND AMMUNITION SALES

9-5.601 Purpose.

This Article establishes regulations governing sales of firearms and ammunition. The purpose of these regulations is to provide criteria for the consideration and approval of businesses engaged in the sale of firearms and ammunition. The City finds it necessary to establish such requirements and criteria to regulate the sale of firearms and ammunition in the interest of the public health, safety and welfare.

9-5.602 Home Occupations.

It is unlawful to engage in the business of selling, leasing, or otherwise transferring any firearm or ammunition as defined in this Article as a Home Occupation as such term is defined in Article 8 of this Chapter.

9-5.603 Districts Where Allowed.

It is unlawful to engage in the business of selling, leasing, or otherwise transferring any firearm or ammunition as defined in this Article in any district other than the INH Heavy Industrial zone.

9-5.604 Location Requirements.

It is unlawful to engage in the business of selling, leasing, or otherwise transferring any firearm or ammunition in the following locations:

(a) Within 200 feet of any area zoned for residential use;

(b) Within 500 feet of any other business engaged in sale of firearms and ammunition;

(c) Within 1,000 feet of any public park, religious institution or elementary or secondary school.

The distance between any two businesses engaged in the business of selling, leasing or otherwise transferring any firearm or ammunition shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any business engaged in the business of selling, leasing or otherwise transferring any firearm or ammunition and any residential district, religious institution, school, or public park shall be measured in a straight line, without regard to intervening structures, from the closest property line of the residential zone, religious institution, school, or public park to the closest exterior structural wall of the business engaged in the business of selling, leasing or otherwise transferring any firearm or ammunition.

9-5.605 Conditional Use Permit Required.

It is unlawful to engage in the business of selling, leasing, or otherwise transferring any firearm or ammunition without first obtaining a conditional use permit as provided in this Article. No final action may be taken by the Planning Commission until the Emeryville Police Department has issued a law enforcement permit as required by Chapter 30 of Title 5. To grant a conditional use permit for the business of selling, leasing, or otherwise transferring any firearm or ammunition, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(a) That the proposed business meets all of the location requirements of Section 9-5.604.

(b) That the proposed business will not be open between 5:00 p.m. and 9:00 a.m. daily.

(c) That the proposed business will comply with all applicable performance standards in Article 11 of this Chapter.

9-5.606 Conditions of Approval.

In approving a conditional use permit for a business engaged in the business of selling, leasing or otherwise transferring any firearm or ammunition, the Planning Commission may designate such conditions as it deems necessary in order to fulfill the purposes of this Article, and may require reasonable guarantees and evidence that such conditions are being, or will be, complied with. Such conditions shall not be less restrictive than the conditions attached to the law enforcement permit issued by the Emeryville Police Department, and may include, but are not limited to, designating hours of operation more restrictive than those listed in Section 9-5.605(b).

9-5.607 Definitions.

(a) "Ammunition" shall mean ammunition or cartridge cases, primers, bullets, or propellant powders designed for use in any firearm, and any component thereof, but shall not include blank cartridges or ammunition that can be used solely in an "antique firearm" as defined in Section 921(a)(16) of Title 18 of the United States Code.

(b) "To engage in the business of selling, leasing or otherwise transferring any firearm or ammunition" means to conduct a business by the selling, leasing or transferring of any firearm or ammunition, or to hold one's self out as engaged in the business of selling , leasing or otherwise transferring any firearm or ammunition, or to sell, lease or transfer firearms or ammunition in quantity, in series, or in individual transactions, or in any other manner indicative of trade.

(c) "Firearm" shall mean any device, designed to be used as a weapon or modified to be used as a weapon, from which is expelled through a barrel a projectile by the force of explosion or other means of combustion, provided that the term "firearm" shall not include an "antique firearm" as defined in Section 921(a)(16) of Title 18 of the United States Code.

(d) "Public park" shall mean a park, playground, swimming pool, beach, pier, or athletic field within the city which is under the control, operation, or management of the City.

(e) "Religious institution" shall mean a building which is used primarily for religious worship and related religious activities.

(f) "School" shall mean an institution of learning for minors, whether public or private, which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school, or a special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or any institution of higher education, including a community or junior college, college or university.

ARTICLE 7. HAZARDOUS WASTE FACILITIES

9-5.701 Purpose.

This Article establishes regulations governing off-site Hazardous Waste Facilities. The purpose of these regulations is to provide criteria and procedures for the consideration and approval of off-site Hazardous Waste Facilities which collect, store, transfer, treat or dispose of hazardous wastes and to be consistent with California Health and Safety Code Sections 25199 through 25199.14, applicable portions of the Alameda County Hazardous Waste Management Plan and the City of Emeryville General Plan. The City finds it necessary to establish such requirements and criteria to regulate Hazardous Waste Facilities in the interest of the public health, safety and welfare.

9-5.702 Applicability.

(a) The requirements of this Article are applicable to the siting and development of off-site hazardous waste treatment, storage, and transfer facilities. Off-site hazardous waste facilities means those facilities which treat, store, recycle, incinerate or transfer hazardous wastes from at least two producers of hazardous wastes which are not located on the same property of the hazardous waste facility. Consistent with the Alameda County Hazardous Waste Management Plan, off-site hazardous waste facilities only include those facility types as defined by the plan for Small-Scale Transfer and Storage Facilities including hazardous waste collection facilities, and Industrial Transfer, Storage and Treatment Facilities.

(b) The off-site facility definition does not apply to:

(1) Transportable treatment units (TTU) which are designed to be moved either intact or in modules and which are intended to be operated at a given location for a limited period of time; or

(2) Permanent on-site hazardous waste facilities at locations where hazardous waste is produced, and which are owned by, leased to, or under the control of the producer of the waste.

(c) Facilities for the land disposal of hazardous wastes or treatment residues are prohibited in the City of Emeryville.

(d) All such facilities (i.e., off-site, on-site, household hazardous waste collection, and TTUs) shall obtain all necessary State licensing to install and operate.

9-5.703 Conditional Use Permit Required.

It is unlawful to establish a Hazardous Waste Facility without first obtaining a conditional use permit as provided in this Article pursuant to the procedures and required findings in Article 5 of Chapter 7.

9-5.704 Location.

Hazardous Waste Facilities shall not be located within the following areas. All distances shall be measured from lot line to lot line.

(a) All Hazardous Waste Facilities.

(1) 200 feet of an active or recently active seismic fault.

(2) 300 feet of the San Francisco Bay shoreline or a critical habitat unless the applicant has demonstrated by risk assessment that a small buffer zone provides adequate protection for the environment and the public in the event of an accident.

(3) An area with 25% or greater slope or areas subject to liquefaction or subsidence unless the facility incorporates adequate engineered designed features which assure structural stability.

(4) An area of highly permeable soils or sediment, as defined in Title 23, California Code of Regulations, Chapter 15.

(b) Small Scale Hazardous Waste Transfer and Storage Facilities.

(1) 500 feet of any dwelling unit unless the applicant has demonstrated by risk assessment that a smaller buffer zone provides adequate protection for the public in the event of an accident.

(2) 500 feet of an immobile population.

(3) A 100-year floodplain or an area subject to flooding by dam failure or tsunami, unless the project is protected by adequate engineered solutions designed to preclude flood failure.

(4) Recreational or scenic areas unless necessary to handle hazardous wastes generated by visitors, workers, or residents in the area.

(c) Industrial Hazardous Waste Transfer/Storage/Treatment Facilities.

(1) A 100-year floodplain or an area subject to flooding by dam failure or tsunami, unless the project is protected by adequate engineered solutions designed to preclude flood failure.

(2) Unless the applicant has demonstrated by risk assessment that a smaller buffer zone provides adequate protection for the public in the event of an accident:

a. 500 feet of any dwelling unit or any area designated for residential use in this Title, or

b. 2,000 feet of any dwelling unit or any area designated for residential use in this Title for facilities that will handle ignitable, explosive, or reactive hazardous wastes.

(3) Unless the applicant has demonstrated by risk assessment that a smaller buffer zone provides adequate protection for the public in the event of an accident:

a. 500 feet of any immobile population, or

b. 5,000 feet of any immobile population for facilities that will handle ignitable, explosive, or reactive hazardous wastes.

(4) A recreational or scenic area.

9-5.705 Application Requirements.

In addition to the documents required for a conditional use permit application pursuant to Article 5 of Chapter 7, an application for a conditional use permit for a Hazardous Waste Facility shall be accompanied by the following documents:

(a) A letter of justification describing the proposed Hazardous Waste Facility and explaining how it will satisfy the findings in Article 5 of Chapter 7.

(b) A preliminary geological study of the property and surrounding area which includes as deep a soils analysis as there are known aquifers, regardless of the potability of those aquifers.

(c) Identification of the amounts (tonnage) and types of hazardous wastes to be managed at the Hazardous Waste Facility, the sources of these wastes, the ultimate disposition of the wastes, and the anticipated life of the project. Information shall be provided on the amount, sources, and types of hazardous wastes to be treated based on an actual survey of the businesses to be served.

(d) Identification of travel routes to be used by generators and the owner/operator of the Hazardous Waste Facility for the transportation of hazardous wastes.

(e) A plan for public involvement with the proposed project prior to any Planning Commission public hearings. This plan will provide for adequate public testimony on the project in an effort to mitigate all public concerns prior to the Planning Commission's review and determination.

(f) A plan that identifies an ongoing monitoring program to ensure no release of any hazardous substance from the project site into the environment. This shall include any ongoing monitoring required by other permitting agencies such as the State Department of Toxic Substances Control, the San Francisco Bay Regional Water Quality Control Board, the Bay Area Air Quality Management District, the Federal Environmental Protection Agency, etc.

(g) A risk assessment which at a minimum, studies the potential risks to public health, safety and the environment with attention to the proximity of the proposed site to residential uses, civil uses, environmentally sensitive areas, and groundwater.

(h) Evidence that all other necessary permits from regional, state and federal agencies have been applied for or received.

9-5.706 Noticing Requirements.

In addition to the noticing requirements set forth in Chapter 7, hearings and public notices shall be consistent with the applicable requirements of California Health and Safety Code Sections 25199 through 25199.14.

9-5.707 Local Assessment Committee.

No later than 30 days after an application for a Hazardous Waste Facility is accepted as complete, the City Council shall appoint a seven member Local Assessment Committee (LAC) for each Hazardous Waste Facility application.

(a) Pursuant to California Health and Safety Code Section 25199.7(d), the City Council shall appoint a seven-member Local Assessment Committee (LAC). The City Council has discretion to appoint additional members to this committee as they deem appropriate. The membership, responsibilities and duties shall be consistent with the provisions of California Health and Safety Code Section 25199.7. The LAC shall cease to exist after the final administrative action has been taken by the State and local agencies on the permit applications for the project for which the LAC was formed.

(b) The City shall provide staff resources to assist the LAC in performing its duties as required by California Health and Safety Code Section 25199.7(d)(3).

(c) If the LAC and the applicant cannot resolve any differences through the meetings specified by State Law, the State Office of Permit Assistance may assist in this resolution pursuant to California Health and Safety Code Section 25199.4, as required by California Health and Safety Code Section 25199.7(h).

9-5.708 Conditions of Approval.

In approving a conditional use permit for a Hazardous Waste Facility, the Planning Commission may designate such conditions as it deems necessary in order to fulfill the purposes of this Article, and may require reasonable guarantees and evidence that such conditions are being, or will be, complied with. Such conditions may include, but are not limited to, the following:

(a) An increase in the amount of liability insurance required under state law for such facilities whether or not a Hazardous Waste Facility is required to comply with such state law.

(b) An agreement to indemnify the City of Emeryville in the event of a spill or release of hazardous wastes or any constituents thereof into the environment.

(c) Installation of containment structures for hazardous waste releases capable of withstanding failure due to geologic, soil or other failures.

(d) Compliance with all applicable laws, regulations, ordinances and orders of any governmental agency. The owner/operator of the Hazardous Waste Facility shall provide the City with notice within three days of any violation or noncompliance with any applicable law, regulation, ordinance or order.

(e) Plans and procedures for notifying property owners and occupants within a 500 foot radius of the facility of any accidental releases of hazardous substances into the environment.

9-5.709 Appeals.

The Planning Commission's decision on a conditional use permit for a Hazardous Waste Facility may be appealed to City Council in accordance with the appeal procedures in Article 14 of Chapter 7. A final decision of the City Council regarding a conditional use permit for a Hazardous Waste Facility may be further appealed to the Governor of the State of California or the Governor's designee pursuant to California Health and Safety Code Section 25199.9.

ARTICLE 8. HOME OCCUPATIONS

9-5.801 Purpose.

This Article establishes regulations governing Home Occupations. The purpose of the regulations contained in this Article is to provide criteria and procedures for the consideration and approval of Home Occupations. The City finds it necessary to establish such requirements and criteria to regulate Home Occupations in the interest of the public health, safety and welfare.

9-5.802 Business License and Zoning Compliance Review Required.

A Home Occupation shall require a business license pursuant to Chapter 1 of Title 3 and a Zoning Compliance Review pursuant to Article 3 of Chapter 7. In approving a Zoning Compliance Review for a Home Occupation, the Director may designate reasonable conditions deemed necessary to comply with the regulations in Section 9-5.805.

9-5.803 Uses Permitted.

Any use, except those listed in Section 9-5.804, may be a Home Occupation if the Director determines that it will comply with all of the regulations set forth in Section 9-5.805.

9-5.804 Uses Excluded.

None of the following uses or activities shall be a Home Occupation:

(a) **Uses of Special Concern.** Any use of special concern, as listed in Section 9-2.701, shall not be a Home Occupation.

(b) **Commercial Hauling.** A commercial hauling business shall not be a Home Occupation.

9-5.805 Regulations.

A Home Occupation shall comply with all of the following regulations:

(a) A Home Occupation shall not change the residential character of the dwelling unit or adversely affect other uses.

(b) A Home Occupation shall take place within the dwelling unit or garage, or accessory building that is incidental to the principal residential use.

(c) Outdoor storage associated with a Home Occupation is prohibited.

(d) A Home Occupation shall not exceed 40% of the dwelling unit's square footage and shall not exceed a maximum of 400 square feet of indoor space.

(e) Plants and animals may be grown or kept in outdoor areas of the subject premises as part of the Home Occupation.

(f) Displays and signage advertising the Home Occupation are prohibited.

(g) A Home Occupation shall not have more than one associated vehicle that shall not exceed 20 feet in length. The associated vehicle shall not have more than four square feet of signage related to the Home Occupation.

(h) Employees must be residents of the dwelling unit in which the Home Occupation is located, with the exception of one non-resident, full-time equivalent employee.

(i) A Home Occupation shall not have more than five clients on the premises at any given time, and shall not have more than ten clients at the premises in any given business day.

(j) Non-resident employees and clients shall only be at the premises between 8:00 a.m. and 9:00 p.m.

(k) On-site sales shall be limited to those items physically produced or manufactured within the dwelling unit, garage, or accessory buildings that are part of the Home Occupation, except for plants and animals, which may be grown or kept in outdoor areas of the subject premises.

(l) A Home Occupation that involves hazardous materials or processes shall require Fire Department approval. A Home Occupation shall not create offensive or objectionable noise, vibration, odors, smoke, fumes, heat, dust, dirt, glare or electrical disturbance perceptible by the average person beyond the lot line or party walls of multi-unit buildings of the subject premises.

(m) A Home Occupation shall comply with all other applicable provisions of these Planning Regulations, including but not limited to the Performance Standards in Article 11 of this Chapter; all other applicable provisions of the Emeryville Municipal Code; and all other applicable local, state, and federal laws and regulations.

ARTICLE 9. LIVE/WORK

9-5.901 Purpose.

This Article establishes regulations governing Live/Work Units. The purpose of these regulations is to provide space that allows for a flexible combination of residential and nonresidential uses to meet the changing needs of the Emeryville community. The intent is to encourage small, independent, and creative businesses and artistic endeavors throughout the city.

9-5.902 Applicability.

The provisions of this Article apply to any new or existing Live/Work Unit or Live/Work building, including conversions of existing residential and nonresidential buildings to Live/Work buildings, conversions of Live/Work buildings to wholly residential or nonresidential uses, and any change of use or occupancy in a Live/Work building.

9-5.903 Conditional Use Permit Required.

Occupancy of a Live/Work building shall require approval of a conditional use permit pursuant to the procedures and required findings in Article 5 of Chapter 7.

(a) **Eligible Applicants.** The following persons shall be eligible to apply for a conditional use permit for a Live/Work building:

(1) The owner of the Live/Work building or Live/Work Unit.

(2) An authorized agent of the owner of the Live/Work building or Live/Work Unit.

(3) The occupant of the Live/Work Unit with the express written permission of the building owner.

(b) **To Whom Granted.** The conditional use permit for occupancy of a Live/Work building shall be granted to the owner of the building or Live/Work Unit.

(c) **Notification of Occupants.** A copy of the conditional use permit, showing the conditions of approval, shall be provided to all occupants of Live/Work Units in the building prior to their execution of a lease or purchase agreement for such Live/Work Unit.

(d) **Exception: Existing Live/Work Building.** If a valid conditional use permit exists for a Live/Work building on the effective date of the adoption of this Article, no additional conditional use permit shall be required for that building in order to meet the requirements of this Section.

9-5.904 Occupancy of Live/Work Unit.

The owner or occupant of a Live/Work Unit shall receive Zoning Compliance approval pursuant to Article 3 of Chapter 7. The Zoning Compliance approval shall identify the occupant(s) and use(s) of the Live/Work Unit and demonstrate compliance with the conditional use permit which was issued for the building.

(a) **Exception: Existing Live/Work Units.** If the owner or occupant has received Zoning Compliance approval for a Live/Work Unit on the effective date of the adoption of this Article, no additional Zoning Compliance approval is required for that unit in order to

meet the requirements of this Section unless the use or occupancy is subsequently changed.

(b) **Posting of Zoning Compliance Approval.** The Zoning Compliance approval for a Live/Work Unit shall be posted in the work portion of the Live/Work Unit.

(c) **Change of Use or Occupancy.** The owner or occupant of a Live/Work Unit shall notify the City of any proposed change in use or occupancy. Any change of use or occupancy shall require a new Zoning Compliance approval pursuant to Article 3 of Chapter 7.

9-5.905 Location and Activity Requirements.

(a) **Location.**

(1) Heavy Live/Work Units, as defined in Section 9-2.331(a) are permitted in the INH zone, subject to a conditional use permit pursuant to Article 5 of Chapter 7.

(2) Light Live/Work Units, as defined in Section 9-2.331(b) are permitted in the RM, RMH, RH, MUR, MURS, MUN, OT, and INL zones, subject to a conditional use permit pursuant to Article 5 of Chapter 7.

(b) **Activity.** The work activity associated with a Live/Work Unit must be permitted or conditionally permitted in the zoning district where it will be located as indicated in Chapter 3; provided, however, that if the unit is in a Residential zone, the work activity must be allowed by the regulations for the MUR Mixed Use with Residential zone.

9-5.906 Incompatible Use Types.

The following use types are deemed incompatible with Live/Work Units, and shall not be permitted in any Live/Work building; nor shall Live/Work Units be permitted in any building which contains the following use types:

(a) **Uses of Special Concern.** Any use of special concern, as listed in Section 9-2.701.

(b) **Commercial and Institutional Use Types**.

Animal Care and Sales (all)
Motor Vehicle Sales and Services (all)
Eating and Drinking Establishments
Bars/Nightclubs/Lounges
Emergency Shelters

9-5.907 Live/Work Standards.

Live/Work buildings shall comply with the following standards, unless specifically waived in accordance with Section 9-5.910 below. The Planning Commission may increase any requirement, up to what normally would be required for the business activities which may be associated with the proposed Live/Work Units, if determined to be necessary to protect the public health, safety and welfare.

(a) **Building Size.** A Live/Work building shall not exceed the floor area ratio as specified in Article 2 of Chapter 4.

(b) **Unit Size and Living Area.**

(1) The floor area of each Live/Work Unit shall be no less than 750 square feet and no more than 2,000 square feet, unless the applicant demonstrates that less or more space is appropriate to the proposed use.

(2) Not more than 50% of the floor area of each Live/Work Unit shall be devoted to living area except that in Residential zones not more than 80% of each Live/Work Unit shall be devoted to living area.

(c) **Parking and Loading.** Off-street parking and loading shall be provided as required by Article 4 of Chapter 4.

(d) **Open Space.** Open space shall be provided as required by Article 3 of Chapter 4.

(e) **Performance Standards.** All Live/Work Units and Live/Work buildings shall comply with the applicable performance standards in Article 11 of this Chapter.

(f) **Ventilation.** All Live/Work Units shall be provided with at least one operable window. A ventilation system shall be installed subject to the approval of the Chief Building Official and Fire Marshal for any Live/Work activity which requires additional ventilation or which generates hazardous fumes or dust.

(g) **Mixed Occupancies.** If a building contains mixed occupancies of Live/Work Units and other uses, occupancies other than Live/Work shall meet all applicable requirements for those uses, and proper occupancy separations shall be provided between the Live/Work Units and other occupancies, as determined by the Chief Building Official.

(h) **Additional Requirements.** Live/Work Units and buildings must comply with any additional requirements imposed by the Planning and Building, Fire, Police and Public Works Departments as necessary to protect the public health, safety and welfare.

9-5.908 Residential Zones.

Live/Work Units and buildings located in Residential zones are subject to the following additional standards:

(a) **On-Premises Sales.** On-premises sales of goods not produced within the Live/Work building by an occupant of a Live/Work Unit are not permitted.

(b) **Work Restricted to Occupants.** Work on the premises of a Live/Work Unit shall be limited to persons who live in the Live/Work Unit with the exception of one non-resident, full-time equivalent employee.

9-5.909 Existing Live/Work Buildings.

Any building which contains one or more Live/Work Units on the effective date of the adoption of this Article, and has valid permits for such Live/Work Units, need not meet the parking, loading, and open space requirements of Section 9-5.907. The parking, loading, and open space which existed on the effective date of this Article shall not be reduced to levels below those required by this Article.

9-5.910 Waiver or Reduction of Standards.

In approving a conditional use permit for Live/Work Units, the Director or Planning Commission, as the case may be, may waive or reduce any requirement or portion of a requirement identified in Section 9-5.907 if all of the following findings are made in addition to the findings required by Article 5 of Chapter 7:

(a) That the Live/Work Units are provided within a building which was in existence on the effective date of the initial adoption of this Article.

(b) That the Live/Work Units are provided within a building which is structurally sound or improved so that it is structurally sound.

(c) That the Live/Work Units are provided within a building which is consistent with the architectural character of neighboring buildings or which is improved in order to be consistent.

(d) That the requirements of Section 9-5.907 cannot be met due to site or building constraints.

(e) That human health, safety and welfare will not be adversely affected due to such waiver.

9-5.911 Review Criteria.

In reviewing an application for a conditional use permit for Live/Work Units, the Planning Commission shall consider and give preference for projects which incorporate the following:

(a) Compatibility of the Live/Work building with neighboring uses.

(b) Activities involving artistic endeavors.

(c) Low-income housing.

(d) Separation of work activities from living areas, where work activities could present threats to human health and safety.

(e) Ground-floor commercial activity.

(f) Adequate traffic circulation.

9-5.912 Conditions of Approval.

In approving a conditional use permit for Live/Work Units, the Planning Commission may designate such conditions as it deems necessary to protect the public health, safety and welfare, and may require reasonable guarantees and evidence that such conditions are being, or will be, complied with. Such conditions may include, but are not limited to, the following:

(a) **Building Management.** A building manager shall be designated for the Live/Work building to serve as a liaison between City personnel and Live/Work occupants, and between Live/Work occupants and commercial or industrial occupants. The building manager shall be provided with a copy of all occupancy permits, and shall notify the City of any changes in use or occupancy. The building manager shall report any infringements of permit conditions. The owner of the Live/Work building shall inform the Director of the name and telephone number of the building manager, and shall notify the Director of any changes thereto.

(b) **Inspections.** Live/Work Units shall be subject to periodic inspections by the City's fire, building, health and safety personnel from 9:00 a.m. to 5:00 p.m. on all days except Saturdays, Sundays, and City holidays.

(c) **Written Notice.** For Live/Work buildings located in Industrial zones, the owner of the Live/Work building shall provide written notice to all Live/Work Unit occupants that the surrounding area may be subject to levels of noise, dust, fumes or other nuisances at higher levels than would be expected in residential areas. Specific sources of these nuisances may be identified if appropriate and if possible.

9-5.913 Conversion of Live/Work Buildings.

(a) **Nonresidential Zone.** In a nonresidential zone, any Live/Work building may be converted to wholly nonresidential uses which are permitted in that zone.

(b) **Residential Zone.** In a Residential zone, no Live/Work building may be converted to wholly nonresidential uses; however, it may be converted to wholly residential uses.

ARTICLE 10. NONCONFORMING USES AND STRUCTURES

9-5.1001 Purpose.

This Article establishes regulations for nonconforming uses and structures. The purpose of these provisions is to regulate uses of land and structures that were legal before the adoption or amendment of these Planning Regulations, but which no longer comply. The intent of this Article is to permit nonconforming uses to continue until they are removed or required to be terminated, but not to encourage their survival. More specifically, it is the intent of this Article to distinguish between incompatible nonconforming uses that are detrimental to public health, safety, and general welfare, and nonconforming uses that are economically productive and compatible with surrounding development despite being inconsistent with the use regulations of these Planning Regulations.

9-5.1002 Applicability.

The provisions of this Article apply to uses that have become nonconforming by adoption of these Planning Regulations, uses that were previously nonconforming and remain nonconforming under these Planning Regulations, and uses that become nonconforming due to subsequent amendments to these Planning Regulations, except as provided in Section 9-5.1003 below.

9-5.1003 Exceptions.

The provisions of this Article do not apply in the following situations:

(a) **Signs.** Nonconforming signs shall be subject to the provisions of Section 9-5.1614.

(b) **Residential Uses.** Any residential use, lot, or structure that was legally established prior to the adoption of these Planning Regulations and that has been continuously maintained in residential use in compliance with the requirements of all applicable codes is deemed to be a conforming use, lot, or structure. However, any enlargement or replacement of such use shall conform to these Planning Regulations.

(c) **General Manufacturing Uses.** Any General Manufacturing use, lot, or structure in the INL Light Industrial zone that was legally established prior to the adoption of these Planning Regulations and that has been continuously maintained in compliance with the requirements of all applicable codes is deemed to be a conforming use, lot, or structure. However, any enlargement or total replacement of such use shall conform to these Planning Regulations.

(d) **Public Uses.** Provided that there is no change of use, nothing in this Article shall require the termination, discontinuance, or removal of a public use or a public utility or to prevent the expansion, modernization, replacement, repair, maintenance, alteration, reconstruction, or rebuilding and continuation of public use or utility buildings, structures, equipment, and facilities.

(e) **Planned Unit Developments.** Planned Unit Developments approved prior to the adoption of these Planning Regulations, as listed in Section 9-3.310, are subject to the use and development regulations stipulated in the various ordinances establishing the PUDs. If the ordinance for a PUD does not address a particular issue, these Planning Regulations

shall apply to that issue. Any modifications to such PUDs shall be subject to the provisions of these Planning Regulations.

(f) **Other Planning Entitlements.** Any use allowed under a planning entitlement, including but not limited to a conditional use permit, design review permit, or variance, that was approved prior to the adoption of these Planning Regulations and that has not expired, is deemed to be a conforming use and is subject to any conditions included in its approval. If such a use is not permitted by these Planning Regulations, it may be expanded pursuant to Section 9-5.1011, except those uses that are deemed incompatible pursuant to Section 9-5.1007. Other modifications to such a use beyond what was originally approved shall be subject to the provisions of these Planning Regulations.

(g) **Structures Under Construction.** Nothing contained in this Article shall be deemed to require any change in the plans, construction, or designated use of any building or structure for which a building permit has properly been issued prior to the adoption of these Planning Regulations.

9-5.1004 Nonconforming Uses as Distinguished from Illegal Uses.

(a) **Nonconforming Use.** A nonconforming use is any use of land, use of structure, lot, or structure that was legally established prior to the adoption of these Planning Regulations, but which does not conform to the provisions of these Planning Regulations. Nonconforming uses may be continued, maintained, repaired, altered, substituted for another nonconforming use, expanded, restored or reestablished only in conformance with the requirements of this Article.

(1) Nonconforming uses include:

a. Uses made nonconforming by the addition of a standard or requirement in these Planning Regulations that was not previously required for such use; and

b. Uses that were previously permitted by right and are subject to a discretionary permit under the requirements of these Planning Regulations.

(2) A nonconformity may result from any inconsistency with the requirements of these Planning Regulations, including but not limited to location, density, floor area ratio (FAR), height, setback, usable open space, parking, or performance standards or the lack of a conditional use permit, variance, or other required planning entitlement.

(3) A use or structure shall not be deemed nonconforming solely because it does not conform with the applicable design standards for parking lots and structures pursuant to Section 9-4.406, allowed projections above the top of buildings pursuant to Section 9-4.202(c), or restrictions on features allowed in required yards pursuant to Section 9-4.301(e), or because of other minor deviations from the requirements of these Planning Regulations.

(b) **Illegal Use.** An illegal use is a use of land, use of structure, lot, or structure that was not legally established under the regulations that were applicable at the time it was established, whether before or after the adoption of these Planning Regulations. Any such

illegal use is hereby declared to be a public nuisance and shall be discontinued or legalized immediately.

9-5.1005 Effect of Conditional Use Permit on Nonconforming Uses.

(a) **Use Remains Nonconforming.** Any nonconforming use that is substituted, expanded, restored or reestablished pursuant to a conditional use permit as provided in this Article shall still be considered a nonconforming use in its entirety and shall be subject to all applicable provisions of this Article.

(b) **Conditions of Approval.** In approving a conditional use permit to substitute, expand, restore, or reestablish a nonconforming use, conditions of approval may be imposed as deemed necessary to fulfill the purposes of this Article, and reasonable guarantees and evidence may be required that such conditions are being, or will be, complied with. Such conditions may include, but are not limited to, requiring additional landscaping, screening, and other site improvements; and establishing a time limit and termination date for the nonconforming use.

9-5.1006 Determination of Legal Nonconforming Uses.

The Director shall determine whether a use is nonconforming and whether it was legally established. The Director's determination may be appealed to the Planning Commission in accordance with the appeal procedures in Article 14 of Chapter 7.

9-5.1007 Incompatible Uses.

Uses of special concern, as listed in Section 9-2.701, that are prohibited in the zoning district in which they are located, as indicated in Article 2 of Chapter 3, are hereby declared to be incompatible uses and may be continued but shall not be expanded, substituted for another nonconforming use, or reestablished if abandoned for more than 90 days. An incompatible use may be substituted with a nonconforming use that is not an incompatible use pursuant to the requirements of Section 9-5.1010(d).

9-5.1008 Nonconforming Lots.

Any lot that is smaller than the minimum lot size or width required by Article 7 of Chapter 4 may be developed subject to all other requirements of these Planning Regulations if it is described in the official records on file in the office of the Alameda County Recorder as a lot of record.

9-5.1009 Continuation and Maintenance of Nonconforming Uses and Structures.

(a) **Right to Continue.** Any nonconforming use or structure may be continued and maintained indefinitely if it has remained in continuous existence since the adoption of these Planning Regulations. The right to continue a nonconforming use or structure shall run with the land. Any substitution, expansion, restoration or reestablished of such nonconforming use or structure shall be subject to the requirements of this Article.

(b) **Maintenance and Repairs.** Maintenance, repairs, and structural interior alterations to a nonconforming structure are permitted if the changes and improvements do not expand the structure, except as provided in Section 9-5.1011 below.

(c) **Additions and Alterations to Nonconforming Public Uses.** Additions, extensions, and alterations may be made to any nonconforming public use, including but not limited to schools, parks, recreation facilities, police stations, and fire stations, if the addition, extension, or alteration:

(1) Does not extend beyond the boundaries of the site in existence when the use became nonconforming;

(2) Does not reduce any off-street parking required by Article 4 of Chapter 4; and

(3) Complies with the applicable performance standards in Article 11 of this Chapter.

9-5.1010 Changes and Substitutions of Nonconforming Uses.

A nonconforming use may be changed to a conforming use or substituted with another nonconforming use subject to the requirements of this Section. These requirements shall not apply to a change of ownership, tenancy, or management where there is no change in use type and the use is not expanded.

(a) **Change from Nonconforming to Permitted Use.** Any nonconforming use may be changed to a use that is permitted by right in the zoning district in which it is located and that complies with all applicable standards for such use. Any such change in use terminates the right of the previous nonconforming use to continue to exist, and it may not be reestablished.

(b) **Change from Nonconforming to Conditionally Permitted Use.** Any nonconforming use may be changed to a use that is conditionally permitted in the zoning district in which it is located, subject to the approval of a conditional use permit pursuant to Article 5 of Chapter 7 and any other applicable findings and standards for the new use. Any such change in use terminates the right of the previous nonconforming use to continue to exist, and it may not be reestablished.

(c) **Absence of Permit.** Any use that is nonconforming solely by reason of the absence of a conditional use permit may be changed to a conforming use by obtaining a minor conditional use permit, subject to all applicable findings and requirements for the use.

(d) **Substitution**. A nonconforming use may be substituted with another nonconforming use that is not an incompatible use as defined in Section 9-5.1007 upon the approval of a minor conditional use permit. To grant such a conditional use permit the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(1) The proposed new use will not be detrimental to the public health, safety, or welfare.

(2) The proposed new use will not impede the redevelopment or use of nearby properties in compliance with the General Plan.

(3) The proposed new use will be no less compatible with the purposes of the zoning district where it is located than the nonconforming use it replaces.

(4) The proposed new use will not increase the nonconformity with respect to density, floor area ratio (FAR), height, setback, usable open space, or parking.

(5) The proposed new use will comply with the applicable performance standards in Article 11 of this Chapter.

9-5.1011 Expansion of Nonconforming Structures and/or Uses.

A nonconforming structure and/or use that is not an incompatible use as defined in Section 9-5.1007 may be expanded upon the approval of a minor conditional use permit. Any increase in bonus density, floor area ratio, or height shall require a conditional use permit pursuant to Section 9-4.204. To grant a conditional use permit for the expansion of a nonconforming structure and/or use, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(1) The proposed expansion will not be detrimental to the public health, safety, or welfare.

(2) The proposed expansion will not impede the redevelopment or use of nearby properties in compliance with the General Plan.

(3) The proposed expansion will not increase the nonconformity with respect to density, floor area ratio (FAR), height, setback, usable open space, or parking.

(4) Any proposed expansion of the structure's floor area shall comply with the parking and loading requirements of Article 4 of Chapter 4 for the new floor area.

(5) The proposed expansion will comply with the applicable performance standards in Article 11 of this Chapter.

9-5.1012 Restoration of Damaged Nonconforming Structures and/or Uses.

A nonconforming structure and/or use that is damaged or partially destroyed by fire, explosion, earthquake or other unintentional act may be restored or rebuilt, subject to the following provisions:

(a) **Damage Not More Than 75%.** If the damage does not exceed 75% of its replacement cost, not including the foundation, immediately prior to the date that the damage occurred, the structure may be restored and the nonconforming use may be resumed, provided that an application for a building permit for the restoration work is submitted within six months of the date that the damage occurred and that the restoration work is diligently pursued so that the building permit does not expire. If an application for a building permit is not submitted within six months, or if the building permit expires, the right of the previous nonconforming structure and/or use to continue to exist shall terminate, and they may not be reestablished.

(b) **Damage More Than 75%.** If the damage exceeds 75% of its replacement cost, not including the foundation, immediately prior to the date that the damage occurred, the structure may be restored and the nonconforming use may be resumed, except an incompatible use as defined in Section 9-5.1007, upon the approval of a minor conditional use permit. If an application for a conditional use permit is not submitted within six months of the date that the damage occurred, or if an application for a building permit is not submitted within six months of approval of the conditional use permit, or if the building permit expires, the right of the previous nonconforming structure and/or use to continue to exist shall terminate, and they may not be reestablished. To grant a

conditional use permit for the restoration of a nonconforming structure and/or use, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(1) The proposed restoration will not be detrimental to the public health, safety, or welfare.

(2) The proposed restoration will not impede the redevelopment or use of nearby properties in compliance with the General Plan.

(3) The proposed restoration will not increase the nonconformity with respect to density, floor area ratio (FAR), height, setback, usable open space, or parking.

(4) The proposed restoration will comply with the applicable performance standards in Article 11 of this Chapter.

9-5.1013 Reestablishment of Abandoned Nonconforming Uses.

An abandoned nonconforming use may be reestablished subject to the requirements of this Section. A nonconforming use shall be deemed to be abandoned when the site is vacated, the business license lapses, utilities are terminated, or the lease is terminated.

(a) **Replacement by a Conforming Use.** If an abandoned nonconforming use is replaced by a conforming use, the right of the previous nonconforming use to continue to exist shall terminate and it may not be reestablished.

(b) **Nonconforming Use Abandoned for 90 Days or Less.** A nonconforming use that is abandoned for 90 days or less, including an incompatible use as defined in Section 9-5.1007, may be reestablished, or may be substituted with another nonconforming use pursuant to the requirements of Section 9-5.1010(d).

(c) **Nonconforming Use Abandoned for More than 90 Days but Less Than One Year.** A nonconforming use that is abandoned for more than 90 days but less than one year, and that is not an incompatible use as defined in Section 9-5.1007, may be reestablished upon the approval of a minor conditional use permit, or it may be substituted with another nonconforming use pursuant to the requirements of Section 9-5.1010(d). To grant a conditional use permit for the reestablishment of an abandoned nonconforming use the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(1) The reestablished use will not be detrimental to the public health, safety, or welfare.

(2) The reestablished use will not impede the redevelopment or use of nearby properties in compliance with the General Plan.

(3) The reestablished use will not increase the nonconformity with respect to density, floor area ratio (FAR), height, setback, usable open space, or parking.

(4) The reestablished use will comply with the applicable performance standards in Article 11 of this Chapter.

(d) **Nonconforming Use Abandoned for One Year or More.** If a nonconforming use is abandoned for one year or more, its right to continue to exist shall terminate and it may not be reestablished or substituted with another nonconforming use.

9-5.1014 Abatement

The provisions of this Article shall not apply to a nonconforming use or structure which is, or which becomes, a public nuisance. If a nonconforming structure or use is found to constitute a public nuisance, appropriate abatement action may be taken by the City in compliance with Article 15 of Chapter 7.

ARTICLE 11. PERFORMANCE STANDARDS

9-5.1101 Purpose.

The purpose of these performance standards is to control and limit dangerous or objectionable environmental effects generated by, or inherent to, the use of land or buildings.

9-5.1102 Applicability.

(a) **New Uses.** These performance standards shall apply to the operation of all new uses established after the effective date of these Regulations.

(b) **Existing Uses.** These performance standards shall generally not apply to the ongoing operations of uses in existence on the effective date of these Regulations or of a subsequent rezoning or other amendment applying more restrictive performance standards to such uses, with the following stipulations:

(1) Existing uses shall be subject to any applicable performance standards that were in effect prior to the effective date of these Regulations.

(2) The operations of existing uses shall not be so changed as to result in a greater degree of nonconformity with respect to these performance standards.

(3) Any expansion of an existing use shall be required to conform to these performance standards.

(4) The establishment of a new use in proximity to an existing use shall not require the existing use to change its operations to comply with these performance standards.

(5) Any existing use that is a legal conforming use with respect to these Regulations, and that ceases operations for a period of one year or more, shall comply with these performance standards upon resuming operations. Any existing use that is nonconforming with respect to these Regulations shall be subject to the applicable provisions for Nonconforming Uses in Article 10 of this Chapter and, if allowed to resume operations, shall comply with these performance standards.

9-5.1103 Proof of compliance.

The Director may require the applicant for a building permit or business license to submit such information with respect to proposed equipment, machinery, processes, products, or environmental effects as may be necessary to demonstrate the ability of the proposed use to comply with these performance standards. Such required information may include reports by expert consultants. Any such requirement, and any determination by the Director as to sufficiency of proof, may be appealed to the Planning Commission in accordance with the appeal procedures in Article 14 of Chapter 7.

9-5.1104 Measurements.

When measurements are necessary in the enforcement of these performance standards, they shall be made by competent professionals in the applicable field, in accordance with accepted professional practice.

9-5.1105 Air Quality: Noxious Materials.

All existing or proposed uses producing dust, dirt, ash, charred paper, soot, grime, carbon or other noxious material which can or may cause damage to the health of any individual, animal or vegetation, damage to property, or the physical soiling or discoloring of the surfaces of any structure or materials located outside the property lines of the parcel of land from which such emission emanates, shall have the source of the contaminant muffled or controlled in a manner that will prevent the issuance, continuance or recurrence of any emission that is, or may be, detectable beyond the property line of the premises. All uses shall comply with the requirements of the Bay Area Quality Management District.

9-5.1106 Air Quality: Noncontaminated Emissions.

All existing or proposed uses shall have all intakes and exhausts on all air-handling equipment designed, installed, and operated in such a manner so as to prevent any perceptible acceleration of air movement across property lines. Cooling towers and condensers shall be designed, installed, and operated in a manner which will prevent water spray from being carried across property lines.

9-5.1107 Light and Glare.

All lighting, reflective surfaces, or any other sources of illumination shall be utilized in a manner which produces no glare on public streets or on any other parcel. Lights shall be shielded so as not to be directly visible from an adjoining residential property, except for low level lighting such as interior lights and porch lights.

9-5.1108 Liquid or Solid Waste.

The use, handling, storage and transportation of waste materials, including hazardous wastes, shall comply with Chapter 8 of Title 7, "Wastewater Collection System"; California Health and Safety Code Section 25100 et. seq., "Hazardous Waste Control"; and any other applicable laws. See also Article 7 of Chapter 5, "Hazardous Waste Facilities".

9-5.1109 Noise.

(a) **Noise Ordinance.** All uses and activities shall be subject to the applicable provisions of the noise regulations in Chapter 13 of Title 5.

(b) **Siting of New Uses.** The community noise compatibility standards in Figure 6-11 of the General Plan shall be used as review criteria for new uses. These standards indicate the level of existing ambient noise to which such new uses may be exposed. Noise generated by such uses shall be regulated by subsection (c) below.

Table 9-5.1109

Maximum Permitted Noise Level (dBA)			
Zone		**Daytime** Weekdays 7 a.m. to 9 p.m. Weekends 8 a.m. to 9 p.m.	**Nighttime** Weekdays 9 p.m. to 7 a.m. Weekends 9 p.m. to 8 a.m.
RM Medium Density Residential Zone		65	55
All Other Zones	Abutting a Lot in the RM Medium Density Residential Zone	65	55
	Not Abutting a Lot in the RM Medium Density Residential Zone	70	60

(c) **Noise Generation.** Noise generated by uses shall not exceed the maximum permitted noise level as set forth in Table 9-5.1109 at the property lines of the receiving land use, except that:

(1) The noise levels set forth in Table 9-5.1109 may be exceeded by no more than 5 dBA for a cumulate period of no more than 15 minutes per hour.

(2) The noise levels set forth in Table 9-5.1109 may be exceeded by no more than 10 dBA for a cumulate period of no more than five minutes per hour.

(3) The noise levels set forth in Table 9-5.1109 may be exceeded by no more than 15 dBA for a cumulate period of no more than one minute per hour.

9-5.1110 Odor.

All uses shall be so operated as not to permit matter causing offensive odors which are perceptible to the average person at or beyond any lot line of the lot containing such uses. Adequate buffer distances shall be provided between offensive odor sources and sensitive receptors including schools, hospitals, and community centers. Cooking odors and smoke shall be controlled and prevented from becoming a nuisance to neighboring properties. An odor detected no more than 15 minutes in any one day is acceptable.

9-5.1111 Vibration.

There shall be no activity on any site that causes ground vibration that is perceptible without instruments at the property line of the site. This shall not apply to operations involved in the demolition of structures or caused by motor vehicles or trains.

ARTICLE 12. PRESERVATION OF STRUCTURES

9-5.1201 Purpose.

This Article establishes regulations for the preservation of significant and residential structures. The purpose of these regulations is to encourage the preservation and reuse of such structures. Significant structures reflect the City's heritage, contribute positively to the City's aesthetic character, and provide opportunities for reinvestment. The City's existing housing stock is an important community resource on which the supply and affordability of shelter and maintenance of the community's character depend.

9-5.1202 Applicability.

This Article applies to any project that involves the demolition of a significant or residential structure, the substantial alteration of the exterior appearance of a significant structure, or a change in the number of dwelling units and/or live/work units in a residential structure.

9-5.1203 Conditional Use Permit Required.

(a) **Preservation and Reuse.** Preservation and reuse of a significant or residential structure shall require approval of a minor conditional use permit pursuant to Article 5 of Chapter 7 and the additional findings specified in Section 9-5.1206(a). This shall be in addition to whatever planning permits are otherwise required for the proposed project (e.g. conditional use permit, design review), which shall be processed concurrently with the conditional use permit for preservation and reuse. Parking credit is available for the preservation and reuse of significant structures with legal nonconforming parking deficiencies pursuant to Section 9-4.404(d).

(b) **Demolition.** Demolition of a significant or residential structure shall require approval of a conditional use permit by the City Council, upon a recommendation of the Planning Commission, pursuant to Article 5 of Chapter 7 and the additional findings specified in Section 9-5.1206(b). This shall be in addition to whatever planning permits are otherwise required for the proposed project (e.g. conditional use permit, design review, planned unit development), which shall also require City Council approval and shall be processed concurrently with the conditional use permit for demolition.

9-5.1204 Application.

In addition to the documents required for a conditional use permit application pursuant to Article 5 of Chapter 7, an application for a conditional use permit for the preservation and reuse or the demolition of a significant or residential structure shall be accompanied by the following documents:

(a) **Existing Structure.** A location map, the address and assessor's parcel number of the property, a plan showing the footprint of the structure, and photographs of all sides of the structure.

(b) **Justification.** A letter stating why the preservation and reuse or the demolition is needed and how the findings set forth in Section 9-5.1206 could be made.

(c) **Proposed Structure.** A description of the proposed preservation and reuse of the existing structure or of any proposed replacement structure, a description of proposed uses, plans, elevations and color and materials board.

9-5.1205 Approval Procedure for Demolition.

(a) **Planning Commission Recommendation.** After holding a public hearing, noticed as required by Chapter 7, the Planning Commission shall recommend a course of action on the application for a conditional use permit to demolish a significant or residential structure and on any application for a replacement project, including any required approvals such as design review, use permit, variance, rezoning and/or planned unit development. At the conclusion of the public hearing, the Planning Commission, after making the required findings, shall recommend approval, conditional approval, or denial of the conditional use permit for demolition and any replacement project. The Planning Commission shall forward to the City Council the application, the appropriate environmental documents and the Commission's written report recommending approval, conditional approval, or denial of the conditional use permit for demolition and any replacement project.

(b) **City Council Action.** The City Council shall take final action on the application for a conditional use permit to demolish a significant or residential structure and on any application for a replacement project, including any required approvals such as design review, use permit, variance, rezoning and/or planned unit development. Within 30 days following receipt by the City Clerk of the reports forwarded by the Planning Commission, a public hearing, noticed as required by Chapter 7, shall be held by the City Council for action on the conditional use permit for demolition and required approvals for any replacement project. At the conclusion of the public hearing, the City Council, after making the required findings, shall approve, conditionally approve, or deny the conditional use permit for demolition and any replacement project.

9-5.1206 Findings.

(a) **Preservation and Reuse.** To approve a proposal for the preservation or reuse of a significant or residential structure, one of the following findings must be made, as applicable:

(1) Significant Structure: That the proposed project will retain and enhance all or most of the features of the structure that make it significant, as described and indicated in Table 9-5.1210.

(2) Residential Structure: That the applicant will retain and incorporate the existing residential units or will provide at least the same number of residential units as the existing structure, either on-site or elsewhere within the City of Emeryville.

(b) **Demolition.** The City Council may authorize demolition of a significant or residential structure only if one or more of the following occurs:

(1) Replacement of Significant Structure: The City Council approves a replacement structure based on all of the following findings:

a. The elimination of the significant structure would not be materially detrimental to the public interest of the affected neighborhood of the city; and

b. The replacement structure would feature design quality that is as high as or higher than the structure to be demolished and that it is compatible with the character of the neighborhood; and

c. The replacement structure will promote a pedestrian orientation of the neighborhood in which it is located; and

d. The proposed use would be unable to occupy the existing structure, or would be cost prohibitive as an adaptive reuse of the existing structure due to required seismic retrofit or other factors.

(2) Replacement of Residential Structure: The City Council approves a replacement structure based on all of the following findings:

a. The applicant will provide at least the same number of dwelling units as the demolished structure, either on-site or elsewhere within the City of Emeryville; and

b. The replacement structure would feature design quality that is as high as or higher than the structure to be demolished and that it is compatible with the character of the neighborhood; and

c. The elimination of the residential structure would not be materially detrimental to the housing needs or the public interest of the affected neighborhood or the City.

(3) Significant or Residential Structure, Whether or Not a Replacement Structure is Proposed: The City Council makes one or more of the following findings:

a. The structure is irrecoverably damaged due to natural disaster; or

b. The structure or lot is irrecoverably contaminated with one or more toxins, such that the appropriate regulatory agency requires demolition or partial demolition of the structure before soil remediation or renovation and reuse of the structure can occur; or

c. The structure will be replaced by publicly accessible landscaped open space; or

d. Demolition of the structure is in the best interest of the public health, welfare, or safety.

9-5.1207 Conditions of Approval.

The City Council may apply such conditions in connection with approval of the demolition of a significant or residential structure as it deems necessary in order to fulfill the purposes of this Article, and may require reasonable guarantees and evidence that such conditions are being, or will be, complied with. Such conditions shall be implemented prior to the Building Official's issuance of a building permit for the demolition of the structure, and may include but are not limited to the following:

(a) A good faith effort to relocate the structure to an appropriate site within the City of Emeryville.

(b) Documentation of the existing structure to Historic American Buildings Survey standards or to standards established by the Director.

(c) Preserving any significant elements of the structure and/or the structure's façade, and reusing them in any replacement structure.

(d) Salvaging of fixtures and architectural features from the existing building and reusing them in any replacement structure or elsewhere within the City of Emeryville.

(e) Use of building materials in any proposed replacement structure similar to the original structure or those in the immediate area.

(f) Design modifications to any proposed replacement structure to better fulfill the purposes of this Article.

9-5.1208 Appeals.

A decision on a conditional use permit for the preservation and reuse of a significant or residential structure pursuant to Section 9-5.1203(a) may be appealed as provided in Article 14 of Chapter 7.

9-5.1209 Effect on Building Permits.

(a) **Replacement Structure.** If the City Council approves a replacement structure based upon the findings specified in Section 9-5.1206(b)(1) or 9-5.1206 (b)(2), and except as specified in subsection (b) below, the Building Official shall not issue a building permit to demolish a significant or residential structure unless:

(1) The Building Official is in a position to concurrently issue a building permit for the replacement structure to be constructed on the site of the structure to be demolished; and

(2) The Building Official has been provided a fully executed copy of a contract for the construction of the replacement structure.

(b) **Contaminated Site.** If the City Council approves a replacement structure based upon the findings specified in Section 9-5.1206(b)(1) or 9-5.1206 (b)(2), and the site of the replacement structure requires remediation of contaminated soil and/or groundwater, the Building Official may issue a building permit to demolish a significant or residential structure upon submittal of an application for a building permit for the replacement structure, including payment of all required plan review fees.

(c) **Other Circumstances.** If the City Council makes any of the findings contained in Section 9-5.1206(b)(3), the Building Official may issue a building permit to demolish a significant or residential structure upon the effective date of the City Council's action.

(d) **Accessory Buildings.** "Accessory buildings," as defined in Chapter 8, shall be excluded from the provisions of this Section.

9-5.1210 Designation of Significant Structures.

All structures or parts of structures shown in Table 9-5.1210 and Figures 9-5.1210(a) and 9-5.1210(b) are hereby designated as significant structures.

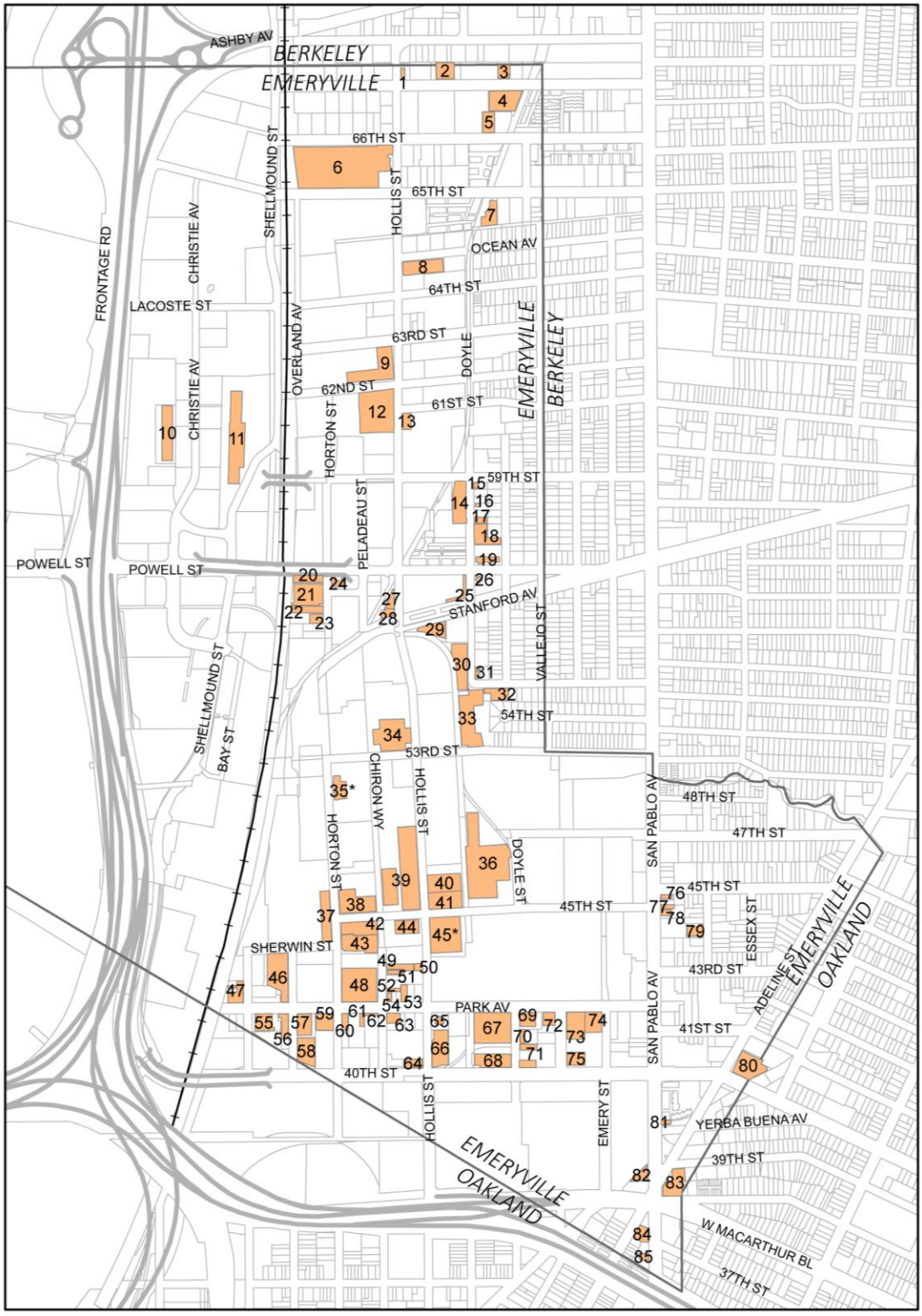

Figure 9-5.1210(a). Significant Structures.

Table 9-5.1210: Significant Structures

Map #	Street Address(es)	Assessor Address	Parcel Number	Name	Significant Features[2]
1	6702 Hollis, 1320 67th	1320 67th	049-1512-002-02	Prizefighter Bar	roof with varied heights, concrete inlay, brick sills
2	1308 67th	1308 67th	049-1513-007-00	Martin north middle	industrial windows with brick sills
3	1250 67th	1250 67th	049-1513-003-00	Martin northeast	gable, industrial windows with brick sills
4	1255 67th	1255 67th	049-1508-012-00	Martin southeast at Greenway	taller central section with pilasters, industrial windows with brick sills
5	1266 66th	1266 66th	049-1508-002-00	Emery Crossing	stepped roofline, repeating bays
6	6529 Hollis	6529 Hollis	049-1510-003-01	Emery Tech & Clif Bar	repeating bays of brick, glass and sills
7	1265 65th	1265 65th	049-1504-002-00	Baker Metal	gabled clerestory roofline, relief on greenway side
8	6450 Hollis	6450 Hollis	049-1483-005-00	Jellybean Square	symmetric windows around taller articulated entry, rounded corners, industrial windows with sills
9	6221-6251 Hollis, 1400 62nd, 1501-1536 63rd	6261 Hollis	049-1488-001-00	Hollis Complex	taller central piece with poured concrete pilasters and windows centered on door, window pattern on Hollis Street
10	5909 Christie	5909 Christie	049-1494-008-00	behind Christie Ave Common	brick cornice, repeated concrete window frames, decorative shields
11	6005 Shellmound	5959 Shellmoun d	049-1556-002-00	Public Market west large	articulated brick, pilasters, cornice and parapet
12	6121 Hollis	6121 Hollis	049-1489-013-03	Heritage Square	clerestory roofline, 62nd and Hollis facades, concrete inlays in brick, rhythm of windows
13	6050 Hollis	5900 Hollis	049-1477-001-01	Hollis Street Project Banta northwest	building massing, shape of window area on 61st, gabled roof, symmetric industrial windows, concrete pilasters
14	1301 59th, 5800s Doyle	1301 59th	049-1329-002-00	Monthly building	crane way, recessed entrance, industrial windows
15	1295 59th	1295 59th	049-1330-001-00	Siegel & Strain architects	symmetric stepped roofline, rectangular contrasting brick pattern, concrete inlays
16	5874 Doyle	5874 Doyle	049-1330-011-00	yellow wood house	gabled roof with dormer, double hung windows with sills
17	5862 Doyle	5862 Doyle	049-1330-009-00	Townhouse	restaurant, wood porch and sidewalk, pattern next todoor, gabled roof
18	5856 Doyle	5856 Doyle	049-1330-008-01	Ratcliff architects	lighter brick stripes between red bricks, repeated industrial windows

Map #	Street Address(es)	Assessor Address	Parcel Number	Name	Significant Features[2]
19	1290 Powell	1260 Powell	049-1330-008-02	Design Centro Italia	bicolor diamond design with tiles, tower, yellow brick cornices and sills, rhythm of industrial windows
20	1519 Powell	1519 Powell	049-1320-001-00	Apex building	repeated bays of brick pilasters and industrial windows with sills
21	5751-5755 Horton	5755 Horton	049-1320-003-00	Zentner building	varied roofline, repeated bays of brick pilasters and industrial windows with sills, larger bricks in curtain walls, cornice
22	5749 Horton	5749 Horton	049-1320-004-00	red industrial building north	gable, industrial windows with sills
23	5743 Horton	5749 Horton	049-1320-004-00	Toll Arbitare brick south	set back gable, brick columns with industrial windows and sills
24	1475 Powell	1475 Powell	049-1319-001-15	Haruff Street building	arches over windows and door, ornament over door, pilaster between upper windows, rhythm of industrial windows, massing, Mansard roof, cornices, courtyard, brick-stucco contrast
25	5741-5749 Doyle	5780 Hollis	049-1317-001-01	Parc on Powell east and south	first floor facades: arches over doors, industrial windows, black brow in brick on Doyle Street
26	1255 Powell	1255 Powell	049-1315-001-00	water tower	water tower
27	5703 Hollis	5701 Hollis	049-1318-003-00	lab north brick	brick soldier coursing, industrial windows with sills
28	5701 Hollis	5701 Hollis	049-1318-003-02	lab south turrets	ornate bas relief around central entry on Hollis Street, contrasting columns with pyramid tops, window railings
29	1335 Stanford	1335 Stanford	049-1041-014-00	PRC brick building	industrial windows with brick sills symmetric around gabled recessed entry, cornice
30	5515 Doyle	5515 Doyle	049-1041-054-00	Doyle St Café and industrial building	gabled roof on cafe, brick cornices and pilasters, industrial windows, taller central section of offices
31	5500 Doyle	5500 Doyle	049-1313-016-00	Bergtraun architects	hip roof, repeated windows with sills
32	1299 55th	1299 55th	049-1184-013-00	Pickleworks	stepped roofline, yellow brick outlining windows contrasting with red brick, entry with windows and stoop, industrial windows
33	1250 53rd	1250 53rd	049-1041-018-01	Thoroughbred building	contrasting ornamental bas-relief entry feature extending above roof on 53rd Street, window pattern, industrial windows

Map #	Street Address(es)	Assessor Address	Parcel Number	Name	Significant Features[2]
34	5301 Hollis	5300 Chiron Way	049-1041-071-02	Chiron - Novartis	semicircular openings, collonade with symmetric window pattern above, recess pattern and color on top floor, conical equipment screen on roof
35	4560 Horton[1]	4560 Horton1	049-1041-050-01	Shell Building - Q Center - Chiron - Grifols	bas-relief shell, pilasters and recessed windows at corner, repeated windows
36	1250-1260 45th	1250 45th	049-1041-023-02	Emeryville Business Center	entire complex except north building; saw tooth roof; gables, large industrial windows; front building alternating brick pattern, glass blocks around door
37	1450 Sherwin	1450 Sherwin	049-1041-026-15	Sherwin-Williams Building	contrasting concrete and brick, three stories, window pattern, windows recessed with concrete sills, north end symmetric concrete and windows around entrance
38	1420 45th	1420 45th	049-1041-056-00	Artist Co-op north	articulated yellow brick, rectangular relief above windows, contrasting entry columns, lentil and shield, rhythm of vertical windows
39	4525 Hollis	4525 Hollis	049-1041-029-02	PG&E North (buildings C & B)	contrasting pilasters, varied heights; Hollis semicircular stoop with arch above, circle windows, contrasting cornice, bas relief sculptures; 45th arched insets symmetric around glass block; west building industrial windows
40	4512-4514 Hollis	4512 Hollis	049-1041-012-02	Bullseye Glass	two-tone yellow brick pattern with relief, pilasters, industrial windows, stepped roofline with taller center
41	1266-1290 45th	1280 45th	049-1041-013-00	Acrylic Arts, Lunt Marymor	curve in roofline, rhythm of industrial windows, contrasting cornice
42	4300 Horton	4300 Horton	049-1033-020-00	Live/Work Lofts	symmetric industrial windows, recessed windows in brick
43	4333 Holden	4250 Horton	049-1033-004-00	Artist Co-op south	gabled roof over contrasting recessed arched door, industrial windows, brick patterns
44	4245 Hollis	4245 Hollis	049-1032-014-00	PG&E south	entry windows above central door, lentil, pilasters and steps; corner taller with arched relief over windows, windows symmetric around door
45	4240 Hollis[1]	4240 Hollis1	049-1539-002-00	Pixar northwest building	yellow brick detail, alternating colors, cornices, stepped roofline taller in center, symmetric windows
46	1500 Park	1500 Park	049-1035-008-00--127-00	Emeryville Warehouse Lofts	arched center of roof on Park Avenue, small gable over door, three stories of poured concrete, industrial windows, cornice

Map #	Street Address(es)	Assessor Address	Parcel Number	Name	Significant Features[2]
47	1550 Park	1550 Park	049-1036-003-00	Pelco	brick pilasters, industrial windows, cornice; north side symmetric bays around central gabled section
48	1400 Park	1400 Park	049-1033-002-00	Peet's Coffee & Tea	taller central section, concrete inlay, large windows, articulated brick façade
49	4240 Holden	4221 Hollis	049-1032-003-01	DePuy Orthopaedics	taller central section, industrial windows with brick sills, door with windows around it and awning above it
50	4221 Hollis	4221 Hollis	049-1032-003-01	Mustard building, Trout	horizontal industrial window pattern, cornice, shields, rectangular brick insets, taller central windows on ground floor, sills
51	4224 Holden	4224 Holden	049-1032-012-00	Bischoff	brick patterns, industrial windows, contrasting scuppers, cornice
52	4210 Holden	4210 Holden	049-1032-009-00	Santner	industrial windows with sills, soldier coursing brick pattern
53	1368 Park	1368 Park	049-1032-007-01	Shaolian	glass block beside door, wide industrial windows, cornices, brick relief
54	1394, 1396 Park	1396 Park	049-1032-008-04	Victorian	circular corner, bay windows, decorative parapet, arched windows, contrasting cornice and window frames, windows over doors
55	1545 Park	1545 Park	049-0617-005-06	Editions Limited	larger central section, tall industrial windows on ground floor with second floor windows in same rhythm, cornices contrasting with brick
56	1501 Park	1501 Park	049-0617-005-07	Lux Estate Services	gable, tall industrial windows in two centered sets of three on Park and square on Holden, cornice contrasting with brick, sills
57	1485 Park	1485 Park	049-0617-007-01	Bruck	window patterns, contrasting relief above and below windows, central entrance and symmetric windows
58	4056 Hubbard	4056 Hubbard	049-0617-010-00	Rug Depot	taller central sections; large openings; brick pilasters, cornice, and insets
59	1461 Park	1461 Park	049-0617-008-01	Bash	industrial windows, taller on Park Avenue, contrasting relief over windows, sills
60	1447 Park	1447 Park	049-0617-013-00	Davies Vinther	stepped symmetry of roof, large industrial windows, cornice
61	1421 Park	1421 Park	049-0617-014-01	Silberman	gable, industrial windows with brick sills

Map #	Street Address(es)	Assessor Address	Parcel Number	Name	Significant Features[2]
62	1401 Park	1401 Park	049-0617-015-01	Icon	articulated center of façade, contrasting concrete inlay, decorative cap and brick relief on pilasters and parapet, pilasters and windows symmetric around central entry
63	4049 Holden	4049 Holden, 1375 Park	049-0617-018-00	Bashland	taller central section, contrasting cornice, industrial windows, recessed larger windows, sills
64	4041 Hollis	4041 Hollis	049-0617-023-00	Granite Expo brick building	taller central section, rhythm of large windows; Park Ave roofline and awning symmetry; 40th windows symmetric around central entry
65	1333 Park	1333 Park	049-0618-001-00	Old Town Hall	contrasting domed section with pilasters and arched entry, bas relief over arch, steps, windows symmetric around central entry, contrasting parapet, eaves, hip roof
66	4062 Hollis	4062 Hollis	049-0618-004-00	Carlavero	contrasting concrete lentil over door and two windows, industrial windows with concrete caps, relief in brickwork
67	1251-1259 Park	1255 Park	049-0618-005-00	ComputerLink Arcadia Milagen Nethawk	taller central section, contrasting cornice, pilasters, large industrial windows, contrasting entry frame, rectangular brick insets
68	4053 Harlan	4053 Harlan	049-0618-058-00--108-00	Besler building	gable, symmetric concrete pilasters contrasting with curtain wall, rhythm of industrial windows with sills
69	1219 Park	1219 Park	049-0618-007-01	Folkmanis	arched windows and doors with brick brows, lower window over central door, cornices
70	4060 Harlan	4060 Harlan	049-0618-007-02	Easy Auto	gables
71	4067 Watts, 4026-4050 Harlan	4067 Watts	049-0618-010-00	Turnkey Systems, Seabright	large industrial windows with brick sills, windows centered around rollup door
72	1201 Park	1201 Park	049-0618-008-00	CCD Innovation	arched industrial windows symmetric around central arched doorway; brick cornices, corner pilasters, and sills
73	1175-1195 Park	1175-1195 Park	049-0618-034-00--042-00	Park Business Center	symmetrical sections of industrial and arched double-hung windows with brick sills; contrasting columns, pilasters and lentils around doors
74	1155-1165 Park, 4089 Emery	1155-1165 Park, 4089 Emery	049-0618-043-00--045-00	NuGenTec	large industrial windows; brick pilasters, cornices, and sills
75	4052-4080 Watts	4052-4080 Watts	049-0618-053-00--56-00	Addiction Motors	one- and two-story sections; industrial windows with contrasting concrete above, brick cornice and sills

Map #	Street Address(es)	Assessor Address	Parcel Number	Name	Significant Features[2]
76	4344-4348 San Pablo	1099 45th	049-1079-001-00	Tom's Computer, nails 2	symmetric stepped roofline, windows, storefronts and central arched entry with decorative tile above it
77	4336 San Pablo	4332 San Pablo	049-1079-023-00	Punjab Bazar, Touch of Soul	symmetric gable with cornice and decorative tiles, high window, storefronts and lamps, tile wainscoting
78	4332 San Pablo	4332 San Pablo	049-1079-023-00	Emeryville market, nails	cornice, three similar sets of windows with sills, storefronts and lamps symmetric around arched entry
79	4321 Salem	4321 Salem	049-1079-009-00	Veterans Memorial Senior Center	three sets of pilasters with tiles and windows on both sides, contrasting mullions, recessed doors and windows, lamps, steps, interior
80	4000 Adeline	4000 Adeline	049-1022-004-00	City Storage National	patterns of repeated industrial windows with sills
81	3900 San Pablo	3900 San Pablo	049-1024-004-00	Bank Club	classical style, two-story arches, shield, central small gable over door, tile hip roof, contrasting symmetric pilasters, cornices
82	3815-3823 San Pablo	3823 San Pablo	049-1554-001-00	Gravestock Building	symmetric windows, larger on first floor, soldier coursing, cornices contrasting with yellow brick, hip roof, windows higher above central entry
83	3800-3840 San Pablo	3800 San Pablo	049-0952-007-00	Maz building	contrasting ornate double pilasters echoed in roofline, cornices and parapet, glass on three sides
84	3631-3637 San Pablo	3637 San Pablo	049-0480-002-01	Rush	ironwork on windows
85	3617 San Pablo	3617 San Pablo	049-0480-007-00	apartments & vacant retail	central arches in roofline and balcony doors, cornice with decorative supports, symmetric windows with sills, clerestories

Notes: 1. Demolition previously approved by City Council as part of a planning entitlement.

2. “Industrial windows" are large windows with many small panes and metal mullions and frames. "Contrasting" refers to color contrast.

1 - 1320 67th

2 - 1308 67th

3 - 1250 67th

Figure 9-5.1210(b) Significant Structures Photographs.

4 - 1255 67th

5 - 1266 66th

6 - 6529 Hollis

7 - 1265 65th Street

8 - 6450 Hollis

9 - 6251 Hollis

10 - 5909 Christie

11 - 5959 Shellmound West

12 - 6121 Hollis

13 - 6050 Hollis

14 - 1301 59th

15 - 1295 59th

Figure 9-5.1210(b) Significant Structures Photographs (continued).

16 - 5874 Doyle

17 - 5862 Doyle

18 - 5856 Doyle

19 - 1260 Powell

20 - 1519 Powell

21 - 5755 Horton

22 - 5749 Horton north

23 - 5749 Horton south

24 - 1475 Powell

25 - 5479 Doyle

26 - 1255 Powell

27 - 5701 Hollis north

Figure 9-5.1210(b) Significant Structures Photographs (continued).

28 - 5701 Hollis

29 - 1335 Stanford

30 - 5515 Doyle

31 - 5500 Doyle

32 - 1299 55th

33 - 1250 53rd

34 - 5300 Chiron

35 - 4560 Horton *

36 - 1250 45th

* Demolition previously approved by City Council as part of a planning entitlement.

37 - 1450 Sherwin

38 - 1420 45th

39 - 4525 Hollis

Figure 9-5.1210(b) Significant Structures Photographs (continued).

40 - 4512-4514 Hollis

41 - 1266-1290 45th

42 - 4300 Horton

43 - 4250 Horton, 4333 Holden

44 - 4245 Hollis

45 - 4240 Hollis *****

* Demolition previously approved by City Council as part of a planning entitlement.

46 - 1500 Park

47 - 1550 Park

48 - 1400 Park

49 - 4240 Holden

50 - 4221 Hollis

51 - 4224 Holden

Figure 9-5.1210(b) Significant Structures Photographs (continued).

52 - 4210 Holden

53 - 1368 Park

54 - 1394 Park

55 - 1545 Park

56 - 1501 Park

57 - 1485 Park

58 - 4056 Hubbard

59 - 1461 Park

60 - 1447 Park

61 - 1421 Park

62 - 1401 Park - Park facade

63 - 4049 Holden, 1375 Park

Figure 9-5.1210(b) Significant Structures Photographs (continued).

64 - 4041 Hollis, 1368 40th

65 - 1333 Park

66 - 4060-4062 Hollis

67 - 1251-1259 Park

68 - 4053 Harlan

69 - 1219 Park

70 - 4060 Harlan

71 - 4067 Watts, 4026-4050 Harlan

72 - 1201 Park

73 - 1175-1195 Park

74 - 1155-1165 Park, 4089 Emery

75 - 4052-4080 Watts

Figure 9-5.1210(b) Significant Structures Photographs (continued).

76 - 1099 45th

77 - 4336 San Pablo

78 - 4330 San Pablo

79 - 4321 Salem

80 - 4000 Adeline

81 - 3900 San Pablo

82 - 3823 San Pablo

83 - 3800 San Pablo

84 - 3637 San Pablo

85 - 3617 San Pablo

Figure 9-5.1210(b) Significant Structures Photographs (continued).

9-5.1211 Criteria for Adding or Deleting Significant Structures.

When significant structures are added or deleted, the following criteria shall be used as a guide:

(a) A prominent structure that exhibits exceptional architectural quality, is emblematic of Emeryville, or is important to the history of Emeryville; or

(b) A structure that has at least five of the following features in its street facade(s):

(1) Predominantly brick, excepting windows and doors.

(2) Windows and doors, including roll-up doors, covering at least 30% of a street façade and covering at least 30% of the ground floor street facade.

(3) Symmetry or repetitive rhythm as defined by window and door openings on most of a street facade.

(4) Multi-paned windows (at least half of the area of the windows having panes measuring no more than one-and-a-half feet by three feet).

(5) Window sills protruding from walls at least two inches.

(6) Roofline with varied heights or angled or curved shapes at street front.

(7) Decorative bas relief, concrete inlays, ironwork, stained glass, tiles or other decorative features.

(8) Walls with columns or curves.

(9) Walls with complex cornices six inches wide or wider.

(10) Varied artistic patterns in the predominant cladding material.

(11) Arch or angle over the major entrance.

9-5.1212 Definitions.

As used in this Article:

(a) "Demolish" means to remove or destroy all or part of any structure to an extent of more than 50% of the replacement cost of the structure, not including the foundation, immediately prior to destruction, or to remove or destroy features of a significant structure that make it significant, as listed in Table 9-5.1210.

(b) "Preserve and reuse" means retention of all or part of any structure, involving demolition to an extent of no more than 50% of its replacement cost, not including the foundation, immediately prior to commencing work on the structure, and to renovate the structure for a subsequent use that is the same as or different than its previous use.

(c) "Residential structure" means a structure that is used for any use classified as a Residential use type at Sections 9-2.203, 9-2.205, 9-2.207, 9-2.211 or 9-2.213, or defined as a "live/work unit" at Section 9-2.331. A vacant structure shall be considered a residential structure if its most recent use was any such Residential or live/work use type.

ARTICLE 13. PRIVATE PROPERTY ACCESS FROM CITY PARKS, GREENWAYS, AND OTHER CITY PROPERTY

9-5.1301 Purpose.

This Article establishes regulations for accessing private property from City parks, greenways, and other City property. Such access can help to enliven parks and greenways and may provide the only feasible means of access in some situations.

9-5.1302 Applicability.

The provisions of this Article shall apply whenever a private property owner seeks to gain access to the private property from a City park, greenway, or other City-owned property. Such access may include the entire property or individual dwelling units, live/work units, commercial tenant spaces, or other individual units of the property. Nothing in this Article shall restrict access to private property from any public right-of-way, which shall be subject to all other applicable laws and regulations.

9-5.1303 Conditional Use Permit Required.

No private property shall be accessed from a City park, greenway, or other City property by pedestrians, bicycles, motor vehicles, or any other means except upon the granting of a minor conditional use permit pursuant to the requirements of this Article. Such a conditional use permit approves access from the City park, greenway, or other City property and includes approval of any and all access improvements on the private property, but does not constitute an entitlement for use of the City park, greenway, or other City property in perpetuity.

9-5.1304 Allowable Uses.

Except for Eating and Drinking Establishments, no use of special concern, as listed in Section 9-2.701, shall gain access from a City park, greenway, or other City property unless it is the only feasible means of access.

9-5.1305 Alternate Access.

To the extent feasible, a second means of access to the private property shall be provided so that access from a City park, greenway, or other City property is not the sole means of access to the private property or any of its individual spaces or units. If access from a City park, greenway, or other City property is the only feasible means of access to the private property, the owner of the private property shall be responsible, in cooperation with the City, for facilitating access to the private property in the event that the City needs to close or restrict access to the park, greenway, or other City property for maintenance, repairs, or other reasons. The owner of the private property shall bear all costs associated with facilitating such access during closure or restriction of the park, greenway, or other City property.

9-5.1306 Limitations.

Access to private property from a City park, greenway, or other City property shall be limited to pedestrian and bicycle access, unless it provides the only feasible means of access for motor vehicles.

9-5.1307 Landscaping and Maintenance of Property Gaining Access.

Private property gaining access from a City park, greenway, or other City property shall be attractively landscaped in conformance with all requirements of this Code, the Emeryville Design Guidelines, and all other applicable design guidelines such as the North Hollis Urban Design Plan or the Park Avenue District Plan. Such landscaping shall be maintained in a healthy growing condition at all times, and the overall property shall be maintained free of trash, litter, graffiti, weeds, peeling paint, and any other blighting conditions, in conformance with the requirements of Chapters 2 and 11 of Title 6 and all other applicable laws and regulations.

9-5.1308 Access Facilities.

The private property owner shall be responsible for providing a suitable all weather pedestrian and/or bicycle path from the pedestrian and/or bicycle path on the City property to the pedestrian and/or bicycle access point on the private property. If motor vehicle access is to be provided, a driveway conforming to the requirements of Article 4 of Chapter 4 shall be provided. The private property owner shall be responsible for bearing all costs of design, construction, operation and ongoing maintenance of such access facilities both on the City property and on the private property. If a door into a building is provided on the private property, it shall not swing over the property line onto the City property; if necessary to prevent this, the door shall be inset into the wall of the private building.

9-5.1309 Financial Contribution to Citywide Parks Fund.

As a condition of gaining access from a City park, greenway, or other City property, the owner of the private property shall make a one-time lump sum contribution to the Citywide Parks Fund in an amount equal to the value of the access as determined by an appraisal prepared at the applicant's expense under the direction of the City. This shall be in addition to the application fee and any other fees prescribed by the Master Fee Schedule. This condition may be waived, or the amount of the contribution reduced, if the property owner is required to construct or make improvements to the park, greenway, or City property, other than the proposed access facilities, or if the City Council determines that the benefit of the access to the City outweighs the benefit of the access to the applicant.

9-5.1310 Application.

An application for access to private property from a City park, greenway, or other City property shall be submitted to the Planning and Building Department on a form provided by the Director, accompanied by the fee as set forth in the Master Fee Schedule and application materials as determined necessary by the Director, including but not limited to the following:

(a) A site plan, dimensioned, clearly labeled, and drawn to a standard architectural or engineering scale, showing the entire area where the private property interfaces with the park, greenway, or other City property, including other properties and public rights-of-way within ten feet in all directions. The site plan shall clearly indicate:

(1) The location of any and all features on the private property and in the park, greenway, or other City property, including but not limited to pedestrian and bicycle paths, trees, tree wells and grates, lights, signs, utility poles, trash

containers, kiosks, planters, benches, play equipment, driveways, parking and loading areas, buildings, doorways, and disabled access ramps.

(2) The proposed access pathways and/or driveways from the park, greenway, or other City property onto the private property, indicating dimensions and materials.

(3) The relationship of the proposed access pathways and/or driveways to other adjacent properties and public rights-of-way, including any doors and windows.

(4) The pedestrian, bicycle, and/or motor vehicle circulation routes and disabled access paths of travel if applicable.

(b) A landscape and grading plan clearly indicating and identifying by species all proposed new trees, shrubs, ground cover, and other plant material, and all trees, shrubs, ground cover, and other plant material proposed to be removed.

(c) Color photographs showing the existing conditions of all areas of the park, greenway, or other City property and the private property affected by the proposed access.

(d) A statement in a form acceptable to the City Attorney that the permittee shall defend, indemnify, and hold harmless the City of Emeryville its agents, officers, and employees from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Emeryville, its agents, officers or employees from any loss, liability, damage, or cost sustained by any person or property, arising from the operation, use, or maintenance of the proposed access facilities as provided by this Article.

9-5.1311 Findings.

To grant a conditional use permit for access to private property from a City park, greenway, or other City property, the following findings must be made in addition to the findings required by Article 5 of Chapter 7:

(a) The location, size, and design of the proposed access facilities will be compatible with and will not adversely affect or be materially detrimental to operation and maintenance of the park, greenway, or other City property through which access is to be gained.

(b) The proposed access facilities conform to the applicable provisions of the Emeryville Design Guidelines, including but not limited to the Area Specific Guidelines pertaining to the area in which the proposed access facilities are to be located, and to all other applicable design guidelines such as the North Hollis Urban Design Plan or the Park Avenue District Plan.

(c) The proposed access facilities comply with all applicable standards and requirements of this Title, the Emeryville Municipal Code, and local, state, and federal regulations.

(d) The proposed access facilities conform with the requirements of all applicable City departments, including but not limited to Planning and Building, Public Works, Fire, and Police.

(e) If motor vehicle access is proposed, there is no other feasible way to provide motor vehicle access to the private property.

9-5.1312 Conditions of Approval.

In approving a conditional use permit for access to private property from a City park, greenway, or other City property, such conditions may be designated as deemed necessary to protect the public health, safety and welfare, and reasonable guarantees and evidence may be required that such conditions are being, or will be, complied with. Such conditions may include, but are not limited to, the following:

(a) Recording of an access easement with the Alameda County Recorder.

(b) Providing for the ongoing maintenance and repair of the access facilities and landscaping constructed on the City's property, and their future replacement if necessary.

(c) Restricting access to certain hours for pedestrians, bicycle, and/or motor vehicles, or allowing access during hours when City parks and greenways are otherwise closed to the public.

(d) Restricting the uses that may gain access from the City park, greenway, or other City property.

ARTICLE 14. SECONDARY RESIDENTIAL UNITS

9-5.1401 Purpose.

This Article establishes regulations for Secondary Residential Units. Secondary Residential Units provide a valuable housing resource and help to achieve the goals, objectives, and policies of the Housing Element of the General Plan to promote a range of affordability levels. The purpose of these regulations is to encourage the establishment of Secondary Residential Units as accessory uses in conjunction with principal Single Unit residential uses, and to provide for their ministerial approval in conformance with State law.

9-5.1402 Applicability.

The provisions of this Article apply to any proposal to establish a Secondary Residential Unit, as defined in Section 9-2.702(b), as an accessory use in conjunction with a principal Single Unit residential use.

9-5.1403 Approval Procedure.

A proposal for a Secondary Residential Unit shall be reviewed by the Director, in consultation with the Chief Building Official and Fire Marshal, for conformance with the provisions of this Article pursuant to the zoning compliance review procedures in Article 3 of Chapter 7. If the Director determines that the proposal conforms to the requirements of this Article, a zoning compliance approval shall be issued. If the Director determines that the proposal does not conform to the requirements of this Article, a zoning compliance approval shall not be issued, and the applicant shall be advised as to how the proposal could be brought into compliance. The Director's determination of compliance or non-compliance may be appealed to the Planning Commission pursuant to Article 14 of Chapter 7.

9-5.1404 Where Allowed.

(a) **Districts.** Secondary Residential Units are permitted only in the Residential zones, and in the MUR Mixed Use with Residential and MURS Mixed Use with Residential South zones.

(b) **Other Uses.** Secondary Residential Units are permitted only on lots containing a legal, conforming Single Unit residential use and no other principal use. (A Single Unit residential use outside the RM Medium Density Residential zone may be deemed conforming pursuant to Section 9-5.1003(b).) A Secondary Residential Unit may be established in conjunction with the establishment of a new principal Single Unit residential use provided that no other principal use exists, or will exist, on the same lot.

9-5.1405 Building Intensity and Residential Density

Secondary Residential Units are exempt from the building intensity (floor area ratio or FAR) and residential density regulations in Article 2 of Chapter 4.

9-5.1406 Size of Unit.

(a) **Floor Area.** A Secondary Residential Unit may not have a greater floor area than the principal Single Unit with which it is associated. In addition, the floor area of the Secondary Residential Unit shall be limited as follows:

(1) If the principal Single Unit is less than 1,000 square feet, the Secondary Residential Unit shall not exceed 500 square feet.

(2) If the principal Single Unit is at least 1,000 square feet but less than 1,800 square feet, the Secondary Residential Unit shall not exceed 50% of the floor area of the principal Single Unit.

(3) If the principal Single Unit is 1,800 square feet or more, the Secondary Residential Unit shall not exceed 900 square feet.

(b) **Bedrooms.** The Secondary Residential Unit may not have more bedrooms than the principal Single Unit with which it is associated.

9-5.1407 Parking.

A Secondary Residential Unit may only be established if off-street parking is provided for the principal Single Unit as required by Article 4 of Chapter 4. Parking shall be provided for the Secondary Residential Unit as follows:

(a) If the Secondary Residential Unit contains no bedrooms or one bedroom, no parking spaces are required.

(b) If the Secondary Residential Unit contains two or more bedrooms, one parking space is required.

Parking for the Secondary Residential Unit shall comply with the Design Standards for Parking Lots and Structures in Section 9-4.406, except that parking spaces for the principal Single Unit and Secondary Residential Unit may be in tandem.

9-5.1408 Dimensional Requirements.

(a) **Lot.** The lot on which a Secondary Residential Unit is to be located must comply with the minimum lot size and width requirements of Section 9-4.701.

(b) **Setback.** A Secondary Residential Unit shall be subject to the same setback requirements as the principal Single Unit, as set forth in Section 9-4.301, except that the minimum rear setback shall be five feet.

(c) **Height.** The maximum height limit of a Secondary Residential Unit shall be 30 feet, except that it shall step down at an angle from a maximum height of 30 feet at 15 feet from the rear lot line to a maximum height of 15 feet at five feet from the rear lot line.

(d) **Separation.** A Secondary Residential Unit may be either attached to or detached from the principal Single Unit with which it is associated. If detached, the Secondary Residential Unit shall be separated from the principal Single Unit by no less than six feet.

9-5.1409 Design.

Any proposal for a Secondary Residential Unit shall be subject to the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to the area of the city in which the proposed Secondary Residential Unit is to be located, and to any other applicable design guidelines. A Secondary Residential Unit shall be compatible with the principal Single Unit with which it is associated in terms of form, materials, style, and other relevant design factors. No formal design review approval shall be required, but the design shall be evaluated as part of the zoning compliance review for conformance to the requirements of this Section.

9-5.1410 Other Requirements.

(a) **Owner Occupancy Required.** The owner of the property must occupy either the principal Single Unit or the Secondary Residential Unit.

(b) **One Secondary Residential Unit Per Lot.** No more than one Secondary Residential Unit is permitted on a lot.

(c) **Units May Not be Sold Separately.** A Secondary Residential Unit and its associated principal Single Unit may not be sold separately either by conversion to condominiums, division of the lot on which they are located, or by other means.

(d) **Sewer Lateral.** A proposal to establish a Secondary Residential Unit shall comply with the provisions of Chapter 8 of Title 7 concerning sewer laterals, including replacement or upgrading of the sewer lateral if required.

(e) **Other Code Requirements.** A Secondary Dwelling Unit shall comply with all other applicable provisions of the Emeryville Municipal Code and State and Federal law, including, but not limited to, building and fire code requirements.

ARTICLE 15. SIDEWALK CAFES

9-5.1501 Purpose.

This Article establishes the sidewalk cafe regulations. The purpose of these provisions is:

(a) To encourage and promote the establishment of sidewalk cafes as visual amenities which in turn intensify pedestrian activity and make the street life more attractive, while protecting the public health, safety, and general welfare;

(b) To ensure that all persons, including those with disabilities, may reasonably use the public streets, sidewalks, rights-of-way, and other public property without interference or hazard;

(c) To avoid obstruction of views of traffic signs and pedestrians;

(d) To ensure that damage to sidewalks is minimized and repaired;

(e) To maintain the good appearance of public streets, sidewalks, and adjacent private property;

(f) To allow the healthy growth of street trees and other landscaping;

(g) To maintain access by emergency vehicles and personnel; and

(h) To protect ingress and egress to properties adjoining the public right-of-way.

9-5.1502 Permit Required.

No person shall establish, operate, or maintain a sidewalk cafe without first obtaining a valid sidewalk cafe permit pursuant to this Article.

9-5.1503 Where Permitted.

Sidewalk cafes shall be permitted in any zoning district in which Restaurants are permitted or conditionally permitted. Parklets shall be permitted in any zoning district.

9-5.1504 Standards.

All sidewalk cafes shall conform to the following standards:

(a) The sidewalk cafe shall adjoin and be operated in conjunction with a Restaurant licensed to sell food and beverages for consumption on the premises.

(b) The permittee shall at all times comply with all federal, state, and local laws regarding the operation of the sidewalk cafe and the associated Restaurant.

(c) The sidewalk cafe permit shall be posted in plain view within the Restaurant for which the permit has been issued.

(d) The hours of operation of the sidewalk cafe shall not exceed the hours of operation of the associated Restaurant.

(e) There shall be no food preparation or storage in the sidewalk cafe area.

(f) All furniture and equipment associated with the sidewalk cafe shall be confined at all times to the sidewalk cafe area as shown on the approved site plan, and shall be removed

from the sidewalk cafe area at the end of each business day, except for semi-permanent barriers such as railings, fences, or planters, which are not required to be removed.

(g) At least four feet of clear sidewalk width, or a greater width if deemed appropriate by the City, shall be maintained adjacent to the sidewalk cafe at all times. Such clear sidewalk width shall be free of any and all obstructions, including but not limited to street trees, tree wells and grates, street lights, signs, utility poles, fire hydrants, trash containers, kiosks, planters, benches, and news racks, and shall comply with any and all requirements for disabled access.

(h) The sidewalk cafe shall be maintained in a clean, sanitary, and attractive condition at all times, free of dirt, grease, trash, and litter. Tables shall be bussed regularly. If disposable plates, cups, and utensils are used, a trash container shall be provided for the use of patrons. A final cleanup shall be conducted at the end of each business day, including litter removal from the sidewalk cafe area, adjacent sidewalk, and roadway gutter within 100 feet in each direction on the same side of the street. The sidewalk cafe area and adjacent sidewalk shall be swept clean at least daily, and shall be steam cleaned annually if required by the Public Works Director.

(i) Amplified sound shall be prohibited in the sidewalk cafe.

(j) Smoking shall be prohibited in the sidewalk cafe and within 25 feet of all entrances, windows, and vents of the associated Restaurant.

(k) No changes to the layout, design, or operation of the sidewalk cafe shall be allowed without prior approval of the Planning Director.

9-5.1505 Alcoholic Beverages.

Alcoholic beverages may be served and consumed in a sidewalk cafe, provided that:

(a) A valid license from the California Department of Alcoholic Beverage Control has been obtained and all requirements imposed by said Department have been met.

(b) The permittee shall at all times comply with all federal, state, and local laws regarding the sale, service, and consumption of alcohol.

(c) The sidewalk cafe shall be separated from the adjacent sidewalk by a substantial physical barrier, such as a railing, fence, or planter, that is at least 30 inches high and with openings no more than four feet wide.

(d) Alcoholic beverages shall be consumed only within the sidewalk cafe area and associated Restaurant. The permittee shall not allow patrons to leave the confines of the sidewalk cafe with any alcoholic beverage and shall not allow patrons to give or sell alcoholic beverages to any person outside the sidewalk cafe.

(e) The sidewalk cafe shall maintain full food service and shall operate as a bona fide eating place at all times that it is in operation. No sidewalk cafe may function as a bar, tavern, or cocktail lounge, and no sidewalk café shall be associated with a Bar/Nightclub/Lounge, as defined in Section 9-2.319(a).

9-5.1506 Application.

Application for a sidewalk cafe permit shall be submitted to the Planning and Building Department on a form provided by the Director, accompanied by the fee as set forth in the Master Fee Schedule and application materials as determined necessary by the Director, including but not limited to the following:

(a) A site plan, dimensioned, clearly labeled, and drawn to a standard architectural or engineering scale, showing the entire area between the curb and the building containing the Restaurant, and adjacent properties, sidewalk areas, and public right-of-way within ten feet in all directions. The site plan shall clearly indicate:

(1) The proposed sidewalk cafe area, including its length, width, and square footage, and the adjacent sidewalk including the curb;

(2) The number and arrangement of tables and chairs, and any other proposed features including but not limited to umbrellas, heaters, trash containers, railings, planters and fencing;

(3) The relationship of the proposed sidewalk cafe to the Restaurant and adjacent businesses, including doors and windows;

(4) The location of any and all other features in the public right-of-way, including but not limited to street trees, tree wells and grates, street lights, signs, utility poles, fire hydrants, trash containers, kiosks, planters, benches, news racks, driveways, disabled access ramps, crosswalks, bus stops and shelters, loading zones, and on-street parking spaces, and indicating the clear sidewalk width required by Section 9-5.1504(g).

(5) The pedestrian circulation and disabled access path of travel through the proposed sidewalk cafe between the public sidewalk and the Restaurant.

(b) Specifications for the design of all tables and chairs, and any other proposed features including but not limited to umbrellas, heaters, trash containers, railings, planters and fencing. Such specifications shall provide sufficient information for the Director to be able to ascertain the color, material, design, and general quality of these features, and may include actual color and material samples, manufacturer's specification sheets, color photographs, catalog entries, or other information as deemed appropriate by the Director.

(c) Color photographs of the Restaurant, sidewalk area, and adjacent businesses and public right-of-way sufficient to illustrate conditions prior to establishment of the sidewalk cafe.

(d) Proof of comprehensive liability insurance covering the sidewalk cafe area and the adjacent property on which the Restaurant is located in an amount of not less than one million dollars as a combined single limit for personal injury (including death) and property damage; an endorsement naming the City of Emeryville as an additional insured; a copy of the declarations or information page(s) for the policy; and a statement by the insurance carrier that 30 days' notice will be given to the City before any cancellation. The policy of liability insurance shall be kept in force during such time as the sidewalk cafe is maintained under the terms of this Article.

(e) A statement in a form acceptable to the City Attorney that the permittee shall defend, indemnify, and hold harmless the City of Emeryville its agents, officers, and employees

from any claim, action, or proceeding (including legal costs and attorney's fees) against the City of Emeryville, its agents, officers or employees from any loss, liability, damage, or cost sustained by any person or property, arising from the operation, use, or maintenance of the sidewalk cafe as provided by this Article.

9-5.1507 Approval Procedure.

Applications for sidewalk cafe permits shall be considered by the Planning and Building Director, in consultation with the Public Works Director, Chief Building Official, Fire Marshal, and Police Chief. The Director, at his/her discretion, may give such notice as is deemed appropriate to adjacent property owners or other interested parties. However, the Director may, instead, refer any application to the Planning Commission for consideration. If considered by the Commission, the application shall be heard at a public hearing noticed by types C, D, and E and optionally by types A and F, as these notice types area defined in Section 9-7.208(b). The Director or Commission, as the case may be, may approve or disapprove an application or require changes or conditions of approval which, in his/her/its judgment, are necessary to ensure conformity with the provisions of this Article. The Director's decision may be appealed to the Planning Commission pursuant to Article 14 of Chapter 7. If the Director refers the application to the Planning Commission for consideration, the Commission's decision may be appealed to the City Council pursuant to Article 14 of Chapter 7.

9-5.1508 Required Findings.

In order to approve a sidewalk cafe permit, all of the following findings shall be made:

(a) The location, size, design and operating characteristics of the proposed sidewalk cafe will be compatible with and will not adversely affect or be materially detrimental to neighborhood character, with consideration given to the convenience and safety of pedestrians, property owners, occupants, customers, residents, and tenants of offices, stores, shops, and dwellings in the vicinity; harmony in design with nearby uses, buildings and structures; and the capacity and physical character of surrounding streets and sidewalks.

(b) The proposed sidewalk cafe conforms to the standards in Section 9-5.1504.

(c) If alcoholic beverages are to be served, the proposed sidewalk cafe conforms to the provisions of Section 9-5.1505.

(d) The proposed sidewalk cafe conforms to the applicable provisions of the Emeryville Design Guidelines, including but not limited to the General Guidelines pertaining to Sidewalks and Landscaping, and the Area Specific Guidelines pertaining to the area in which the proposed sidewalk café is to be located; and to all other design guidelines applicable to the area in which the proposed sidewalk café is to be located.

(e) The proposed sidewalk cafe is consistent with the General Plan.

(f) The proposed sidewalk cafe complies with all applicable standards and requirements of this Title, the Emeryville Municipal Code, and local, state, and federal regulations.

(g) The proposed sidewalk cafe conforms with the requirements of all applicable City departments, including but not limited to Planning and Building, Public Works, Fire, and Police.

9-5.1509 Renewal.

A sidewalk cafe permit shall expire on December 31st of the calendar year in which it was issued or renewed. A valid permit which has not been surrendered, suspended or revoked may be renewed for respective periods of not longer than one year upon the following terms and conditions:

(a) All annual sidewalk cafe permits issued under this Article, except the first permit issued for a newly established sidewalk cafe, shall be considered to be issued on January 1st of each year and shall expire on December 31st of the same year.

(b) The annual renewal application for an existing sidewalk cafe is hereby declared delinquent if not filed on or before March 1st of each year.

(c) The City is not required to send a renewal, delinquency or other notice to any person subject to the provisions of this Article.

(d) Every person subject to a sidewalk cafe permit shall, before the renewal application becomes delinquent, file with the Director a renewal application except as provided in subsection (h).

(e) Application for renewal of a sidewalk cafe permit shall be submitted to the Planning and Building Department on a form provided by the Director, accompanied by a statement indicating whether any information required by Section 9-5.1506 has changed; and proof of comprehensive liability insurance, as detailed in Section 9-5.1506(d), for the renewal period.

(f) The Director shall review the renewal application in consultation with the Public Works Director, Chief Building Official, Fire Marshal, and Police Chief, to ensure the sidewalk cafe's continued compliance with the provisions of this Article and any conditions of approval, and to assess any outstanding violations or complaints. The Director may request additional information in order to complete his/her review.

(g) Upon completion of the review, the Director shall make a determination whether to renew the application, and shall promptly inform the permittee of his/her decision. If the permit is renewed, the Planning Director shall provide the permittee with a new permit for the renewal period, to be posted in the Restaurant as required by Section 9-5.1504(c). In renewing the sidewalk cafe permit, the Director may modify or delete any existing conditions of approval, and impose any new conditions of approval, as he/she deems appropriate. If the permit is not renewed, the Director shall provide a written explanation to the permittee detailing the reasons for the non-renewal. If the permit is not renewed, the sidewalk cafe shall be removed, and the sidewalk shall be restored as required by Section 9-5.1512, within 30 days of the Director's decision, unless appealed pursuant to Section 9-5.1511(c).

(h) In the absence of any action by the City or the permittee to renew a sidewalk cafe permit prior to the delinquency date specified in subsection (b), the permit shall be deemed to be renewed for one year.

9-5.1510 Revocation.

A permit issued pursuant to this Article shall be subject to suspension, revocation, or modification for the violation of any provisions of this code or for any grounds which would warrant the denial of the issuance of such original permit. The Director may issue a notice of violation for any failure to comply with any requirement of this Article or any condition of the permit. Such notice shall set forth the action necessary to come into compliance and a time frame for compliance. If the noncompliance is not abated, corrected, or rectified within the time specified by the Director in said notice, the Director may revoke, suspend, or modify the permit, upon 30 days' notice. If the Director decides to revoke or suspend the permit, the sidewalk cafe shall be removed, and the sidewalk shall be restored as required by Section 9-5.1512, within 30 days of the Director's decision unless appealed pursuant to Section 9-5.1511(d).

9-5.1511 Appeals.

(a) A decision of the Director on a new sidewalk cafe permit pursuant to Section 9-5.1507 may be appealed to the Planning Commission as provided in Article 14 of Chapter 7. The decision of the Planning Commission shall be final.

(b) If the Director refers a new sidewalk cafe permit application to the Planning Commission for consideration pursuant to Section 9-5.1507, the decision of the Planning Commission may be appealed to the City Council as provided in Article 14 of Chapter 7.

(c) A decision of the Director on the renewal of a sidewalk cafe permit pursuant to Section 9-5.1509 may be appealed to the Planning Commission as provided in Article 14 of Chapter 7. The decision of the Planning Commission shall be final. If the Commission decides not to renew the permit, the sidewalk cafe shall be removed, and the sidewalk shall be restored as required by Section 9-5.1512, within 30 days of the Commission's decision.

(d) A decision of the Director to revoke, suspend, or modify a sidewalk cafe permit pursuant to Section 9-5.1510 may be appealed to the Planning Commission as provided in Article 14 of Chapter 7. The decision of the Planning Commission shall be final. If the Commission decides to revoke or suspend the permit, the sidewalk cafe shall be removed, and the sidewalk shall be restored as required by Section 9-5.1512, within 30 days of the Commission's decision.

9-5.1512 Restoration of Sidewalk.

Upon cessation of the operations of a sidewalk cafe, the permittee shall restore the sidewalk to its original condition, including but not limited to the refilling of any holes drilled into the sidewalk. Any damage or alteration to the sidewalk caused by the use of the sidewalk cafe shall be repaired to the satisfaction of the Director of Public Works by the permittee at the permittee's sole expense.

9-5.1513 Amortization.

Any existing sidewalk cafe which does not comply with the provisions of this Article shall be removed or otherwise brought into conformance within six months of the effective date of this Article.

9-5.1514 Parklets.

Parklets shall require a sidewalk cafe permit and shall be subject to all of the regulations and procedures set forth in this Article for sidewalk cafes except that they are not required to be built and operated in conjunction with a Restaurant. In addition, parklets shall be subject to the following regulations:

(a) A parklet shall require the approval of the City Council, upon the recommendation of the Transportation Committee, prior to the approval of a sidewalk cafe permit. Any conditions and requirements designated by the City Council in its approval shall become conditions of approval of the sidewalk cafe permit.

(b) A parklet shall be available for use by the general public and shall not be reserved for the exclusive use an adjacent Restaurant or other use, even if built and operated in conjunction with that Restaurant or other use, nor for the exclusive use of any other private enterprise.

(c) Table service shall not be permitted in a parklet.

(d) Commercial signage and advertising shall not be permitted in a parklet.

(e) Service and consumption of alcoholic beverages shall not be permitted in a parklet.

(f) Design criteria for parklets may be issued administratively by the Director.

(g) A building permit shall not be required for a parklet, but its design and construction shall comply with all applicable building regulations, including but not limited to disabled access, and any design criteria issued by the Director.

9-5.1515 Definitions.

As used in this Article:

(a) "Parklet" shall mean the temporary use of space in the roadway, adjacent to the curb and typically located in a parking space, unused bus stop, or other vehicular zone, with or without a platform to extend the grade of the sidewalk into the roadway. A parklet may feature tables and chairs for public use, benches, planters and landscaping features, bicycle parking, and other public amenities, and may be built and operated in conjunction with an adjacent street-level Restaurant or other use. A parklet may also function as a "bicycle corral" with bicycle racks in the roadway for the on-street parking of bicycles.

(b) "Person" shall mean and include individual, firm, association, partnership, joint venture or corporation (whether for-profit or nonprofit).

(c) "Public right-of-way" shall mean the area dedicated to public use for public street purposes including but not limited to roadways, parkways, alleys and sidewalks.

(d) "Restaurant" shall mean the use type defined in Section 9-2.319(b).

(e) "Roadway" shall mean that portion of a public right-of-way improved, designed and ordinarily used for vehicular traffic and/or parking, including drainage gutters and curbs.

(f) "Sidewalk" shall mean either:

(1) That portion of a public right-of-way provided for the exclusive use of pedestrians, including planting areas or parkways, between the roadway and adjacent property lines; or

(2) Any other publicly-accessible pedestrian area owned or controlled by the City of Emeryville including, but not limited to, greenways and parks.

(g) "Sidewalk cafe" shall mean an area of the sidewalk used exclusively for eating, drinking, and related pedestrian circulation and located adjacent to, and operated in conjunction with, a street-level Restaurant.

(h) "Sidewalk cafe permit" shall mean a permit to establish, operate, and maintain a sidewalk cafe or parklet issued pursuant to this Article. A sidewalk cafe permit may not be transferred or assigned, does not constitute a deed or grant of an easement by the City, shall be valid for one calendar year, and is revocable at any time.

ARTICLE 16. SIGNS

9-5.1601 Purpose.

The purpose of this Article is to regulate signs as an information system that expresses the character and environment of Emeryville while recognizing the importance of business activity to the City. Specifically, these regulations are intended to:

(a) Encourage communications which aid orientation and promote economic vitality.

(b) Enhance and preserve the aesthetic character of the City.

(c) Apply basic principles of good design and sensitivity to community appearance.

(d) Restrict signs that may create a nuisance to nearby properties, violate privacy, or create hazards or unreasonable distractions for pedestrians or drivers.

(e) Ensure that the constitutionally-guaranteed right of free speech is protected.

9-5.1602 Applicability.

This Article establishes the sign regulations. These regulations shall apply to all signs in the City, except signs on the public sidewalk, which are regulated by Chapter 34 of Title 5; signs for certified farmers' markets, which are regulated by Section 5-35.06 of Chapter 35 of Title 5; and signs adjacent to landscaped freeways, which are regulated by Chapter 12 of Title 8. Nothing in this Article shall be construed to allow any signs for a Home Occupation except as allowed by Article 8 of this Chapter.

9-5.1603 Procedure.

(a) **Review by Director.** All sign proposals shall be subject to review by the Director to determine whether they are prohibited, exempt, or require approval of a minor design review permit, major design review permit, or Master Sign Program.

(b) **Prohibited Signs.** A prohibited sign, as listed in Section 9-5.1604, is not allowed. Any such sign, other than a nonconforming sign pursuant to Section 9-5.1614, is hereby declared to be a public nuisance and shall be removed immediately.

(c) **Exempt Signs.** An exempt sign, as listed in Section 9-5.1605, does not require design review approval and may be installed without further planning review if the Director determines that it meets all the requirements for an exempt sign. Note, however, that such a sign may still require a building permit pursuant to the Building Regulations in Title 8.

(d) **Individual Establishment Signs.** Individual establishment signs that are neither prohibited nor exempt shall require a design review permit from either the Director or the Planning Commission and shall be processed pursuant to Section 9-5.1612.

(e) **Master Sign Programs.** A proposal for a Master Sign Program shall require approval by the Planning Commission pursuant to Section 9-5.1613.

9-5.1604 Prohibited Signs

The following types of signs, materials, designs, messages, and locations are prohibited:

(a) **Cabinet Signs.** One- or two-sided internally illuminated signs consisting of a translucent message panel or panels, usually rectangular, mounted on a frame enclosing the illumination fixtures; also known as “panel”, “can”, or “box” signs.

(b) **Electronic Signs.** Electronic signs with changeable copy and/or animation; also known as “reader boards”. This prohibition does not include small signs oriented to pedestrians and providing public transportation and other noncommercial information.

(c) **Mobile Billboards.** Any sign carried or conveyed by a vehicle for the primary purpose of advertising excluding signs on taxis and buses.

(d) **Outdoor Advertising Signs.** Billboards and any other off-premises outdoor advertising signs which convey a commercial message as their primary purpose.

(e) **Signs Creating Traffic Hazards.**

(1) Signs located in such a manner as to constitute a traffic hazard or obstruct the view of traffic, any unauthorized traffic sign or signal device, or any sign that may be confused with any authorized traffic sign, signal, or device; or that makes use of the words “stop,” “look,” “danger,” or any other word, phrase, symbol, or character that interferes with, misleads, or confuses vehicular drivers in their use of roads.

(2) Signs which may pose a traffic hazard due to glaring or varying illumination.

(3) Signs within five feet of a fire hydrant, street sign, or traffic signal if such placement could create a safety hazard.

(f) **Signs for Vacated Uses.** Signs for activities which have vacated a site or premises for 90 days or more.

(g) **Signs on Public Property.** Signs on public property unless posted by public personnel in the performance of their duties.

(h) **Signs That Produce Noise or Emissions.** Signs that produce noise or sounds that can be heard at the lot line and signs that emit visible smoke, vapor, particles, or odor.

(i) **Streamers, Pennants or Inflatable Signs.** Streamers, pennants, and other signs made of lightweight fabric or similar material, designed to rotate or move with the wind, or inflatable signs or displays.

(j) **Vehicle-Mounted Signs.** Vehicle-mounted signs of a commercial nature, except when attached to vehicles being used for bona fide delivery and other vehicular purposes away from a fixed place of business;

9-5.1605 Exempt Signs.

The following signs or modifications to signs do not require design review, and, except for business signs, the area of such signs shall not be included in the maximum allowable sign area measurement for the purposes of this Article. The owner of an exempt sign is responsible for its safe and attractive erection and maintenance, for obtaining a building permit where applicable, and for complying with applicable provisions of this Article or any other requirements of this Title.

(a) **A-Frame Signs.** Portable freestanding signs in the shape of the letter "A" as viewed from the side, typically with two sides facing opposite directions. Under this exemption, such signs may only be displayed on private property. No more than one sign is permitted per individual establishment. Such sign may not exceed three feet in height with no more than six square feet of sign area on each side. See Chapter 34 of Title 5 for regulations pertaining to the display of such signs on the public sidewalk.

(b) **Address Signs.** Address identification signs of no more than two square feet per address.

(c) **Apartment and Condominium Identification Signs.** Non-illuminated identification signs on apartment and residential condominium buildings of no more than six square feet per address.

(d) **Business Signs.** Business establishment identification signs, restricted to one sign not exceeding six square feet in area for each establishment. Such signs shall be included in the aggregate sign area as specified in Section 9-5-1609(b)(1).

(e) **Business Information Signs.** Signs not exceeding six square feet in aggregate area per business establishment containing such information as "open/closed," "credit cards accepted" or items such as directories and menus.

(f) **Change of Business Signs.** A temporary attachment or covering of wood, plastic, or canvas over a permanent sign indicating a change of ownership or activity may be displayed for no longer than 45 days following the change of ownership or activity for which the sign is intended. The sign shall be no larger than the previously permitted permanent sign.

(g) **Commemorative Signs.** Commemorative plaques, memorial signs or tablets, or signs indicating names of buildings and dates of building erection, either attached to or cut into the surfaces of buildings, provided that no such sign exceeds four square feet in area.

(h) **Construction Signs.** A temporary construction sign may be erected on a construction site for the duration of construction activities provided that it is immediately removed after issuance of a Certificate of Occupancy for the project, or abandonment of work. A temporary construction sign may not exceed eight square feet in area and five feet above finished grade to the top of the sign in the RM Medium Density Residential zone or 18 square feet in area and six feet above finished grade to the top of the sign in other zones.

(i) **Decorative Holiday Displays.** Noncommercial decorative holiday displays, provided that such displays are removed within 45 days of their installation.

(j) **Directional Signs.** Signs to direct on-site traffic circulation, not exceeding six square feet in area, and with an aggregate area not exceeding one-fifth of a square foot per linear foot of site frontage, and publicly installed off-site directional signs to facilitate traffic flow to and from high-volume private facilities.

(k) **Flags.** Noncommercial flags flown from flagpoles or otherwise displayed. Flagpoles shall be subject to the applicable height limits in Section 9-4.202.

(l) **Information Signs.** Noncommercial informational signs not exceeding four square feet in area erected for the safety and convenience of the public, such as signs identifying rest rooms or telephones, "no parking" and "no trespassing" signs.

(m) **Interior Signs.** Signs located in interior areas of a building or site that are not intended to be visible from public streets, public open space, or adjacent properties.

(n) **Kiosk and Mobile Vendor Signs.** Signs fixed to mobile vending carts that identify or advertise the name, product, or service provided by the vendor. Each mobile vending cart is limited to a maximum sign area of eight square feet.

(o) **Official Government Signs.** Official notices issued by a court, public body or office; official notices posted by a utility or public agency; signs erected by a governmental body to direct or regulate pedestrian or vehicular traffic; public hearing or meeting notices; or other signs required or authorized by law.

(p) **Public Service and Civic Identity Signs.** Signs erected on public or private property to promote City-sponsored activities or other community events. Signs may include district identification banners; temporary signs or banners erected above streets or attached to lamp posts or utility poles; or temporary banners posted to fences at public schools.

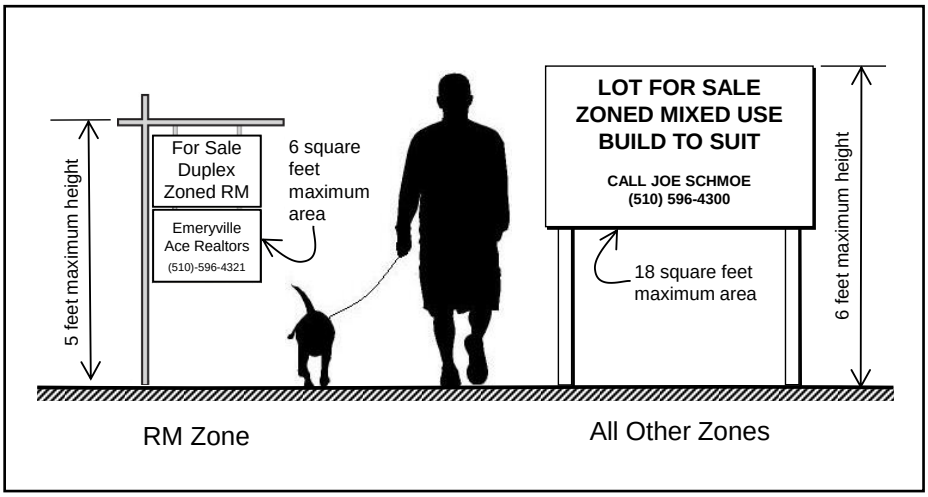

Figure 9-5.1605(q)(1): On-Site Real Estate Signs.

(q) **Real Estate Signs.**

(1) **On-Site Real Estate Signs.** On-premises signs conveying information about the sale, rental, or lease of the appurtenant lot, premises, dwelling, or structure, provided that they comply with the following standards:

a. No more than one real estate sign per lot in the RM Medium Density Residential zone, or one real estate sign per public street frontage per lot in other zones, may be displayed at any one time.

b. The sign or signs shall not exceed an aggregate area of six square feet in the RM Medium Density Residential zone or 18 square feet in all other zones. See Figure 9-5.1605(q)(1).

c. Wall signs shall not be higher than seven feet above finished grade to the top of the sign in the RM Medium Density Residential zone or 15 feet in all other zones. Ground signs shall not exceed five feet in height to the top

of the sign in the RM Medium Density Residential zone or six feet in height in all other zones. See Figure 9-5.1605(q)(1).

d. Signs shall not be illuminated.

e. Signs shall not be placed on roof tops or above parapet or eave lines.

f. All signs shall be removed within seven days after the sale, lease, or rental of the property has been completed.

(2) **Directional Signs for Open Houses.** Off-site signs located on the public sidewalk and directing the public to "open house" events for the viewing of lots, premises, dwellings or structures that are for sale, lease, or rent, shall be regulated by the applicable provisions of Chapter 34 of Title 5.

(r) **Small Noncommercial Signs.** Noncommercial signs, each no larger than six square feet in area, attached to a freestanding sign structure, a window, or a building wall. All businesses and residences may display up to two such signs, which may include, but are not limited to, freedom of speech signs, political signs, and organization identification signs. Such signs may be located on the ground floor or upper floors of buildings and shall not be located in the public right-of-way.

(s) **Temporary Window Signs.** Window signs, subject to the following provisions:

(1) Temporary window signs not exceeding ten percent of the area of window and transparent door frontage on any ground-floor or second-floor building façade in non-residential use are permitted.

(2) Temporary window signs may be displayed for no more than 90 consecutive days with at least 90 consecutive days between display periods.

(3) Temporary window signs shall not be included in the aggregate sign area as specified in Section 9-5-1609(b)(1).

(4) Any interior sign either hung within two feet of a window or attached to a display located within two feet of a window, and which faces outward, is considered a window sign.

9-5.1606 General Provisions for All Sign Types

(a) **Calculation of Sign Area.** The area of an individual sign shall be calculated as follows.

(1) Single-faced Signs. Sign area shall include the entire area within a single continuous perimeter composed of squares or rectangles that enclose the extreme limits of all sign elements, including, but not limited to, sign structures or borders, written copy, logos, symbols, illustrations, and color. Supporting structures such as sign bases and columns are not included in sign area provided that they contain no lettering or graphics except for addresses. The calculation of sign area for various types of single-faced signs is illustrated in Figure 9-5.1606(a)(1).

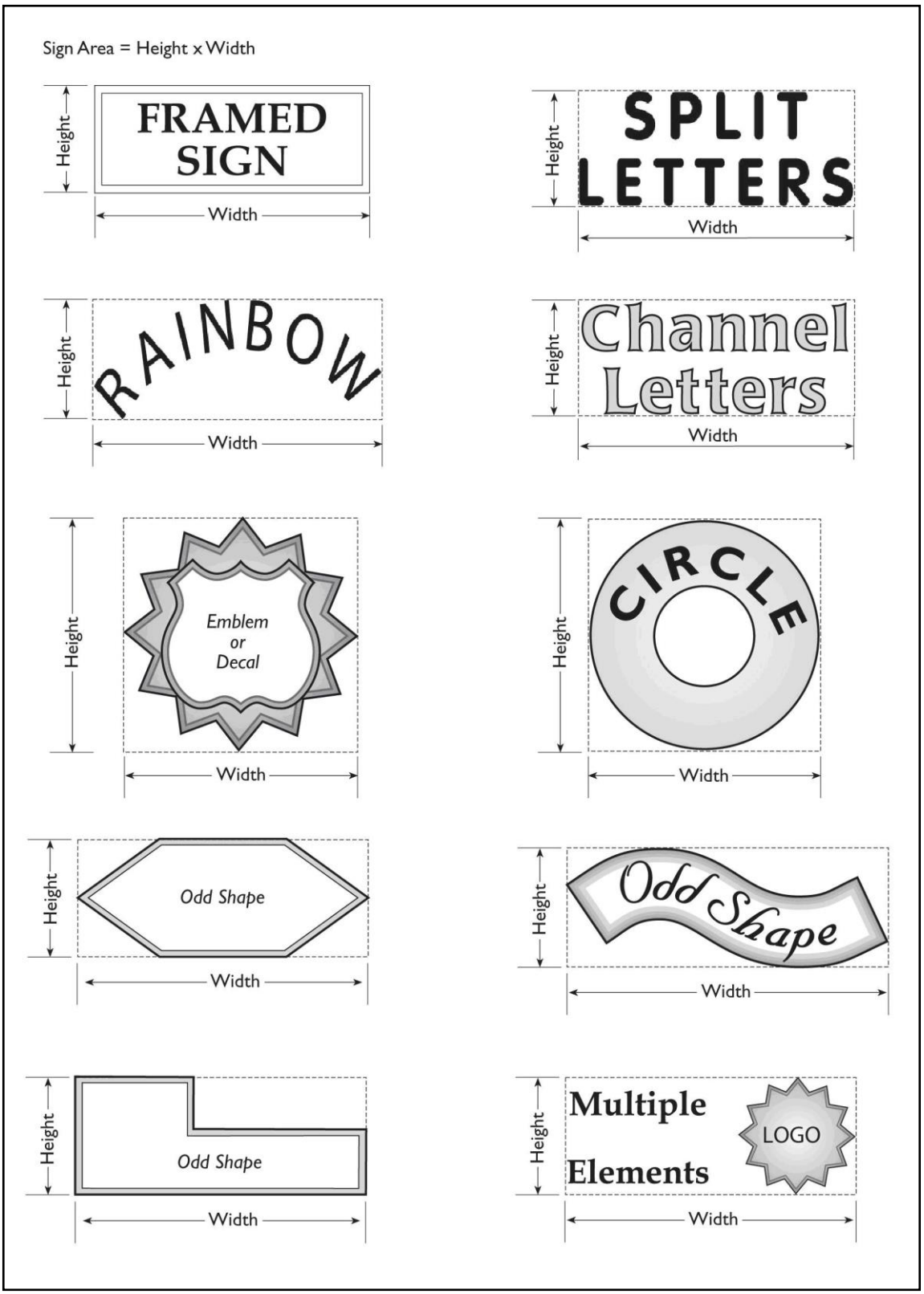

Figure 9-5.1606(a)(1): Area of Single-Faced Signs

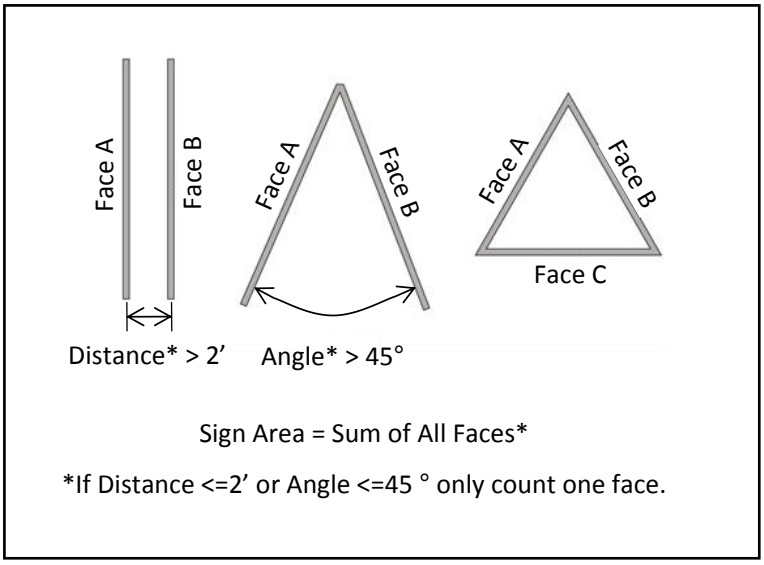

Figure 9-5.1606(a)(2-3): Area of Double-Faced and Multi-Faced Signs

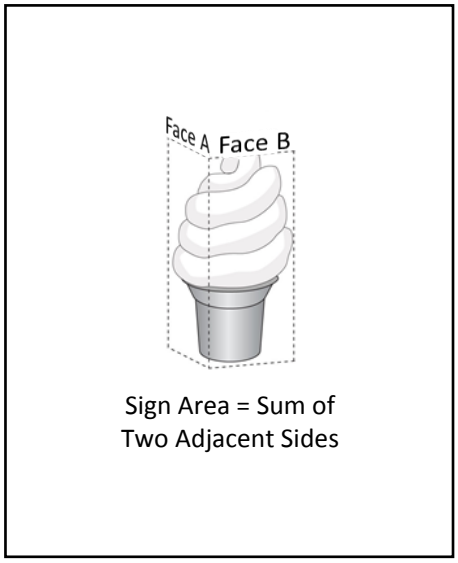

Figure 9-5.1606(a)(4): Area of Three-Dimensional Signs

(2) Double-faced Signs. Where two faces of a double-faced sign are located two feet or less from one another at all points, or located at an interior angle of 45 degrees or less from one another, the sign area shall be computed as the area of one face. Where the two faces are not equal in size, the larger sign face shall be used. Where two faces of a double-faced sign are located more than two feet or 45 degrees from one another, both sign faces shall be counted toward sign area. See Figure 9-5.1606(a)(2-3).

(3) Multi-faced Signs. On a three-faced sign, where at least one interior angle is 45 degrees or less, the area of two faces (the largest and smallest face) shall be summed to determine sign area. In all other situations involving a sign with three or more sides, sign area shall be calculated as the sum of all faces. See Figure 9-5.1606(a)(2-3).

(4) Three-Dimensional Signs. Signs that consist of, or have attached to them, one or more three-dimensional objects (i.e., balls, cubes, clusters of objects, sculpture, or statue-like trademarks), shall have a sign area of the sum of all areas using the four vertical sides of the smallest cube that will encompass the sign. See Figure 9-5.1606(a)(4).

(b) **Materials.** Signs shall be constructed of durable and attractive materials. Paper, cardboard, or other material subject to rapid deterioration shall be limited to temporary interior window signs. Fabric and vinyl signs shall be restricted to Public Service and Civic Identity Signs, Awning Signs, Banner Signs, and Temporary Signs permitted pursuant to Section 9-5.1610.

(c) **Construction and Maintenance.**

(1) All signs and supporting structures shall be installed in accordance with applicable provisions of the Building Regulations in Title 8.

(2) All signs, together with all supporting structures, shall be maintained in the following manner:

a. Signs shall be kept free of rust, dirt and chipped, cracked or peeling paint.

b. All hanging, dangling, torn or frayed parts of signs shall be promptly repaired, and graffiti and unauthorized attachments shall be removed.

c. Burned-out illumination shall be promptly replaced.

d. Sign areas shall be kept free and clear of all noxious substances, rubbish and weeds.

(3) If a sign is removed from its supporting structure for longer than 90 days, the supporting structure shall be removed.

(d) **Illumination.** The illumination of signs, from either an internal or external source, shall be designed to avoid negative impacts on neighboring rights-of-way and properties. The following standards apply to all illuminated signs:

(1) Sign lighting shall not be of an intensity or brightness, or generate glare, that will create a public or private nuisance.

(2) External light sources shall be directed, shielded, and filtered to limit direct illumination of any object other than the sign.

(3) Illuminated roof signs and high-rise identification signs shall be dimmable, and shall be dimmed if necessary to address complaints of glare from occupants of buildings in a direct line of sight to the sign. Other sign types may also be required to be dimmable as a condition of approval.

(4) Exterior LED signs shall be subject to major design review pursuant to Section 9-5.1612(c), and shall be evaluated for conformance with the "Recommended Night-Time Brightness Levels for On-Premise Electronic Message Centers (EMC's)" dated April 2011 prepared by the International Sign Association.

(e) **Changeable Copy Other Than Permitted Marquee Signs.** Non-electronic changeable copy shall cover no more than 20% of an establishment's total allowed aggregate sign area, except for the following uses which are allowed up to 75% of sign area to be changeable copy: all public and civic uses, indoor theaters, other public assembly uses, and fuel price signs.

9-5.1607 Standards for Specific Sign Types.

Except as otherwise specified, all permanent signs shall comply with the standards in Table 9-5.1607. Signs erected on a site may be any combination of permitted sign types, subject to the limitations for individual sign types listed in this Section, and any other applicable provisions of this Article including, but not limited to, aggregate sign area. See Figure 9-5.1607 for illustrations of projecting, shingle, monument, and awning signs.

TABLE 9-5.1607: STANDARDS FOR SPECIFIC SIGN TYPES					
Sign Type	*Maximum Number Permitted*	*Maximum Area per Individual Sign*	*Maximum Height to Top of Sign*	*Location Requirements*	*Additional Regulations*
(a) Individual Establishment Signs Allowed with Minor Design Review					
(1) Awning Sign	3 per non-residential tenant or use	10 sq. ft. or 25% of surface area of awning, whichever is less.	25' or top of second floor of building, whichever is less.	Lowest point must be at least 9' above public sidewalk. Awnings permitted only on first and second floors of building.	May project no more than 4 feet from building wall and no more than 1/3 width of public sidewalk
(2) Banner Signs	3 per non-residential tenant or use per street frontage	15 sq. ft.	25'	No portion may extend above highest point of parapet wall or eave line. Lowest point must be at least 9' above public sidewalk	May project no more than 4 feet from building wall and no more than 1/3 width of public sidewalk
(3) Monument Sign	1 per non-residential lot per street frontage	60 sq. ft. per face; no more than 2 faces	6'	N/A	Larger sign may be approved as part of Master Sign Program for overall site signage only
(4) Projecting Sign	1 per non-residential tenant or use per street frontage	15 sq. ft.	25'	No portion may extend above highest point of parapet wall or eave line. Lowest point must be at least 9' above public sidewalk	May project no more than 4 feet from building wall and no more than 1/3 width of public sidewalk
(5) Shingle Sign	1 per non-residential tenant or use	4 sq. ft.	N/A	Lowest point must be at least 9' above public sidewalk	Illumination not permitted
(6) Wall Sign	1 per non-residential tenant or use per street frontage.	50 sq. ft. or 15% of tenant facade area, whichever is less.	25'	Width may not exceed 75% of tenant façade width, or 25 feet, whichever is less.	Larger signs may be approved as part of Master Sign Program for overall site signage only

TABLE 9-5.1607: STANDARDS FOR SPECIFIC SIGN TYPES					
Sign Type	*Maximum Number Permitted*	*Maximum Area per Individual Sign*	*Maximum Height to Top of Sign*	*Location Requirements*	*Additional Regulations*
(7) Window Signs	1 per window or transparent door per non-residential tenant or use	No more than 10% of area of window or transparent door	N/A	Ground floor or second floor only.	N/A
(b) Individual Establishment Signs Allowed with Major Design Review					
(1) Entry Gateway	1 per non-residential lot per street frontage	To be determined by Planning Commission.			N/A
(2) High-Rise Identification Sign	2 per non-residential building; 1 on any facade	1% of area of building façade on which sign is located	No portion of sign above top of parapet	Top story of building	Only permitted on buildings over 75' high. Changeable copy not permitted.
(3) Marquee Sign	1 per non-residential building	To be determined by Planning Commission.			May only contain changeable copy and images related to on-premises events
(4) Roof Sign	1 per non-residential building	To be determined by Planning Commission.			N/A
(c) Signs Allowed Only as Part of a Master Sign Program as Part of Overall Site Signage					
(1) Ground Sign	1 per non-residential lot per street frontage	To be determined by Planning Commission.			N/A
(2) Tower Sign	1 per non-residential lot per street frontage	To be determined by Planning Commission.			N/A
(3) Wall Signs exceeding maximum dimensions specified in (a)(6) above.	To be determined by Planning Commission.				N/A
(4) Monument Sign over 6' in height and/or 60 sq. ft. in area.	1 per non-residential lot per street frontage	To be determined by Planning Commission.			N/A

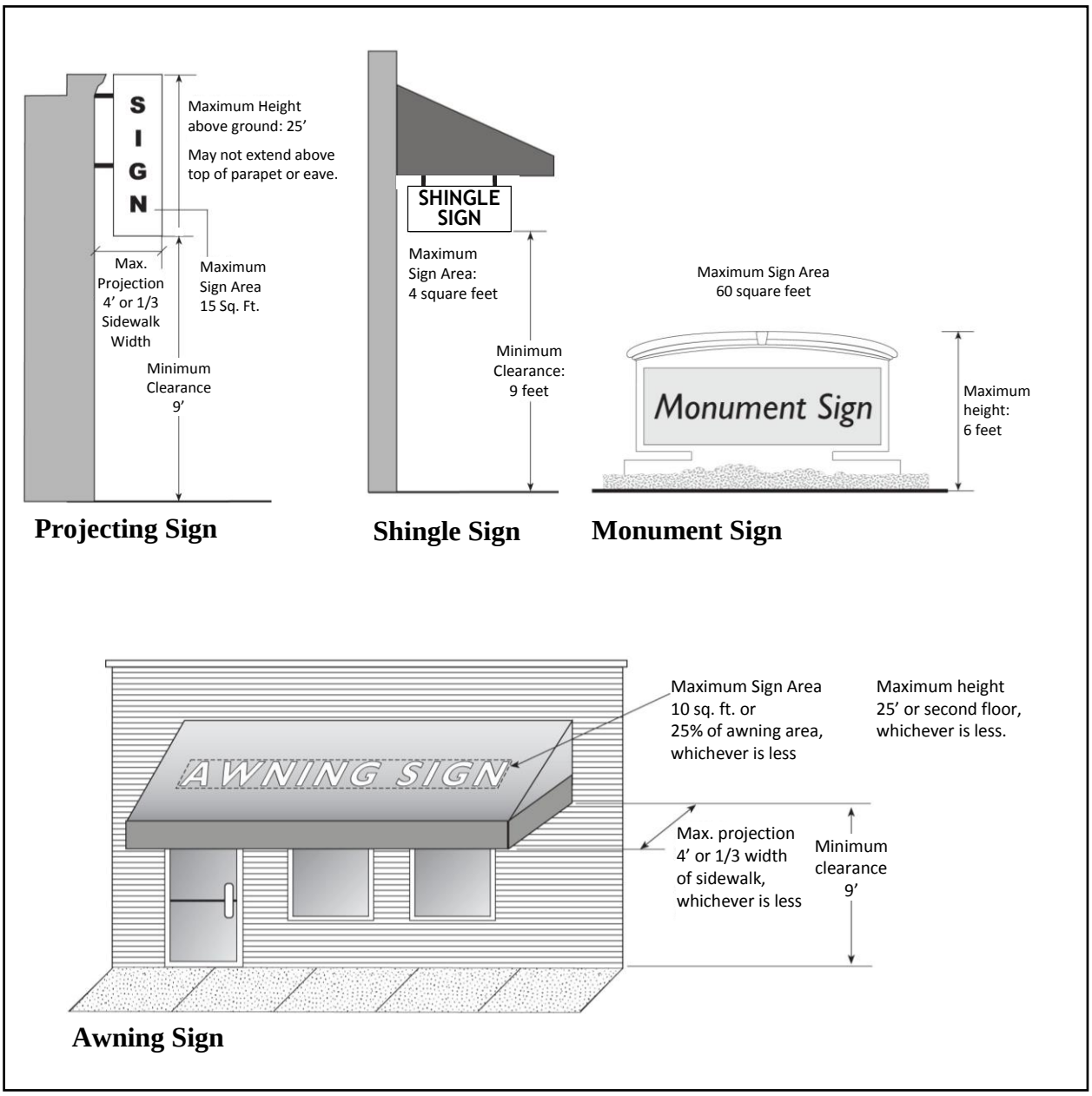

Figure 9-5.1607: Illustration of Projecting, Shingle, Monument, and Awning Signs

9-5.1608 Sign Regulations in the RM Medium Density Residential Zone.

(a) **Permitted Signs.** In addition to the exempt signs listed in Section 9-5.1605, commercial establishments are allowed one sign of up to ten square feet per establishment, subject to minor design review approval pursuant to Section 9-5.1612.

(b) **Standards for Specific Sign Types.** Signs shall conform to the standards listed in Table 9-5.1607 except as modified by subsection (a) above.

(c) **Illumination.** No sign illumination is permitted except downward facing indirect illumination. No sign shall be internally illuminated.

9-5.1609 Sign Regulations in All Other Zones.

(a) **Permitted Signs.** In addition to the exempt signs listed in Section 9-5.1605, all sign types listed in Table 9-5.1607 are permitted, subject to the standards in the table. Sign types not listed in Table 9-5.1607, or signs not in conformance with the standards in Table 9-5.1607, may be considered on a case-by-case basis. If the applicant proposes that such signs be included in the aggregate sign area allowed by subsection (b) below, they may be considered by the Director under the minor design review procedure at Section 9-5.1612(b). If the applicant proposes that such signs not be included in the aggregate sign area allowed by subsection (b) below, they shall be considered by the Planning Commission under the major design review procedure at Section 9-5.1612(c).

(b) **Aggregate Sign Area.**

(1) Individual Establishments.

a. The maximum aggregate sign area for individual establishments is one square foot of sign area per linear foot of public frontage. "Public frontage" refers to either building frontage on a public street or, if the establishment does not front on a public street, the building façade of the establishment accessible to the public on which the main entrance to the establishment is located. In a multi-tenant property, the frontage is typically measured from lease-line to lease-line.

b. If an establishment has frontage on more than one public street or more than one publicly accessible façade, all such frontages may be included in the calculation of aggregate sign area, except service roads, alleys, and similar accessways intended primarily for service vehicles.

c. The following shall not be included in aggregate sign area:

i. Exempt signs other than Business signs.

ii. Roof signs, high-rise identifications signs, marquee signs, and entry gateway signs approved by the Planning Commission pursuant to Section 9-5.1612(c).

iii. Signs that identify individual establishments but are part of the overall site signage of a Master Sign Program approved pursuant to Section 9-5.1613.

d. For any individual establishment, the total area of all signs, including exempt Business signs but excluding all other signs listed in subsection c. above, shall not exceed the aggregate sign area calculated pursuant to this Section.

(2) Site Signage. The aggregate sign area allowance for sites with multiple individual establishments shall be determined on a case-by-case basis by the Planning Commission as part of the approval of a Master Sign Program. The aggregate sign area for overall site signage shall be no more than is necessary to adequately identify the site and its major tenants, and shall not include the aggregate sign area of individual establishments, as determined pursuant to subsection (1) above.

9-5.1610 Temporary Commercial Signs.

Temporary commercial signs meeting the requirements of this Section may be permitted in all zones other than the RM Medium Density Residential zone upon the approval of a minor design review permit pursuant to Section 9-5.1612(b). This Section does not apply to temporary Change of Business Signs, which are exempt from design review pursuant to Section 9-5.1605(f).

(a) **Number.** A maximum of two temporary commercial signs may be displayed by any individual establishment at the same time.

(b) **Area.** The total area of all such temporary commercial signs shall not exceed 32 square feet per individual establishment. This sign area shall not be included in the calculation of aggregate permanent sign area pursuant to Section 9-5.1609(b).

(c) **Materials.** Temporary commercial signs shall be constructed of durable and attractive materials. Paper, cardboard, or other material subject to rapid deterioration shall not be used. Fabric and vinyl signs are permitted.

(d) **Location.** Temporary commercial signs may be located anywhere on the site of the individual establishment, subject to minor design review approval. If located in windows or transparent doors, no more than 20% of the total area of any window or transparent door shall be covered by any combination of temporary commercial signs, exempt temporary window signs pursuant to Section 9-5.1605(s), and permanent window signs pursuant to (a)(7) in Table 9-5.1607.

(e) **Duration.** The time limit for display of a temporary commercial sign shall be 45 days, which may be renewed for one additional period of 45 days upon payment of a second application fee. Two consecutive 45-day periods may be approved at one time upon the payment of two fees, but may not be further extended.

(f) **Illumination.** Temporary signs shall not be illuminated.

9-5.1611 Design Principles

The following design principles shall be used as criteria for review and approval of design review for individual signs and Master Sign Programs.

(a) **Architectural Compatibility.** A sign (including its supporting structure, if any) shall be designed as an integral design element of a building's architecture and shall be architecturally compatible, including color and scale, with any building to which the sign is to be attached and with surrounding structures. A sign that covers a window or that spills over "natural" boundaries or architectural features and obliterates parts of upper floors of buildings is detrimental to visual order and generally is not permitted.

(b) **Legibility.** The size and proportion of the elements of the sign's message, including logos, letters, icons and other graphic images, shall be selected based on the average distance and average travel speed of the viewer. Sign messages oriented towards pedestrians may be smaller than those oriented towards automobile drivers. Colors chosen for the sign text and/or graphics shall have sufficient contrast with the sign background in order to be easily read during both day and night hours.

(c) **Design Guidelines.** All signs shall be subject to the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to signs and

to the area of the city in which a proposed sign is to be located, and to any other applicable design guidelines.

(d) **Animated and Moving Signs.** Animated, flashing, blinking, reflecting, revolving, or other similar signs, or signs with visibly moving or rotating parts or visible mechanical movement of any kind, are generally discouraged unless they add appropriate visual interest compatible with their surroundings.

(e) **Deviations from Design Principles.** The Director may approve signs that do not adhere to the principles established in this Section if he or she finds that the sign exhibits exceptional design quality or is of significance to the area where it will be displayed.

9-5.1612 Procedures for Individual Establishment Signs.

(a) **Application.** Application for a design review permit for individual establishment signs shall be submitted to the Planning and Building Department on a form provided by the Director, accompanied by the fee as set forth in the Master Fee Schedule and application materials as determined necessary by the Director, including but not limited to the following:

(1) A site plan that is fully dimensioned and drawn to scale showing all sign locations and elevations of buildings and signs.

(2) A fully dimensioned color drawing of each proposed sign indicating construction details and sign copy.

(3) Proposed colors, materials and methods of illumination.

(b) **Minor Design Review.**

(1) Types of Signs Eligible. The following types of signs shall be reviewed by the Director pursuant to the minor design review procedures in Article 4 of Chapter 7 and the applicable provisions of this Article:

Wall signs.
Projecting signs.
Banner signs.
Shingle signs.
Awning signs.
Window signs.
Monument signs no more than six feet tall and 60 square feet in area.
Temporary commercial signs.

(2) Findings. To approve a minor design review permit for individual establishment signs as listed in subsection (1) above, all of the following findings must be made in addition to the findings required by Article 4 of Chapter 7:

a. The proposed signs will comply with all the applicable provisions of this Article, including but not limited to aggregate sign area, standards for specific sign types, and design principles.

b. The size, materials, colors, graphic style, illumination and other features of the proposed signs are in keeping with the visual character of the area.

c. The signs will be readable, taking into account the proportion between different parts of the sign, its visibility from important vantage points, and other relevant design features.

d. The signs will relate well to the design of the building and be compatible with its architectural features, colors and textures.

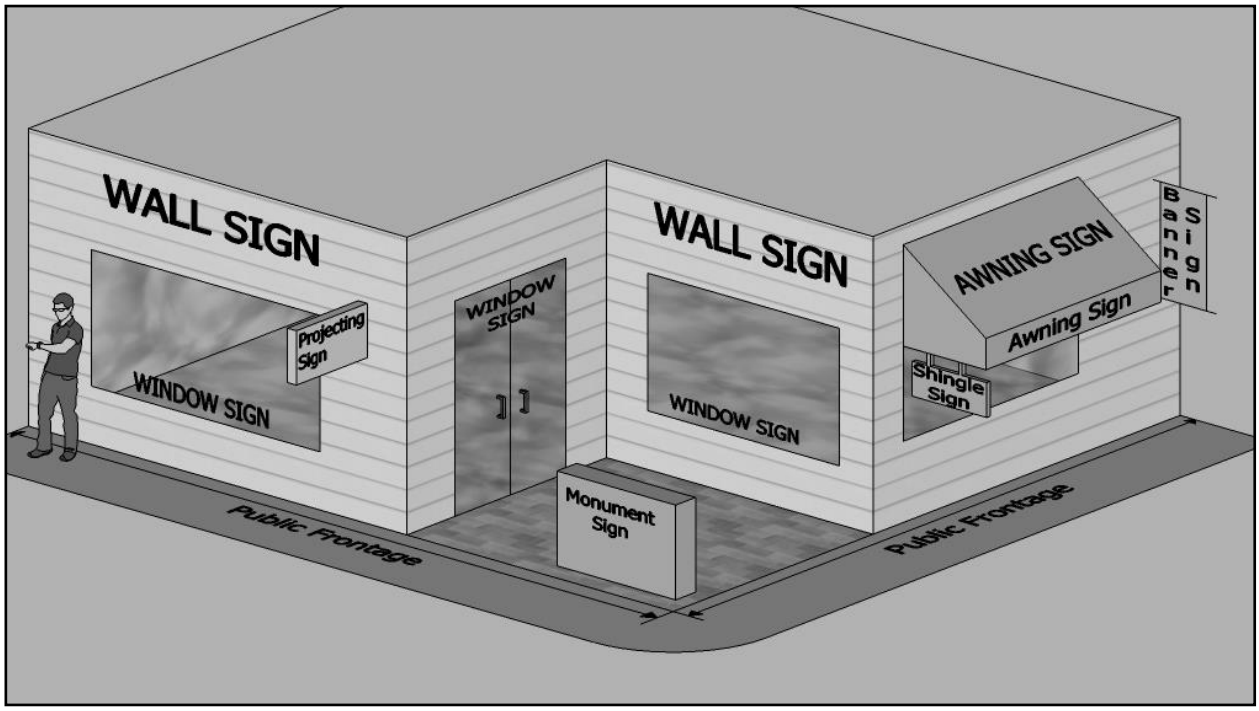

Figure 9-5.1612(b). Examples of Individual Establishment Signs Allowed with Minor Design Review.*

* Note: This drawing is for illustrative purposes only; a typical establishment will not have all signs illustrated here. Total area of all signs may not exceed aggregate sign area pursuant to Section 9-5.1609(b).

(c) **Major Design Review.**

(1) Types of Signs Eligible. The following types of signs shall be reviewed by the Planning Commission pursuant to the major design review procedures in Article 4 of Chapter 7 and the applicable provisions of this Article:

Roof signs.
High-rise identification signs.
Marquee signs.
Entry gateways.
Exterior LED signs.

(2) Findings. To approve a major design review permit for individual establishment signs as listed in subsection (1) above, all of the following findings must be made in addition to the findings required by Article 4 of Chapter 7:

a. The proposed sign is necessary because of the nature of the establishment and its location.

b. The proposed sign is no larger than is necessary to adequately identify the establishment, or the sign is of extraordinary design significance justifying its size.

c. The proposed sign will comply with all the applicable provisions of this Article, including but not limited to design principles.

d. The size, materials, colors, graphic style, illumination and other features of the proposed sign are in keeping with the visual character of the area.

e. The sign will be readable, taking into account the proportion between different parts of the sign, its visibility from important vantage points, and other relevant design features.

f. The sign will relate well to the design of the building and be compatible with its architectural features, colors and textures.

9-5.1613 Master Sign Programs.

(a) **General.**

(1) When Required. A Master Sign Program is required for all developments including five or more retail tenant spaces, and is optional for any other multi-tenant non-residential or mixed use development.

(2) Types of Signs Eligible. A Master Sign Program may include any type of sign eligible for individual establishment signs as indicated in Section 9-5.1612. In addition, the following types of signs may only be allowed as part of a Master Sign Program, and only as overall site signage for the development:

Ground signs.
Tower signs.
Wall signs exceeding maximum dimensions at (a)(6) in Table 9-5.1607.
Monument signs exceeding six feet in height and/or 60 square feet in area.

(b) **Application.** Application for a Master Sign Program shall be submitted to the Planning and Building Department on a form provided by the Director, accompanied by the fee as set forth in the Master Fee Schedule and application materials as determined necessary by the Director, including but not limited to the following:

(1) Text and drawings, including plans drawn to scale, which identify all signs proposed for the development, establishing their location, size, function and other characteristics needed to evaluate the extent of the signage proposed. Plans and drawings shall include a site plan, typical building elevations, and drawings of proposed overall site signage and generic sign types for individual establishments. Any anticipated recurring temporary signs shall be included.

(2) Computation of allowable area for all signs for each individual establishment, and of total area of all proposed signage. Maximum allowable aggregate area for individual establishments shall be no more than allowed by Section 9-

5.1609(b)(1). Maximum allowable aggregate area for overall site signage shall be in addition to this and shall be shown separately. The maximum area of such overall site signage shall be no more than is necessary to adequately identify the development and its major tenants.

(3) Design criteria for individual establishment signs dealing with colors, materials, illumination, graphic styles, placement, size, and other pertinent sign features.

(4) A written program of standards for individual establishment signs to be distributed to future tenants, including color, size, illumination, construction details, sign placement and size.

(c) **Findings.** In order to approve a Master Sign Program, the Planning Commission must make all of the following findings in addition to the findings required by Article 4 of Chapter 7:

(1) The proposed Master Sign Program will promote visual harmony and a cohesive appearance for the development while allowing an appropriate level of individuality for each establishment.

(2) The proposed Master Sign Program will promote signs that relate well to the design of the buildings in the development in terms of compatibility with architectural features, colors and textures.

(3) The proposed Master Sign Program will promote signage that is in keeping with the visual character of the surrounding area.

(4) The total aggregate sign area allowed under the proposed Master Sign Program for each individual establishment does not exceed that allowed by Section 9-5.1609(b)(1).

(5) The height, size, and total aggregate area of overall site signage allowed under the proposed Master Sign Program is no more than is necessary to adequately identify the development and its major tenants.

(6) The proposed Master Sign Program will comply with all the applicable provisions of this Article, including but not limited to standards for specific sign types and design principles.

(d) **Review of Individual Signs Under a Master Sign Program.** A proposal for individual signs under a Master Sign Program shall be reviewed by the Director for conformance with the requirements of the Master Sign Program and this Article pursuant to the zoning compliance review procedures in Article 3 of Chapter 7. If the Director determines that the proposal conforms to the requirements of the Master Sign Program and this Article, a zoning compliance approval shall be issued. If the Director determines that the proposal does not conform to the requirements of the Master Sign Program and this Article, a zoning compliance approval shall not be issued, and the applicant shall be advised as to how the proposal could be brought into compliance. The Director's determination of compliance or non-compliance may be appealed to the Planning Commission pursuant to Article 14 of Chapter 7.

9-5.1614 Nonconforming Signs.

(a) **Continuance and Maintenance.** Nonconforming signs that were legal when first installed, and which have not been modified so as to become illegal, may be continued, and routine maintenance and repairs may be performed.

(b) **Alterations and Additions to Nonconforming Signs.** No nonconforming sign shall be moved, altered, or enlarged unless required by law or unless the moving, alteration or enlargement will result in the elimination of the nonconformity.

(c) **Abandonment of Nonconforming Sign.** Whenever a nonconforming sign has been abandoned, or the use of the property has been discontinued for a continuous period of 90 days, the nonconforming sign shall be removed.

(d) **Restoration of a Damaged Sign.**

(1) Whenever a nonconforming sign is destroyed by fire or other calamity to the extent of 50% or less of the sign's replacement value, the sign may be restored and the non-conforming use of the sign may be resumed, provided that restoration is started within six months of the damage and diligently pursued to completion.

(2) Whenever a nonconforming sign is destroyed by fire or other calamity to a greater extent than 50% of the sign's replacement value, or is voluntarily removed or is required by law to be removed, the sign shall not be restored except in full conformity with the requirements of this Article.

(e) **Illegal Signs.** A sign that was not legally established under the regulations that were applicable at the time it was established, whether before or after the adoption of these Planning Regulations, is an illegal sign. Any such illegal sign is hereby declared to be a public nuisance and shall be removed or legalized immediately.

9-5.1615 Definitions.

(a) **Signs Generally.** "Sign" means a structure, fixture, device, or material containing any combination of written copy, graphics, or symbols intended to promote a business, product, commodity, service, idea, or person, or to provide direction, identification, or information. "Sign" may include flags, streamers, pennants, banners, and balloons if their intent is as stated above. Noncommercial works of art, including but not limited to murals, are not signs.

(b) **Sign Types.** The following definitions shall apply throughout this Article, in addition to definitions contained elsewhere in this Article, including, but not limited to, the Prohibited Signs listed in Section 9-5.1604 and the Exempt Signs listed in Section 9-5.1605.

(1) "Animated sign" means a sign which, by method or manner of illumination, flashes on or off, or blinks with varying light intensity, shows motion or creates the illusion of motion, or revolves to create the illusion of being on or off.

(2) "Awning sign" means a sign affixed permanently to the outside surface of an awning.

(3) “Banner sign” means a sign made of fabric or any non-rigid material with no enclosing framework, usually supported by horizontal poles protruding from a building wall.

(4) “Blade sign” means a projecting sign.

(5) “Business sign” means a sign that directs attention to the principal business, profession or industry located on the premises where the sign is displayed, to products sold, manufactured or assembled, or to services or entertainment offered on such premises.

(6) “Changeable copy sign” means a sign whose informational content can be changed or altered manually.

(7) “Channel letters” means three-dimensional individual letters or figures, with an open back or front, illuminated or non-illuminated, that are affixed to a building or to a freestanding sign structure.

(8) “Construction sign” means a temporary sign that describes in words and/or drawings a planned future development project on a property.

(9) “Entry gateway sign” means a sign permanently affixed to an arch or other structure spanning over an entrance to a property.

(10) “Freedom of speech sign” means a noncommercial sign expressing an idea.

(11) “Freeway-oriented sign” means a sign that is oriented primarily to the traveling public using a freeway, and installed for the sole purpose of identifying major business locations in close proximity to the freeway.

(12) “Ground sign” means a sign that is permanently supported upon the ground by poles or braces and is not attached to any building or other structure. These may include freestanding pole signs.

(13) “High-rise identification sign” means a sign located on the top story of a building that is over 75 feet tall and identifying the name of the building, its owner, a tenant of the building, or any entity associated with the building.

(14) “Marquee sign” means a sign with a changeable message that advertises events, performances, or services, and that is displayed on a permanent structure made of rigid materials supported by and extending from the facade of a building.

(15) “Monument sign” means a low-profile freestanding sign erected upon or supported solely by a planter, pedestal base, or similar ground structure approximately the same width as the sign.

(16) “Moving sign” means a sign or any portion thereof that rotates, moves, or appears to move in some manner by mechanical, electrical, natural, or other means.

(17) “Noncommercial sign” means a sign that does not promote a business, commodity, service, entertainment, product, or other attraction.

(18) “Organization sign” means a sign that identifies a non-profit or other noncommercial organization.

(19) “Permanent sign” means a sign made of durable materials and intended to be displayed for an indefinite time period.

(20) “Political sign” means a sign that promotes a political candidate, party, or issue.

(21) “Projecting sign” means a sign, the surface of which is not parallel to the face of the supporting wall and which is supported wholly by the wall. This definition includes V- or wing-type signs. Also known as a “blade sign”.

(22) “Roof sign” means a sign located above any portion of any roof of a building, including a canopy or other overhang.

(23) “Shingle sign” means a sign that hangs from a canopy or awning or from the ceiling of an arcade or passageway.

(24) “Temporary sign” means a sign that is intended to be displayed for a limited time period.

(25) “Tower sign” means a sign that is supported by a tall framework or structure, whether or not attached to a building, typically intended to identify a multi-tenant commercial complex and its major tenants.

(26) “Wall sign” means a sign painted on or affixed to, and wholly supported by, a building or other wall in such a manner that its exposed face is approximately parallel to the plane of such building or wall.

(27) “Window sign” means a sign painted or installed on a glass window or door and intended to be seen from the exterior of the structure in which the window or door is located, or an interior sign located within two feet of the inside a window or door in a manner that it can be viewed from the exterior of the structure.

ARTICLE 17. TELECOMMUNICATION FACILITIES

9-5.1701 Purpose.

This Article provides standards and procedures to regulate the development, siting, installation, and operation of wireless communications facilities, consistent with the applicable requirements of state and federal law. The regulations are intended to provide for the appropriate development of wireless communications facilities within the City to meet the needs of residents, business-owners, and visitors, while protecting public health and safety and preventing visual blight and degradation of the community's aesthetic character, consistent with the General Plan.

9-5.1702 Applicability and Exemptions.

The requirements of this Article apply to all Wireless Communication Facilities as defined in Section 9-5.1708.

(a) **Principal Use.** A Wireless Communications Facility that includes a transmission tower shall be considered a principal use and is subject to the provisions of Section 9-3.202.

(b) **Accessory Use.** A Wireless Communications Facility that includes wireless communications antennas and related equipment shall be considered an accessory use and is subject to the Development Requirements and Standards in Section 9-5.1705 below.

(c) **Exemptions.** The following accessory facilities are exempt from this Article:

(1) Licensed amateur (ham) radio, citizen band operations and emergency services radio.

(2) Hand-held, mobile, marine, and portable radio transmitters and/or receivers.

(3) Radio and television mobile broadcast facilities.

(4) Communication equipment and storage devices, such as computer servers, in cabinets or rooms completely located inside of permitted structures.

(5) A single ground or building-mounted receive-only radio, television or wireless cable antenna not exceeding the maximum height permitted by Article 2 of Chapter 4, including any mast, or a receive-only radio or television satellite dish antenna, subject to the following restrictions in residential districts:

a. Satellite Dish One Meter or Less. A satellite dish that does not exceed one meter in diameter and is for the sole use of a resident is permitted anywhere on a lot in a residential district so long as it does not exceed the height of the ridgeline of the primary structure on the lot.

b. Antennas. An antenna that is mounted on any existing building or other structure that does not exceed 25 feet in height is permitted. The antenna must be for the sole use of a resident living on the lot on which the antenna is located.

(6) Any Wireless Communications Facility that is exempt from local regulation pursuant to the rules and regulations of the Federal Communications Commission (FCC) or a permit issued by the California Public Utilities Commission (CPUC).

The owner or operator of such Facility shall provide the Director with a copy of a current FCC or CPUC permit or a copy of applicable FCC regulations prior to its installation.

(7) Minor modifications to existing Wireless Communications Facility, including replacement in-kind or with smaller or less visible equipment, that meet the standards set forth in this Article and will have little or no change in the visual appearance of the Facility.

9-5.1703 Application Requirements.

An applicant shall file a written application pursuant to the application procedures in Article 2 of Chapter 7 and any specific application requirements established by the Director for this use.

(a) **Co-location.** The applicant and owner of any site on which a Wireless Communications Facility is located shall cooperate and exercise good faith in co-locating other Wireless Communications Facilities on the same support structures. Good faith shall include sharing technical information to evaluate the feasibility of co-location, and negotiations for erection of a replacement support structure to accommodate co-location. A competitive conflict to co-location or financial burden caused by sharing information normally will not be considered as an excuse to the duty of good faith. In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the City may require the applicant to obtain a third party technical study at applicant's expense.

(1) All Wireless Communications Facilities shall make available unused space for co-location of other Wireless Communications Facilities, including space for these entities providing similar, competing services.

(2) All co-located and multiple-user Wireless Communications Facilities shall be designed to promote facility and site sharing. Telecommunication towers and necessary appurtenances, including but not limited to parking areas, access roads, utilities and equipment buildings, shall be shared by site users whenever possible.

(3) No co-location is required where it can be shown that the shared use would or does result in significant interference in the broadcast or reception capabilities of the existing Wireless Communications Facilities or failure of the existing facilities to meet federal standards for emissions or cause the host to go offline for a significant period of time.

(4) Failure to comply with co-location requirements when feasible or cooperate in good faith as provided for in this subsection is grounds for denial of a permit request or revocation of an existing permit.

(b) If an applicant proposes a Wireless Communications Facility which is not co-located with an existing Wireless Communications Facility, the applicant shall provide an inventory of existing Facilities within a quarter mile of the proposed site, including area which falls in a neighboring jurisdiction, and the applicant shall also provide an explanation as to why the proposed Facility cannot be co-located with an existing Facility.

(c) In addition to any other requirements, all Wireless Communications Facilities applications shall, at a minimum, include the following information:

(1) **Report on Alternatives.** A report explaining why the Wireless Communications Facility is needed at the requested location. Any applicant seeking to construct a new transmission tower shall explain why co-location or location on another kind of support structure is not feasible, including efforts made to develop such an alternative. If the City has requested that the applicant co-locate its Wireless Telecommunication Facility on a site, the applicant shall explain why co-location is not feasible.

(2) **Wireless Communications Facility Plans.** Plans shall include a fully dimensioned diagram of the proposed Wireless Communications Facility, including height, shape, size and type of construction. Plans for a transmission tower must include information demonstrating that the structure will be able to accommodate at least one other similar telecommunication provider. A diagram showing the separation between the proposed Facility and any existing Facility or Facilities on the same support structure or site is required if co-location is planned.

(3) **Site Plans.** A fully-dimensioned site/landscaping plan that includes: specific placement of the proposed tower, equipment shelters, and any other Wireless Telecommunication Facility on the site; elevation drawings; setbacks from lot lines; the location of existing structures, trees, and other significant site features; notation of those features proposed to be removed; the type and locations of plant materials proposed to screen the facility; and the proposed materials and colors for the Facility.

(4) **Visual Analysis.** Photo-simulations showing views of the proposed Facility from surrounding residential properties and public rights-of-way at varying distances with a map indicating the locations used for the analysis and their distances from the site.

(5) **Documentation of Compliance.** Copies of all applicable licenses or other approvals required by the FCC and any other agency with authority to regulate Wireless Communications Facilities, including documentation of compliance with all conditions imposed in conjunction with such licenses or approvals, shall be provided. If these do not include an estimate of the anticipated radio frequency emissions, the applicant shall provide this separately.

9-5.1704 Review of Telecommunications Facilities.

A non-exempt Wireless Communications Facility shall not be established, expanded, or otherwise modified except in conformance with this Article. Non-exempt facilities are subject to design review and/or conditional use permit, pursuant to the procedures in Chapter 7, as follows:

(a) Wireless Communications Antennas in the RM Medium Density Residential zone may only be approved with a conditional use permit and are subject to design review. To grant such a conditional use permit, the following finding must be made in addition to the findings required by Article 5 of Chapter 7:

(1) That the antenna is necessary to fill a gap in coverage.

(b) Wireless Communications Antennas not in the RM Medium Density Residential zone are subject to major design review unless the antennas and all associated equipment are completely hidden from public view.

(c) Wireless Communications Antennas in the public right of way may only be approved with a conditional use permit, design review, and an encroachment agreement pursuant to Chapter 2 of Title 7.

(d) Wireless Communications Facilities which include a freestanding pole or transmission tower may only be approved with a conditional use permit and design review, and only in the INL Light Industrial, INH Heavy Industrial, and P Public zoning districts.

9-5.1705 Development Requirements and Standards.

All Wireless Communications Facilities shall be located, developed, and operated in compliance with all of the following standards and with applicable standards of the zoning district in which they are located.

(a) **Location and Siting.**

(1) No new transmission tower shall be located within 1,000 feet of an existing transmission tower, including existing transmission towers which are in other jurisdictions.

(2) Pursuant to Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, any modification of a transmission tower which does not "substantially change" the tower is permitted.

(3) All Wireless Communications Facilities shall meet the building setback standards of the district in which they are proposed to be located.

(4) Facilities and equipment located in the public right-of-way shall be located, constructed, installed, and maintained in compliance with the applicable requirements of Title 7 and the following standards:

a. Facilities shall only be installed where they will not interfere with existing or future City uses of the right-or-way, the rights of private property owners, other utility fixtures and services, water hydrants or mains, wastewater stations, traffic control systems, or any other service or facility that benefits the City or its residents.

b. Facilities shall be installed within existing underground ducts or conduits whenever such ducts, conduits, manholes or other facilities have volume or capacity that is available or will be available for third party facilities. Utility boxes, power units, and similar fixtures shall be installed completely underground, unless the Public Works Director finds that undergrounding would result in maintenance and operation problems that would interfere with service.

c. Overhead facilities may be installed on existing utility poles or replacement poles if the new pole has the same or better appearance than the existing pole.

d. Overhead facilities shall not be installed where a project has been implemented to remove existing overhead facilities.

e. Pedestals, amplifier units, equipment cabinets, and similar above ground installations shall, where feasible, be located at least six inches from any sidewalk and two feet from driveway and curb edges. They shall not be placed in front of the primary entrance to a residence or retail business or at any other location where they would unduly interfere with the operation of a business, including blocking views of the entrance or display windows.

(b) **Height Requirements.**

(1) **Wireless Communications Antennas on Buildings.** See Article 2 of Chapter 4 for requirements regulating building height and projections above the top of buildings.

(2) **Other Wireless Communications Facilities.** A free-standing Wireless Communications Facility shall not exceed the height limit of the district in which it is located. When a Wireless Communications Antenna is mounted on a structure which is not a building it shall not exceed the height of the structure unless camouflaged as part of the structure design, nor shall it exceed the height limit of the district in which the structure is located.

(c) **Design and Screening.** Wireless Communications Facilities shall be located, designed and screened to blend with the existing natural or built surroundings, as well as any existing support structures, so as to reduce visual impacts to the extent feasible. All Facilities, except for equipment within existing buildings, are subject to design review. Equipment cabinets shall be located within the building upon which antennae are placed, if technically feasible. Otherwise, equipment cabinets, and associated equipment such as air conditioning units and emergency generators, shall be screened from view by a wall or landscaping, as approved by the Director.

(d) **Performance Standards.** Wireless Communications Facilities shall comply with the performance standards listed in Article 11 of this Chapter, including but not limited to noise standards.

9-5.1706 Post-Installation Verification and Monitoring.

Post-installation verification and monitoring by qualified and objective third-party experts shall be required as follows:

(a) **Validation of Proper Operation.** Within forty-five days of commencement of operations, the permittee shall provide verification that the radio frequency levels comply with FCC regulation and that all equipment complies with City noise regulations.

(b) **Review Following One Year.** The permittee shall report to the City a measurement of radio frequency emissions one year from the date of commencement of operation. Thereafter, such a report shall be available upon request by the City.

9-5.1707 Discontinuance of Use.

(a) As a condition of approval, an applicant for a building permit to erect or install a Wireless Communications Facility shall be required to post a cash or surety bond in a form and amount acceptable to the Director to cover removal costs of the Wireless Communications Facility in the event that its use is abandoned or the approval is otherwise terminated.

(b) The service provider shall notify the Director of the intent to vacate a site at least thirty days prior to the vacation. The permit for any Wireless Communications Facility that is not operated for a continuous period of twelve months shall be deemed lapsed and the site will be considered abandoned unless:

(1) The Director has determined that the same operator resumed operation within six months of the notice; or

(2) The City has received an application to transfer the permit to another service provider.

(c) No later than ninety days from the date the use is discontinued or the provider has notified the Director of the intent to vacate the site, the owner of the abandoned Wireless Communications Facility or the owner of the property on which the Facility is sited shall remove all equipment and improvements associated with the use and shall restore the site to its original condition. The owner may use any bond or other assurances provided by the operator to do so. The owner or his agent shall provide written verification of the removal of the Facility within thirty days of the date the removal is completed.

(d) If the Wireless Communications Facility is not removed within thirty days after the permit has lapsed, the site shall be deemed to be a nuisance, and the Director may cause the Facility to be removed at the owner's expense or by calling any bond or other financial assurance to pay for removal. If there are two or more users of a single transmission tower, then this provision shall apply to the abandoned Facility but not become effective for the tower until all users cease using the tower.

9-5.1708 Definitions.

As used in this Article:

(a) "Co-location" means the location of two or more Wireless Communications Facilities on a single support structure or otherwise sharing a common location. For the purposes of this Article, co-location shall also include the location of Wireless Communications Facilities with other facilities such as water tanks, light standards, and other utility facilities and structures.

(b) "Wireless Communications Antenna" means the physical device through which electromagnetic, wireless telecommunications signals authorized by the Federal Communications Commission are transmitted or received. It includes antennas and related equipment which may include cable, conduit and connectors, equipment pads, shelters and cabinets, and access ladders. Antennas used by amateur radio operators are excluded from this definition.

(c) “Wireless Communications Facility” is a facility containing equipment for the transmitting or receiving of electromagnetic radio frequency waves. It may include wireless communications antennas as define above and may also include the pole or tower on which equipment is mounted.

ARTICLE 18. EMERGENCY SHELTERS

9-5.1801 Purpose.

This Article establishes regulations governing Emergency Shelters. The City finds it necessary to establish such requirements and criteria in the interest of the public health, safety and welfare.

9-5.1802 Applicability.

This Article shall apply to the establishment of all Emergency Shelters.

9-5.1803 Approval Procedure.

(a) **Where Permitted by Right.** In zoning districts in which Emergency Shelters are permitted by right, as indicated in Table 9-3.202, a proposal for an Emergency Shelter shall be reviewed by the Director, in consultation with the Chief Building Official and Fire Marshal, for conformance with the provisions of this Article pursuant to the zoning compliance review procedures in Article 3 of Chapter 7. If the Director determines that the proposal conforms to the requirements of this Article, a zoning compliance approval shall be issued. If the Director determines that the proposal does not conform to the requirements of this Article, a zoning compliance approval shall not be issued, and the applicant shall be advised as to how the proposal could be brought into compliance. The Director's determination of compliance or non-compliance may be appealed to the Planning Commission pursuant to Article 14 of Chapter 7.

(b) **Where Conditionally Permitted.** In zoning districts in which Emergency Shelters require a conditional use permit, as indicated in Table 9-3.202, a proposal for an Emergency Shelter shall be considered by the Planning Commission pursuant to the major conditional use permit procedures in Article 5 of Chapter 7. In approving a conditional use permit for an Emergency Shelter, the Commission may designate reasonable conditions including, but not limited to, those deemed necessary to comply with the standards in Section 9-5.1804. The Commission's decision may be appealed to the City Council pursuant to Article 14 of Chapter 7.

9-5.1804 Standards.

Emergency Shelters shall comply with all of the following standards:

(a) **Number of Beds.** An Emergency Shelter may have up to 60 beds.

(b) **Waiting Area.** A waiting and intake area containing a minimum of ten square feet per bed shall be provided.

(c) **Outdoor Activities.** Outdoor activities, including but not limited to on-site waiting, client intake areas, and charitable food distribution, may only be conducted between the hours of 8:00 a.m. to 6:00 p.m. and shall be screened from public view to the extent feasible.

(d) **Location Requirement.** No Emergency Shelter shall be established within 300 feet of any other Emergency Shelter. The distance between any two Emergency Shelters shall be measured in a straight line, without regard to intervening structures, from the closest property line of each shelter.

(e) **Lighting.** Adequate external lighting for security shall be provided.

(f) **Security.** Parking and outdoor facilities shall be designed for security for residents, visitors and employees.

(g) **Management Plan.** The shelter operator shall have a written management plan including provisions for staff training, neighbor relations, security, screening of residents to ensure compatibility with services provided at the facility, and programs for residents.

(h) **On Site Staffing.** A minimum of one staff member per twenty beds shall be on duty and awake when the facility is in operation.

(i) **Compliance with Federal, State, and Local Regulations.** Emergency Shelters shall comply with all Federal, State, and Local Licensing Requirements.

(j) **Compliance with Life Safety Regulations.** Emergency Shelters shall comply with all applicable Building, Fire, and Health and Safety codes, including maximum occupancy restrictions.

ARTICLE 19. DEVELOPMENT IMPACT FEES

9-5.1901 Authority and Reference to Article.

This Article may be referred to as the "Impact Fee Ordinance," and is adopted pursuant to the authority of Article XI, Section 7 of the California Constitution, Cal. Gov't Code §§ 66000 et seq. (hereinafter "Mitigation Fee Act"), Cal. Gov't Code §§ 65000 et seq. (the Planning and Zoning Law of the State of California), and in accordance with the findings set forth in the ordinance codified herein.

9-5.1902 Purpose of Fees.

Pursuant to this Article, the City has established fees which will be imposed upon projects for the purpose of mitigating the impacts that the projects have upon the City's ability to provide public facilities.

9-5.1903 Use of Fees.

(a) The fees imposed by the City pursuant to this Article, including any interest earnings thereon, shall be used to pay, in whole or in part, the estimated reasonable cost of providing specified public facilities, as described in implementing resolutions; to reimburse the City for the cost of specified public facilities constructed by the City with funds from other sources; and to make reimbursement payments in accordance with Section 9-5.1915.

(b) As described in each implementing resolution, the specified public facilities will be categorized into separate and distinct sets of public facilities based upon the type of public facility to be provided, or other identifying features. Each separate set of specified public facilities described in an implementing resolution shall be referred to in this chapter as a "public facility category." Public facility categories include, but are not limited to: transportation and park and recreation facilities.

(c) For each separate public facility category, a separate fee shall be calculated and imposed, and each separately imposed fee shall be collected by the City and deposited in a separate and distinct "fee fund," subject to the accounting requirements of the Mitigation Fee Act.

9-5.1904 Calculation of Fees by Implementing Resolutions.

Pursuant to the Mitigation Fee Act, in any action establishing, increasing, or imposing a fee as a condition of approval of a project, a technical report shall be prepared for each public facility category, subject to City Council approval by implementing resolution. Each implementing resolution shall include the following:

(a) Identify the purpose of the fee by identifying the estimated types and quantities of projects subject to the fee, and the public facility category to be funded by the fees.

(b) Identify the use of the fee by identifying the specified public facilities to be funded by the fees.

(c) Determine how there is a reasonable relationship between the City's use of the fee and the types of projects on which the fee is to be imposed by demonstrating how the project will benefit from the specified public facilities to be funded by the fees.

(d) Determine how there is a reasonable relationship between the need for the specified public facilities and the types of projects on which the fee is to be imposed, by demonstrating how the project creates a demand for the construction of the specified public facilities to be funded by the fees.

(e) Determine how there is a reasonable relationship between the amount of the fee and the cost of the specified public facility attributable to the project on which the fee is to be imposed. This shall include two elements: (1) a quantification of the estimated reasonable cost of providing the specified public facility, which may include the estimated costs of land acquisition, design, construction, construction administration, general administration (including establishment and enforcement) of the fee program, and contingencies; and (2) an identification of the method by which the City quantifies the proportionate responsibility of each project for the cost of the specified public facilities, which may be satisfied by establishing a formula which reasonably quantifies the proportionate responsibility of various types of projects using standardized units of measurement

9-5.1905 Obligation to Pay Fees.

(a) Each applicant for City approval of a project (including applications for a change of use and remodels) shall pay impact fees to the City, in accordance with the amounts set forth in implementing resolutions, unless the applicant establishes, to the satisfaction of the Director, entitlement to a fee adjustment pursuant to Section 9-5.1908 of this Article, a fee exemption pursuant to Section 9-5.1909 of this Article, or approval of a fee credit pursuant to Section 9-5.1913 of this Article.

(b) The obligation to pay impact fees pursuant to this Article shall not replace an applicant's obligation to mitigate development project impacts in accordance with other requirements of state or local law, or to otherwise comply with applicable City site development standards (Chapter 4 of Title 9 of the Planning Regulations), citywide use and development regulations (Chapter 5 of Title 9 of the Planning Regulations), or subdivision requirements (Chapter 6 of Title 9 of the Planning Regulations).

9-5.1906 Timing of Payment.

(a) At Permit Issuance. Except as otherwise provided in this section, the fees for each project shall be paid in full prior to the issuance of the permit required for that project.

(b) After Permit Issuance. Upon application by an applicant, and approval by the Director, the fees for a project may be paid as follows:

(1) For projects that include residential dwelling units, if application of this subsection (b)(1) is specifically requested by the applicant, fees shall be paid before: (i) final inspection, or (ii) issuance of a certificate of occupancy, whichever occurs first. The amount of the fee to be paid shall be the amount of the fee in effect on the date of permit issuance. Notwithstanding the foregoing, the Director may deny the application to defer payment of fees for a residential project that does not meet the criteria set forth in Cal. Gov't Code § 66007 (b)(2)(A) pertaining to lower income affordable housing, and thus require the earlier payment of fees only if the criteria set forth in Cal. Gov't Code § 66007 (b)(1) is satisfied.

(2) For any non-residential project, fees shall be paid in their entirety on a date before the project receives (i) its final inspection, or (ii) its certificate of occupancy, whichever occurs first. However, the amount of the fee to be paid for a project shall be the amount of the fee in effect, pursuant to implementing resolution, at the time that full payment is made to the City.

(c) Implementation. The Director shall develop an application form for applicants to request payment of fees after permit issuance pursuant to subsection (b) of this Section and shall establish departmental guidelines for approval or denial of such applications. The Director is authorized to execute and approve an application under this subsection (c).

(d) Compliance. No City official may issue a permit with respect to a project unless the fees required by this Article have been paid as required by subsection (a) of this Section or an application meeting the criteria set forth in subsection (c) of this Section has been approved by the Director in connection with the project. No City official may certify final inspection or issue a certificate of occupancy for a project, or otherwise allow occupancy of a project, until the fees required by this Article with respect to such project are paid in accordance with this section.

9-5.1907 Amount of Payment.

(a) The amount of any fee to be paid for a project shall be the amount of the fee in effect, pursuant to implementing resolution, on the date of permit issuance. However, for any project besides one covered by Section 9-5.1906(b)(1), if any fee is paid after the date of permit issuance in accordance with an application approved by the Director pursuant to Section 9-5.1906(c), then the amount of the fee shall be the amount in effect, pursuant to implementing resolution, at the time that full payment is made to the City.

(b) The amount of any fee to be paid in connection with a change of use shall be: (1) the amount of the fee required pursuant to subsection (a) of this Section for the proposed use, (2) minus the amount of the fee paid for the last legal use of the existing structure.

(c) The amount of any fee to be paid in connection with a remodel shall be the amount of the fee required pursuant to subsection (a) of this Section for that portion of the remodel which generates impacts greater than the last legal use of the existing structure.

(d) In the event that the land use of a project is not included in the implementing resolution for determination of the amount of the fee, the Director shall determine their fee as set forth in the implementing resolution.

9-5.1908 Fee Adjustments by the City.

The City reserves the right to update and adjust each fee from time to time, in accordance with the Mitigation Fee Act. The fee in effect at the time any applicant has obtained a vested development right shall be subject to adjustment by the City, as incorporated in updated implementing resolutions in effect at the time that full payment of the fee is made, based upon any or all of the following criteria:

(a) Adjustments in the amount of the estimated construction costs of providing the specified public facilities based upon adjustments in accordance with the inflation index.

(b) Adjustments to replace estimated costs with actual costs (including carrying costs) of providing the specified public facilities.

(c) Adjustments to reflect more accurate cost estimates of providing the specified public facilities based upon more detailed analysis or design of the previously identified specified public facilities.

9-5.1909 Exemptions.

(a) Residential projects are exempt from impact fees for any remodel, as long as it does not result in a change of use.

(b) A project shall be exempt from the requirements of this Impact Fee Ordinance if the applicant provides documentation, to the satisfaction of the Director, of federal, state, or local law (including a duly adopted resolution of the City Council) which establishes entitlement to the exemption.

9-5.1910 Request For Refund.

An applicant may request a refund of a fee previously paid in accordance with this Article, and the Director may approve said refund, only if the applicant provides written documentation to the satisfaction of the Director that: (1) the permit (including any planning permit or City approval on which the fee was imposed) is cancelled or voided, and (2) work has not progressed on the permit which would allow commencement of a new use or change of use, and (3) the City has not already committed the fees to the construction of public facilities. Any refund made pursuant to this subsection shall include a deduction to cover the City's administrative costs of processing the refund.

9-5.1911 Application For Potential Credit.

An applicant may be eligible for a credit against impact fees otherwise owed, in return for providing a specified public facility to the City, only if the applicant submits a written application to the Director which establishes compliance with all of the following requirements to the satisfaction of the City Council:

(a) Describe the specified public facilities (or portion thereof) proposed to be provided by the applicant, with a cross-reference to the description of the specified public facilities in the relevant implementing resolution.

(b) Identify the estimated cost of providing the specified public facilities (including construction, design, and/or land acquisition) for which the applicant is requesting credit.

(c) Describe the project or projects to which the fee credit is requested to apply. The description shall be limited to all or a portion of the project for which specified public facilities are a condition of approval.

(d) Document that either: (1) the applicant is required, as a condition of approval for the project, to construct the specified public facilities; or (2) the applicant requests to build one or more specified public facilities which benefit the project, and the City Council determines by resolution prior to the commencement of construction that it is in the City's best interests for the specified public facilities to be built by the applicant.

(e) To the extent that credit for land acquisition costs are requested, document that: (1) the location of the land is advantageous to the public facility needs of the City; and (2) the amount of credit for the land acquisition is equal to a reasonable estimate of the fair market value of the land based upon either: (A) documentation provided by the applicant to the City, or (B) in the event that the City determines that the documentation provided by the applicant does not provide a reasonable basis for determining the fair market value of the land, the applicant shall pay for the costs of a property appraisal by an expert selected by the City which is qualified to express an opinion as to the value of the property (pursuant to Cal. Civ. Proc. Code § 1255.010).

(f) Notwithstanding the foregoing, no credit shall be provided against impact fees otherwise owed if an applicant has received a development bonus in accordance with Section 9-4.204 of these Planning Regulations for providing the specified public facility.

9-5.1912 Timing of Application For Potential Credit.

The application for credit shall be submitted by the applicant to the Director in accordance with the following timing requirements: (a) to the extent that the applicant requests credit for design or construction, the application shall be submitted concurrently with the submittal of improvement plans; (b) to the extent that the applicant requests credit for land dedication, the application shall be submitted prior to the recordation of a final map or parcel map for the project. The applicant may submit a late application only if the applicant establishes, to the satisfaction of the City, that, in light of new or changed circumstances, it is in the City's best interests to allow the late application.

9-5.1913 Amount of Potential Credit.

In the event that the City determines that the applicant has submitted a timely application in compliance with Section 9-5.1912, and it is in the City's best interest to allow the applicant to provide the proposed specified public facility, the applicant shall be entitled to credit against fees otherwise owed in accordance with this Article; provided, that the applicant enters into a public improvement agreement with the City approved by resolution of the City Council which includes the following essential terms:

(a) The design of the specified public facility is approved by the City.

(b) The applicant agrees to provide the specified public facilities in return for the credit to be allocated in accordance with the terms of the public improvement agreement and this Article.

(c) The amount of credit available to the applicant shall not exceed the lesser of: (1) the applicant's actual cost of providing the specified public facility, to be evidenced by the submittal of written documentation to the satisfaction of the City, and (2) the estimated cost of providing the specified public facility, as identified in the implementing resolution.

(d) The amount of credit available to the applicant for land dedication shall be equal to the amount identified in Section 9-5.1911(e).

(e) The land to be dedicated to the City shall not contain hazardous substances, waste or materials, as defined by state or federal law, including petroleum, crude oil or any

fraction thereof, or shall otherwise be remediated in accordance with a cleanup plan approved by the City and applicable state or federal regulatory agencies to a level suitable for the intended use. Further, the applicant shall agree to thereafter defend, indemnify, and hold the City harmless from all demands, claims, orders, costs, expenses, fees, penalties, and causes of action related to hazardous substances, waste or materials, as defined by state or federal law, including petroleum, crude oil or any fraction thereof, located on or emanating from the property.

(f) The applicant provides improvement security in a form and amount acceptable to the City.

(g) The applicant agrees to pay prevailing wages for all public works as defined in the California Labor Code related to the specified public facility. The requirement for payment of prevailing wages shall be limited to the construction of the specified public facility for which a fee credit is granted, unless an exception to prevailing wage requirements applies under the California Labor Code, in which case the requirement for prevailing wages shall not apply.

(h) The applicant identifies the project to which the credit will be applied.

(i) The credit may only be applied to fees which would otherwise be owed for the public facility category relevant to the specified public facility.

9-5.1914 Request For Reimbursement.

To the extent that the applicant has a balance of credit available, the applicant may be entitled to potential reimbursement from the City only if the applicant submits a written request to the Director which establishes the following:

(a) The request shall be made no later than 180 days after the later to occur of: (1) issuance of the last permit within the project for which the application for credit was made, or (2) the date of the city's acceptance of the specified public facilities as complete.

(b) The request shall identify the specific dollar amount of the credit balance for which the applicant requests reimbursement, along with documentation in support thereof. This documentation shall include a calculation of the total credit available (pursuant to Section 9-5.1913 (c)) less amount of credit previously allocated to offset fees pursuant to Section 9-5.1913 (h).

(c) The request must include a designation of the name and address of the legal entity to which reimbursement payments are to be made.

9-5.1915 Allocation of Reimbursements.

(a) In the event the Director determines that the applicant has properly submitted a request for reimbursement pursuant to Section 9-5.1914, the Director shall prepare a written determination to be approved by resolution of the City Council which will identify the dollar amount of the reimbursement. The dollar amount of the reimbursement shall be based upon the amount specified in the applicant's request, not to exceed the actual credit available to the applicant, less the total of all credit allocations to offset fees pursuant to Section 9-5.1913, as determined by the City.

(b) The City shall make reimbursement payments to the applicant or the entity identified by the applicant pursuant to Section 9-5.1914(c). The right to receive reimbursement payments, if any, shall not run with the land.

(c) The City shall make reimbursement payments pursuant to a schedule approved by resolution of the City Council, and consistent with the approved capital improvement program. No interest shall accrue on the amount subject to reimbursement. The City shall not make and shall have no obligation to make reimbursement payments to an applicant from any source other than the relevant fee fund, nor shall any reimbursement be made in excess of the amount of fees deposited in the relevant fee fund.

(d) No reimbursement payment shall be made to an applicant until after the completion of construction by the applicant and acceptance of improvements by the City.

9-5.1916 Notice of Protest Rights.

(a) Each applicant is hereby notified that, in order to protest the imposition of any impact fee required by this Article, the protest must be filed in accordance with the requirements of this Article and the Mitigation Fee Act. Failure of any person to comply with the protest requirements of this Article or the Mitigation Fee Act shall bar that person from any action or proceeding or any defense of invalidity or unreasonableness of the imposition. Notwithstanding language to the contrary, the provisions of Article 14 of Chapter 7 of Title 9 of these Planning Regulations and Chapter 4 of Title 1 of the Emeryville Municipal Code shall not apply to a protest of the imposition of any impact fee required by this Article.

(b) On or before the date on which payment of the fee is due, the applicant shall pay the full amount required by the City and serve a written notice to the Director with all of the following information: (1) a statement that the required payment is tendered, or will be tendered when due, under protest; and (2) a statement informing the City of the factual elements of the dispute and the legal theory forming the basis for the protest.

(c) After receipt of the notice from the applicant, and prior to the informal hearing to be scheduled in accordance with Section 9-5.1917, the Director shall investigate the factual and legal adequacy of the applicant's protest. At the request of the Director, the applicant shall provide additional information or documentation in substantiation of the protest.

(d) The applicant shall bear the burden of proving, to the satisfaction of the Director, entitlement to a fee adjustment. The evidence (information and documentation) to be submitted by the applicant in support of the protest shall include, but not be limited to, an identification of the amount of the fee which the applicant alleges should be imposed upon the project, and all factual and legal bases for the allegation. The applicant shall identify each portion of this impact fee ordinance and any implementing resolution which the applicant claims supports the allegation. The applicant shall identify each portion of this impact fee ordinance (in particular the elements summarized in Section 9-5.1904) and each portion of any implementing resolution (in particular the technical reports incorporated therein) which the applicant claims fails to support the City's imposition of the fee upon the project.

9-5.1917 Informal Hearing.

(a) The Director shall schedule an informal hearing regarding the protest, to be held no later than 60 days after the imposition of the impact fees upon the project, and with at least 10 days' prior notice to the applicant (unless either dates are otherwise agreed by the Director and the applicant).

(b) During the informal hearing, the Director shall consider the applicant's protest, relevant evidence assembled as a result of the protest, and any additional relevant evidence provided during the informal hearing by the applicant and the City. The Director shall provide an opportunity for the applicant to present additional evidence at the hearing in support of the protest. However, in weighing relevant evidence, the Director may consider the extent to which the applicant provided requested substantiating evidence prior to the hearing.

9-5.1918 Director's Determination.

When the Director determines that sufficient evidence has been submitted to decide the protest, the Director shall close the informal hearing and issue a written determination regarding the protest. The Director may continue the informal hearing in order to assemble additional relevant evidence. The Director's determination shall support the fee imposed upon the project unless the applicant establishes, to the satisfaction of the Director, entitlement to an adjustment to the fee.

9-5.1919 Appeal of Director's Determination.

Any applicant who desires to appeal a determination issued by the Director pursuant to Section 9-5.1918 shall submit a written appeal to the Director and the City Manager. A complete written appeal shall include a complete description of the factual elements of the dispute and the legal theory forming the basis for the appeal of the Director's determination. An appeal received by the City Manager more than 10 calendar days after the Director's determination may be rejected as late. Upon receipt of a complete and timely appeal, the City Manager shall appoint an independent hearing officer to consider and rule on the appeal.

9-5.1920 Appeal Hearing.

The independent hearing officer shall, in coordination with the applicant and the Director, set the time and place for the appeal hearing, and provide written notice thereof. The independent hearing officer may issue directives related to the conduct of the hearing in an effort to facilitate resolution of the dispute or narrow the issues in dispute, including prehearing or post-hearing briefs pursuant to a briefing schedule, and scheduling presentation of evidence during the hearing. The independent hearing officer shall consider relevant evidence, provide an opportunity for the applicant and the City to present additional noncumulative evidence at the hearing, and preserve the complete administrative record of the proceeding.

9-5.1921 Decision of Independent Hearing Officer; Judicial Review.

(a) Within 30 days after the independent hearing officer closes the hearing and receives post-hearing briefs (if any), the independent hearing officer shall issue a written decision on the appeal hearing which shall include a statement of findings of fact in support of the decision and notice that the time within which judicial review must be sought is governed

by this section. The written decision shall be mailed by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the applicant. The independent hearing officer's discretion shall be limited to a determination that either supports the Director's determination or orders the City to refund all or a portion of the impact fees to the applicant. The applicant shall bear the burden of proving entitlement to a fee adjustment. The decision of the hearing officer is final and conclusive, and is subject to judicial review only in accordance with subsection (b) herein.

(b) Judicial review of any decision of the hearing officer may be had pursuant to Cal. Civ. Proc. Code § 1094.5 only if the petition for writ of mandate is filed no later than the ninetieth (90th) calendar day following the date the decision of the hearing office is provided to the applicant as provided in subsection (a) above.

(c) If the applicant files a request for the record, as specified in subsection (d) herein, within ten (10) calendar days after the date the decision of the hearing officer is provided to the applicant as provided in subsection (a) above, the time within which a petition pursuant to Cal. Civ. Proc. Code § 1094.5 may be filed shall be extended to not later than the thirtieth (30th) calendar day following the date on which the record is either personally delivered or mailed to the applicant or his or her designee.

(d) The complete record of the proceedings shall be prepared by the city clerk and shall be delivered to the applicant within ninety (90) calendar days after a written request therefor has been filed by the applicant with the city clerk. The City may recover from the applicant its actual costs for transcribing or otherwise preparing the record. Such record shall include the transcript of the proceedings, all pleadings, all notices and orders, any proposed or tentative decision by a hearing officer, the final decision, all admitted exhibits, all rejected exhibits in the possession of the City or hearing officer, all written evidence, and any other papers in the case.

9-5.1922 Costs of Protest.

The applicant shall pay all City costs related to any protest or appeal pursuant to this Article, in accordance with the fee schedule adopted by the City. At the time of the applicant's protest, and at the time of the applicant's appeal, the applicant shall pay a deposit in an amount established by the City to cover the estimated reasonable cost of processing the protest and appeal. If the deposit is not adequate to cover all City costs, the applicant shall pay the difference within 20 days after receipt of written notice from the Director.

9-5.1923 Applicant's Acknowledgment of Adjustment or Waiver.

As a condition of any adjustment or waiver made for a fee imposed upon a particular project, the applicant may be required by the Director or the independent hearing officer to provide an acknowledgment and waiver, in a form acceptable to the Director, of any further right to protest or appeal the City's imposition of fees for that project.

9-5.1924 Definitions.

As used in this Article, all words, phrases, and terms shall be interpreted in accordance with the definitions set forth in the Mitigation Fee Act, unless otherwise defined herein.

(a) "Applicant" means any person, or other legal entity, which applies to the City for approval of a development project.

(b) "Change of use" means any proposed use of an existing structure (or a previously existing structure) on a parcel which: (a) requires a building permit, planning permit, or other permit or City approval, and (b) the proposed use is included in a different property use category (as defined in implementing resolutions) than the last legal use of the existing structure, and (c) the proposed use results in impacts greater than the last legal use of the existing structure.

(c) "Fee" means, for the purpose of this Article, a development impact fee imposed by the City in accordance with this Article.

(d) "Fee fund" means each of the separate and distinct funds into which fees for each public facility category are deposited.

(e) "Impact Fee Ordinance" means this Article.

(f) "Implementing resolution" means a resolution of the City Council of the City of Emeryville, including any technical report incorporated by reference, in which the findings specified in Section 9-5.1904 are made for each public facility category.

(g) "Inflation index" means a recognized standard index (such as the Consumer Price Index), as determined by the City Council to be a reasonable method of calculating the impact of inflation upon cost estimates set forth in implementing resolutions.

(h) "Mitigation Fee Act" means Cal. Gov't Code §§ 66000 et seq.

(i) "Permit" means the City building permit required for a project, or, if the project consists of a change of use for which no building permit is required, a zoning compliance review or any other permit or City approval required for the change of use.

(j) "Project" means any project as defined in Section 9-8.216(qq) of these Planning Regulations, and shall specifically include any building permit, planning permit, or any other permit or City approval required for a change of use. Project shall specifically include any change of use or remodel.

(k) "Public facility" means any public improvements, public services, or community amenities, as defined by the Mitigation Fee Act, including, but not limited to: transportation improvements, park and recreation facility improvements, and any similar public improvement for which the City has adopted an implementing resolution pursuant to this Article.

(l) "Public facility category" means a separate and distinct set of public facilities as described in Section 9-5.1903(b).

(m) "Remodel" means any proposed improvement or reconstruction of an existing structure (or a previously existing structure) on a parcel which: (a) requires a building permit, planning permit, or other permit or City approval, and (b) results in impacts greater than the last legal use of the existing structure.

(n) "Specified public facility" means those public facilities described in each implementing resolution, the total program costs of which are used as the basis for the calculation of a fee, as described in Section 9-5.1904.

(o) "Vested development rights" means an applicant's right to proceed with development of a development project in substantial compliance with the local ordinances, policies, and standards in effect at the time that the rights vest, as the term is defined in the vesting tentative map statutes (Cal. Gov't Code §§ 66498.1 through 66498.9), development agreement statutes (Cal. Gov't Code §§ 65864 through 65869.5), and state law.

ARTICLE 20. MULTI-UNIT RESIDENTIAL DEVELOPMENTS

9-5.2001 Purpose.

This Article establishes regulations for Multi-Unit Residential developments. The purpose of these regulations is help achieve the goals, objectives, and policies of the Housing Element of the General Plan to promote family-friendly, affordability housing by establishing minimum standards for unit mix and design, and providing incentives for affordable and ownership housing.

9-5.2002 Applicability.

Except as otherwise stipulated, the provisions of this Article apply to any proposal to develop a Multi-Unit Residential use, as defined in Section 9-2.207.

9-5.2003 Unit Mix.

Multi-Unit Residential developments of 10 units or more shall comply with the following requirements:

(a) No fewer than 50% of all units in the development shall have two or more bedrooms, including units with three or more bedrooms as required by subsection (b) below.

(b) No fewer than 15% of all units in the development shall have three or more bedrooms.

(c) No more than 10% of all units in the development shall be studio units.

9-5.2004 Design.

(a) All Multi-Unit Residential developments shall be subject to the applicable provisions of the Emeryville Design Guidelines, including but not limited to those pertaining to Residential Use Types, as required by Article 4 of Chapter 7.

(b) In addition to the requirements of subsection (a) above, all Multi-Unit Residential developments of 10 units or more shall comply with the applicable provisions of the Emeryville Design Guidelines pertaining to Family-Friendly Residential Site and Building Design, and all units required by Section 9-5.2003 shall comply with the applicable provisions of the Emeryville Design Guidelines pertaining to Family-Friendly Residential Unit Design.

9-5.2005 Exceptions.

Exceptions to the unit mix and design requirements of Sections 9-5.2003 and 9-5.2004, respectively, may be approved upon the granting of a conditional use permit by the City Council upon a recommendation of the Planning Commission. Examples include, but are not limited to, senior housing, special needs housing, and multi-generational housing. To grant such a conditional use permit, the following finding must be made in addition to the findings required by Article 5 of Chapter 7:

(a) There is a demonstrated need for a housing type or types that deviate from the unit mix and/or design requirements of this Article. The importance of meeting this need outweighs the importance of compliance with these requirements.

9-5.2006 Affordable Housing.

(a) **Projects Not Seeking Development Bonuses.** Multi-Unit Residential projects not seeking development bonuses, either pursuant to Section 9-4.204 or Article 5 of Chapter 5, shall pay the affordable housing impact fee pursuant to the requirements of Section 9-5.406, or may propose to provide affordable units in the project pursuant to the requirements of Section 9-5.407.

(b) **Projects Seeking Development Bonuses.** Multi-Unit Residential projects seeking development bonuses, either pursuant to Section 9-4.204 or Article 5 of Chapter 5, shall be exempt from the affordable housing impact fee requirements of Section 9-5.406, but shall provide affordable units in the project pursuant to the applicable provisions of Section 9-4.204 or Article 5 of Chapter 5.

9-5.2007 Ownership Housing.

Multi-Unit Residential projects seeking development bonuses pursuant to Section 9-4.204 shall be subject to the following requirements for ownership housing:

(a) **Condominium Map Required.** A subdivision map for the purposes of creating condominium units shall be submitted and considered for approval concurrently with applications of other planning permits required for the project. The final subdivision map creating the condominium units shall be recorded prior to issuance of a certificate of occupancy for the project.

(b) **Project May Be Operated As Rental.** Notwithstanding the requirements of subsection (a) above, the developer may retain ownership of all units and operate the project as a rental project. In this case, the requirements of Section 9-4.204 and Article 4 of Chapter 5 for rental residential projects shall apply.

(c) **Requirements for Ownership Projects.** If the developer elects to sell the individual units and operate the project as an ownership project, the following requirements shall apply:

(1) The requirements of Section 9-4.204 and Article 4 of Chapter 5 for ownership residential projects shall apply.

(2) Covenants, Conditions and Restrictions shall be recorded that include the current basic eligibility requirements of the Federal Housing Administration (FHA) for condominium project approval, including, but not limited to, requirements for owner occupancy and limitations on investor ownership and commercial space.

(d) **Conversion to Ownership Project.** Pursuant to the applicability provisions of Section 9-6.702, if a project that had been operated as a rental project pursuant to subsection (b) above is later converted to an ownership project through the sale of units, the residential condominium conversion requirements in Article 7 of Chapter 6 shall apply.

9-5.2008 Transportation Demand Management.

Multi-Unit Residential developments of 10 units or more shall comply with the following Transportation Demand Management (TDM) requirements.

(a) **TDM Plan.** As part of the development application, the developer shall submit a TDM plan for approval by the Planning Commission or City Council, as the case may be, in conjunction with approval of the development. Compliance with the approved TDM plan shall be a condition of approval of the development. The TDM plan shall be implemented for a minimum of 40 years following issuance of a certificate of occupancy. The primary goal of the TDM plan shall be to ensure that the average Vehicle Miles Traveled (VMT) by residents of the development is less than the average citywide VMT. Such plan may include, but is not limited to, free transit passes for residents, free car sharing memberships for residents, free bike sharing memberships for residents, transportation information displays, and transportation information packets for residents. The plan shall include an annual survey of residents of the development to measure the plan's success at achieving its primary goal; such annual surveys shall be made available to the Community Development Director upon request. The Community Development Director may require modifications to the plan if it does not appear to be meeting its primary goal based on the annual survey.

(b) **GreenTRIP Certification.** Residential developments that obtain GreenTRIP Certification from TransForm, or other equivalent certification, prior to issuance of a certificate of occupancy, shall be deemed to have met the requirement for a TDM plan in subsection (a).

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ARTICLE 1. GENERAL PROVISIONS

9-6.101 Title.

This Chapter shall be known and may be cited as the "City of Emeryville Subdivision Regulations" or the "Subdivision Regulations".

9-6.102 Purpose.

The purpose of the Subdivision Regulations is to regulate the division of land within the City of Emeryville. These provisions implement and supplement the requirements of the Subdivision Map Act found in California Government Code Title 7, Division 2 concerning the design and improvement of subdivisions and regulating other divisions of land within the City including the form and content of all maps and the procedure to be followed in securing official approval.

The provisions of this Chapter are intended to:

(a) Protect and promote the public health, safety, peace and general welfare;

(b) Promote orderly growth and development;

(c) Ensure that the design and improvement of subdivisions is consistent with and promotes the goals and policies of the General Plan;

(d) Protect and enhance property values;

(e) Provide for adequate traffic circulation;

(f) Ensure the availability of adequate public facilities;

(g) Protect existing affordable housing; and

(h) Provide for the future development of adjacent properties.

9-6.103 Applicability.

These Subdivision Regulations apply to all parts of subdivisions lying wholly or partially within the City of Emeryville and to the preparation of maps required by the Subdivision Map Act.

9-6.104 Exceptions.

These Subdivision Regulations shall not apply to:

(a) The financing or leasing of apartments, offices, stores or similar space within apartment buildings, industrial buildings, commercial buildings, mobile home parks or trailer parks.

(b) Mineral, oil or gas leases.

(c) Land dedicated for cemetery purposes under the State Health and Safety Code.

(d) Any separate assessment under California Revenue and Taxation Code Section 2188.7 for community apartment or cooperative housing projects.

(e) The conversion of a community apartment project or a stock cooperative to a condominium in compliance with the requirements of Sections 66412(g) and (h) of the Subdivision Map Act.

(f) The financing or leasing of any parcel of land, or any portion, for the construction of commercial or industrial buildings on a single parcel, unless the project is not subject to review under other ordinances regulating design and improvements.

(g) The financing or leasing of existing separate commercial or industrial buildings on a single parcel.

(h) The construction, financing or leasing of secondary residential units, subject to the provisions of Article 14 of Chapter 5.

(i) Leasing for agricultural purposes, cultivation of food or fiber, and grazing or pasturing of livestock.

(j) Leasing of, or grant of easement to, a parcel of land, or any portion or portions of land, for financing, erection, and sale or lease of a wind powered electrical generation device which is subject to discretionary action by the City.

(k) The leasing or licensing of a portion of a parcel, or the granting of an easement, use permit, or similar right on a portion of a parcel, to a telephone corporation, as defined in California Public Utilities Code Section 234, exclusively for the placement and operation of cellular radio transmission facilities, including but not limited to, antennae, transmission equipment, support structures, microwave dishes, structures to house cellular communications transmission equipment, power sources, and other equipment incidental to the transmission of cellular communications, if the project is subject to discretionary action by the Planning and Building Director, Planning Commission or City Council.

9-6.105 Prohibitions.

(a) Except as otherwise provided in subsection (b) of this Section:

(1) No person shall offer to sell or lease, contract to sell or lease, sell or lease, or finance any parcel of real property, or commence the construction of any building for sale, lease, or financing thereon except for model homes, or allow the occupancy thereof, for which a tentative or final map is required by the provisions of this Chapter or the Subdivision Map Act until such tentative or final map, in full compliance with the provisions of this Chapter and the Subdivision Map Act, has been filed for record in the office of the Alameda County Recorder.

(2) No person shall sell, lease, or finance any parcel of real property, or commence the construction of any building for sale, lease, or financing thereon except for model homes, or allow the occupancy thereof, for which a parcel map is required by the provisions of this Chapter or the Subdivision Map Act until such parcel map, in full compliance with the provisions of this Chapter and the Subdivision Map Act, has been filed for record in the office of the Alameda County Recorder.

(3) The conveyance of any part of a division of real property for which a final or parcel map is required by the provisions of this Chapter or the Subdivision Map Act shall not be made by parcel or block number, initial, or other designation, unless and until such map has been filed for record in the office of the Alameda County Recorder.

(4) The provisions of this subsection shall not apply to any parcel of a subdivision offered for sale or lease, contracted for sale or lease, or sold or leased in compliance with or exempt from any law, including City laws, regulating the design and improvement of subdivisions in effect at the time the subdivision was established.

(5) Any deed of conveyance, sale, or contract to sell made contrary to the provisions of this Chapter, in addition to being a misdemeanor, shall be voidable to the extent and in the same manner provided in the Subdivision Map Act.

(b) Persons may offer to sell or contract to sell a parcel split prior to the approval thereof in accordance with the provisions of this Chapter only if the offer to sell or contract to sell provides in writing that the transfer of the title and the close of the escrow, if any, are conditioned upon the approval of the final parcel map, in accordance with the provisions of this Chapter, prior to the consummation of the sale.

9-6.106 Certificate of Compliance.

(a) A person owning real property or a vendee of such person under a contract of sale may request a certificate of compliance from the City Engineer indicating whether the real property complies with the provisions of the Subdivision Map Act and this Chapter. A written application for a certificate of compliance shall be accompanied by a current preliminary title report showing the legal owner of the property.

(b) If the City Engineer determines that the real property complies with the provisions of the Subdivision Map Act and this Chapter, the City Engineer shall file a certificate of compliance for recording with the Alameda County Recorder. The certificate of compliance shall identify the real property and shall state that the division thereof complies with the provisions of the Subdivision Map Act and this Chapter.

(c) If the City Engineer determines that the real property does not comply with the provisions of the Subdivision Map Act or this Chapter, the City Engineer may, as a condition to granting a certificate of compliance, impose conditions in accordance with Section 66499.35(b) of the Subdivision Map Act. Upon the City Engineer's making such a determination and establishing such conditions, the City Engineer shall file a conditional certificate of compliance for record with the Alameda County Recorder. The certificate shall serve as notice to the property owner and any successor that the fulfillment and implementation of such conditions shall be required before subsequent issuance of a permit or other grant of approval for development of the property. Compliance with such conditions is not required until the City issues a permit or other grant of approval for development of the property.

(d) A recorded final map or parcel map constitutes a certificate of compliance with respect to the parcels of real property described on the map.

(e) The applicant for a certificate of compliance shall pay the City a fee to cover the reasonable cost of processing the application as set forth in the Master Fee Schedule.

9-6.107 Common Procedures.

Except as otherwise provided in this Chapter, all subdivisions shall be processed in accordance with the applicable Common Procedures in Article 2 of Chapter 7.

9-6.108 Reversion to Acreage.

Reversion to acreage shall be processed in accordance with the applicable provisions of the Subdivision Map Act.

ARTICLE 2. MAJOR SUBDIVISIONS

9-6.201 Applicability.

A tentative and final map shall be required for all subdivisions creating five or more parcels, five or more condominiums as defined in California Civil Code Section 783, a community apartment project containing five or more parcels, or for the conversion of a dwelling to a stock cooperative containing five or more dwelling units, except where:

(a) The land before division contains less than five acres, each parcel created by the division abuts upon a maintained public street or highway and no dedications or improvements are required by the City.

(b) Each parcel created by the division has a gross area of 20 acres or more and has an approved access to a maintained public street or highway.

(c) The land consists of a parcel or parcels of land having approved access to a public street or highway, which comprises part of a tract of land zoned for industrial or commercial development, and which has the approval of the City as to street alignments and widths.

(d) Each parcel created by the division has a gross area of not less than 40 acres or is not less than a quarter of a quarter section.

(e) The land being subdivided is solely for the creation of an environmental subdivision pursuant to Section 66418.2 of the Subdivision Map Act.

A parcel map pursuant to Article 3 shall be required for those subdivisions described in subsections (a), (b), (c), (d), or (e) above or those creating four or fewer parcels.

9-6.202 Tentative Maps: Filing.

Three paper prints of a tentative map, prepared as described in Section 9-6.203, shall be filed with the Planning and Building Director, accompanied by an application form provided by the Director, data and reports as set forth in Section 9-6.204, and the applicable fee as set forth in the Master Fee Schedule. If the subdivision lies partially within two or more cities, the tentative map shall be filed with each city and acted upon by each.

9-6.203 Tentative Maps: Form and Contents.

(a) **General.** A tentative map shall be based upon a field survey made in conformity with the Land Surveyors Act, shall be prepared by or under the direction of a land surveyor registered in the State of California or a civil engineer registered in the State of California who is authorized to perform land surveying, shall be legibly drawn, shall include a description of the real property being subdivided and the names, addresses, telephone numbers, and email addresses of the persons preparing and filing the map, and shall conform to the requirements of this Section and the Subdivision Map Act.

(b) **Map Sheets.** The size of each sheet shall be 18 by 26 inches. A marginal line shall be drawn completely around each sheet, leaving an entirely blank margin of one inch. The scale of the map shall be large enough to show all details clearly and enough sheets shall be used to accomplish this. The number of each sheet and the total number of sheets comprising the map shall be stated on each of the sheets, and its relation to each

adjoining sheet shall be clearly shown. The subdivision number shall be shown on each sheet. One or more reduced sets of the map sheets may also be required to be submitted, as specified by the Director.

(c) **Scale, North Arrow and Basis of Bearings.** Each sheet shall include a scale, north arrow, and basis of bearings based on previously recorded final maps, parcel maps, or records of survey in the vicinity of the site. The basis of bearings shall be approved by the City Engineer.

(d) **Boundaries and Monuments.** The exterior boundaries of the land included within the subdivision shall be clearly indicated by distinctive symbols. The map shall show the definite location of the subdivision, and its relation to surrounding surveys. City boundaries that cross or join the subdivision shall be clearly designated. The location of all existing and proposed monuments shall be shown based on the required survey. The map shall include a sufficient legal description, including all bearings, tract and lot identification, and distances, of the land as to define the boundaries of the area to be divided, including and describing all monuments found or set. The engineer or surveyor shall set sufficient durable monuments to conform to the standards described in California Business and Professions Code Section 8771 so that another engineer or surveyor may readily retrace the survey.

(e) **Linear, Angular and Radial Data.** Sufficient linear, angular and radial data shall be shown to determine the bearings and lengths of monument lines, street centerlines, the boundary lines of the subdivision, the boundary lines on every lot and parcel which is a part of the subdivision, and ties to existing monuments used to establish the boundary. Bearing and distance of all straight lines, and arc length, radius, total central angle and radial bearings of all curves shall be shown. Ditto marks shall not be used in the dimensions and data shown on the map.

(f) **Parcels.** The location of each parcel shall be shown, including the exact layout, bearings, dimensions and area of each parcel. New lot lines shall be shown as solid lines, and original lot lines shall be dashed lines. Each parcel shall be numbered or otherwise designated. Each parcel must be shown completely on one sheet; if more than one sheet is required to show a parcel, the first sheet shall contain a small-scale, undimensioned map of the entire parcel. The location of any remainder of the original parcel shall be shown, but if such remainder has a gross area of five acres or more, then it need not be shown as a matter of survey, but only by reference to the existing record boundaries of such remainder. Minimum lot size and width shall be in conformance with the requirements of Article 7 of Chapter 4.

(g) **Streets.** The locations, names, and widths of all existing adjacent highways, streets, and ways, and the width of all proposed highways, streets, and ways within the subdivision shall be shown. Each proposed highway, street, and way shall be named or otherwise designated, and a cross-sectional drawing of each shall be provided on the map.

(h) **Easements.** The widths and locations of all existing and proposed easements for drainage, sewers, and public utilities shall be shown. Easements for roads or streets, paths, storm water drainage, sanitary sewers, or other public use as may be required, shall be dedicated to the public for acceptance by the City or other public agency, and the use shall be specified on the map.

(1) All easements of record shall be shown on the map, together with the name of the grantee and sufficient recording data to identify the conveyance, such as the County Recorder's serial number and date, or book and page of official records.

(2) Easements not disclosed by the records in the office of the County Recorder and found by the surveyor or engineer to be existing shall be specifically designated on the map, identifying the apparent dominant tenements for which the easement was created.

(3) The sidelines of all easements of record shall be shown by dashed lines on the final map with the widths, lengths and bearings of record. The width and location of all easements shall be approved by the City Engineer.

(i) **Buildings and Improvements.** The location of buildings and improvements and their relationship to the existing and proposed lot lines shall be shown.

(j) **Adjoining Properties.** All adjoining property shall be identified by subdivision number, or name when not identified by official number, and by reference to the book and page number of the filed map showing such subdivision. If no such subdivision is adjacent, the adjoining property shall be identified by the name of the owner and by reference to the recorded deed by book and page number for the last recorded owner of such adjacent property.

(k) **Owners' Consent.** The tentative map shall indicate the names, addresses, telephone numbers and email addresses of all parties having any record title interest in the real property to be subdivided, and shall include a certificate, signed and acknowledged by all such parties, consenting to the preparation and recordation of the final map, except as provided in Section 66436 of the Subdivision Map Act.

9-6.204 Tentative Maps: Accompanying Data and Reports.

The tentative map shall be accompanied by the following data and reports as may be required by the Planning and Building Director or City Engineer:

(a) **Title Report.** A preliminary title report, showing the legal owners at the time of filing the tentative map, shall be submitted with the tentative map.

(b) **Soils Report.** The Planning and Building Director or City Engineer may require the preparation of a preliminary soils report. If a preliminary soils report indicates the presence of critically expansive soils or other soil problems which, if not corrected, could lead to structural defects, the soils report accompanying the final map shall contain an investigation of each lot within the subdivision. The Director or City Engineer may require additional information or reject the report if it is found to be incomplete, inaccurate or unsatisfactory. The preliminary soils report may be waived if the Director or City Engineer determines that, due to knowledge of the soil qualities in the subdivision, no preliminary analysis is necessary.

(c) **Geotechnical Report.** A geotechnical report that evaluates seismic hazards and recommends appropriate mitigation measures, prepared in compliance with the requirements of the State Seismic Hazard Mapping Act, shall be submitted with the tentative map. The report shall identify mitigation measures that will be incorporated in

design of the subdivision to mitigate hazards from liquefaction and other seismic hazards subject to approval by the Planning and Building Director.

(d) **Environmental Site Assessment.** The Planning and Building Director or City Engineer may require the preparation of a Phase I Environmental Site Assessment to determine the probable existence of any hazardous waste on the property, including contamination of soil, groundwater, or surface water. Such report shall be based on reasonably available knowledge of the property, including, but not limited to, historical use of the property, prior releases, visual and other surveys, records, consultant reports, and regulatory agency correspondence. The exact form and content of the report shall be as specified by the Director or City Engineer. If the report concludes that hazardous waste may exist on the property, further evaluation and/or remediation may be required as a condition of approval of the tentative map.

(e) **Environmental Review Information.** The subdivider shall provide additional data and information and pay such fees as may be required for the preparation and processing of environmental documents pursuant to the California Environmental Quality Act.

(f) **Other Reports.** Any other data or reports deemed necessary by the Planning and Building Director and/or the City Engineer shall be submitted with the tentative map.

9-6.205 Vesting Tentative Maps.

(a) **Applicability.**

(1) Whenever a provision of the Subdivision Map Act, as implemented and supplemented by these Subdivision Regulations, requires the filing of a tentative map, a vesting tentative map may instead be filed, in accordance with the provisions of this Section.

(2) If a subdivider does not seek the rights conferred by a vesting tentative map, the filing of a vesting tentative map shall not be a prerequisite to any approval for any proposed subdivision, permit for construction, or work preparatory to construction.

(3) No land shall be subdivided and developed pursuant to a vesting tentative map for any purpose that is inconsistent with the General Plan and any applicable specific plan, or not permitted by this Title or other applicable provisions of the Municipal Code

(b) **Procedures.**

(1) **Filing and Processing.** A vesting tentative map shall be filed in the same form and have the same contents, accompanying data and reports and shall be processed in the same manner as set forth in this Article for a tentative map, except as follows:

a. At the time a vesting tentative map is filed, it shall have printed conspicuously on its face the words “Vesting Tentative Map.”

b. In addition to the data and reports required by Section 9-6.204, a vesting tentative map shall be accompanied by the following plans and reports when deemed necessary by the Planning and Building Director:

i. Grading plans prepared in accordance with City standards, including, but not limited to, the Grading Regulations of Chapter 5 of Title 7 and the Building Regulations in Title 8.

ii. Structural plans for any development proposed to be constructed on the subdivided property in compliance with the Building Regulations in Title 8.

iii. Energy calculations for any development proposed to be constructed on the subdivided property in compliance with the Building Regulations in Title 8.

c. A subdivider shall obtain all discretionary approvals that will be required under this Title in conjunction with the approval or conditional approval of the vesting tentative map in order to construct the development including, but not limited to, General Plan amendments, zoning changes, conditional use permits, variances, and design review. An application for a vesting tentative map shall be determined to be incomplete if other required discretionary permit applications have not been submitted at the same time.

d. Upon filing a vesting tentative map, the subdivider shall pay the fees required by the City for the filing and processing of a tentative map as set forth in the Master Fee Schedule.

(2) **Applications Inconsistent with Zoning.** If the City determines that a vesting tentative map is inconsistent with the zoning of the property, the City may deny the vesting tentative map or approve it conditioned on the subdivider, or his or her designee, obtaining the necessary zoning changes to eliminate the inconsistency. If the necessary zoning changes are obtained, the approved or conditionally approved vesting tentative map shall confer the vested right to proceed with the development in substantial compliance with the zoning changes as approved.

(c) **Vesting of Development Rights.** The approval or conditional approval of a vesting tentative map shall confer a vested right to proceed with development in substantial compliance with the ordinances, policies and standards in effect at the time that the application is determined to be complete by the City pursuant to California Government Code Section 66474.2, subject to the following:

(1) Any fees required for development under an approved vesting tentative map shall be payable at the rates in effect at the time such fees are due.

(2) A subsequent permit, approval, extension, building permit, or entitlement may be made conditional or denied pursuant to later ordinances, policies and standards if any of the following are determined:

a. A failure to do so would place the residents of the subdivision or the immediate community in a condition dangerous to their health or safety.

b. The condition or denial is required, in order to comply with state or federal law.

(d) **Expiration and Extension.**

(1) The approval or conditional approval of a vesting tentative map shall expire at the end of the same period, and shall be subject to the same extensions that this Article establishes for the expiration of the approval or conditional approval of a tentative map.

(2) Following the recording of a final map, the vested development rights shall last for the following periods of time:

a. An initial time period of two years beyond the recording of the final map. Where several final maps are recorded on various phases of a project covered by a single vesting tentative map, this initial time period shall begin for each phase when the final map for that phase is recorded.

b. The initial time period set forth in subsection a. above shall be automatically extended by any time used for processing a complete application for discretionary approvals for the proposed development, including, but not limited to, General Plan amendments, zoning changes, conditional use permits, variances, design review or grading permits if such processing exceeds 30 days from the date a complete application is filed.

(3) A subdivider may apply to the Planning Commission for a one year extension at any time before the initial time period set forth in subsection (2)a. expires. If the extension is denied, the subdivider may appeal that denial to the City Council pursuant to Article 14 of Chapter 7.

(4) If the subdivider submits a complete application for a building permit prior to the expiration of the final map, the development rights shall continue until the expiration of such building permit or the expiration of any extension of that permit.

9-6.206 Tentative Maps: Planning and Building Director Review and Referral.

(a) **Determination of Complete Application.** The Planning and Building Director shall determine whether an application is complete within 30 days after receipt of the application and shall notify the applicant of the determination in writing. A tentative map application shall be accepted for filing only when the Planning and Building Director determines that:

(1) All maps and information required by these Subdivision Regulations and the Subdivision Map Act have been submitted, checked and accepted as complete.

(2) All information required to conduct environmental review in compliance with the California Environmental Quality Act has been submitted.

(3) The required fees and deposits as set forth in the Master Fee Schedule have been paid.

(b) **Referral.** Within five days of the Director's determination that a tentative map application is complete, the Director shall forward copies of the application to the City Engineer, other affected City departments, public agencies, and utilities including, but not limited to, the Emery Unified School District and the East Bay Municipal Utility District.

The affected public agencies and utilities may, in turn, forward to the Director their findings and recommendations.

9-6.207 Tentative Maps: Review by City Engineer.

The City Engineer shall review the form and contents of the tentative map and accompanying data and reports pursuant to the requirements of this Chapter and any additional requirements established by the City Engineer, and shall convey his or her comments to the subdivider's engineer or surveyor. The subdivider's engineer or surveyor shall make corrections and/or additions until the map is acceptable to the City Engineer.

9-6.208 Tentative Maps: Planning Commission Action.

(a) **Public Hearing.** The Planning Commission shall hold a public hearing on a tentative map pursuant to the Section 66451.3 of the Subdivision Map Act and the requirements of the Common Procedures in Article 2 of Chapter 7. The Planning and Building Director shall prepare and distribute a staff report pursuant to Section 66452.3 of the Subdivision Map Act, including distribution of the staff report at least three days prior to the hearing to the subdivider and, in the case of a proposed conversion of residential real property to a condominium project, community apartment project, or stock cooperative project, to each tenant of the subject property.

(b) **Action Required.** After conducting a public hearing, the Planning Commission shall approve, conditionally approve, or deny a tentative map within 50 days after certification of an environmental impact report, adoption of a negative declaration or determination that the project is exempt from the requirements of the California Environmental Quality Act.

(c) **Findings.** A tentative map may be approved or conditionally approved only if all of the following findings are made:

(1) **Consistency.** The proposed subdivision, together with the provisions for its design and improvement, is consistent with the General Plan, any applicable specific plan or area plan, these Subdivision Regulations, this Title, and other applicable provisions of the Emeryville Municipal Code.

(2) **Lot Width, Area, and Design.** The proposed lots are of such width, area, and design as the Commission finds to be necessary to preserve the purpose and intent of this Chapter and these Planning Regulations.

(3) **Passive or Natural Heating and Cooling.** The design of the subdivision will provide, to the extent feasible, for future passive or natural heating and cooling features in accordance with Section 66473.1 of the Subdivision Map Act.

(4) **Availability of Water.** Water will be available and sufficient to serve a proposed subdivision with more than 500 dwelling units in accordance with Section 66473.7 of the Subdivision Map Act.

(5) **Site Suitability.** The site is physically suitable for the type and density of development proposed.

(6) **Fish and Wildlife.** The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or to substantially and avoidably injure fish or wildlife or their habitat.

(7) **Public Health.** The design of the subdivision and the type of improvements are not likely to cause serious public health problems.

(8) **Easements.** The design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. The Planning Commission or City Council, acting on an appeal, may approve a map if it finds that alternate easements for access or for use will be provided, and that these will be substantially equivalent to easements previously acquired by the public. This shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is granted to the Planning Commission or City Council to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

(9) **Sewers.** The waste discharge into the City sewer system from the proposed subdivision would not add to, or result in, violations of requirements of the Regional Water Quality Control Board, the City's National Pollutant Discharge Elimination System (NPDES) permit, or other restrictions of the sanitary sewer collection system imposed on the City.

(d) **Exceptions.** Exceptions to the standards set forth in this Chapter may be approved if all of the following findings are made:

(1) That the strict application of any such standard would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of this Chapter.

(2) That there are exceptional circumstances or conditions applicable to the property being subdivided or to its intended use or development.

(3) That the granting of the exception will not be materially detrimental to the public welfare nor injurious to the property being subdivided or to improvements in the immediate vicinity.

(e) **Conditions of Approval.** Conditions necessary to make the findings required by this Section, or to meet the requirement of these Planning Regulations or the Subdivision Map Act may be imposed on the approval of a tentative map, including, but not limited to, the following:

(1) **Recommendations of Public Agencies and Utilities.** Conditions related to any recommendations of affected public agencies and utilities submitted pursuant to Section 9-6.206(b) may be imposed on the tentative map.

(2) **Joint Use.** A condition may be imposed, when applicable, requiring agreements for the joint use of portions of private streets and driveways, including areas to be landscaped and jointly maintained.

(3) **Indemnification.** Whether or not such a condition is explicitly listed as a condition of approval, every approved tentative map shall be deemed to include a

condition requiring the subdivider to defend, indemnify and hold harmless the City and its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees to attach, set aside, void or annul an approval of the Planning and Building Director, Planning Commission, or City Council concerning a subdivision. The City shall promptly notify the subdivider of any claim, action or proceeding and shall cooperate fully in the defense.

(4) **Multiple Final Maps.** If the subdivider has provided written notice of the intention to file multiple final maps on the tentative map pursuant to Section 9-6.215, reasonable conditions may be imposed relating to the filing of multiple final maps.

(5) **Residential Condominiums.** Residential condominiums shall be conditioned to require recordation of covenants, conditions, and restrictions that include the current basic eligibility requirements of the Federal Housing Administration (FHA) for condominium project approval, including, but not limited to, requirements for owner occupancy and limitations on investor ownership and commercial space.

(f) **Approval by Failure to Act.** If no action is taken by the Planning Commission within the time limit specified in subsection (b) above, and all other applicable City and State requirements have been met, including but not limited to compliance with the Subdivision Map Act, these Subdivision Regulations, other applicable City regulations, the General Plan and the California Environmental Quality Act, the tentative map application shall be deemed to be approved by the Planning Commission. It shall be the duty of the City Clerk to certify the approval. The appeal period to the City Council pursuant to Article 14 of Chapter 7 shall begin on the date of such certification.

9-6.209 Tentative Maps: Expiration and Extensions.

(a) **Expiration.** Except as otherwise provided by Section 66452.6 of the Subdivision Map Act, a tentative map shall expire two years after the date of its approval by the Planning Commission or City Council acting on an appeal unless an application for a final map is filed pursuant to the requirements of this Chapter within that period. However, the expiration date shall be extended in accordance with Section 66452.6(a) of the Subdivision Map Act if the filing of multiple final maps is authorized pursuant to Section 9-6.215, and if the subdivider is required to provide off-site improvements in the amounts specified in Section 66452.6(a) of the Subdivision Map Act.

(b) **Extensions.**

(1) **Request by Subdivider.** The subdivider may request an extension of the expiration date of the approved or conditionally approved tentative map by written application to the Planning and Building Director prior to expiration of the map. If such a request is filed, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first.

(2) **Public Hearing.** The Planning and Building Director shall prepare and distribute a staff report and the Planning Commission shall hold a public hearing on an

extension request pursuant to the requirements of the Common Procedures in Article 2 of Chapter 7.

(3) **Planning Commission Action.** The Planning Commission may approve the extension request only if it makes all of the following findings:

a. That the subdivider has clearly documented that it has made a good faith effort to complete the subdivision process.

b. That it is in the best interest of the City of Emeryville to extend the tentative map.

c. That there are no substantial changes to the project, no substantial changes to the circumstances under which the project is undertaken, and no new information of substantial importance that would require any further environmental review pursuant to the California Environmental Quality Act.

(4) **Time Limit of Extension.** Time extensions approved by the Planning Commission may be for a period of up to two years. In no case shall the expiration of the tentative map extend more than six years from the date of its approval by the Planning Commission or City Council acting on an appeal, except as otherwise provided by the Subdivision Map Act. After that time, a new tentative map application shall be required.

9-6.210 Tentative Maps: Corrections and Amendments.

(a) **Minor Changes.** Minor changes in an approved tentative map may be approved by the Planning and Building Director and City Engineer upon application by the subdivider or on the City's initiative, provided that:

(1) No lots, units or building sites or structures are added.

(2) Changes are consistent with the intent of the original tentative map approval.

(3) There are no resulting violations of the Municipal Code.

(b) **Substantive Changes.** Amendments of the tentative map that, in the opinion of the Planning and Building Director or City Engineer, are not minor shall be referred to the Planning Commission for a decision, subject to the procedures for processing a tentative map as set forth in this Article.

(c) **Expiration Date.** Any approved amendment shall not alter the expiration date of the tentative map.

9-6.211 Tentative Maps: Appeals.

The Planning Commission's decisions on tentative maps, including extensions and amendments, may be appealed to the City Council pursuant to Article 14 of Chapter 7 and Section 66452.5 of the Subdivision Map Act.

9-6.212 Final Maps: Filing.

A final map conforming to the approved or conditionally approved tentative map, prepared as described in Section 9-6.213 and accompanied by data and reports as set forth in Section 9-6.214, shall be filed with the Planning and Building Director for approval after all the required certificates on such map have been signed and, where necessary, acknowledged. If the subdivision lies partially within two or more cities, the map shall be filed with each city and acted upon by each as provided in Section 66457(b) of the Subdivision Map Act.

9-6.213 Final Maps: Form and Contents.

The form and content of a final map shall conform to the requirements of this Section and Section 66443 of the Subdivision Map Act, and shall be the same as that of a tentative map, as set forth in Section 9-6.203, except as follows:

(a) **Permanence.** A final map shall be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record in black on tracing cloth or polyester base film. Certificates, affidavits, and acknowledgments may be legibly stamped or printed upon the map with opaque ink. If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility.

(b) **Monuments.** At least one exterior boundary line shall be marked with a standard City monument prior to recording the final map. Other monuments shall be set as required by the City Engineer at or on approved offsets from the following locations:

(1) The intersection of street centerlines;

(2) Beginning and end of curves or intersection of tangents on centerlines; and

(3) Other locations as required by the City Engineer.

(c) **Abandonment of Streets and Easements.** The filing of the final map shall constitute abandonment of all public streets and public easements not shown on the map, provided that a written notation of each abandonment is listed by reference to the recording data or other official record creating these public streets or public easements and certified on the map by the City Manager. Before a public easement vested in another public entity may be abandoned pursuant to this Section, that public entity shall receive notice of the proposed abandonment. No public easement vested in another public entity shall be abandoned pursuant to this Section if that public entity objects to the proposed abandonment.

(d) **Engineer's/Surveyor's Statement.** The final map shall contain a statement by the engineer or surveyor responsible for the preparation of the map that states that all monuments are of the character and occupy the positions indicated, or that they will be set in those positions on or before a specified date, and that the monuments are, or will be, sufficient to enable the survey upon which the final map is based to be retraced.

(e) **City Engineer's Statement.** The final map shall include a statement to be signed by the City Engineer confirming that he or she has examined it and found it to be technically correct, consistent with the approved tentative map, and in compliance with these Subdivision Regulations and the Subdivision Map Act.

(f) **Planning and Building Director's Statement.** The final map shall include a statement to be signed by the Planning and Building Director confirming that he or she has examined it and found it to be in compliance with the tentative map as approved by the Planning Commission or City Council, acting on an appeal, indicating the date of such approval, and indicating that the map is in compliance with the Emeryville General Plan and all other planning requirements.

(g) **Additional Information.** The City may require additional information to be recorded simultaneously with the final map. Whenever additional information is made by a separate document, there shall appear on the final map a reference to the separately recorded document. This reference shall be completed by the Alameda County Recorder according to Section 66468.1 of the Subdivision Map Act. Additional information may include the following:

(1) Covenants, codes and restrictions.

(2) Regulatory agreements.

(3) Property maintenance agreements.

(4) Other documents or agreements required by the Planning Commission as conditions of approval on the tentative map.

(5) Additional survey and map information including, but not limited to building setback lines, flood hazard zones, seismic lines and setbacks, geologic mapping, and archaeological sites. The additional information shall be in the form of a separate document or an additional map sheet which shall indicate its relationship to the final map, and shall contain a statement that the additional information is for informational purposes, describing conditions as of the date of the recording, and is not intended to affect record title interest. The document or additional map sheet may also contain a notation that the additional information is derived from public records, or reports, and does not imply the correctness or sufficiency of those records or reports by the preparer of the document or additional map sheet.

9-6.214 Final Maps: Accompanying Data and Reports.

The final map shall be accompanied by the following data or reports as may be required by the Planning and Building Director or City Engineer:

(a) **Title Report.** A title report, showing the legal owners at the time of filing the final map, shall be submitted with the final map, accompanied by copies of all deeds and easement descriptions referenced in the report.

(b) **Guarantee of Title.** A guarantee of title, in a form acceptable to the City Engineer and City Attorney, shall be issued by a competent title company to and for the benefit and protection of the City and shall continue up to the instant of recording of the final map, guaranteeing that the names of all persons whose consent is necessary to pass a clear title to the land being subdivided, and all public easements being offered for dedication, and all acknowledgments thereto, appear on the proper certificates and are correctly shown on the map, both as to consents to the making thereof and affidavits of dedication where necessary.

(c) **Deeds and Maps.** The final map shall be accompanied by copies of deeds for all adjoining property, and copies of all maps referenced in the title report.

(d) **Easements.** The final map shall be accompanied by written evidence of rights of entry or permanent easements across private property outside of the subdivision that permit or grant access to perform necessary construction work or permit the maintenance of any sewer, water, electric and/or other facility.

(e) **Improvement Plans and Agreement.** Improvement plans and an Improvement Agreement as required by Article 6 shall accompany the final map.

(f) **Soils Report.** If the Planning and Building Director or City Engineer required a preliminary soils report with the filing of the tentative map, and if the preliminary soils report indicated the presence of critically expansive soils or other soil problems which, if not corrected, could lead to structural defects, the soils report accompanying the final map shall contain an investigation of each lot within the subdivision. The Director or City Engineer may require additional information or reject the report if it is found to be incomplete, inaccurate or unsatisfactory.

(g) **Traverse Closures.** Traverse closures for the boundary blocks, lots, easements, street centerlines and monument lines shall be submitted with the final map.

(h) **Hydrology and Hydraulic Calculations.** Complete hydrology and hydraulic calculations of all storm drains shall be submitted with the final map if determined necessary by the City Engineer.

(i) **Covenants, Conditions and Restrictions.** If required by the City, the submittal of the final map for a common interest development within the meaning of California Civil Code Section 4000 et seq. shall include the proposed Declaration of Covenants, Conditions and Restrictions containing the provisions described in California Civil Code Section 4250(a) and 4255, and all other governing documents for the subdivision. The submittal of the final map for all subdivisions other than a common interest development shall include any proposed Declaration of Covenants, Conditions and Restrictions. All documents shall be subject to review and approval by the Planning and Building Director, City Engineer, and City Attorney.

(j) **Electronic Copy.** The final map shall be submitted in an approved electronic format as required by the Planning and Building Director and City Engineer.

(k) **Other Reports.** Any other data or reports deemed necessary by the Planning and Building Director and/or the City Engineer shall be submitted with the final map.

9-6.215 Final Maps: Multiple Filings.

(a) **Notice of Intention to File Multiple Final Maps.** Multiple final maps relating to an approved or conditionally approved tentative map may be filed prior to the expiration of the tentative map if the subdivider, at the time the tentative map is filed, informs the Planning and Building Director in writing of the subdivider's intention to file multiple final maps on the tentative map, or after the filing of the tentative map the subdivider and Planning and Building Director concur in the filing of multiple final maps. In providing the notice, the subdivider shall not be required to define the number or configuration of the proposed multiple maps.

(b) **Filing of Multiple Final Maps.** The filing of a final map on a portion of an approved or conditionally approved tentative map shall not invalidate any part of the tentative map. Each final map that constitutes a part of the approved or conditionally approved tentative map shall have a separate subdivision number, and shall be subject to any reasonable conditions imposed pursuant to Section 9-6.208(e)(4). The public improvement agreement executed by the subdivider shall provide for the construction of improvements as required to constitute a logical and orderly development of the whole subdivision.

9-6.216 Final Maps: Certification by City.

(a) **Review by City Engineer and Planning and Building Director.** The subdivider's engineer or surveyor shall submit the final map, signed by all parties required to execute the statements on the map, to the City Engineer and Planning and Building Director for review. The subdivider's engineer or surveyor shall make any corrections and/or additions as required by the City Engineer and/or Planning and Building Director until the final map meets the requirements of the approved or conditionally approved tentative map and related City requirements.

(b) **Certification by City Engineer and Planning and Building Director.** When the City Engineer and Planning and Building Director are satisfied that the final map meets the requirements of this Chapter, they shall certify the map by signing the statements contained on the final map.

(c) **Acceptance of Dedications by City Manager.** If any dedications are required pursuant to Article 6, the City Manager shall accept, accept subject to improvement, or reject, any offer of dedication prior to recordation of the final map. The City Manager shall certify the acceptance by signing a statement to this effect on the final map. Any certificate for dedications prepared pursuant to Section 9-6.607 shall be included on the map.

9-6.217 Final Maps: Recordation.

Except as provided in Section 66493 of the Subdivision Map Act, upon certification of the final map by the City Engineer and Planning and Building Director, and acceptance of any dedications by the City Manager, the map shall be forwarded to the Alameda County Recorder or to a title company or other authorized agent that the subdivider has designated for transmittal to the County Recorder. If any part of the subdivision is subject to a lien for taxes or special assessments collected as taxes which are not yet payable, the final map shall be processed in accordance with Section 66493 of the Subdivision Map Act. If the subdivider dedicates property to the City, a certificate concerning the dedication as provided in Section 9-6.607 shall also be prepared and forwarded for recording, and a copy of the certificate shall be attached to the final map.

9-6.218 Final Maps: Corrections and Amendments.

(a) **General.** After a final map is recorded by the Alameda County Recorder, it may be amended by a certificate of correction or amending map. Corrections of errors and omissions may be approved by the City Engineer pursuant to subsection (b). Modifications to a final map due to changes that make any or all of the conditions of the map no longer appropriate or necessary require approval of the Planning Commission pursuant to subsection (c). The amending map or certificate of correction shall be

prepared by or under the direction of a land surveyor registered in the State of California or a civil engineer registered in the State of California who is authorized to perform land surveying. The form and contents of an amending map shall conform to the requirements for the form and contents of a final map as set forth in Section 9-6.213. An amending map shall set forth in detail the corrections made and show the names of the owners of the property affected by the correction or omission as of the date of the filing or recording of the original recorded map.

(b) **Corrections.**

(1) **Purposes.** The City Engineer may approve a certificate of correction or amending map for any of the following purposes:

a. To correct an error in any course or distance shown on the map.

b. To show any course or distance that was omitted from the map.

c. To correct an error in the description of the real property shown on the map.

d. To indicate monuments set after the death, disability, retirement from practice, or replacement of the engineer or surveyor charged with responsibilities for setting monuments.

e. To show the proper location of any monument that has been changed in location or character, or that was originally shown at the wrong location or incorrectly as to its character.

f. To correct any additional information filed or recorded pursuant to Section 66434.2 of the Subdivision Map Act if the correction does not impose any additional burden on the present owners of the property and does not alter any right, title, or interest in the real property reflected on the recorded map.

g. To correct any other type of map error or omission as approved by the City Engineer that does not affect any property right, including, but not be limited to, lot numbers, acreage, street names, and identification of adjacent record maps.

As used in this subsection, "error" does not include changes in courses or distances from which an error is not ascertainable from the data shown on the final map.

(2) **Review**. The amending map or certificate of correction shall be submitted to the City Engineer for review and approval, accompanied by the required fee as set forth in the Master Fee Schedule. The City Engineer shall examine the amending map or certificate of correction and, if the only changes are those set forth in subsection (b)(1) above, the City Engineer shall certify to this fact on the amending map or certificate of correction.

(3) **Certificate of Correction.** The City Engineer shall have 20 working days to examine the certificate of correction for compliance with this Chapter, endorse a statement on it of his or her examination and certification, and present it to the

County Recorder for recordation. If the City Engineer determines that the certificate of correction fails to comply with this Chapter, the City Engineer shall return the certificate to the applicant with a written statement of the changes necessary. The City Engineer shall have ten working days after resubmission and approval of the amended certificate of correction to present it to the County Recorder for recordation.

(c) **Modifications.** The Planning Commission must approve any modifications to a final map due to changes that make any or all of the conditions of the map no longer appropriate or necessary. The Planning Commission shall hold a public hearing pursuant to Section 9-6.208(a) on the proposed modifications. The Planning Commission shall approve the modifications only if it makes all of the following findings:

(1) There are changes in circumstances that make any or all of the conditions of the map no longer appropriate or necessary.

(2) The modifications do not impose any additional burden on the fee owners of the real property.

(3) The modifications do not alter any right, title, or interest in the real property reflected on the recorded map.

(4) The map as modified conforms to the findings of Section 9-6.208(c).

The City Engineer shall certify the amending map or certificate of correction as approved by the Planning Commission.

(d) **Recordation.** The amending map or certificate of correction certified by the City Engineer shall be filed in the office of the Alameda County Recorder. After the County Recorder takes the actions required by Section 66472 of the Subdivision Map Act, the original map shall be deemed to have been conclusively so corrected and shall impart constructive notice of all the corrections in the same manner as though set forth on the original map.

ARTICLE 3. MINOR SUBDIVISIONS

9-6.301 Applicability.

A parcel map shall be required for all divisions of land into four or fewer parcels and for divisions of land into five or more parcels in the situations described in Sections 9-6.201 (a), (b), (c), (d), or (e), including construction of a condominium project on a single parcel that is not a conversion pursuant to Article 7, unless the Planning and Building Director, with the concurrence of the City Engineer, waives the requirement for a parcel map pursuant to Section 9-6.312. A parcel map shall not be required for lot line adjustments that meet the requirements of Article 4 or in certain other situations as specified in the Subdivision Map Act. A parcel map shall be submitted, reviewed, and approved before being finalized for certification by the City and recordation with the Alameda County Recorder.

9-6.302 Parcel Maps: Filing.

Three paper prints of a parcel map, prepared as described in Section 9-6.303, shall be filed with the Planning and Building Director, accompanied by an application form provided by the Director, data and reports as set forth in Section 9-6.304, and the applicable fee as set forth in the Master Fee Schedule. If the subdivision lies partially within two or more cities, the parcel map shall be filed with each city and acted upon by each.

9-6.303 Parcel Maps: Form and Contents.

The form and content of a parcel map shall be the same as that of a final map, as set forth in Section 9-6.213, except as follows:

(a) **Owners' Consent.** When a parcel map involves the division of land into four or fewer parcels and dedications or offers of dedications are not required, the statement shall be signed and acknowledged by the subdivider only. If the subdivider does not have a record title ownership interest in the property to be divided, the subdivider shall provide the City with satisfactory evidence that the persons with record title ownership have consented to the proposed division. For purposes of this subsection, "record title ownership" means fee title of record unless a leasehold interest is to be divided, in which case "record title ownership" means ownership of record of the leasehold interest.

9-6.304 Parcel Maps: Accompanying Data and Reports.

The parcel map shall be accompanied by the same data and reports as may be required by the Planning and Building Director or City Engineer for a tentative map pursuant to Section 9-6.204 and a final map pursuant to Section 9-6.214.

9-6.305 Parcel Maps: Planning and Building Director Review and Referral.

(a) **Determination of Complete Application.** The Planning and Building Director shall determine whether an application is complete within 30 days after receipt of the application and shall notify the applicant of the determination in writing. A parcel map application shall be accepted for filing only when the Planning and Building Director determines that:

(1) All maps and information required by these Subdivision Regulations and the Subdivision Map Act have been submitted, checked and accepted as complete.

(2) All information required to conduct environmental review in compliance with the California Environmental Quality Act has been submitted.

(3) The required fees and deposits as set forth in the Master Fee Schedule have been paid.

(b) **Referral.** Upon determining that a parcel map application is complete, the Director shall forward the application to the City Engineer for review. At his or her discretion, the Director may also forward copies of the application to other affected City departments, public agencies, and utilities including, but not limited to, the Emery Unified School District and the East Bay Municipal Utility District. The affected public agencies and utilities may, in turn, forward to the Director their findings and recommendations.

9-6.306 Parcel Maps: Review by City Engineer.

The City Engineer shall review the form and contents of the parcel map and accompanying data and reports pursuant to the requirements of this Chapter and any additional requirements established by the City Engineer, and shall convey his or her comments to the subdivider's engineer or surveyor. The subdivider's engineer or surveyor shall make corrections and/or additions until the map is acceptable to the City Engineer.

9-6.307 Parcel Maps: Planning and Building Director Action.

(a) **Action Required.** The Planning and Building Director shall approve, conditionally approve, or deny a parcel map within 50 days after certification of an environmental impact report, adoption of a negative declaration or determination that the project is exempt from the requirements of the California Environmental Quality Act.

(b) **Findings.** A parcel map may be approved or conditionally approved only if all of the following findings are made:

(1) **Consistency.** The proposed subdivision, together with the provisions for its design and improvement, is consistent with the General Plan, any applicable specific plan or area plan, these Subdivision Regulations, this Title, and other applicable provisions of the Emeryville Municipal Code.

(2) **Lot Width, Area, and Design.** The proposed lots are of such width, area, and design as the Director finds to be necessary to preserve the purpose and intent of this Chapter and these Planning Regulations.

(3) **Passive or Natural Heating and Cooling.** The design of the subdivision will provide, to the extent feasible, for future passive or natural heating and cooling features in accordance with Section 66473.1 of the Subdivision Map Act.

(4) **Availability of Water.** Water will be available and sufficient to serve a proposed subdivision with more than 500 dwelling units in accordance with Section 66473.7 of the Subdivision Map Act.

(5) **Site Suitability.** The site is physically suitable for the type and density of development proposed.

(6) **Fish and Wildlife.** The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage or to substantially and avoidably injure fish or wildlife or their habitat.

(7) **Public Health.** The design of the subdivision and the type of improvements are not likely to cause serious public health problems.

(8) **Easements.** The design of the subdivision and the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. The Planning and Building Director or Planning Commission, acting on an appeal, may approve a parcel map if it finds that alternate easements for access or for use will be provided, and that these will be substantially equivalent to easements previously acquired by the public. This shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is granted to the Director or Commission to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

(9) **Sewers.** The waste discharge into the City sewer system from the proposed subdivision would not add to, or result in, violations of requirements of the Regional Water Quality Control Board, the City's National Pollutant Discharge Elimination System (NPDES) permit, or other restrictions of the sanitary sewer collection system imposed on the City.

(c) **Exceptions.** Exceptions to the standards set forth in this Chapter may be approved if all of the following findings are made:

(1) That the strict application of any such standard would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of this Chapter.

(2) That there are exceptional circumstances or conditions applicable to the property being subdivided or to its intended use or development.

(3) That the granting of the exception will not be materially detrimental to the public welfare nor injurious to the property being subdivided or to improvements in the immediate vicinity.

(d) **Conditions of Approval.** Conditions necessary to make the findings required by this Section, or to meet the requirement of these Planning Regulations or the Subdivision Map Act may be imposed on the approval of a parcel map, including, but not limited to, the following:

(1) **Recommendations of Public Agencies and Utilities.** Conditions related to any recommendations of affected public agencies and utilities submitted pursuant to Section 9-6.305(b) may be imposed on the parcel map.

(2) **Joint Use.** A condition may be imposed, when applicable, requiring agreements for the joint use of portions of private streets and driveways, including areas to be landscaped and jointly maintained.

(3) **Indemnification.** Whether or not such a condition is explicitly listed as a condition of approval, every approved parcel map shall be deemed to include a

condition requiring the subdivider to defend, indemnify and hold harmless the City and its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees to attach, set aside, void or annul an approval of the Planning and Building Director, Planning Commission, or City Council concerning a subdivision. The City shall promptly notify the subdivider of any claim, action or proceeding and shall cooperate fully in the defense.

(4) **Residential Condominiums.** Residential condominiums shall be conditioned to require recordation of covenants, conditions, and restrictions that include the current basic eligibility requirements of the Federal Housing Administration (FHA) for condominium project approval, including, but not limited to, requirements for owner occupancy and limitations on investor ownership and commercial space.

9-6.308 Parcel Maps: Appeals.

The Planning and Building Director's decisions on parcel maps may be appealed to the Planning Commission pursuant to Article 14 of Chapter 7 and Section 66452.5 of the Subdivision Map Act.

9-6.309 Parcel Maps: Certification by City.

(a) **Review by City Engineer and Planning and Building Director.** The subdivider's engineer or surveyor shall submit the parcel map, signed by all parties required to execute the statements on the map, to the City Engineer and Planning and Building Director for review. The subdivider's engineer or surveyor shall make any corrections and/or additions as required by the City Engineer and/or Planning and Building Director until it meets the requirements of its approval pursuant to Section 9-6.307.

(b) **Certification by City Engineer and Planning and Building Director.** When the City Engineer and Planning and Building Director are satisfied that the parcel map meets the requirements of this Chapter, they shall certify the map by signing the statements contained on the parcel map.

(c) **Acceptance of Dedications by City Manager.** If any dedications are required pursuant to Article 6, the City Manager shall accept, accept subject to improvement, or reject, any offer of dedication prior to recordation of the parcel map. The City Manager shall certify the acceptance by signing a statement to this effect on the parcel map. Any certificate for dedications prepared pursuant to Section 9-6.607 shall be included on the map.

9-6.310 Parcel Maps: Recordation.

Except as provided in Section 66493 of the Subdivision Map Act, upon certification of the parcel map by the City Engineer and Planning and Building Director, and acceptance of any dedications by the City Manager, the map shall be forwarded to the Alameda County Recorder or to a title company or other authorized agent that the subdivider has designated for transmittal to the County Recorder. If any part of the subdivision is subject to a lien for taxes or special assessments collected as taxes which are not yet payable, the parcel map shall be processed in accordance with Section 66493 of the Subdivision Map Act. If the subdivider dedicates property

to the City, a certificate concerning the dedication as provided in Section 9-6.607 shall also be prepared and forwarded for recording, and a copy of the certificate shall be included on the parcel map.

9-6.311 Parcel Maps: Corrections and Amendments.

(a) **General.** After a parcel map is recorded by the Alameda County Recorder, it may be amended by a certificate of correction or amending map. Corrections of errors and omissions may be approved by the City Engineer pursuant to subsection (b). Modifications to a parcel map due to changes that make any or all of the conditions of the map no longer appropriate or necessary require approval of the Planning and Building Director pursuant to subsection (c). The amending map or certificate of correction shall be prepared by or under the direction of a land surveyor registered in the State of California or a civil engineer registered in the State of California who is authorized to perform land surveying. The form and contents of an amending map shall conform to the requirements for the form and contents of a parcel map as set forth in Section 9-6.303. An amending map shall set forth in detail the corrections made and show the names of the owners of the property affected by the correction or omission as of the date of the filing or recording of the original recorded map.

(b) **Corrections.**

(1) **Purposes.** The City Engineer may approve a certificate of correction or amending map for any of the following purposes:

a. To correct an error in any course or distance shown on the map.

b. To show any course or distance that was omitted from the map.

c. To correct an error in the description of the real property shown on the map.

d. To indicate monuments set after the death, disability, retirement from practice, or replacement of the engineer or surveyor charged with responsibilities for setting monuments.

e. To show the proper location of any monument that has been changed in location or character, or that was originally shown at the wrong location or incorrectly as to its character.

f. To correct any additional information filed or recorded pursuant to Section 66434.2 of the Subdivision Map Act if the correction does not impose any additional burden on the present owners of the property and does not alter any right, title, or interest in the real property reflected on the recorded map.

g. To correct any other type of map error or omission as approved by the City Engineer that does not affect any property right, including, but not be limited to, lot numbers, acreage, street names, and identification of adjacent record maps.

As used in this subsection, "error" does not include changes in courses or distances from which an error is not ascertainable from the data shown on the parcel map.

(2) **Review**. The amending map or certificate of correction shall be submitted to the City Engineer for review and approval, accompanied by the required fee as set forth in the Master Fee Schedule. The City Engineer shall examine the amending map or certificate of correction and, if the only changes are those set forth in subsection (b)(1) above, the City Engineer shall certify to this fact on the amending map or certificate of correction.

(3) **Certificate of Correction.** The City Engineer shall have 20 working days to examine the certificate of correction for compliance with this Chapter, endorse a statement on it of his or her examination and certification, and present it to the County Recorder for recordation. If the City Engineer determines that the certificate of correction fails to comply with this Chapter, the City Engineer shall return the certificate to the applicant with a written statement of the changes necessary. The City Engineer shall have ten working days after resubmission and approval of the amended certificate of correction to present it to the County Recorder for recordation.

(c) **Modifications.** The Planning and Building Director must approve any modifications to a parcel map due to changes that make any or all of the conditions of the map no longer appropriate or necessary. The Planning and Building Director shall approve the modifications only if all of the following findings are made:

(1) There are changes in circumstances that make any or all of the conditions of the map no longer appropriate or necessary.

(2) The modifications do not impose any additional burden on the fee owners of the real property.

(3) The modifications do not alter any right, title, or interest in the real property reflected on the recorded map.

(4) The map as modified conforms to the findings of Section 9-6.307(b).

The City Engineer shall certify the amending map or certificate of correction as approved by the Planning and Building Director.

(d) **Recordation.** The amending map or certificate of correction certified by the City Engineer shall be filed in the office of the Alameda County Recorder. After the County Recorder takes the actions required by Section 66472 of the Subdivision Map Act, the original map shall be deemed to have been conclusively so corrected and shall impart constructive notice of all the corrections in the same manner as though set forth on the original map.

9-6.312 Parcel Map Waiver Procedure.

(a) **Applicability.** Pursuant to Section 66428(b) of the Subdivision Map Act, the Planning and Building Director with the concurrence of the City Engineer may waive the requirement for preparation and filing of a parcel map for any of the following:

(1) Division of real property or interests therein created by probate, eminent domain procedures, partition, or other civil judgments or decrees.

(2) Division of real property resulting from the conveyance of land or any interest therein to or from the City, public entity or public utility for a public purpose, such as park sites, school sites, public building sites, or rights-of-way or easements for streets, sewers, utilities, drainage, etc.

(b) **Procedure.** Any person desiring to obtain the approval of a parcel map waiver shall file two paper prints of a plat and legal description with the Planning and Building Director, accompanied by an application form provided by the Director, and the applicable fee as set forth in the Master Fee Schedule. The form and content of such plat and legal description shall be as specified by the Director and City Engineer.

(c) **Action Required.** The Planning and Building Director shall approve, conditionally approve, or deny a parcel map waiver within 60 days of the application being deemed complete.

(d) **Findings.** In order to approve a parcel map waiver the Planning and Building Director shall find that the proposed division of land complies with requirements as to area, improvement and design, floodwater drainage control, appropriate improved public roads, sanitary disposal facilities, water supply availability, environmental protection, and other requirements of the Subdivision Map Act, this Chapter, these Planning Regulations, the Municipal Code, and the General Plan.

(e) **Conditions.** Approval of a parcel map waiver may be conditioned to provide for, among other things, payment by the subdivider of parkland dedication, drainage, and other fees that are permitted by law.

(f) **Appeals.** The Planning and Building Director's decision on a parcel map waiver may be appealed to the Planning Commission pursuant to Article 14 of Chapter 7 and Section 66452.5 of the Subdivision Map Act.

(g) **Recordation.** Following the expiration of the appeal period pursuant to subsection (f) above, or the Planning Commission's final decision if appealed and approved, the City Engineer shall forward a plat and legal description of the approved division of land and a certificate of compliance identifying the real property and stating that the approved division of land complies with the provisions of the Subdivision Map Act and this Article to the Alameda County Recorder or to a title company or other authorized agent that the subdivider has designated for transmittal to the County Recorder.

ARTICLE 4. LOT LINE ADJUSTMENTS

9-6.401 Purpose.

The purpose of this Article is to establish the procedures and standards for changing the boundary or boundaries between four or fewer existing adjoining parcels as provided in the Subdivision Map Act to ensure that such adjustments are consistent with the General Plan and applicable zoning and building requirements. The Map shall be drawn in accordance with the requirements established by the City Engineer.

9-6.402 Procedure.

An application for a lot line adjustment shall be made to the Planning and Building Director and shall be accompanied by the required filing fee; an application form; a plat and legal description of the transfer piece(s); two plats and legal descriptions of the resulting parcels, one showing the transfer piece(s) and one showing only the resulting parcels; and any other information, including, but not limited to, a title report, deemed necessary by the Director or City Engineer. The form and content of such plats and legal descriptions and other information shall be as specified by the Director and City Engineer.

(a) Within 30 days of the receipt of the application, the Director or the City Engineer may require additional information as deemed necessary to determine whether the proposed adjustment meets the requirements of this Article including, but not limited to, a record survey of the property involved if necessary to provide an adequate description of the property as required by California Business and Professions Code Section 8762.

(b) Within 30 days of the receipt of a complete application, the Director, in consultation with the City Engineer, shall approve, conditionally approve, or deny the application for a lot line adjustment if the application is exempt from environmental review. If the application requires environmental review, the Director shall take action in compliance with the deadlines specified in Section 9-7.207, Environmental Review.

(c) The Director may impose any conditions necessary to ensure that the proposed map will comply with all of the required findings of Section 9-6.403. Any improvements that are required to be installed or constructed to comply with the criteria for approval shall be constructed pursuant to the requirements of this Chapter.

(d) If the Director determines that the proposed adjustment does not comply with all of the required findings of Section 9-6.403, the Director shall deny the adjustment and provide written notification to the applicant of the decision.

(e) If the lot line adjustment is approved or conditionally approved, the City Engineer shall prepare and provide to the applicant a certificate of compliance describing the adjusted parcels and showing the names of the owners of record of the parcels involved.

9-6.403 Findings.

A lot line adjustment may be approved or conditionally approved only if all of the following findings are made:

(a) The adjustment is between four or fewer parcels and no additional parcels are created.

(b) No street or alley dedication or improvement is necessary to adequately serve the properties affected by the proposed lot line adjustment.

(c) The proposed lot lines will be approximately parallel to the existing lot lines and will be located so that the adjustment will not substantially alter the size or shape of the existing lots.

(d) The lots proposed in the adjustment will comply with the provisions of this Chapter, these Planning Regulations, the General Plan, and the Subdivision Map Act.

(e) The resulting parcels will not interfere with existing utilities, infrastructure or easements.

(f) Real property taxes have been paid.

(g) The City Engineer approves the proposed adjustment.

9-6.404 Appeals.

The Director's decision on a lot line adjustment may be appealed to Planning Commission in accordance with the appeal procedures in Article 14 of Chapter 7.

9-6.405 Recordation.

Following the expiration of the appeal period pursuant to Section 9-6.404, or the Planning Commission's final decision if appealed and approved, the applicant for a lot line adjustment approved pursuant to this Article shall provide to the Director and record with the Alameda County Recorder the following:

(a) A plat and legal description of the transfer piece(s).

(b) Two plats and legal descriptions of the resulting parcels, one showing the transfer piece(s) and one showing only the resulting parcels.

(c) A grant deed for the transfer piece(s).

(d) The certificate of compliance prepared by the City Engineer pursuant to Section 9-6.402(e).

ARTICLE 5. PARCEL MERGERS

9-6.501 Purpose.

The purpose of this Article is to establish the procedures and standards for the merger into one parcel of two or more contiguous parcels of land that were created under the provisions of the Subdivision Map Act or any prior State law regulating the division of land.

9-6.502 Initiation by City.

(a) **Criteria.** Pursuant to the Subdivision Map Act and the requirements of this Chapter, the City may initiate the merger of two or more contiguous parcels held by the same owner if any one of the contiguous parcels does not conform to the standards for minimum lot area or width established by Article 7 of Chapter 4, and if all the following requirements are satisfied:

(1) At least one of the affected parcels is undeveloped by any structure for which a building permit was issued or for which a building permit was not required at the time of construction, or is developed only with an accessory structure or structures, or is developed with a single structure, other than an accessory structure, that is also partially sited on the contiguous parcel proposed for merging.

(2) One or more of the following conditions exists for at least one of the affected parcels:

a. The parcel comprises less than 2,500 square feet in area at the time of the determination of merger.

b. The parcel was not created in compliance with applicable laws and ordinances in effect at the time of its creation.

c. The parcel does not meet current standards for sewage disposal and domestic water supply.

d. The parcel does not meet slope stability standards.

e. The parcel has no legal access that is adequate for vehicular and safety equipment access and maneuverability.

f. Development would create health or safety hazards.

(b) **Procedures.**

(1) **Notice of Intention to Determine Status.** The Director shall mail, by certified mail, a notice of intention to determine status to the current record owner of the property. The notice shall state that the affected parcels may be merged, and that the property owner may request a hearing on the determination of status before the Planning Commission to present evidence that the property does not meet the criteria for merger. The notice of intention to determine status shall be recorded at the office of the Alameda County Recorder on the same day that the notice is mailed to the property owner. The owner of the affected property may file a

written request for a hearing with the Director within 30 days after the recording of the notice of intention to determine status.

(2) **If a Hearing is Requested.** Upon receipt of a request for a hearing, the Director shall set the time, date and place for the hearing and notify the property owner by certified mail. The hearing shall be conducted not more than 60 days following the receipt of the property owner's request, or may be postponed or continued by mutual consent of the Director and the property owner. At the hearing, the property owner shall be given the opportunity to present any evidence that the affected property does not meet the requirements of this Chapter for merger. At the conclusion of the hearing, the Planning Commission shall determine whether or not the affected parcels shall be merged. If the Planning Commission makes a determination that the parcels are to be merged, the City Engineer shall record a determination of merger in the form of a certification of compliance within 30 days of the Commission's determination unless the property owner files an appeal pursuant to Section 9-6.505. The determination of merger/certificate of compliance shall specify the name of the record owners and a description of the property. The Director shall notify the property owner of the determination.

(3) **If a Hearing is not Requested.** If, within the 30 day period following the recording of the notice of intention to determine status, the property owner does not file a request for hearing, the Director and City Engineer shall make a determination whether or not the affected parcels are to be merged. If the Director and City Engineer determine that the parcels shall be merged, the City Engineer shall record a determination of merger in the form of a certificate of compliance within 90 days following the mailing of the notice of intention to determine status. The determination of merger/certificate of compliance shall specify the name of the record owners and a description of the property. The Director shall notify the property owner of the determination.

(4) **If Parcels are not to be Merged.** If the Planning Commission, or the Director and City Engineer, as the case may be, determine that the parcels shall not be merged, the City Engineer shall record a certificate of compliance for the unmerged parcels and a release of the notice of intention to determine status, and the Director shall mail a clearance letter to the owner of record.

9-6.503 Initiation by Property Owner.

(a) **Request for Determination.** Within 30 days of the receipt of a written application to the Director by the owner of the affected parcels, and payment of required fees, the Director and City Engineer shall determine whether the affected parcels shall be merged and the Director shall notify the property owner of the determination. If the Director and City Engineer determine that the parcels shall not be merged, the property owner may file a written request for a hearing with the Planning Commission pursuant to the requirements of this Article within 30 days of the date of the Director's notice. The Planning Commission shall then hold a hearing on the proposed merger. If the Planning Commission makes a determination that the parcels are to be merged, the City Engineer shall record a determination of merger in the form of a certificate of compliance within 30 days of the Commission's determination. The determination of merger/certificate of

compliance shall specify the name of the record owners and a description of the property. The Director shall notify the property owner of the determination.

(b) **Waiver of Right to Hearing.** If the merger of contiguous parcels is initiated by the record owner, the owner may waive the right to a hearing before the Planning Commission and to all notices required by this Article. Upon receipt of the waiver, the City Engineer shall record a notice of intention to determine status, a waiver of right of hearing and notice, and a notice of merger/certificate of compliance simultaneously.

9-6.504 Unmerged Parcels.

A property owner may apply to the Director for a determination that any parcels of land for which a notice of merger had not been recorded on or before January 1, 1984 are deemed not to have been merged under Section 66451.30 of the Subdivision Map Act. If the Director and City Engineer determine that the parcels meet the standards specified in Section 66451.30, the Director shall issue to the owner, and the City Engineer shall record with the County Recorder, a certificate of compliance declaring that the parcels are not merged.

9-6.505 Appeals.

The Planning Commission's decision on a parcel merger may be appealed to the City Council in accordance with the appeal procedures in Article 14 of Chapter 7.

ARTICLE 6. IMPROVEMENTS AND DEDICATIONS

9-6.601 Purpose.

The purpose of this Article is to establish the improvements, dedications and reservations that the City may impose on a subdivider as a condition for approval of a tentative map or a parcel map.

9-6.602 Improvements Required.

(a) **General.**

(1) **Improvements Required for Subdivision Approval.** No tentative map, parcel map, or other division of land subject to the provisions of this Chapter shall be approved unless improvements are constructed or required to be constructed to serve the lots being created both on-site and off-site, including, but not limited to, those improvements described in this Section. As a condition of approval there may be imposed a requirement that improvements installed by the subdivider for the benefit of the subdivision contain supplemental size, capacity, number or length for the benefit of property not within the subdivision and that those improvements be dedicated to the public, subject to the provisions of Sections 66485-66489 of the Subdivision Map Act.

(2) **Improvement Plans.** Before beginning construction of any improvements, a complete set of plans, profiles, cross sections, and other drawings for all improvements, together with a complete set of detailed specifications for the work, prepared according to City standards and specifications, shall be submitted to the City Engineer for review and approval. Once approved, one or more complete sets of plans and specifications, as required, shall be furnished to the City Engineer. No work shall commence without approved plans and specifications.

(3) **Design of Improvements.** The design and layout of all required improvements both on and off site, private and public, shall conform to generally accepted engineering standards, to the Standard Specifications for Public Works Construction as set forth in Chapter 7 of Title 7, to such standards as approved by the City Engineer, and, where applicable, to the standards of Section 9-6.609, Design Standards.

(b) **Frontage Improvements.** The frontage of each lot shall be improved to its ultimate adopted geometric section, including street structural sections, curbs, gutters, sidewalks, alleys, street trees, street lights, driveway approaches and transitions, and right-of-way surfaces. Property corners abutting the public right-of-way shall be located and marked in a manner acceptable to the City Engineer.

(c) **Pedestrian Ways.** Pedestrian ways, including paving, landscaping, fences and other amenities, may be required in all locations shown in the General Plan and shall be constructed in conformance with the General Plan and the Pedestrian and Bicycle Plan:

(1) To provide access to greenways, trails or bikeways as shown in the General Plan.

(2) Through the middle of blocks that are more than 500 feet in length or as otherwise indicated in the General Plan.

(3) To connect streets that have only one outlet.

(4) To provide access to playgrounds, parks, schools, shopping areas, or similar community facilities.

(d) **Bikeways.** Bikeways, including Class I paths, Class II bike lanes, Class III signed bike routes, and/or Bicycle Boulevards, may be required in all locations shown in the General Plan and shall be constructed in conformance with the General Plan and the Pedestrian and Bicycle Plan. Appropriate signs as may be required shall be furnished and installed by the subdivider.

(e) **Trails and Greenways.** Trail and greenway improvements may be required as shown in the General Plan, the Pedestrian and Bicycle Plan, and any applicable area plan.

(f) **Street Trees.** The subdivider may be required to plant street trees at no more than 25 feet on center along all public or private streets within and/or bordering the subdivision, in conformance with the General Plan, Emeryville Design Guidelines, and any applicable area plan. The location, species and size of trees shall be as specified in any associated project approvals or as approved by the Director of Public Works, and shall be indicated on the improvement plans. Street trees shall be planted in accordance with City standards and specifications.

(g) **Storm Drainage.** Storm water runoff from the subdivision shall be treated on-site in accordance with the stormwater management requirements in Chapter 13 of Title 6, and shall be collected and conveyed by an approved storm drain system. The storm drain system shall provide for the protection of abutting and off-site properties that would be adversely affected by any increase in runoff attributed to the development. Off-site storm drain improvements may be required to satisfy this requirement.

(h) **Sanitary Sewers.** A sewage collection system designed and constructed to serve each unit or lot within the subdivision and connected to the City's sewer collection system shall be provided as required. Sewer laterals shall comply with the requirements of Chapter 8 of Title 7.

(i) **Water Supply.** Each unit or lot within the subdivision shall be served by an approved water distribution system designed and constructed to supply domestic water for use on each lot or by each unit, for fire-fighting purposes, and to provide landscape irrigation as shown on approved plans. The water supply system for any industrial, commercial, or residential subdivision for which a tentative map or parcel map is required pursuant to this Chapter and Section 66426 of the Subdivision Map Act, shall comply with the requirements of Section 9-4.603 of Article 6 of Chapter 4 regarding recycled water.

(j) **Utilities.** Each unit or lot within the subdivision shall be served by gas, electric, telephone and cable television facilities. All utility distribution facilities shall be placed underground. All transformers shall be placed underground unless prior permission is granted by the City to place them above ground, in which case they shall be screened from public view by fencing, dense landscaping, or other acceptable means. Other appurtenant equipment, such as pedestal-mounted terminal boxes, and meter cabinets, may be placed above ground but shall be screened from public view by fencing, dense

landscaping, or other acceptable means. No transformers or other appurtenant equipment shall be placed in the public right-of-way or on any sidewalk.

(k) **Fire Hydrants.** Fire hydrants, gated connections, and appurtenances as required by the Fire Department shall be provided. Improvement plans showing such hydrants, connections, and appurtenances shall be shown on the improvement plans that are submitted for review and approval by the Fire Department.

(l) **Off-Site Improvements.** Pursuant to Section 66462.5 of the Subdivision Map Act, if the subdivider is required to construct off-site improvements on land in which neither the City nor the subdivider have sufficient title or interest to allow construction, the City shall, within 120 days of recording the final map, acquire by negotiation or commence condemnation of the land. Prior to approval of the final map, the City may require the subdivider to enter into an agreement to complete the off-site improvements at the time the City acquires title or interest in the land. If no such agreement is required and the City fails to meet the 120-day time limit, the condition for the construction shall be waived. The subdivider shall pay the cost of acquiring off-site land or an interest in the land required to construct the off-site improvements.

9-6.603 Improvement Agreements.

(a) **General.** If the improvements required by Section 9-6.602 are not completed prior to the filing of the parcel map or final map, the subdivider shall enter into an Improvement Agreement with the City for the construction of the required improvements. Such Agreement is subject to the approval of the City Manager as recommended by the City Engineer and approved as to form by the City Attorney. The Agreement shall provide for:

(1) Construction of all improvements according to the approved plans and specifications on file with the City Engineer.

(2) Specified times for completion of improvements.

(3) Right by City to require changes to the plans and specifications in accordance with the development requirements and to require the subdivider to pay for the modifications.

(4) Payment of applicable fees as set forth in the Master Fee Schedule.

(5) Improvement security in accordance with Section 66499 et seq. of the Subdivision Map Act.

(6) Posting of a performance bond for 100% of the value of the improvements, at prevailing wage, and, upon completion and acceptance by the City of the improvements, a one-year warranty bond guaranteeing the constructed improvements from defects.

(7) Release and indemnification of the City from all liability incurred by the development and payment of all reasonable attorney's fees that the City may incur because of any legal action arising from the development.

(8) Any other provisions required by the City as reasonably necessary to comply with the requirements of this Chapter.

(b) **Deferred Agreements.** An agreement may be made between the subdivider and the City to defer the construction of public improvements until such time as the improvements are necessary to preserve the general purposes of this Title. No such agreement shall be valid until and unless it is secured by a good and sufficient surety bond or cash deposit adequate to cover all the costs and administrative expenses of the improvements in the event of default. If the subdivider or subsequent owner of the subdivision desires to construct the improvements, the City will release the deposit to the subdivider or subsequent owner of the subdivision after the improvements are constructed, inspected, and accepted as complete by the City.

9-6.604 Completion and Acceptance of Improvements.

(a) **Completion.** The subdivider shall complete the subdivision improvements within 12 months from the recording of the parcel map or final map, or at a time approved by the City Engineer, not to exceed 24 months from the recording of the parcel map or final map, unless an extension is granted by the City Manager. If the subdivider fails to complete the improvements within the specified time, the City may, by resolution of the City Council and at its option, cause any or all uncompleted improvements to be completed and the parties executing the surety or sureties shall be firmly bound for the payment of all necessary costs. All improvements are subject to inspection by the City Engineer to ensure that they have been completed in accordance with the Improvement Agreement.

(b) **Acceptance.** Upon completion of the improvements required by the provisions of this Article, the subdivider or his authorized agent shall file a complete set of record drawings with the City Engineer. Such record drawings shall be certified as to accuracy and completeness by the subdivider's engineer of record. Upon the receipt and acceptance of such record drawings for major subdivisions, the City Engineer shall recommend to the City Manager the formal acceptance of the improvements.

(c) **Acceptance of a Portion of Improvements.** When requested by the subdivider in writing, the City may consider acceptance of a portion of the improvements as recommended by the City Engineer. The improvements will be accepted by the City only if it finds that it is in the public interest and such improvements are for the use of the general public. Acceptance of a portion of the improvements shall not relieve the subdivider from any other requirements imposed by this Chapter. Acceptance of a portion of the improvements shall be in accordance with subsection (b) above.

9-6.605 Dedications.

When required as a condition for approval of a tentative map or parcel map, the subdivider shall dedicate or make an irrevocable offer of dedication of land within the subdivision that is needed for:

(a) **Streets, Alleys and Other Public Rights-of-way or Easements.** Streets and alleys, as shown in the General Plan, including access rights and abutters' rights, drainage, public utility easements and other public easements, as deemed necessary by the City Engineer. The waiver of direct access rights, as provided by Section 66476 of the Subdivision Map Act, may be required if the City determines that the public interest necessitates such a waiver.

(b) **Bicycle Paths.** Bicycle paths and greenways as shown in the General Plan for the use, safety, and benefit of the residents of the subdivision.

(c) **Transit Facilities.** Local transit facilities such as bus turnouts, benches, shelters, landing pads and similar items that directly benefit the residents of the subdivision.

(d) **Parkland.** Land for open space, park and recreational purposes, based on the General Plan standard of three new acres of parkland per 1,000 new residents, and 0.25 acres per 1,000 new employees, as further detailed in the General Plan and the Parks and Recreation Strategic Plan, and in conformance with the requirements of Section 66477 of the Subdivision Map Act. In lieu of such dedication, the City may require the subdivider to make a contribution to a Citywide Park Fund, or may require a combination of such land dedication and in-lieu fee pursuant to the requirements of Section 66477 of the Subdivision Map Act.

(e) **Drainage Facilities.** Storm drain rights-of-way or easements as deemed necessary by the City Engineer.

9-6.606 Acceptance of Dedications.

(a) **Action Upon Approval of Map.** At the time the City approves a final map or parcel map, the City shall also accept, accept subject to improvement, or reject, any offer of dedication. The City Manager shall certify or state on the map the City's action.

(a) **Rescission of Rejection.** If, at the time the final map or parcel map is approved, any streets, paths, alleys, public utility easements, rights-of-way for local transit facilities which directly benefit the residents of a subdivision, or storm drainage easements are rejected by the City, the offer of dedication shall remain open and the City may at any later date, and without further action by the subdivider, rescind its action and accept and open the streets, paths, alleys, public utility easements, rights-of-way for local transit facilities or storm drainage easements for public use, which acceptance shall be recorded in the office of the Alameda County Recorder.

(b) **Termination of Offers.** Offers of dedications may be terminated and abandoned in the same manner as prescribed for the summary vacation of streets by California Streets and Highways Code Division 9, Part 3 (commencing with Section 8300).

9-6.607 Recordation of Dedications.

The City shall record a certificate with the Alameda County Recorder for any dedication for public purpose or for making public improvements or constructing public facilities, other than for open space, parks, or schools. The certificate shall be included on the map and shall contain the name and address of the subdivider dedicating the property; a legal description of the real property being dedicated; and a statement that the City shall reconvey the property to the subdivider if the City makes a determination that the same public purpose for which the property was dedicated does not exist, or the property or any portion thereof is not needed for public utilities.

9-6.608 Reservations.

(a) **General.** As a condition of approval of a tentative map, the subdivider shall reserve sites, appropriate in area and location, for parks, recreational facilities, fire stations, libraries or other public uses according to the standards contained in this Section.

(b) **Standards for Reservation.** Where a park, recreational facility, fire station, library, or other public use is shown on the General Plan, the subdivider may be required by the City to reserve sites determined by the City to be in accordance with the policies and standards of the plan. The reserved area must be of such size and shape as to permit the balance of the property to develop in an orderly and efficient manner. The amount of land reserved shall not make development of the remaining land held by the subdivider economically unfeasible. The reserved area shall conform to the General Plan, and shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

(c) **Procedure.** The public agency for whose benefit an area has been reserved shall, at the time of approval of the final map, enter into a binding agreement to acquire the reserved area within two years after the completion and acceptance of all improvements, unless the period of time is extended by mutual agreement.

(d) **Payment.** The purchase price shall be the market value of the reserved land at the time of the filing of the tentative map, plus the taxes against the reserved land from the date of the reservation and any maintenance costs incurred by the subdivider including interest costs incurred on any loan covering the reserved area.

(e) **Termination.** If the public agency for whose benefit an area has been reserved does not enter into a binding agreement, as provided for in California Government Code Section 66480, the reservation of the area shall automatically terminate.

9-6.609 Design Standards.

(a) **Access.**

(1) A subdivision shall abut upon or have an approved access to a public or private street. Each unit or lot within the subdivision shall have access to a public or private street.

(2) Street layout shall be designed to provide for future access to undeveloped property adjoining the subdivision. Reserve strips, or non-access at the end of streets or at the boundaries of subdivisions, shall be dedicated unconditionally to the City when required.

(3) In no event shall lots in a proposed subdivision that do not abut a public or private street be served by access that traverses an existing lot that abuts a public or private street. This does not preclude flag lots where access through an existing parcel abuts an existing property line.

(b) **Streets and Paths.**

(1) Private streets, alleys, or access corridors are not permitted unless approved as part of a major or minor subdivision pursuant to the requirements of this Chapter, and provisions are made for their improvement and permanent maintenance.

(2) Streets shall be graded and improved in accordance with generally accepted engineering standards, the Standard Specifications for Public Works Construction as set forth in Chapter 7 of Title 7, and such standards as approved by the City Engineer.

(3) Minimum right-of-way widths for streets and paths, as indicated in the General Plan, shall be as set forth below; the City may require greater width if necessary to promote the public health, safety or general welfare of the community.

a. Transit Streets and Collector Streets: 80 feet

b. Local Streets and Bicycle Boulevards: 60 feet

c. Bicycle Paths and Pedestrian Paths: 20 feet

(4) Access rights shall be restricted where required by the City for major streets, greenways, trails or parklands.

(5) Reserve strips controlling the access to streets or other public rights-of-way shall not be approved unless such strips are necessary for the protection of the public welfare or property.

(6) Pavement Design:

a. The structural design of the pavement, including the determination of the thickness and type of subbase, base, and surfacing to be placed over the basement soil, is subject to the approval of the City Engineer.

b. The subdivider, at his or her expense, shall make tests of the soil over which the surfacing and base is to be constructed and furnish the test reports to the City Engineer for use in determining a preliminary structural design of the road bed.

(7) Curbs, gutters, and sidewalks shall be installed in accordance with generally accepted engineering standards, the Standard Specifications for Public Works Construction as set forth in Chapter 7 of Title 7, the General Plan, the Emeryville Design Guidelines, and any other applicable design guidelines or area plans. All sidewalks shall comply with the applicable accessibility requirements of the Americans with Disabilities Act.

(8) Traffic signs, signals, pavement markings, and street name signs conforming to City standards shall be installed by the subdivider.

(9) All proposed street names shall be reviewed and approved by the Planning and Building Department, Public Works Department, Fire Department, Police Department, and other interested agencies, prior to filing of a final or parcel map, and shall be shown on such map.

(10) Street lights shall be provided in accordance with City standards as required by the City Engineer and their location shall be shown on the construction plans in plan view and a typical street cross section.

(c) **Water Connection.**

(1) Water supply facilities shall be shown on all improvement plans and shall be East Bay Municipal Utility District facilities installed in accordance with East Bay Municipal Utility District standards.

(2) Water lines shall be installed to the end of new paving on any street that might need a water extension to avoid the need for a trench cut in new paving.

(3) Easements not less than ten feet in width shall be provided within the subdivision where required for construction and maintenance of water facilities.

(d) **Sanitary Sewers.**

(1) Sanitary sewer mains, when required by the City Engineer, shall be shown on all improvement plans and shall be designed and installed in accordance with City standards.

(2) All required sanitary sewer laterals shall be shown on all improvement plans and shall comply with the requirements of Chapter 8 of Title 7.

(e) **Trees.**

(1) All existing trees shall be shown on the improvement plans with a notation as to the size, species, dripline, and condition. The City may require a report by a certified arborist to determine the condition of existing trees and to specify recommendations for their preservation, replacement, and/or removal.

(2) Existing trees may be required to be preserved, in which case a report shall be prepared by a certified arborist specifying requirements for the preservation, replacement, and removal of trees on and adjacent to the site. The arborist shall be consulted regarding the planting and preservation of all trees, and his or her recommendations shall be followed.

(3) The protection, planting, and removal of street trees shall be in conformance with the Urban Forestry Ordinance in Chapter 10 of Title 7.

(f) **Grading and Erosion Control.** Grading shall be done in accordance with City standards, including, but not limited to, the Grading Regulations of Chapter 5 of Title 7 and the Building Regulations in Title 8. No grading shall be done without prior review and approval of the City Engineer and Planning and Building Director.

(g) **Communication Facilities.** A subdivision shall provide franchised cable television systems and communication systems, including, but not limited to, telephone and Internet services, an opportunity to construct, install and maintain, on land identified on the map as dedicated or to be dedicated to public utility use, any equipment necessary to extend services to each parcel in the subdivision. For the purposes of this Section, "franchised cable television systems" means those systems franchised or licensed to serve the geographical area in which the subdivision is located. This Section shall not apply to the conversion of existing dwelling units to condominiums, community apartments, or stock cooperatives.

(h) **Energy Conservation and Solar Access.**

(1) A subdivision for which a tentative map is required shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision. Examples of passive or natural heating opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.

(2) Examples of passive or natural cooling opportunities include design of lot size and configuration to permit orientation of a structure to take advantage of shade or prevailing breezes.

(3) Consideration shall be given to local climate, to contour, to configuration of the parcel to be divided, and to other design and improvement requirements, and such provision shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or structure.

(4) The requirements of this Section do not apply to condominium projects that consist of the subdivision of airspace in an existing building when no new structures are added.

(i) **Natural and Cultural Resources.** Sensitive habitat areas, archeological resources, and designated and potential historic resources shall be shown and identified on the tentative map or tentative parcel map, and on improvement and landscape plans. Such features shall be preserved as required by the City.

ARTICLE 7. RESIDENTIAL CONDOMINIUM CONVERSIONS.

9-6.701 Purpose.

This Article establishes regulations for the conversion of existing residential rental units to residential condominiums. The provisions of this Article are intended to protect and preserve the public health, safety and general welfare and to promote orderly growth and development, and more specifically to ensure that:

(a) Residential condominium conversion projects are consistent with the Housing Element of the General Plan and state law;

(b) Converted dwellings meet certain safety, quality and appearance standards;

(c) Purchasers of converted dwelling units are fully informed as to the physical condition of the structure and facilities;

(d) Tenants are provided with notice of the conversion, relocation benefits and the opportunity to purchase the residential units being converted; and

(e) The City maintains a supply of affordable housing.

9-6.702 Applicability.

The provisions of this Article implement and supplement the requirements of the Subdivision Map Act applicable to condominium conversions. Such condominium conversions may include, but are not limited to, any of the following: (a) a community apartment project, (b) a condominium project or (c) a stock cooperative as defined by state law. The provisions apply to either:

(a) Any proposed tentative map or parcel map that involves a change in ownership of a single structure or a group of structures used for residential dwelling units from individual ownership to an ownership in which the residential units may be sold separately.

(b) The sale of dwelling units in a residential development that has an approved condominium map but that has previously been operated as a rental project.

9-6.703 Application Requirements.

The application submittal requirements for condominium conversions shall follow the requirements and procedures set forth in this Chapter for tentative maps, parcel maps, or parcel map waivers, as the case may be. In addition, the application submittal shall include:

(a) Floor plans for all buildings on the subject site.

(b) A site plan that includes, but is not limited to, lot lines, property dimensions, streets, easements, setbacks, parking, and location of all structures.

(c) Building elevation drawings that include, but are not limited to, materials, details and features for all building sides.

(d) A landscape plan that includes, but is not limited to, trees, shrubs, lawn and groundcover, paving, hardscape and site furnishings.

(e) The substandard housing evaluation required by Section 9-6.705(a)(5)c.

(f) The housing inspection report and disclosure of any deficiencies required by Section 9-6.705(a)(6).

(g) Proof that each tenant has received written notification, as required by Section 9-6.706.

(h) A draft of the proposed Declaration of Covenants, Conditions and Restrictions for the condominium units, including, but not be limited to:

(1) Conveyance of units.

(2) Assignment of parking.

(3) Agreement for common area maintenance, including facilities and landscaping, together with an estimate of any initial assessment fees anticipated for such maintenance.

(4) Description of a provision for maintenance of all vehicular access areas within the project.

(5) Assignment of appropriate responsibilities for maintenance of all utility lines and services for each unit.

(6) Plan for equitable sharing of communal water and gas metering.

9-6.704 Procedures.

(a) A condominium conversion application shall be processed as major subdivision, minor subdivision, or parcel map waiver, whichever applies, subject to the provisions of the Subdivision Map Act and this Chapter.

(b) Condominium conversion projects shall be subject to design review pursuant to Article 4 of Chapter 7 if changes to building elevations are proposed, buildings and structures are in need of renovation and/or rehabilitation, and/or a significant amount of new landscaping is proposed or required.

9-6.705 Development Standards.

(a) **Building and Fire Code Related Improvements.** Prior to recordation of the condominium conversion, the following improvements shall be completed to the satisfaction of the Director:

(1) **Electrical.** Separate grounded electrical meters and panels must be provided to serve each condominium unit and common areas. The electrical upgrade work must be done by a State of California licensed electrical contractor.

(2) **Fire-Related.**

a. Existing fire sprinkler systems must be certified by a licensed fire sprinkler contractor to meet the appropriate codes in effect at the time of the conversion. Proper tags and certificates must be affixed to the system riser, as required.

b. Eliminate all openings located within the restricted yard setback zones or provide special sprinkler protection for openings located within the restricted yard setback zones.

c. All existing gas services shall be equipped with approved Excess Flow Valves (EFV).

d. Provide smoke detectors and carbon monoxide detectors in accordance with the California Building Code.

(3) **Health-Related.**

a. Existing toilets are required to be upgraded to comply with the requirements of Section No. 503.1 (privacy) of the International Property Maintenance Code.

b. Existing cooking facilities are required to be upgraded to comply with the requirements of Section No. 502.1 of the International Property Maintenance Code.

c. All units must be provided with heating facilities that comply with the building code currently in effect.

d. Hot water shall be available in all condominium units.

e. All gas-fired hot water heaters and forced air units shall comply with the venting requirements of the building code currently in effect.

(4) **Security-Related.**

a. Applicants will be required to upgrade entry doors and screen doors. Key opening hardware on the inside of doors is prohibited.

b. Substandard security grills are required to be upgraded to comply with the requirements of Emeryville Municipal Code.

c. Handrails and guardrails are required to be upgraded to comply with the requirements of the building code currently in effect.

(5) **Miscellaneous.**

a. Partial seismic retrofits of buildings are required to meet selected provisions of the current building code for earthquake resistance. These items include the following:

i. Brick foundations are required to be replaced with current code complying foundations.

ii. Cripple walls are required to be braced to meet current code requirements.

iii. Foundation sill plates are required to be bolted down to the foundations to meet current code provisions.

b. Basements in dwelling units and every sleeping room below the fourth story shall have at least one operable window or door approved for emergency escape or rescue. Windows provided for emergency escape or

rescue shall comply with minimum sill height and opening size requirements in the current building code.

c. Applicants will be required to perform a substandard housing evaluation in accordance with the International Property Maintenance Code. Applicant will be required to repair and/or upgrade all items identified in the substandard housing report.

(6) **Disclosure Items.**

a. Applicant shall submit a housing inspection report, prepared by an independent third-party qualified to perform such inspections, to the Planning and Building Department. Applicant shall disclose the housing inspection report to prospective purchasers of the condominiums.

b. Applicant shall not be required to upgrade the dimensions of existing rooms to comply with current building codes. Applicant shall be required to disclose any deficiencies to prospective purchasers of the condominiums.

c. Applicant is not required to upgrade existing habitable spaces for natural light and natural ventilation (doors and windows). Any rooms with deficient light and ventilation shall not be used for sleeping purposes. Applicant is required to disclose these items and restrictions to prospective purchasers of the condominiums.

(b) **Design and Landscaping Upgrades.** The Director or Planning Commission, as the case may be, may impose design and aesthetic requirements to improve the appearance and functionality of the site and structures. These may include but are not limited to: providing enclosed trash and recycling areas, concealing utility meter and other utility apparatus from public view, removal of front yard pavement and replacement with landscaping, replacement of solid driveways with wheel strips and landscaping, replacement of or upgrades to landscaping, new exterior paint, replacement of window frames, and/or restoration of architectural features to the original style if appropriate.

(c) **Public Improvements.** The Director or Planning Commission, as the case may be, may require upgrade of existing public curb, gutters, sidewalks, and driveways adjacent to the project site to improve the condition of the sidewalk and to conform to current disabled access requirements, and may require new landscaping, including street trees, in the public right-of-way as deemed necessary by the City Engineer.

(d) **Affordable Housing.** All condominium conversion projects that contain 10 or more units shall comply with the requirements for new ownership residential projects of the Affordable Housing Program in Article 4 of Chapter 5.

(e) **Deviation from Standards.** The Director or Planning Commission, as the case may be, may permit deviation from any standards above if the applicant can demonstrate the standard cannot or should not be reasonably met.

9-6.706 Tenants' Rights.

(a) **Tenant Notification.** The applicant shall comply with the requirements of California Government Code Section 66427.1 (as it may be amended from time to time), including but not limited to:

(1) Each tenant shall be given written notice of the intention to convert at least 60 days prior to the filing of a tentative map or parcel map. Applicant shall provide proof of such notification to the Director as part of the application for condominium conversion.

(2) Each tenant shall be given ten days' advance written notice that an application for a public report will be submitted to the Department of Real Estate and that the tenant may receive a copy of the report upon request.

(3) Each tenant shall be given written notice of approval of a final map for the proposed conversion within ten days of the approval.

(4) Each tenant shall be given 180 days' advance written notice of the termination of the tenancy due to the conversion or proposed conversion.

(5) Each tenant shall be given notice of their exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that the unit will be initially offered to the general public or on terms more favorable to the tenant. The exclusive right to contract shall run for a period not less than 90 days from the date of issuance of the public report pursuant to California Business and Professions Code Section 11018.2, unless the tenant gives prior written notice of the intention not to exercise the right of exclusive offer.

(b) **Additional Tenant Rights.** In addition to the requirements of California Government Code Section 66427.1, the following requirements must be met:

(1) No rent increase shall be permitted during the 180 day notice period of termination of the tenancy due to the conversion or proposed conversion.

(2) Tenants may terminate their lease or rental agreement during this 180 period without penalty at any time.

(c) **Tenant Relocation Assistance.**

(1) At least 60 days prior to the date of termination of the tenancy, applicant shall provide to each tenant, at no cost, a reasonably complete and current list of vacant and available rental units within a two-mile radius of the project site, which units are comparable in size and amenities to the unit occupied by the tenant. The applicant shall also submit a copy of this list to the Director.

(2) The applicant shall provide a relocation assistance payment to each tenant of the project, limited to one assistance payment per unit. The relocation payment shall be three months' rent based on the current Alameda County "fair market rent" for comparable apartment size, as established by the U.S. Department of Housing and Urban Development or three months of the current rent paid by the tenants, whichever is larger. The assistance is due to the tenant on the date the tenant vacates the unit, or sooner if agreed upon in writing by the parties. The rental

assistance does not include the first or last month's rent or cleaning or security deposit. Written notice of the tenant's right to a relocation assistance payment shall be included in the notice of termination of the tenancy.

9-6.707 Findings.

To approve a tentative map, parcel map, or parcel map waiver for a condominium conversion project, the following findings must be made in addition to the findings required by Article 2 or Article 3 of this Chapter:

(a) The proposed conversion will not have an adverse effect on the diversity of housing types available in the City.

(b) The amount and impact of the displacement of tenants will not have a detrimental effect on the health, safety or general welfare of the community.

(c) All requirements of this Article pertaining to tenants' rights have been or will be met.

(d) All requirements of this Article pertaining to development standards have been or will be met unless deviations are approved.

9-6.708 Appeals.

(a) **Parcel Map or Parcel Map Waiver.** If a parcel map or parcel map waiver is required for a condominium conversion project, the Director's decision may be appealed to the Planning Commission in accordance with the appeal procedures in Article 14 of Chapter 7.

(b) **Tentative Map.** If a tentative map is required for a condominium conversion project, the Planning Commission's decision may be appealed to the City Council in accordance with the appeal procedures in Article 14 of Chapter 7.

ARTICLE 8. COVENANT OF EASEMENT

9-6.801 General Provisions.

The method of creation of easements authorized by this Chapter shall be in addition to any other method allowed by law.

9-6.802 Creation of Easement.

An easement may be created pursuant to this part by a recorded covenant of easement made by an owner of real property to the City of Emeryville, in accordance with the procedures set forth in this Chapter.

9-6.803 Purposes of Easement.

An easement created pursuant to this Chapter may be for one or more of the following purposes:

(a) Parking.

(b) Ingress and egress.

(c) Emergency access.

(d) Light and air access.

(e) Landscaping.

(f) Open space.

(g) Access to and/or operation and maintenance of a storm water treatment measure.

9-6.804 Common Ownership.

At the time of recording of the covenant of easement, all the real property benefited or burdened under it shall be in common ownership.

9-6.805 Contents of Covenant.

A covenant of easement recorded pursuant to this part shall be executed by the owner of the burdened property and shall include all of the following:

(a) A legal description of the real property to be subject to the easement.

(b) A legal description of the real property to be benefited by the easement.

(c) Identification of the City approval, permit or designation which was granted in reliance upon recordation of the covenant or for which recordation of the covenant is or was a requirement.

(d) A description of the purpose(s) of the easement.

9-6.806 Acceptance by City Manager.

The City Manager may accept a covenant of easement as described in this Chapter on behalf of the City of Emeryville when such an easement, required as a condition of a land use approval,

permit or designation pursuant to Title 8 (Building Regulations) or Title 9 (Planning Regulations) of the Emeryville Municipal Code, is first approved by the City Attorney.

9-6.807 Recordation.

The covenant of easement shall be recorded in the Alameda County Recorder's Office. A copy of the recorded document shall be provided to the City Manager, City Clerk, Planning and Building Director and Chief Building Official.

9-6.808 When Effective.

(a) The covenant of easement shall be effective when recorded and shall act as an easement pursuant to California Civil Code Title 2, Part 2, Division 2, Chapter 3 (commencing with Section 801), except that it shall not merge into any other interest in the real property.

(b) From and after the time of its recordation, the covenant shall impart notice thereof to all persons to the extent afforded by the recording laws of the State of California.

9-6.809 Enforceability.

Upon recordation, the burdens of the covenant shall be binding upon, and the benefits shall inure to, all successors in interest to the affected real property. Nothing in this Article shall create in any person other than the City of Emeryville and the owner of real property benefited or burdened by the covenant standing to enforce or to challenge the covenant or any amendment to it or release from it.

9-6.810 Release of Covenant.

Pursuant to and in accordance with the provisions hereinafter set forth in this part, the Planning Commission, and the City Council on appeal from a decision of the Planning Commission, may approve and authorize recordation of a release of a covenant of easement.

9-6.811 Petition for Release.

A petition for release of a covenant of easement may be made by any person whether or not that person has title to the real property, and shall be filed in writing with the Director of Planning and Building on a form furnished by the Director. The form of the petition and the information required to be set forth in them shall be prescribed by the Director. The Director shall not accept any such petition for filing unless:

(a) All information and data is set forth and shown as required by the form;

(b) The petition is verified by the party making the petition; and

(c) The applicable filing fee has been paid.

9-6.812 Fees.

The fee for filing a petition for release of a covenant of easement pursuant to this Article shall be as set forth in the Master Fee Schedule.

9-6.813 Hearing by Planning Commission.

(a) Upon filing of such petition, payment of filing fees, and acceptance of such petition as complete by the Planning and Building Director, the Director shall set a date for the public hearing by the Planning Commission. The date of hearing shall be not less than 20 nor more than 60 days after the date the application was accepted as complete by the Director. Notice shall be provided in accordance with Section 9-7.202.

(b) The Director shall provide a report and recommendation to the Planning Commission. In addition, the Director shall file with the Planning Commission at its hearing all relevant papers, documents, and exhibits. Within 45 days after the Planning Commission has concluded its hearing, it shall, by resolution, set forth its findings and decision on the matter. The Planning Commission may decide to grant the petition, conditionally grant the petition or deny the petition.

(c) The decision of the Planning Commission shall be final on the date of adoption of a resolution setting forth its findings and decision; provided, however, that if a written notice of appeal is accepted for filing by the Director as provided in Section 9-6.814, within the 15 day period, the decision of the Planning Commission shall not be final, and it shall be of no force or effect.

9-6.814 Appeal to City Council.

Any action taken by the Planning Commission under this Article may be appealed to the City Council by filing with the Planning and Building Director a written notice of appeal within 15 days after the date of the Planning Commission adopts a resolution setting forth its findings and decision, as provided in Section 9-6.813. The applicant, or any person, may file such a notice of appeal. The notice of appeal shall be filed with the Director and shall contain a statement of the facts upon which the appeal is based and the relief requested in sufficient detail to enable the City Council to understand the nature of the controversy and the parties concerned. When such notice of appeal has been accepted by the Director for filing:

(a) The Director shall, within ten days, file with the City Clerk a copy of the application and the notice of appeal.

(b) The City Council shall hold at least one public hearing on the matter. The hearing of the City Council shall be de novo. The City Clerk shall set the date of the first public hearing by the City Council, which date shall not be less than 20 nor more than 60 days after the date on which the copy of the application and the notice of appeal were filed with the City Clerk. Within 45 days after the City Council has concluded its hearing, it shall, by resolution, set forth its findings and decision on the matter.

(c) The decision of the City Council shall be final. The City Clerk shall mail a certified copy of the decision of the City Council to the applicant and the appellant at the addresses shown for such purpose on the application and notice of appeal.

9-6.815 Findings.

The Planning Commission or the City Council, on appeal, may grant the petition for release of the covenant of easement only upon a finding that the restriction of the property is no longer necessary to achieve the land use goals of the City.

9-6.816 Release to be Recorded.

Within 15 days after the action of the Planning Commission or the City Council in granting a petition for release has become final, the Director shall cause the release to be recorded in the Alameda County Recorder's Office, and a copy of the recorded document shall be provided to the applicant and the City Manager, City Clerk, Planning and Building Director and Chief Building Official.

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ARTICLE 1. PLANNING DECISION AUTHORITY

9-7.101 Purpose.

The purpose of this Article is to identify the bodies, officials, and administrators with designated responsibilities under various provisions of these Planning Regulations. Subsequent Articles of this Chapter provide detailed information regarding various procedures, applications, and permits, including amendments to these Planning Regulations, the Zoning Maps, and the General Plan, establishment of fees, and enforcement. When carrying out their assigned duties and responsibilities, all bodies, administrators, and officials of the City shall interpret and apply the provisions of these Planning Regulations as minimum requirements adopted to implement the General Plan.

9-7.102 City Council.

The City Council (the "Council") has the following powers and duties under these Planning Regulations:

(a) **General Plan.** Make decisions on General Plan amendments pursuant to the provisions of Article 12 of this Chapter and applicable provisions of State law.

(b) **Planning Regulations and Zoning Maps.** Make decisions on amendments to these Planning Regulations and the Zoning Maps pursuant to the provisions of Article 13 of this Chapter and applicable provisions of State law.

(c) **Planned Unit Developments.** Make decisions on the creation of PUD zones and the approval of preliminary development plans pursuant to the provisions of Article 10 of this Chapter.

(d) **Development Agreements.** Make decisions on development agreements pursuant to the provisions of Article 11 of this Chapter.

(e) **Significant and Residential Structures.** Make decisions on applications to demolish significant and residential structures pursuant to the provisions of Article 12 of Chapter 5.

(f) **Multi-Unit Residential Uses.** Make decisions on applications for exemptions to unit mix and design requirements for Multi-Unit Residential uses pursuant to the provisions of Section 9-5.2005.

(g) **Flexible Community Benefit.** Make decisions on applications for development bonus points for Flexible Community Benefits pursuant to the provisions of item (7) of Table 9-4.204(e).

(h) **Revocation of Permits**. Make decisions on revocation of permits pursuant to the provisions of Article 15 of this Chapter.

(i) **Appeals.** Hear and decide appeals from decisions of the Planning Commission on applications for major design review, major conditional use permits, variances, final development plans for planned unit developments, major subdivisions, and any other decisions that can be appealed to the City Council pursuant to the provisions of Article 14 of this Chapter.

(j) **Emeryville/Oakland Joint Planning Authority.** Participate as members of the Appellate Council of the E/OJPA pursuant to the provisions of Section 9-7.107.

(k) **Environmental Review.** Make environmental determinations on any approvals it grants that are subject to environmental review under the California Environmental Quality Act.

(l) **Time Extensions and Modifications.** Make decisions on requests for time extensions and modifications to permits originally approved by the City Council.

(m) **Design Guidelines.** Adopt design guidelines to facilitate the implementation of the Design Review requirements in Article 4 of this Chapter.

(n) **Fees.** Establish and periodically update the Master Fee Schedule listing fees, charges, and deposits for various applications and services provided pursuant these Planning Regulations.

(o) **Other Duties.** Perform other duties as may be stipulated by these Planning Regulations or established by State law.

9-7.103 Planning Commission.

The Planning Commission (the "Commission") is established and organized pursuant to Article 3 of Chapter 3 of Title 2 of the Emeryville Municipal Code and the requirements of the California Government Code. The Commission has the following powers and duties under these Planning Regulations:

(a) **Design Review.** Make decisions on major design review applications, including signs, pursuant to the provisions of Article 4 of this Chapter.

(b) **Conditional Use Permits.** Make decisions on major conditional use permit applications pursuant to the provisions of Article 5 of this Chapter.

(c) **Variances.** Make decisions on variance applications pursuant to the provisions of Article 7 of this Chapter.

(d) **Planned Unit Developments.** Make decisions on the approval of final development plans pursuant to the provisions of Article 10 of this Chapter.

(e) **Subdivisions.** Make decisions on major subdivision applications pursuant to the provisions of Article 2 of Chapter 6.

(f) **Parcel Mergers.** Make decisions on parcel mergers if the property owner requests a hearing pursuant to the provisions of Article 5 of Chapter 6.

(g) **Covenants of Easement.** Make decisions on the release of covenants of easement pursuant to the provisions of Article 8 of Chapter 6.

(h) **Nuisance Abatement.** Make decisions on nuisance abatement pursuant to the provisions of Article 15 of this Chapter.

(i) **Recommendations to City Council.** Make recommendations to the City Council on General Plan amendments, amendments to these Planning Regulations and the Zoning Maps, the creation of PUD zones and approval of preliminary development plans, development agreements, demolition of significant and residential structures, and revocation of permits.

(j) **Appeals.** Hear and decide appeals from decisions of the Director of Planning and Building on code interpretation, zoning compliance review, and other ministerial decisions; and applications for minor design review, minor conditional use permits, temporary use permits, exceptions to standards, sidewalk café permits, minor subdivisions, parcel map waivers, lot line adjustments, parcel mergers if the property owner does not request a hearing, and any other decisions that can be appealed to the Planning Commission pursuant to the provisions of Article 14 of this Chapter.

(k) **Emeryville/Oakland Joint Planning Authority.** Participate as members of the Planning Council of the E/OJPA pursuant to the provisions of Section 9-7.107.

(l) **Environmental Review.** Make environmental determinations on any approvals it grants that are subject to environmental review under the California Environmental Quality Act.

(m) **Time Extensions and Modifications.** Make decisions on requests for time extensions and modifications to permits originally approved by the Planning Commission.

(n) **Design Guidelines.** Make recommendations to the City Council concerning design guidelines to facilitate the implementation of the Design Review requirements in Article 4 of this Chapter.

(o) **Other Duties.** Perform other duties as may be assigned by the City Council or established by State law.

9-7.104 City Manager.

The City Manager is appointed by the City Council pursuant to Article 5 of Chapter 7 of Title 2 of the Emeryville Municipal Code. The City Manager has the following powers and duties under these Planning Regulations:

(a) **Acceptance of Dedications.** Accept, accept subject to improvement, or reject, any offer of dedication prior to recordation of a final or parcel map, and certify any acceptance by signing a statement to this effect on the map pursuant to the Subdivision Regulations in Chapter 6.

(b) **Improvement Agreements.** Enter into improvement agreements with subdividers, consider extension requests, and accept completed improvements pursuant to Article 6 of Chapter 6.

(c) **Abandonment of Streets and Easements.** Certify abandonment of public streets and public easements on final subdivision maps pursuant to Section 9-6.213(c).

(d) **Covenants of Easement.** Accept covenants of easement pursuant to Article 8 of Chapter 6.

(e) **Development Agreements.** Enter into development agreements as authorized by the City Council and annually review compliance with such agreements pursuant to Article 11 of this Chapter.

9-7.105 Director of Planning and Building.

The Director of Planning and Building ("Director") is appointed by the City Manager pursuant to Article 5 of Chapter 7 of Title 2 of the Emeryville Municipal Code. The Director has the following powers and duties under these Planning Regulations, which he or she may delegate to staff of the Planning and Building Department who are supervised by and report to him or her.

The Director may refer any administrative decision to the Planning Commission for consideration. In that case the Commission's decision may be appealed to the City Council:

(a) **Recommendations to Planning Commission and City Council.** Make recommendations to the Planning Commission and City Council on all matters on which they have decision-making authority pursuant to Sections 9-7.103 and 9-7.102 above, respectively. Convey Planning Commission recommendations to the City Council.

(b) **Code Interpretation.** Interpret the content and applicability of these Planning Regulations pursuant to the provisions of Section 9-1.104.

(c) **Consistency with General Plan.** Determine the extent of any inconsistency between these Planning Regulations and the General Plan and issue a decision to resolve the matter pursuant to the provisions of Section 9-1.105.

(d) **Classification of Uses.** Classify uses according to the use classifications described in Chapter 2, pursuant to the provisions of Section 9-2.102(b).

(e) **Nonconforming Uses and Structures.** Determine whether a use or structure is nonconforming and whether it was legally established, pursuant to the provisions of Section 9-5.1006.

(f) **Performance Standards.** Determine compliance of uses with performance standards pursuant to the provisions of Section 9-5.1103.

(g) **Zoning Compliance.** Determine whether new or expanded uses or structures, including Home Occupations and Secondary Residential Units, comply with the applicable requirements of these Planning Regulations pursuant to the provisions of Article 3 of this Chapter.

(h) **Minor Design Review.** Make decisions on minor design review applications, including signs, pursuant to the provisions of Article 4 of this Chapter.

(i) **Minor Conditional Use Permits.** Make decisions on minor conditional use permit applications pursuant to the provisions of Article 5 of this Chapter.

(j) **Temporary Use Permits.** Make decisions on temporary use permit applications pursuant to the provisions of Article 6 of this Chapter.

(k) **Exceptions to Standards.** Make decisions on exception to standards applications pursuant to the provisions of Article 8 of this Chapter.

(l) **Sidewalk Cafes.** Make decisions on sidewalk café applications pursuant to the provisions of Article 15 of Chapter 5.

(m) **Subdivisions.** Make decisions on minor subdivisions, parcel map waivers, lot line adjustments, and parcel mergers if the property owner does not request a hearing, pursuant to the provisions of Chapter 6.

(n) **Minor Modifications.** Make decisions on minor modifications to permits approved by the Planning Commission or City Council, pursuant to the provisions of Section 9-7.214(a).

(o) **Reasonable Accommodation.** Make decisions on requests for reasonable accommodation pursuant to Article 9 of this Chapter.

(p) **Environmental Review.** Determine whether projects require environmental review under the California Environmental Quality Act, and, if so, prepare the required environmental documents for consideration by the appropriate decision-makers.

(q) **Other Duties.** Perform other duties as may be assigned by the City Manager.

9-7.106 City Engineer.

The City Engineer is appointed by the City Manager pursuant to Article 5 of Chapter 7 of Title 2 of the Emeryville Municipal Code. The City Engineer has the following powers and duties under these Planning Regulations, which he or she may delegate to staff of the Public Works Department who are supervised by and report to him or her:

(a) **Certificates of Compliance.** Prepare, and file for recording with the Alameda County Recorder, certificates of compliance certifying that real property complies with the provisions of the Subdivision Map Act and the City Subdivision Regulations pursuant to Section 9-6.106.

(b) **Tentative Maps.** Review tentative subdivision maps, including vesting tentative maps, and advise the Director as to whether to recommend Planning Commission approval pursuant to Article 2 of Chapter 6. Approve minor changes to approved tentative maps pursuant to Section 9-6.210(a).

(c) **Final Maps.** Sign statements on final maps confirming that they are technically correct, consistent with the approved tentative map, and in compliance with the City Subdivision Regulations and the Subdivision Map Act pursuant to Article 2 of Chapter 6. Prepare, and file for recording with the Alameda County Recorder, certificates of correction to amend recorded final maps to correct errors and omissions, and certify amending maps for modifications approved by the Planning Commission, pursuant to Section 9-6.218.

(d) **Parcel Maps.** Review parcel maps and advise the Director as to whether they should be approved, and sign statements on parcel maps confirming that they are technically correct, and in compliance with the City Subdivision Regulations and the Subdivision Map Act pursuant to Article 3 of Chapter 6. Prepare, and file for recording with the Alameda County Recorder, certificates of correction to amend recorded parcel maps to correct errors and omissions, and certify amending maps for modifications approved by the Director, pursuant to Section 9-6.311.

(e) **Parcel Map Waivers.** Review requests for parcel map waivers and advise the Director as to whether they should be approved pursuant to Section 9-6.312.

(f) **Lot Line Adjustments.** Review applications for lot line adjustments and advise the Director as to whether they should be approved pursuant to Article 4 of Chapter 6.

(g) **Parcel Mergers.** Review proposed parcel mergers pursuant to Article 5 of Chapter 6; if parcels are to be merged, prepare and file for recording with the Alameda County Recorder, a determination of merger/certificate of compliance for the merged parcel; if parcels are not to be merged, prepare and file for recording with the Alameda County Recorder, a certificate of compliance for the unmerged parcels.

(h) **Improvements, Dedications, and Reservations.** Review all proposed improvements, dedications, and reservations pursuant to Article 6 of Chapter 6.

(i) **Condominium Conversions.** Review proposed condominium conversations and advise as to whether any public improvements are necessary pursuant to Article 7 of Chapter 6.

(j) **Planned Unit Developments.** Review and advise on public improvements and engineering feasibility studies associated with proposed preliminary and final development plans pursuant to Article 10 of this Chapter.

9-7.107 Emeryville/Oakland Joint Planning Authority.

(a) **General Provisions.**

(1) There is hereby established a joint planning authority, to be known as the Emeryville/Oakland Joint Planning Authority ("the E/OJPA,"), which shall have jurisdiction, subject to the provisions of this Section, over the Catellus Development Corporation ("CDC") project ("Project") on the CDC property ("Property"), as both are more specifically described in Ordinance No. 92-07, a copy of which is on file in the office of the Emeryville City Clerk. The E/OJPA planning area lies within the cities of Emeryville and Oakland, and is generally bounded by 40th Street on the north; San Pablo Avenue on the east; West MacArthur Boulevard, Hollis Street, and Mandela Parkway on the south; and Beach Street on the west.

(2) The E/OJPA shall consist of a Planning Council and an Appellate Council. The Planning Council shall be comprised of six members of the Emeryville Planning Commission and seven members of the Oakland Planning Commission. The Appellate Council shall be comprised of four members of the Emeryville City Council and three members of the Oakland City Council.

(3) The Planning Council shall have jurisdiction to take final action on behalf of the Joint Planning Authority; provided, however, that if any such action is appealed, the Appellate Council shall render the final decision on any such appeal.

(4) The Mayor, subject to approval of the City Council, shall designate the members of the Emeryville Planning Commission and the Emeryville City Council who shall serve on the Planning Council and the Appellate Council, respectively. Such members shall continue to serve on the Joint Planning Authority for so long as they continue to hold the position on the Planning Commission or City Council from which they were originally appointed, until their voluntary resignation from the Joint Planning Authority, until replaced by a substitute member appointed by the Mayor or until the Joint Planning Authority shall no longer exist.

(b) **Term of the E/OJPA.** The E/OJPA shall exist for an initial term of five years after its establishment, and shall thereafter automatically be renewed for successive five year terms, unless terminated by the unilateral action of the City Council of either Emeryville or Oakland within 60 days prior to the end of any term. Notwithstanding the foregoing, the cities may terminate the Joint Planning Authority at any time after the initial term by their mutual agreement.

(c) Powers of the E/OJPA.

(1) Except as hereinafter set forth, the City of Emeryville hereby delegates to the E/OJPA the power to exercise all of Emeryville's planning and subdivision power

and authority under the Emeryville Municipal Code and California State Laws in relation to the E/OJPA planning area, including, but not limited to, findings of General Plan and zoning consistency, granting of rezonings, design review, variances, conditional use permits, subdivision of the Property and hearing and ruling upon all other land use and related authorizations necessary for the construction of the Project.

(2) In compliance with the California Environmental Quality Act, Emeryville has heretofore been deemed the "Lead Agency" and Oakland has acted as a "Responsible Agency" pursuant to California Administrative Code Title 14, Section 15051, in the preparation of the Draft Environmental Impact Report and certification of the Final Environmental Impact Report for the Project. Emeryville shall, therefore, continue to function as the Lead Agency and Oakland shall continue to function as a Responsible Agency for any subsequent environmental review that may be required for the Property.

(3) For so long as the Joint Planning Authority shall continue to exist pursuant to Section 9-7.107(b), the owner of the Property may not divide or subdivide the site or otherwise substantially modify the approvals granted by the Joint Planning Authority, without further approval of the Joint Planning Authority.

(d) **Procedures.**

(1) Meetings of the E/OJPA shall be convened as necessary for the consideration of those matters which are within the jurisdiction of the E/OJPA.

(2) All meetings of the E/OJPA shall comply with the Ralph M. Brown Act and other State laws regulating the conduct of business by City Councils in California. Public notice of meetings of the E/OJPA shall comply with the requirements of the Emeryville Municipal Code and shall, in addition, comply with the Oakland Municipal Code with respect to the owners of land within Oakland in the vicinity of the Property.

(3) The location of meetings of the E/OJPA shall be determined by the Chair of the Planning Council and the Appellate Council, respectively, provided that reasonable effort shall be made to alternate meetings of each body between locations within Emeryville and Oakland.

(4) Minutes of all meetings and appropriate legislation of the E/OJPA shall be public documents pursuant to State law and shall be appropriately maintained in the office of the City Clerk of Emeryville.

(5) The E/OJPA shall adopt and implement all regulations which may be necessary for the performance of its obligations under the terms and conditions of this Article and the Memorandum of Understanding between Emeryville and Oakland regarding the E/OJPA.

(e) **Appeals.**

(1) Any person or entity aggrieved or affected by a determination or decision by the Planning Council may appeal the determination or decision to the Appellate Council. Such appeal shall be taken by filing a written Notice of Appeal with the

Emeryville City Manager within 15 days after the determination or decision of the E/OJPA. The Notice of Appeal shall set forth the grounds upon which the appeal is based. The Notice of Appeal shall also be accompanied by a fee in the amount established by applicable resolutions of the City of Emeryville for appeals to the City Council from the Emeryville Planning Commission.

(2) The Appellate Council may reverse or affirm, wholly or partly, or may modify the decision or determination appealed from the Planning Council.

(3) Decisions of the Appellate Council shall be final and shall be subject to the time limits and procedures provided for in California Code of Civil Procedure Sections 1086 and 1094.6 for such actions to which Sections 1086 and 1094.6, respectively, are applicable.

(f) **Remedies.** All legislative and quasi-judicial decisions of the Planning Council and Appellate Council shall be subject to all remedies provided by State law including, but not limited to, referendum and writ of mandamus; provided, however, that any writ of mandamus shall be filed within 90 days of the decision unless State law provides for a shorter limitation period.

ARTICLE 2. COMMON PROCEDURES

9-7.201 Purpose.

This Article establishes procedures that are common to the application and processing of all permits and approvals provided for in these Planning Regulations, unless superseded by specific requirement of this Title or State law. All applications shall be processed in conformance with the applicable provisions of the State Permit Streamlining Act (California Government Code Section 65920 et seq.).

9-7.202 General Processing Requirements.

The general requirements for processing permits and approvals under these Planning Regulations, including decision and appeal authority, public hearing and noticing requirements, required findings, and combined or concurrent processing, are summarized in Table 9-7.202. Descriptions of types of notice may be found in Section 9-7.208(b). Any staff-level decisions made pursuant to these Planning Regulations that are not included in Table 9-7.202 may optionally be noticed by notice types A, B, and F. Any Planning Commission or City Council decisions made pursuant to these Planning Regulations that are not included in Table 9-7.202 shall be noticed by types C, D, and E and may optionally be noticed by type A and F.

Table 9-7.202: Decision Making, Public Hearing and Notice Requirements

Permit or Action Type	Reference	Decision Process			Public Hearing Required?	Type of Notice		Required Findings	Combined or Concurrent Processing
		Advisory	Decision	Appeal[1]		Required	Optional		
Ministerial Actions									
Code Interpretation	Section 9-1.104	N/A	Director	PC[2]	No	None	N/A	None	N/A
Consistency of Code with General Plan	Section 9-1.105	N/A	Director	PC[2]	No	None	N/A	None	N/A
Classification of a Use	Section 9-2.102	N/A	Director	PC[2]	No	None	N/A	None	N/A
Determination of Nonconforming Use	Section 9-5.1006	N/A	Director	PC[2]	No	None	N/A	None	N/A
Proof of Compliance with Performance Standards	Section 9-5.1103	N/A	Director	PC[2]	No	None	N/A	None	N/A
Zoning Compliance including Home Occupations and Secondary Residential Units	Chapter 7 Article 3	N/A	Director	PC[2]	No	None	N/A	None	N/A

Permit or Action Type	Reference	Decision Process			Public Hearing Required?	Type of Notice		Required Findings	Combined or Concurrent Processing
		Advisory	Decision	Appeal[1]		Required	Optional		
Minor Changes to an Approved Permit[3]	Section 9-7.214(a)	N/A	Director	PC[2]	No	None	N/A	None	N/A
Request for Reasonable Accommodation	Chapter 7 Article 9	N/A	Director	PC[2]	No	None	N/A	None	N/A
Discretionary Quasi-Judicial Actions									
Sidewalk Café Permit[4]	Chapter 5 Article 15	N/A	Director	PC[2]	No	None	A, B, F	Section 9-5.1508	N/A
Design Review including Signs[5]	Chapter 7 Article 4							Section 9-7.407	Combined[6]
Minor[7]		N/A	Director	PC[2]	No	None	A, B, F		
Major		Director	PC	CC[2]	Yes	A, C, D, E	F		
Conditional Use Permits	Chapter 7 Article 5							Section 9-7.505[8]	Combined[6]
Minor[7]		N/A	Director	PC[2]	No	None	A, B, F		
Major		Director	PC	CC[2]	Yes	A, C, D, E	F		
Flexible Community Benefits	Item (7) of Table 9-4.204(e)	PC	CC[2]	None[2]	Yes	A, C, D, E	F	Section 9-4.204(f)(2)	
Demolition of Significant or Residential Structure	Chapter 5 Article 12	PC	CC[2]	None[2]	Yes	A, C, D, E	F	Section 9-5.1206(b)	
Exceptions to unit mix and design requirements for Multi-Unit Residential uses	Section 9-5.2005	PC	CC[2]	None[2]	Yes	A, C, D, E	F	Section 9-5.2005(a)	
Temporary Use Permit	Chapter 7 Article 6	N/A	Director	PC[2]	No	None	B, F	Section 9-7.605	N/A
Variance	Chapter 7 Article 7	Director	PC	CC[2]	Yes	A, C, D, E	F	Section 9-7.704	Combined[6]
Exception to Standards	Chapter 7 Article 8	N/A	Director	PC[2]	No	None	A, B, F	Section 9-7.804	Combined[6]
Planned Unit Developments: Final Development Plans	Chapter 7 Article 10	Director	PC	CC[2]	Yes	A, C, D, E	F	Section 9-7.1004(b)	Concurrent
Subdivisions									Concurrent
Parcel Map Waiver	Section 9-6.312	N/A	Director	PC[2]	No	None	A, B, F	Section 9-6.312(d)	
Minor	Chapter 6 Article 3	N/A	Director	PC[2]	No	None	A, B, F	Section 9-6.307(b)	

Permit or Action Type	Reference	Decision Process			Public Hearing Required?	Type of Notice		Required Findings	Combined or Concurrent Processing
		Advisory	Decision	Appeal[1]		Required	Optional		
Major	Chapter 6 Article 2	Director	PC	CC[2]	Yes	C, D, E	A, F	Section 9-6.208(c)	
Lot Line Adjustments	Chapter 6 Article 4	N/A	Director	PC[2]	No	None	A, B, F	Section 9-6.403	
Parcel Mergers	Chapter 6 Article 5								Concurrent
If hearing not requested		N/A	Director	PC[2]	No	None	A, B, F	None	
If hearing requested		Director	PC	CC[2]	Yes	C, D, E	A, F	None	
Condominium Conversions	Chapter 6 Article 7	Same as Parcel Map Waiver, Minor Subdivision, or Major Subdivision, whichever applies						Section 9-6.707	Concurrent
Covenant of Easement	Chapter 6 Article 8								Concurrent
Created		CA	CM	None	No	None	None	None	
Release		Director	PC	CC[2]	Yes	C, D, E	A, F	Section 9-6.815	
Nuisance Abatement	Section 9-7.1506	Director	PC	CC[2]	Yes	C, D, E	A, F	Section 9-7.1504	N/A
Revocation of Permit	Section 9-7.1508	PC	CC[2]	None[2]	Yes	C, D, E	A, F	Section 9-7.1508(a)	N/A
Planning and Subdivision Approvals for Emeryville/ Oakland JPA Planning Area[9]	Section 9-7.107	Director	E/O JPA Planning Council	E/O JPA Appellate Council	Yes	A, C, D, E	F	Per these Planning Regulations	Combined/ Concurrent
Discretionary Legislative Actions[10]									
Planned Unit Developments: Preliminary Development Plans	Chapter 7 Article 10	PC	CC[2] Ordinance	None[2]	Yes	A, C, D, E	F	Section 9-7.1004(a)	Concurrent
Development Agreements	Chapter 7 Article 11	PC	CC[2] Ordinance	None[2]	Yes	C, D, E	A, F	Section 9-7.1104	Concurrent
General Plan Amendments	Chapter 7 Article 12	PC	CC[2] Resolution	None[2]	Yes	C, D, E	A, F	Section 9-7.1205	Concurrent
Planning Regulations and Zoning Map Amendments	Chapter 7 Article 13	PC	CC[2] Ordinance	None[2]	Yes	C, D, E	A, F	Section 9-7.1305	Concurrent

Key: Director = Director of Planning and Building
CA = City Attorney
CM = City Manager
PC = Planning Commission
CC = City Council

Notes:
1. All appeals require a public hearing, with required notice of Types A, C, D, and E and optional notice of Type F.
2. A final decision of the Planning Commission or City Council is subject to litigation in the Superior Court.
3. Major modifications to permits shall be processed the same as the original permit, pursuant to Section 9-7.214(b).
4. In granting a sidewalk café permit, the Director shall consult with the Chief Building Official, Public Works Director, Fire Marshal, and Police Chief. The Director may refer the application to the Planning Commission, in which case a public hearing would be required, with required notice of Types A, C, D, and E and optional notice of Type F, and the Commission's decision would be appealable to the City Council.
5. Approval of signs requires making the applicable findings in Article 16 of Chapter 5 in addition to the findings at Section 9-4.407.
6. Combined permits shall be considered at the highest level of any of the permits. For example, a combined minor design review application (Director level) and major conditional use permit (Planning Commission level) would be considered by the Planning Commission and would be appealable to the City Council.
7. Minor design review and minor conditional use permits may be referred by the Director to the Planning Commission for decision, in which case they are processed as major design review and major conditional use permits, respectively.
8. In addition to the findings at Section 9-7.505, a conditional use permit may also require special findings, as specified in these Planning Regulations for the particular conditional use permit.
9. Pursuant to the Memorandum of Agreement between the cities of Emeryville and Oakland, all planning and subdivision approvals in the JPA planning area shall be processed under these Emeryville Planning Regulations, as supplemented by specific provisions of Oakland regulations by mutual agreement.
10. Legislative actions of the City Council take effect 30 days after final passage and are subject to referendum.

9-7.203 Applications and Fees.

(a) **Applicants.** Except as otherwise provided elsewhere in these Planning Regulations, the following shall be eligible to apply:

(1) The owner of the subject property or agent with written consent of the property owner.

(2) A purchaser of the subject property with written consent of the property owner.

(3) A lessee with written consent of the property owner.

(4) An entity authorized to exercise the power of eminent domain.

(b) **Application Forms and Materials.**

(1) The Director shall prepare and issue application forms and lists that specify the information that will be required from applicants for projects subject to the provisions of these Planning Regulations.

(2) The Director may require the submission of supporting materials as part of the application, including but not limited to narrative statements, photographs, plans, drawings, maps, renderings, models, material samples and other items necessary to describe existing conditions and the proposed project.

(3) All material submitted becomes the property of the City, may be distributed to the public, and shall be made available for public inspection.

(4) At any time upon reasonable request, and during normal business hours, any person may examine an application and materials submitted in support of or in opposition to an application in the Planning Division offices. Unless prohibited by

law, copies of such materials shall be made available at a reasonable cost as specified in the Master Fee Schedule.

(c) **Application Fees**.

(1) Schedule of Fees. All fees shall be as set forth in the Master Fee Schedule adopted by the City Council pursuant to Section 3-7.05 of Chapter 7 of Title 3.

(2) Payment of Fees. Payment of the fee is required in order for an application to be complete.

(3) Multiple Applications. Fees for multiple applications that are combined or processed concurrently pursuant to Section 9-7.204 shall be the sum of what the individual fees would be for each application if they were submitted separately.

(4) Refund of Fees. If an application is withdrawn prior to a decision, the applicant may be eligible to receive a refund of a portion of the fee. The Director of Planning shall determine the amount of the refund based on the level of staff review conducted to date. No refund shall be made for any application that has been approved or denied. Refunds shall be processed in accordance with Chapter 5 of Title 3.

9-7.204 Coordination of Applications.

When multiple applications are required for a project they may be either combined or processed concurrently as follows:

(a) **Combined Processing.** The following types of permits may be combined under one application, with combined notice, public hearing and resolution as required. To approve the combined application, all applicable findings for each permit type must be made.

Design Review pursuant to Article 4
Conditional Use Permits pursuant to Article 5
Variances pursuant to Article 7
Exceptions to Standards pursuant to Article 8

(b) **Concurrent Processing.** The following types of permits may not be combined under one application, but may be processed concurrently, with combined notice, public hearing and resolution as required. These permit types may also be processed concurrently with a combined permit pursuant to subsection (a). To approve the concurrent applications, all applicable findings for each permit type must be made.

Planned Unit Developments pursuant to Article 10
Development Agreements pursuant to Article 11
Subdivisions pursuant to Chapter 6
General Plan Amendments pursuant to Article 12
Planning Regulation and Zoning Map Amendments pursuant to Article 13

9-7.205 Review for Completeness.

The Director shall determine whether an application is complete within 30 days of the date the application is filed with the required fee. The Director my require additional information pursuant to Section 9-7.203(b)(2)

(a) **Incomplete Application.** If an application is incomplete, the Director shall provide written notification to the applicant listing the applications for permit(s), forms, information and any additional fees that are necessary to complete the application.

(b) **Zoning Violations.** An application shall not be found complete if conditions exist on the site in violation of these Planning Regulations or any permit or other approval granted in compliance with these Planning Regulations or any previous applicable regulations, unless the proposed project includes the correction of the violations.

(c) **Expiration of Application.** If an applicant fails to correct any specified deficiencies or provide additional information requested within 90 days of the date of the Director's notification or other time specified by the Director, the application shall expire and be deemed withdrawn. The Director shall provide written notice to the applicant and shall also notify the applicant of the opportunity for appeal.

(d) **Appeal of Determination.** Determinations of incompleteness may be appealed to the Planning Commission pursuant to Article 14, except that there shall be a final written determination on the appeal not later than 60 days after receipt of the appeal.

(e) **Extensions.** The Director may, upon written request and for good cause, grant extensions of any time limit for submission of information and review of applications imposed by these Planning Regulations in compliance with applicable provisions of State law.

9-7.206 Application Processing.

When an application is determined to be complete, the Director shall make a record of that date. In consultation with other City staff as appropriate, the Director or his or her designee shall investigate and analyze the application and formulate appropriate conditions of approval. If the application requires a public hearing, the Director shall schedule it and provide notice as required by Section 9-7.208.

9-7.207 Environmental Review.

Before approving any application subject to discretionary review under these Planning Regulations, the requirements of the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 et seq.) and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.) shall be met.

(a) **Procedures.** The City of Emeryville hereby adopts the State CEQA Guidelines as its environmental review procedures.

(b) **Determination of Exemption.** The Director shall determine whether a project is exempt from environmental review under CEQA and, if so, shall make a record of that determination. If the project is not exempt, a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report shall be prepared at the applicant's expense.

(c) **Exempt Projects.** Prior to approving the project, the decision-maker(s) shall first approve the determination of exemption. Following project approval, a Notice of Exemption need not be filed with the Alameda County Clerk unless the applicant requests it or the City determines that it is necessary. All filing fees for the Notice of Exemption shall be paid by the applicant.

(d) **Non-exempt Projects.** If the Director determines that the project is not exempt from environmental review under CEQA, the applicant shall be notified and shall deposit with the City sufficient funds to pay the anticipated cost of preparation and processing of the required environmental document. Prior to approving the project, the decision-maker(s) shall first approve the Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report. Any identified mitigation measures shall be incorporated into the conditions of approval of the project unless a Statement of Overriding Considerations is adopted. Following project approval, a Notice of Determination shall be filed with the Alameda County Clerk at the applicant's expense.

9-7.208 Public Notice.

Whenever the provisions of this Title require public notice, notification shall be provided in compliance with the requirements of State law and as follows. Unless otherwise specified elsewhere in these Planning Regulations or applicable State law, all notice shall be provided at least ten days prior to the public hearing or date of action. The type of notice to be provided for each permit type is indicated in Table 9-7.202.

(a) **Contents of Notice.** The notice shall include the following information:

(1) The location of the real property, if any, that is the subject of the application;

(2) A general description of the proposed project or action;

(3) The date, time, location, and purpose of the public hearing or the date of action when no public hearing is required;

(4) The identity of the hearing body or officer;

(5) The names of the applicant and the owner of the property that is the subject of the application;

(6) The location and times at which the complete application and project file may be viewed by the public;

(7) If a public hearing is required, a statement that any interested person or authorized agent may appear and be heard; and

(8) A statement describing how to submit written comments.

(b) **Types of Notice.**

(1) **On-Site Poster (Type A).** The applicant erects a poster on the site of the proposed project, readily visible to the public, in a format prescribed by the Director. Such poster shall remain in place until the public hearing or date of action, and shall be removed thereafter by the applicant.

(2) **Limited Notice (Type B).** Notice is provided to adjacent property owners and other interested parties.

(3) **Posted Notice (Type C).** Notices are posted at the three public places designated in Title 2, Chapter 8.

(4) **Newspaper Notice (Type D).** A display advertisement of at least one-eighth page is published in a newspaper of general circulation.

(5) **Mailed Notice (Type E).** Notice is provided by first class mail delivery to the parties listed below. If the number of owners to whom notice would be mailed or delivered is greater than 1,000, Type D newspaper notice may be used instead.

a. The applicant, the owner, and any occupant of the subject property.

b. All property owners of record within 300 feet of the subject property as shown on the latest available assessment role or within a larger area if deemed necessary by the Director in order to provide adequate public notification.

c. All neighborhood and community organizations that have previously filed a written request for notice of projects in the area where the site is located.

d. The City of Oakland or the City of Berkeley if the subject property is within 300 feet of the respective jurisdiction's boundary.

e. The Emery Unified School District, East Bay Municipal Utility District, and any other local agency expected to provide water, wastewater treatment, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.

f. Any person or group who has filed a written request for notice regarding the specific application and has paid any required fee that the City Council has adopted to provide such service.

(6) **Additional Notice (Type F).** Notice may be provided in any other manner deemed necessary or desirable.

(c) **Failure to Receive Notice.** The validity of the proceedings shall not be affected by the failure of any person or entity to receive notice given pursuant to this Section.

9-7.209 Conduct of Public Hearings.

Whenever the provisions of these Planning Regulations require a public hearing, the hearing shall be conducted in compliance with the requirements of State law and as follows.

(a) **Staff Report.** At least five days prior to the hearing the Director shall issue a staff report containing an analysis of the project, recommendation for action, and any recommended conditions of approval deemed necessary to ensure that the project will comply with the General Plan, these Planning Regulations, and any other applicable City regulations.

(b) **Presentations.** At the hearing, the Director or his or her designee shall briefly present his or her analysis of the project and recommendation for action. If the hearing is before the City Council, the Planning Commission's recommendation shall also be presented. The applicant shall also be provided an opportunity to make a presentation.

(c) **Testimony.** Any person may appear at the public hearing and submit oral or written evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall be identified, state an address and, if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.

(d) **Time Limits.** The presiding officer may establish time limits for individual testimony and may request that individuals with shared concerns select one or more spokespersons to present testimony on behalf of those individuals.

(e) **Continuation of Public Hearing.** The body conducting the public hearing may continue it to a fixed date, time and place, in which case no additional notification is required, or may continue it to an undetermined date and provide notice of the continued hearing when the date, time and place for the hearing have been determined.

9-7.210 Action.

(a) **Decision.** After the close of the public hearing, or, if no hearing is required, no sooner than ten days after any notice was provided pursuant to Section 9-7.208, the Director, Planning Commission, or City Council, as the case may be, shall make a decision to approve, approve with conditions, or deny the application.

(b) **Findings.** The decision shall be based on the findings required by these Planning Regulations or State law. The findings shall be based on consideration of the application, plans, testimony, reports, and other materials that constitute the administrative record and, for a Planning Commission or City Council decision, shall be stated in writing in the resolution approving or denying the application.

(c) **Conditions of Approval.** In approving an application, the Director, Planning Commission, or City Council may impose conditions it deems necessary to ensure that the project will comply with the General Plan, these Planning Regulations, and any other applicable City regulations.

(d) **Referral Back to Planning Commission.** In approving applications requiring City Council approval upon a recommendation of the Planning Commission, the Council may add, modify or delete any terms of the permit itself or any provisions of the conditions of approval. Such action may, but need not be, referred back to the Planning Commission for its review and recommendation. If the Council proposes any substantial modification to an amendment to the General Plan, Planning Regulations, or Zoning Maps that was not previously considered by the Planning Commission during its hearings, the proposed modification shall first be referred back to the Planning Commission for its recommendation. The Planning Commission may, but is not required to, conduct a public hearing on the proposed modification.

(e) **Notice of Decision.** After the decision is made, the Director shall issue a notice of decision. For a Planning Commission or City Council action, this notice shall consist of the approved resolution or ordinance and any associated conditions of approval. For a decision by the Director, a letter shall be issued to the applicant indicating the decision and any written findings and conditions of approval. A copy of the notice shall also be provided to any other person or entity that has filed a written request of such notification.

9-7.211 Scope of Approvals.

(a) **Scope.** Any approval allows only those uses, activities, and structures actually proposed in the application, described in the staff report, if any, and/or included in the conditions of approval. Any other uses, activities, or structures shall require a separate application and

approval. The approved use and/or construction is subject to, and shall comply with, all applicable City regulations and laws and regulations of other governmental agencies.

(b) **Termination of Previous Uses.** Unless otherwise specified, the approval of a new use shall terminate all rights and approvals for previous uses no longer occupying the same site or location, including conforming uses, nonconforming uses, and any previous entitlements granted under these Planning Regulations or any previous regulations.

(c) **Approved Plans.** The approved project shall be constructed in conformance with the approved plans except as modified by the conditions of approval. The approved plans shall be clearly referenced by sheet number/name and date in the conditions of approval.

(d) **Periodic Review.** All approvals may be subject to periodic review to determine compliance with the permit and applicable conditions. If a condition specifies that allowed activities or uses are subject to periodic reporting, monitoring or assessments, it shall be the responsibility of the permit holder, the property owner or successor property owners to comply with such conditions.

9-7.212 Effective Date.

A final decision on an application for any discretionary approval subject to appeal shall become effective after the expiration of the 15-day appeal period following the date of action, unless an appeal is filed pursuant to Article 14. No building permit or business license for the structure or use that is the subject of the application shall be issued until after the close of the 15-day appeal period.

9-7.213 Expiration and Extension.

(a) Unless the Planning Commission or City Council specifies otherwise pursuant to subsection (b) below, any design review approval, conditional use permit, variance or exception to standards granted in accordance with the terms of these Planning Regulations shall automatically expire unless an application for a building permit has been filed and fees have been paid within one year from the date of final approval, or, if a building permit is not required, a good faith effort to commence work upon the use has been made, as determined by the Director in his or her sole discretion. If a building permit is issued but expires with no work being done, then the associated planning permit shall also expire unless extended pursuant to the provisions of this Section. Such extension may not exceed three years from the planning permit's original approval date.

(b) In approving any design review approval, conditional use permit, variance or exception to standards the Director, Planning Commission, or City Council may grant an initial expiration period of up to two years from the date of final approval upon the applicant's request. Such lengthened expiration period, and the actual expiration date, shall be specified in the conditions of approval.

(c) An applicant may request time extensions not exceeding one year by applying to the original decision-maker(s) prior to the expiration date of the permit. In the case of one-year approvals, two such extensions may be allowed. In the case of two-year approvals, one such extension may be allowed. In no case shall a permit be extended beyond three years from its original approval date. After that time, a new application shall be required.

(d) The Director shall refer an extension request to the Public Works Director, Fire Chief, and Police Chief for their review and recommendation prior to action being taken on the extension request.

(e) In order for an extension to be granted pursuant to subsection (c), above, all of the following findings must be made:

(1) The permit holder has clearly documented that it has made a good faith effort to commence work upon the use.

(2) It is in the best interest of the City to extend the permit.

(3) There are no substantial changes to the project, no substantial changes to the circumstances under which the project is undertaken, and no new information of substantial importance that would require any further environmental review pursuant to the California Environmental Quality Act.

(4) The permit holder is maintaining the property in compliance with all applicable City regulations.

(f) In granting an extension pursuant to subsection (c) above, the decision-maker(s) may modify the conditions of approval as it deems necessary in order to fulfill the purposes of these Planning Regulations.

9-7.214 Modifications.

(a) **Minor Modifications.** The Director may approve minor modifications to approved plans or conditions of approval that are substantially consistent with the original findings and conditions of approval and would not intensify any potentially detrimental effects of the project.

(b) **Major Modifications.** Modifications to approved plans or conditions of approval that are not deemed minor by the Director require the approval of the original decision-makers(s). Any person holding a permit granted under these Planning Regulations may apply for such modification by following the same procedure required for the initial application for the permit. Such modifications may be to the terms of the permit itself or to conditions of approval.

9-7.215 Failure to Comply with Conditions.

Failure to comply with any condition of approval is a violation of these Planning Regulations subject to enforcement action as prescribed by Article 15.

9-7.216 Denied Applications.

Whenever an application for any type of permit under these Planning Regulations has been denied, no application for essentially the same proposal affecting the same property, or any portion thereof, shall be filed within one year after the date of denial. This shall not apply in instances where the applicant can show changed circumstances sufficient to justify a new application. Whether or not a new application is justified shall be determined by the Director, whose decision may be appealed to the Planning Commission pursuant to Article 14.

9-7.217 Legal Considerations.

(a) **Indemnification.** Applicant, its assignees, and successors-in-interest shall defend, hold harmless, and indemnify the City of Emeryville, the City of Emeryville as Successor Agency to the Redevelopment Agency, the Bay Cities Joint Powers Insurance Authority and their respective officials, officers, agents and employees (the Indemnified Parties) against all claims, demands, and judgments or other forms of legal and or equitable relief, which may or shall result from: 1) any legal challenge or referendum filed and prosecuted to overturn, set-aside, stay or otherwise rescind any or all final project or zoning approvals, analysis under the California Environmental Quality Act or granting of any permit issued in accordance with the Project; or 2) Applicant's design, construction and/or maintenance of the public improvements set forth in the final building plans. Applicant shall pay for all direct and indirect costs associated with any action herein. Direct and indirect costs as used herein shall mean but not be limited to attorney's fees, expert witness fees, and court costs including, without limitation, City Attorney time and overhead costs and other City Staff overhead costs and normal day-to-day business expenses incurred by the City including, but not limited to, any and all costs which may be incurred by the City in conducting an election as a result of a referendum filed to challenge the project approvals. The Indemnified Parties shall promptly notify the Applicant, its assignees, and successors-in-interest of any claim, demand, or legal actions that may create a claim for indemnification under this Section and shall fully cooperate with Applicant, its assignees and successors-in-interest.

(b) **Irregularity in Proceedings.** No action, inaction or recommendation regarding any application under these Planning Regulations shall be held void or invalid or be set aside by a court by reason of any error, irregularity, informality, neglect or omission ("error") as to any matter pertaining to petition, application, notice, finding, record, hearing, report, recommendation, or any matters of procedure whatever unless, after an examination of the entire case, including the evidence, the court is of the opinion that the error complained of was prejudicial and that by reason of the error the complaining party sustained and suffered substantial injury and that a different result would have been probable if the error had not occurred or existed. There is no presumption that error was prejudicial or that injury was done if error was shown.

ARTICLE 3. ZONING COMPLIANCE REVIEW

9-7.301 Purpose.

This Article establishes procedures for conducting zoning compliance review to ensure that each new or expanded use or structure complies with the applicable requirements of these Planning Regulations.

9-7.302 Applicability.

Zoning compliance review is required for all construction or new uses to determine whether they comply with the applicable provisions of these Planning Regulations. Before the City may issue any business license, design review permit, or building permit, the Director shall review the application to determine whether the use or construction complies with all provisions of these Planning Regulations and any planning permit issued pursuant to the requirements of these Planning Regulations or any previous regulations, and whether all conditions of such permits have been satisfied.

9-7.303 Procedures.

An application for zoning compliance review shall be filed and processed in accordance with the provisions of Article 2, Common Procedures. The Director shall review the application to determine whether the proposed use or construction is allowed by right, requires any type of planning permit, is allowed pursuant to any previously approved planning permit, or is prohibited. If the Director determines that the proposal conforms to the requirements of these Planning Regulations, a zoning compliance approval shall be issued. If the Director determines that the proposal does not conform to the requirements of these Planning Regulations, a zoning compliance approval shall not be issued, and the applicant shall be advised as to how the proposal could be brought into compliance.

9-7.304 Appeals.

The Director's determination of compliance or non-compliance may be appealed to the Planning Commission pursuant to Article 14.

ARTICLE 4. DESIGN REVIEW

9-7.401 Purpose.

This Article establishes objectives, standards, and procedures for conducting design review. The purpose of these provisions is to ensure that development is of a high design quality and complies with the applicable provisions of the General Plan, including but not limited to its Urban Design goals and policies, the Emeryville Design Guidelines, and any other applicable design guidelines or criteria.

9-7.402 Applicability.

Except as specified in Section 9-7.403, design review is required for any exterior changes that alter the appearance of a property and are visible from the public right-of-way or from public open space, whether or not a building permit is required, including all projects that involve construction, reconstruction, rehabilitation, alteration, or improvements to the exterior of a structure; the erection, replacement, or alteration of signs; and changes in landscaping including all retaining walls and fences over six feet tall. Design review shall be required for exterior alterations to a project approved under a previous design review permit, conditional use permit, variance, or planned unit development if such alterations are not authorized by the previous permit. Demolition and grading permits that are not associated with a construction project approved pursuant to a design review permit, conditional use permit, variance, or planned unit development shall also be subject to design review.

9-7.403 Exemptions.

The following exterior changes to a property shall be exempt from design review:

(a) Replacement in kind.

(b) Any work deemed by the Director to have a negligible visual effect.

(c) Structures not visible from the public right-of-way or from public open space.

(d) Landscaping less than 1,000 square feet.

(e) Projects consistent with a previous design review, conditional use permit, variance, or planned unit development approval.

(f) Secondary Residential Units, the design of which shall be reviewed as part of the zoning compliance review, pursuant to Section 9-5.1409.

(g) Solar panels.

(h) Exempt signs pursuant to Section 9-5.1605.

(i) Exterior alterations required by State or Federal law or other public agencies.

9-7.404 Minor and Major Design Review.

As provided in Article 1, Planning Decision Authority, the Director, Planning Commission, and City Council have authority to conduct design review. Minor and major design review are established as follows:

(a) **Minor Design Review.** The Director conducts minor design review and makes a decision to approve, approve with conditions, or deny the design. The Director, at his or her discretion, may refer any such application for design review to the Planning Commission for a decision, in which case the application shall be reviewed under the major design review procedures. Projects subject to minor design review include the following:

(1) New construction or alteration of a Single Unit or Two Unit residential use.

(2) Alterations and additions to existing buildings that do not alter the exterior building envelope, or that do alter the exterior building envelope but do not result in more than 5,000 square feet of new floor area.

(3) New construction and alteration of accessory structures and facilities, whether or not a building permit is required.

(4) Signs that are eligible for minor design review pursuant to Article 16 of Chapter 5.

(5) Landscaping of more than 1,000 square feet, including all retaining walls, and fences and gates over six feet tall.

(6) Collection bins as defined in Section 9-2.702(o).

(7) Demolition and grading permits that are not associated with a construction project approved pursuant to a design review permit, conditional use permit, variance, or planned unit development and that do not involve demolition of a significant or residential structure.

(8) Any other design review application that the Director deems unlikely to have a visual or functional impact of substantial consequence because of its location, scale, or type.

(b) **Major Design Review.** A project that does not quality for minor design review pursuant to Section 9-7.404(a) and is not exempt from design review pursuant to Section 9-7.403 shall be subject to major design review. The Planning Commission conducts major design review and makes a decision to approve, approve with conditions, or deny the design. Design review that is combined with another permit application that requires Planning Commission approval shall be conducted by the Planning Commission under the major design review process. Design review that is associated with the demolition of a significant or residential structure, pursuant to Article 12 of Chapter 5, shall be conducted by the City Council under the major design review process.

9-7.405 Procedures.

An application for design review shall be filed and processed in accordance with the provisions of Article 2, Common Procedures, including conditions of approval, expiration, extensions, and modifications.

9-7.406 Design Review Criteria.

Applications for design review shall be reviewed for conformance with the applicable provisions of the General Plan, including but not limited to its Urban Design goals and policies, the Emeryville Design Guidelines, and any other applicable design guidelines or criteria. Such

design guidelines and criteria include, but are not limited to, the North Hollis Area Urban Design Program, San Pablo Avenue Urban Design Plan, South Bayfront Design Guidelines, Park Avenue District Plan, and Shellmound Design Guidelines. Design review shall be based on an evaluation of the design of the proposed project, including, but not limited to:

(a) Sidewalks and landscaping.

(b) Parking and access.

(c) Site planning.

(d) Building massing.

(e) Building form and articulation.

(f) Architecture and building materials.

(g) Open space.

(h) Signs.

9-7.407 Findings.

To approve a design review application, all of the following findings must be made:

(a) The design of the project is consistent with the General Plan, including but not limited to its Urban Design goals and policies.

(b) The design of the project conforms to the Emeryville Design Guidelines and any other applicable design guidelines or criteria. If strict compliance with the provisions of such design guidelines or criteria is not achieved, the applicant must convincingly demonstrate that the intent of the guidelines or criteria is met.

(c) The project is of a high design quality that is compatible with, and will not adversely affect, the surrounding area.

9-7.408 Appeals.

The Director's decision on a minor design review application may be appealed to the Planning Commission, and the Planning Commission's decision on a major design review application may be appealed to the City Council, pursuant to Article 14.

ARTICLE 5. CONDITIONAL USE PERMITS

9-7.501 Purpose.

This Article describes the process and general requirements applicable to those uses and situations for which these Planning Regulations require a minor or major conditional use permit. The conditional use permit process is intended to apply to uses and situations that are generally consistent with the purposes of the district where they are proposed, but require special consideration to ensure that they can be designed, located, and operated in a manner that will not interfere with the use and enjoyment of surrounding properties.

9-7.502 Applicability.

A conditional use permit is required to approve certain uses in certain zoning districts as specified in Article 2 of Chapter 3. A conditional use permit is also required to allow certain other uses and situations as specified in these Planning Regulations including the following:

(a) Development on sites of one to five acres in the Mixed Use zones pursuant to Section 9-3.303(b)(2)b.

(b) Applying a single zoning district to a lot split by zoning district boundaries pursuant to Section 9-3.104.

(c) Building intensity, height, and residential density regulations:

  (1) Bonus floor area ratio, height, and/or residential density pursuant to Section 9-4.204.

  (2) Applying a single floor area ratio to a lot split by floor area ratio district boundaries pursuant to Section 9-4.201(c).

  (3) Exceeding limits for allowed projections above the tops of buildings pursuant to Section 9-4.202(c).

  (4) Applying a single height limit to a lot split by height district boundaries pursuant to Section 9-4.202(d).

  (5) Applying a single residential density to a lot split by residential density district boundaries pursuant to Section 9-4.203(c).

(d) Required yards and open space regulations:

  (1) Modifying features allowed in required yards pursuant to Section 9-4.301(e).

  (2) Allowing required open spaces to be located in certain driveways, loading, and service areas pursuant to Section 9-4.303(a)(2)b.

(e) Parking and loading regulations:

  (1) Providing parking less than the required minimum or more than the allowed maximum pursuant to Section 9-4.404(g).

  (2) New surface parking lots of one-half to two acres pursuant to Section 9-4.403(f))(2).

  (3) Alternative parking plans pursuant to Section 9-4.407.

  (4) Off-site common loading areas pursuant to Section 9-4.409(f).

(f) Certain uses with special regulations:

(1) Adult entertainment businesses pursuant to Article 3 of Chapter 5.

(2) Firearms or ammunition businesses pursuant to Article 6 of Chapter 5.

(3) Hazardous Waste Facilities pursuant to Article 7 of Chapter 5.

(4) Live/Work buildings pursuant to Article 9 of Chapter 5.

(5) Wireless Communication Antennas in the RM zone and in the public right-of-way, and Wireless Communication poles and towers in the INL, INH, and P zones pursuant to Article 17 of Chapter 5.

(g) Substitution, expansion, or reestablishment of certain nonconforming uses pursuant to Article 10 of Chapter 5.

(h) Preservation and reuse, or demolition, of a significant or residential structure pursuant to Article 12 of Chapter 5.

(i) Private property access from a City park, greenway, or other City property pursuant to Article 13 of Chapter 5.

(j) Exceptions to unit mix and design requirements for Multi-Unit Residential uses pursuant to Section 9-5.2005.

(k) Any other use or situation indicated as requiring a conditional use permit in these Planning Regulations.

9-7.503 Major and Minor Conditional Use Permits.

As provided in Article 1, Planning Decision Authority, the Director, Planning Commission, and City Council have authority to act on applications for conditional use permits. Minor and major conditional use permits are established as follows:

(a) **Minor Conditional Use Permits.** The Director considers and makes decisions to approve, approve with conditions, or deny minor conditional use permits applications. The Director, at his or her discretion, may refer any such application for a minor conditional use permit to the Planning Commission for a decision, in which case the application shall be reviewed under the major conditional use permit procedures. Minor conditional use permits include the following:

(1) Any use in any zoning district indicated as requiring a minor conditional use permit in Article 2 of Chapter 3.

(2) A conditionally permitted use in any zoning district other than the RM zone in an existing building where the floor area is not increased by more than ten percent, except uses of special concern as listed in Section 9-2.701.

(3) Exceeding limits for allowed projections above the tops of buildings pursuant to Section 9-4.202(c).

(4) Modifying features allowed in required yards pursuant to Section 9-4.301(e).

(5) Allowing required open spaces to be located in certain driveways, loading, and service areas pursuant to Section 9-4.303(a)(2)b.

(6) Substitution, expansion, or reestablishment of certain nonconforming uses pursuant to Article 10 of Chapter 5.

(7) Preservation and reuse of a significant or residential structure pursuant to Article 12 of Chapter 5.

(8) Private property access from City parks, greenways, and other City property pursuant to Article 13 of Chapter 5.

(9) Any other use or situation indicated as requiring a minor conditional use permit in these Planning Regulations.

(b) **Major Conditional Use Permits.** A use or situation that requires a conditional use permit but does not qualify for a minor conditional use permit pursuant to Section 9-7.503(a) shall be subject to a major conditional use permit. The Planning Commission considers and makes decisions to approve, approve with conditions, or deny major conditional use permits applications. A conditional use permit application that is combined with another permit application that requires Planning Commission approval shall be considered by the Planning Commission under the major conditional use permit process. A conditional use permit to demolish a significant or residential structure, pursuant to Article 12 of Chapter 5, shall be considered by the City Council under the major conditional use permit process.

9-7.504 Procedures.

An application for a conditional use permit shall be filed and processed in accordance with the provisions of Article 2, Common Procedures, including conditions of approval, expiration, extensions, and modifications.

9-7.505 Findings.

To approve a conditional use permit application, all of the following findings must be made, in additional to any special findings that may be required by the applicable provisions of these Planning Regulations for the particular conditional use permit:

(a) The proposed use is consistent with the General Plan.

(b) The location, size, coverage, density, design and operating characteristics of the proposed use will be compatible with, and will not adversely affect, the surrounding area, including neighborhood character, street design and capacity, safety, noise, and lighting.

(c) The proposed use is consistent with the capability of the water supply, wastewater disposal, fire, and police systems to operate adequately and cost effectively.

(d) The proposed use at its proposed location will provide a service or facility that will contribute to the general well-being of the surrounding neighborhood or community.

(e) The proposed use complies with all applicable standards and requirements of these Planning Regulations.

9-7.506 Appeals.

The Director's decision on a minor conditional use permit application may be appealed to the Planning Commission, and the Planning Commission's decision on a major conditional use permit may be appealed to the City Council, pursuant to Article 14.

ARTICLE 6. TEMPORARY USE PERMITS

9-7.601 Purpose.

This Article establishes a process for review and approval of uses that are intended to have a limited duration and will not permanently alter the character or physical facilities of the property where they occur.

9-7.602 Applicability.

Except as specified in Section 9-7.603, all temporary uses, as defined in Section 9-2.104(b), require the approval of a Temporary Use Permit, including, but not limited to, carnivals, Halloween pumpkin lots, Christmas tree lots, farmers markets on private or public property, mobile food vendors on private or public property, and other vendors, peddlers, solicitors, or events on private or public property.

9-7.603 Exemptions.

The following temporary uses shall be exempt from the requirement for a Temporary Use Permit:

(a) On-site temporary construction offices and on-site contractors' storage yards, including debris containers.

(b) On-site offices for real estate sales or rental.

(c) Garage and yard sales operated by a resident of the premises where such sales operate for a period of less than two days per quarter per year.

(d) Any use operating on a public street or sidewalk, including, but not limited to, farmers markets as regulated by Chapter 35 of Title 5, and mobile food vendors and other vendors, peddlers, and solicitors as regulated by Chapter 27 of Title 5.

(e) Any other temporary uses otherwise regulated by the Emeryville Municipal Code, including, but not limited to, community events regulated by Chapter 23 of Title 5.

9-7.604 Procedures.

An application for a temporary use permit shall be filed and processed in accordance with the provisions of Article 2, Common Procedures. Applications for temporary use permits shall be considered by the Planning and Building Director, in consultation with the Public Works Director, Chief Building Official, Fire Marshal, Police Chief, and other City staff as deemed appropriate. The application shall be submitted at least 14 days before the temporary use is intended to begin. It shall include a site plan of the proposed use that shows any electrical or plumbing connections, the relation of the temporary use to existing buildings, parking spaces, landscaping, and other features of the site; a description of operating characteristics, including dates, hours, number of employees, expected visitors, and security if appropriate; and any other information deemed necessary by the Director. The Director, at his or her discretion, may give such notice as is deemed appropriate to adjacent property owners or other interested parties. The Director may approve or disapprove an application or require changes or conditions of approval which, in his or her judgment, are necessary to ensure conformity with the provisions of this Article. The Director's decision may be appealed to the Planning Commission.

9-7.605 Findings.

To grant a temporary use permit, all of the following findings must be made:

(a) The proposed use will not adversely affect adjacent properties, their owners and occupants, or the surrounding neighborhood.

(b) The proposed use will not interfere with pedestrian or vehicular traffic or circulation in the area surrounding the proposed use.

(c) The proposed use will not create a demand for additional parking that cannot be safely and efficiently accommodated by existing parking areas.

(d) The proposed use will not conflict with the intent or requirements of any design review permit, conditional use permit, variance, or planned unit development applicable to the subject property.

(e) Appropriate controls are in place that will ensure that the premises will be kept clean, sanitary, and free of litter.

9-7.606 Duration.

Temporary use permits shall be approved for no longer than the following initial time periods and may be renewed for subsequent time periods of the same duration or less. Each renewal shall require a new application and fee.

(a) **One Time Temporary Uses** (as defined in Section 9-2.104(b)(1))**:**

(1) Mobile Food Vendors located on private or public property (i.e. not on a public sidewalk or public street): one year.

(2) All other One-Time Temporary Uses: 60 days.

(b) **Recurring Temporary Uses** (as defined in Section 9-2.104(b)(2))**:** one year.

9-7.607 Conditions of Approval.

Unless waived by the Director, the following conditions of approval shall apply to all temporary use permits. In approving a temporary use permit, the Director may impose any additional conditions that are deemed necessary to make the findings required by Section 9-7.605.

(a) Any construction or other work shall conform to all applicable codes.

(b) Fire protection and access for fire vehicles shall be maintained, as specified by the Fire Marshal.

(c) All signage shall comply with the Sign Regulations in Article 16 of Chapter 5.

(d) The site of the temporary use shall be maintained free of weeds, litter, and debris for the duration of the temporary use.

(e) The site of the temporary use shall be completely cleaned and all trash, debris, signs, sign supports, and temporary structures and electrical and/or plumbing service shall be removed, within three days following the date specified for termination of the temporary use.

9-7.608 Revocation.

A temporary use permit issued pursuant to this Article shall be subject to suspension, revocation, or modification for the violation of any provisions of this code or for any grounds which would warrant the denial of the issuance of such original permit. The Director may issue a notice of violation for any failure to comply with any requirement of this Article or any condition of the permit. Such notice shall set forth the action necessary to come into compliance and a time frame for compliance. If the noncompliance is not abated, corrected, or rectified within the time specified by the Director in said notice, the Director may revoke, suspend, or modify the permit, upon 30 days' notice. If the Director decides to revoke or suspend the permit, the temporary use shall be removed within 30 days of the Director's decision unless appealed pursuant to Section 9-7.609.

9-7.609 Appeals.

The Director's decision on a temporary use permit application or revocation may be appealed to the Planning Commission pursuant to Article 14.

ARTICLE 7. VARIANCES

9-7.701 Purpose.

This Article is intended to provide a mechanism for relief from the strict application of these Planning Regulations where strict application would deprive the property owner of privileges enjoyed by owners of similar properties because of the property's unique and special conditions.

9-7.702 Applicability.

A variance may be granted with respect to dimensional and performance standards, except that certain minor exceptions to standards may be granted pursuant to Article 8, Exceptions to Standards. A variance may not be granted to authorize a use that is not otherwise authorized by these Planning Regulations, nor may a variance be granted from any standard that is based on requirements of the General Plan, including, but not limited to, floor area ratio, height, or residential density. A deviation from such a General Plan standard requires a General Plan Amendment pursuant to Article 12. Personal, family or financial difficulties, loss of prospective profits, and neighboring violations are not hardships justifying a variance. Further, a previous variance can never have set a precedent because each case must be considered only on its individual merits.

9-7.703 Procedures.

An application for a variance shall be considered by the Planning Commission and shall be filed and processed in accordance with the provisions of Article 2, Common Procedures, including conditions of approval, expiration, extensions, and modifications. In addition to any other application requirements, an application for a variance shall include data or other evidence demonstrating that:

(a) There are special circumstances or conditions applicable to the property such as size, shape, topography, location, surroundings, or existing structures, which do not apply generally to uses, land or structures in the vicinity and in the same zoning district.

(b) Due to the special circumstances applicable to this property, strict application of the regulation from which a variance is sought would deprive the property owner of privileges enjoyed by other property owners in the same zoning district.

(c) Special circumstances applicable to the property were or are not self-imposed by the property owner.

(d) Authorization of the variance would substantially meet the intent and purpose of the zoning district in which the subject property is located and would not be detrimental to the health, safety, and general welfare of persons living or working in the neighborhood or to the general welfare of the City.

9-7.704 Findings.

To grant a variance, all of the following findings must be made:

(a) The proposal for which the variance is sought is consistent with the General Plan.

(b) Because of special circumstances applicable to the property, including size, shape, topography, location, or surroundings, the strict application of these Planning Regulations would deprive the property owner of privileges enjoyed by the owners of other property in the vicinity and in the same zoning district.

(c) The variance is necessary for the preservation and enjoyment of substantial property rights possessed by other conforming property in the vicinity and in the same zoning district and the variance, if granted, would not constitute a special privilege of the recipient inconsistent with limitations on other properties in the vicinity and in the same zoning district.

(d) Granting the variance would not be materially detrimental to the public health, safety, or welfare and would not impair an adequate supply of light and air to adjacent property.

(e) The conditions upon which the requested variance is based would not be applicable, generally, to other property in the same zoning district.

9-7.705 Appeals.

The Planning Commission's decision on a variance may be appealed to the City Council pursuant to Article 14.

ARTICLE 8. EXCEPTIONS TO STANDARDS

9-7.801 Purpose.

This Article is intended to provide a means of granting relief from the requirements of these Planning Regulations for minor deviations from dimensional and design standards when strict application would preclude an effective design solution improving livability, operational efficiency, or appearance, and fulfilling the basic intent of the applicable regulation.

9-7.802 Applicability.

Exceptions to standards may be granted for:

(a) Minimum yards in the Residential zones, up to one-third of the required setback.

(b) Maximum height of fences and freestanding walls in the Residential zones.

(c) Minimum landscaping, up to ten percent of required landscaping for sites or parking lots.

(d) Parking space dimensions, up to five percent of length and/or width for no more than ten percent of spaces.

(e) Individual establishment sign dimensions up to five percent of any linear dimension or ten percent of any area dimension, provided that the maximum aggregate sign area for the establishment is not exceeded.

9-7.803 Procedures.

An application for an exception to standards shall be considered by the Director and shall be filed and processed in accordance with the provisions of Article 2, Common Procedures, including conditions of approval, expiration, extensions, and modifications. An exception to standards application that is combined with another permit application that requires Planning Commission or City Council approval shall be acted upon by the Commission or Council concurrently with the other permit application.

9-7.804 Findings.

To grant an exception to standards, all of the following findings must be made:

(a) The proposal for which the exception is sought is consistent with the General Plan.

(b) Strict compliance with these Planning Regulations would preclude an effective design solution improving livability, operational efficiency, or appearance.

(c) The proposal for which the exception is sought would fulfill the basic intent of the applicable regulation.

(d) The proposal for which the exception is sought would comply with the applicable design review criteria at section 9-7.406.

(e) The proposal for which the exception is sought would be compatible with, and would not adversely affect, the surrounding area, and would not be detrimental to the health or safety of the public or the occupants of the property.

9-7.805 Appeals.

The Director's decision on an exception to standards may be appealed to the Planning Commission pursuant to Article 14. If the initial decision on the exception is made by the Planning Commission, the Commission's decision may be appealed to the City Council pursuant to Article 14.

ARTICLE 9. REASONABLE ACCOMMODATION

9-7.901 Purpose.

It is the policy of the City of Emeryville to comply with the Federal Fair Housing Amendments Act and the California Fair Employment and Housing Act to provide reasonable accommodation by modifying the application of its zoning and subdivision regulations for persons with disabilities seeking fair access to housing. The City also recognizes the importance of sustaining and enhancing neighborhoods. In determining whether a requested modification of zoning or subdivision regulations is reasonable, the City will consider, among other relevant factors, the extent to which the requested modification might be in conflict with the legitimate purposes of its existing zoning or subdivision regulations. The purpose of these provisions is to provide a process for making requests for reasonable accommodation to zoning and subdivision decisions and procedures regulating the siting, funding, development and use of housing for people with disabilities.

9-7.902 Notice to the Public of Availability of Accommodation Process.

A notice shall be displayed at the counter of the Planning and Building Department advising applicants that they may request a reasonable accommodation of existing rules, policies, practices and procedures related to housing. A form for requesting an accommodation shall be available in the Planning and Building Department and from the Americans with Disabilities Act (ADA) Coordinator.

9-7.903 Requesting Reasonable Accommodation.

(a) In order to make specific housing available to an individual with a disability, any person may request a reasonable accommodation in the rules, policies, practices and procedures regulating the siting, funding, development or use of housing by completing the form for requesting an accommodation and filing it with the Department.

(b) If an individual needs assistance in making the request for reasonable accommodation, the Department/ADA Coordinator shall provide the assistance necessary to ensure that the process is accessible to the applicant.

(c) A request for reasonable accommodation in rules, policies, practices and/or procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. Accordingly, the request may be filed at the outset or during the zoning or subdivision approval process.

9-7.904 Review of Requests for Reasonable Accommodation.

(a) When a request for reasonable accommodation is filed with the Department, it is referred to the ADA Coordinator and Planning and Building Director or his or her designee for review and consideration. The Director shall issue a written decision within 45 days of the date of the application and may grant the reasonable accommodation request, grant with modifications, or deny the request.

(b) If necessary to reach a decision on the request for reasonable accommodation, the Director may request further information from the applicant consistent with the Act, specifying in detail what information is required.

(c) Not more than 45 days after receiving a written request for reasonable accommodation, the Director shall issue a written decision on the request to the applicant and adjacent owners of the property which is the subject of the request for reasonable accommodation; provided that, in the event that the Director requests further information pursuant to the above paragraph, the running of this period shall be tolled (stopped) until the applicant responds to the request.

9-7.905 Factors for Considering Requests for Reasonable Accommodation.

In approving a requested accommodation, the Director shall find:

(a) That the housing which is the subject of the request for reasonable accommodation will be used by an individual protected under the Act;

(b) That the request for accommodation is necessary to make specific housing available to an individual protected under the Act;

(c) That the requested accommodation would not impose an undue financial or administrative burden on the City;

(d) That the requested accommodation would not require a fundamental alteration in the nature of a program; and

(e) That there are no alternative reasonable accommodations which may provide an equivalent level of benefit to the applicant.

9-7.906 Written Decision on the Request for Reasonable Accommodation.

(a) The Director's written decision on the request for reasonable accommodation shall explain in detail the basis of the decision, including the Director's findings on the criteria set forth in Section 9-7.905, above. All written decisions shall give notice of the right to appeal and to request reasonable accommodation in the appeals process as set forth below. The Director's Notice of Decision shall be sent to the applicant by certified mail.

(b) If the Director fails to render a written decision on the request for reasonable accommodation within the time period allotted by Section 9-7.904, above, the request shall be deemed denied.

9-7.907 Appeals.

(a) Any person may appeal the decision of the Director to the Planning Commission as provided in Article 14 by filing the Appeal of Decision of Fair Housing Accommodation Request Form to be provided by the Department with the written decision.

(b) An appellant may request reasonable accommodation in the procedure by which an appeal will be conducted. If an appellant needs assistance in filing an appeal, the Department shall provide the assistance that is necessary to ensure that the appeal process is accessible to the applicant.

(c) All appeals shall contain a statement of the grounds for the appeal.

9-7.908 Definitions.

For purposes of this Article, the following terms shall have the meaning ascribed to them.

(a) "Act" means the Federal Fair Housing Amendments Act and the California Fair Employment and Housing Act.

(b) "Applicant" means the individual making the request for reasonable accommodation pursuant to this Article.

(c) "Disability" means as defined by either the Federal Fair Housing Amendments Act (FHA), 42 U.S.C. Section 3601 et seq., or the California Fair Employment and Housing Act (FEHA), California Government Code Section 12900 et seq.

ARTICLE 10. PLANNED UNIT DEVELOPMENTS

9-7.1001 Purpose.

This Article establishes the planned unit development (PUD) procedures, which allow for the creation of PUD zones to encourage the creative development of large sites so as to permit flexibility in physical design, achieve attractive designs which encourage large-scale site planning, and ensure that the applicable provisions of the General Plan are established early in the formation of such development proposals.

9-7.1002 Applicability.

The procedures in this Article apply to all proposals for planned unit development projects. Before commencing any construction for any development within the scope of this Article, preliminary and final development approval for a planned unit development (PUD) as set forth in this Article shall first be obtained.

9-7.1003 Procedures.

An application for a planned unit development shall be filed and processed in accordance with the provisions of Article 2, Common Procedures, including conditions of approval, expiration, extensions, and modifications. A preliminary development plan (PDP) for the PUD shall be considered by the City Council with a recommendation from the Planning Commission. The PDP may stipulate that the development of the PUD shall be in phases, and may also stipulate the sequence and timing of such phases. Approval of the PDP shall constitute the zoning for the site, shall be by ordinance, and is subject to referendum. One or more subsequent final development plans (FDP), corresponding to the development phases approved in the PDP, shall be considered by the Planning Commission, which must find that each FDP substantially conforms to the PDP. The Commission's decision on an FDP may be appealed to the City Council. PDPs and FDPs may also be processed concurrently, in which case the Planning Commission's approval of the FDP is contingent upon City Council approval of the PDP.

9-7.1004 Findings.

(a) **PUD Zone and Preliminary Development Plan.** The Planning Commission in recommending, and the City Council in approving, the creation of a PUD zone and the adoption of a preliminary development plan, must make all of the following findings:

(1) The proposed planned unit development is consistent with the General Plan and any other applicable plans.

(2) The proposed planned unit development will provide for a cohesive, integrated, well-planned development that will contribute to the general well-being of the surrounding neighborhood or community.

(3) The subject property is suitable for the uses permitted in the proposed planned unit development in terms of access, size of parcel, and relationship to similar or related uses.

(4) The location, size, coverage, density, design and operating characteristics of the proposed planned unit development will be compatible with, and will not

adversely affect, the surrounding area, including neighborhood character, street design and capacity, safety, noise, and lighting.

(5) The subject property will be developed with due regard for aesthetic quality and landscaping so as to reduce, to the extent feasible, significant negative impacts on the environmental quality, value, or stability of the site or the environmental quality or value of improved or unimproved property in the area.

(6) The proposed planned unit development will be developed to allow originality which does not have significant adverse impacts on the environmental quality or value of improved or unimproved property in the area or prevent appropriate development and use of such areas.

(7) The proposed planned unit development has been designed to include open space, parking, pedestrian walks, signs, illumination, and landscaping (including irrigation) to enhance the environmental quality of the site.

(b) **Final Development Plan.** In approving a final development plan, the Planning Commission must make both of the following findings:

(1) The final development plan substantially conforms to the preliminary development plan.

(2) Changes and conditions of approval specified by the City Council in its approval of the preliminary development plan have been met.

9-7.1005 General Requirements.

(a) **Area.** The minimum area of a proposed planned unit development must be no less than one acre. Pursuant to Section 9-3.303(b)(2), a development in the Mixed Use Zones on a site of one to five acres may, at the applicant's option, be processed as a planned unit development, and on a site of more than five acres, must be processed as a planned unit development.

(b) **Uses.** A planned unit development may authorize uses that are not permitted in the base zone in which the site was located prior to adoption of the PUD, but may not authorize uses inconsistent with the General Plan land use designation of the site. A proposed planned unit development on a site that was located in a Mixed Use zone prior to adoption of the PUD must include a mix of uses as specified in Section 9-3.303(b).

(c) **Overlay Zones.** The regulations for overlay zones, as specified in Article 4 of Chapter 3, shall apply to new PUDs approved under these Planning Regulations, but shall not apply to PUDs approved prior to the adoption of these Planning Regulations.

(d) **Development Standards.** A planned unit development may modify any of the standards in Chapter 4, Site Development Regulations, except those that are set by the General Plan, including building intensity (floor area ratio), height, and residential density. A planned unit development must provide public benefits pursuant to Section 9-4.204 to qualify for bonus floor area ratio, height, and/or residential density.

(e) **Subdivision Map.** When a planned unit development requires the submission of a subdivision map, the tentative map and all supporting documents shall be prepared and submitted concurrently with the preliminary development plan, and the final map and all

supporting documents shall be prepared and submitted concurrently with the final development plan. This requirement does not preclude subsequent submission and approval of an application for a subdivision map.

(f) **Persons Eligible to Apply.**

(1) **Preliminary Development Plan.** An application for the granting of a preliminary development plan for a PUD may be made by any person having a legal ownership interest, or option to purchase, in the property to be included in the proposed planned unit development, or by any person with the ability to acquire property to be included in the proposed planned unit development pursuant to a disposition and development agreement, participation agreement, exclusive right to negotiate agreement or other such agreement between said person and the City of Emeryville and/or the City of Emeryville as Successor Agency to the Redevelopment Agency.

(2) **Final Development Plan.** An application for the granting of a final development plan for a planned unit development may be made by any person having a legal ownership interest, or option to purchase, in the property to be included in the proposed final development plan or by any person with the ability to acquire the property to be included in the proposed final development plan pursuant to a disposition and development agreement, participation agreement, exclusive right to negotiate agreement or other such agreement between the applicant and the City of Emeryville and/or the City of Emeryville as Successor Agency to the Redevelopment Agency; provided, however, that at the time of final action on the final development plan, the applicant must have concurrence of all owners of the property to be included in the proposed final development plan, or approval of such an agreement set forth herein by the City of Emeryville and/or the City of Emeryville as Successor Agency to the Redevelopment Agency respecting property to be included in the proposed final development plan for which the applicant has not secured concurrence of the owner.

9-7.1006 Preliminary Development Plan: Application.

In addition to any other application requirements as specified in Article 2, Common Procedures, an application for a preliminary development plan shall include the following:

(a) **Form and Contents.** The form and contents of the proposed preliminary development plan shall be as follows:

(1) **Statement of Intent.** An overall development scheme which states the development intentions of the applicant respecting his/her property, including but not limited to the following: a general statement of location and intensity of proposed uses and activities, including public and private open spaces; a general physical description of proposed facilities accommodating such uses, including general types of buildings, structures, and landscape and circulation elements; a description of both the location and method for treatment of stormwater on-site; a statement of location and general configuration of lands to be dedicated for public open space and other public uses; a general designation of utilities; a general statement of the form of site management proposed in areas of significant natural

resources; a general statement detailing the consistency of the proposed development project with major public development programs, including but not limited to Transit Streets, Bicycle Boulevards, greenways, parks, trails, open spaces, and the phased schedules of proposed major public facilities; and a statement of proposed general uses planned within the PUD.

(2) **Supporting Graphics.** Graphics as are necessary to establish the physical scale and character of the development and demonstrate the relationship among its constituent land uses, buildings and structures, public facilities, and open space. These graphics shall at a minimum indicate: perimeter boundaries of the site; approximate location and dimension of streets, driveways, sidewalks, pedestrian ways, off street parking and loading areas, buildings and structures; a conceptual lighting plan for the buildings and adjacent parking and pedestrian travel areas, utilization of buildings and structures, including activities and the number of living units; reservations for public uses, including schools, parks, playgrounds, and other open spaces; location, sizing and preliminary design of stormwater treatment measures; and major landscaping proposals. The Director may require graphics presenting additional information as he or she determines is necessary to support the statement of intent.

(3) **Description of Surrounding Area.** A set of maps and statements providing information on the character and use of the surrounding area within 300 feet of the development site.

(4) **Background Report.** A background report which includes but is not limited to the following information: a preliminary development schedule including anticipated timing, to the extent known, for commencement and completion of each phase of development; tabulation, to the extent known, of the total number of acres in each separate phase and percentage of such acreage to be devoted to particular uses, and, if applicable, an indication of the proposed number and type of dwelling units by phase of development; a preliminary population schedule, if applicable, including estimated residential population for the entire project at its completion and for each type of dwelling unit for each phase of development; calculation, if applicable, of the average residential density per gross acre and per net residential acre by phase, and estimated nonresidential population for each phase of development; an indication of the retail market area to be served by any nonresidential uses included in the proposal and sufficient economic data to support inclusion of such nonresidential uses; and engineering feasibility studies if determined necessary by the City Engineer.

(b) **Accompanying Data and Reports.** The proposed preliminary development plan shall be accompanied by the following data and reports:

(1) A list of names and addresses of all owners of the property and the extent and nature of their interest in the parcel(s) proposed for the PUD.

(2) A legal description of the parcel(s) and a statement of their size in acres.

(3) A title report verifying the description and vestees.

(4) Project description and other data identifying the development.

(5) The method whereby the landscaped areas adjacent to building sites and landscaped open areas are to be established and maintained and the method for on-site treatment for stormwater.

(6) Information as to whether the parcel(s) is (are) intended to remain under the same ownership and control or to be divided into smaller units during or after development, and the manner and method of the division.

(7) A copy of any proposed deed restrictions and covenants proposed to be recorded.

(8) A copy of any association description, articles of incorporation, and bylaws, and, should there be none, then a statement of the proposed contents.

(9) A completed environmental assessment information form.

(10) Satisfactory evidence of the ability and intention of the applicant to proceed with actual construction work in accordance with the requested PUD within 12 to 18 months after approval of a final development plan.

(11) Any other data or reports deemed necessary by the Planning and Building Director.

(c) **Tentative Map.** As appropriate, a tentative subdivision map may be submitted concurrently with the preliminary development plan.

9-7.1007 Preliminary Development Plan: Planning Commission Action.

The Planning Commission shall recommend a course of action on the preliminary development plan after holding a public hearing, noticed as required by Article 2, Common Procedures. At the conclusion of the hearing, the Planning Commission shall review the preliminary development plan for conformity with the General Plan and any applicable special requirements contained in this Article and, after making the findings required by Section 9-7.1004(a), shall recommend approval, conditional approval, or denial of the preliminary development plan and any associated tentative map. The Planning Commission shall forward to the City Council the appropriate environmental documents and a written report of its recommendation.

9-7.1008 Preliminary Development Plan: City Council Action.

Within 30 days following the receipt of the recommendation of the Planning Commission, the City Council shall conduct a public hearing, noticed as required by Article 2, Common Procedures, for final action on the preliminary development plan and any associated tentative map. At the conclusion of the hearing, the Council shall review the preliminary development plan for conformity with the General Plan and any applicable special requirements contained in this Article and, after making the findings required by Section 9-7.1004(a), shall approve, conditionally approve, or disapprove the preliminary development plan and any associated tentative map.

Approval of a preliminary development plan shall be by ordinance. The ordinance shall include conditions of approval specifying the uses permitted in the planned unit development; any waiver or modification of the development standards of Chapter 4, Site Development Regulations; an amendment to the Zoning Map at Section 9-3.103(a) to indicate the new PUD zone; and an amendment to Section 9-3.310 to list the new PUD.

9-7.1009 Final Development Plan: Application.

(a) **Timing.** Unless otherwise provided by an approved preliminary development plan or development agreement, within 24 months of approval of the preliminary development plan by the City Council, the applicant shall file with the Planning Division a final development plan for the entire development or, when submission in phases has been authorized by the City Council pursuant to its review of the preliminary development plan, for the first phase of development. This time limit may be extended by the City Council pursuant to the procedures in Article 2, Common Procedures.

(b) **Form and Contents.** The final development plan shall substantially conform to the approved preliminary development plan. In addition to any other application requirements as specified in Article 2, Common Procedures, an application for a final development plan shall include the following:

(1) The same elements as required for a preliminary development plan pursuant to Section 9-7.1006(a).

(2) The location of existing and proposed water, sewerage, and drainage facilities.

(3) Detailed building and landscaping plans and elevations.

(4) Character and location of signs, or, if required by Section 9-5.1613(a)(1) or at the applicant's option, a proposed Master Sign Program.

(5) Proposed plans for street improvements.

(6) Proposed grading, site-improvement, traffic-control, drainage, sewer, and lighting plans.

(7) Application for any permits required by the City of Emeryville, not including demolition, grading, or building permits.

(8) Legal documents required for the dedication or reservation of group or common open spaces, for the creation of a nonprofit homeowners' association, or for performance bonds.

(9) Changes, if any, as required by the City Council as conditions of approval of the preliminary development plan.

(10) A narrative delineating those aspects of the final development plan that are not in exact conformance with the preliminary development plan, if any.

(11) Any other data or reports deemed necessary by the Planning and Building Director.

(c) **Final Map.** As appropriate, a final subdivision map may be submitted concurrently with the final development plan.

9-7.1010 Final Development Plan: Planning and Building Director Review and Recommendation.

Within 60 days after submission of a complete application for a final development plan, the Planning and Building Director shall examine the plan and review it for substantial conformity to the preliminary development plan approved by the City Council and whether changes and

conditions of approval specified by the City Council have been met. The Director shall refer the final development plan to the City Engineer for review of its substantial conformity to the preliminary development plan respecting public improvements, including streets, sewers, and drainage, and for review of compliance with applicable conditions of approval, as specified by the City Council. Within 30 days after the Director and City Engineer complete their review of the final development plan, the Director shall forward a written report to the Planning Commission advising approval, conditional approval, or disapproval of the final development plan.

9-7.1011 Final Development Plan: Planning Commission Action.

The Planning Commission shall consider the final development plan at a public hearing noticed and conducted as required by Article 2, Common Procedures. At the conclusion of this public hearing, the Commission shall review the final development plan for substantial conformity to the preliminary development plan approved by the City Council and to determine whether changes and conditions of approval specified by the Council have been met, and, after making the findings required by Section 9-7.1004(b), shall approve, conditionally approve, or deny the final development plan. In approving a final development plan, the Planning Commission may designate such additional conditions as it deems necessary for the final development plan to conform to the preliminary development plan, and to fulfill the purposes of these Planning Regulations, the General Plan, and any other applicable plans. If the final development plan does not include a Master Sign Program, the Commission may include a condition of approval requiring one, if appropriate.

9-7.1012 Final Development Plan: Appeals.

The Planning Commission's decision on a final development plan may be appealed to the City Council pursuant to Article 14.

9-7.1013 Concurrent Processing of Preliminary and Final Development Plans.

(a) Applicants may, at their option, submit and file, at one time, applications for both a preliminary development plan for all of the property, and a final development plan for all or some phases of the development.

(b) After determining that the applications are complete, the Director shall schedule a hearing before the Planning Commission on both the preliminary and final development plans, pursuant to the applicable provisions of this Article. Planning Commission approval of the final development plan shall be contingent upon City Council approval of the preliminary development plan.

(c) The City Council shall take action on the preliminary development plan pursuant to Section 9-7.1008. A final development plan approved by the Planning Commission shall be final when the ordinance approving the preliminary development plan takes effect.

9-7.1014 Adherence to Approved Plan.

The applicant shall agree in writing to be bound, for him or her and his or her successors in interest, by the conditions prescribed for approval of the development. The approved final development plan and phased development schedule shall control the issuance of all building

permits and shall restrict the nature, location and design of all uses. Minor changes in an approved final development plan, including a phased development schedule and minor relocation of uses on the site, may be approved by the Planning and Building Director if such changes are consistent with the purposes and general character of the approved final development plan, unless otherwise provided by an owner participation agreement, disposition and development agreement, development agreement, vesting tentative map, or other controlling agreement respecting the site. All other modifications shall be processed in the same manner as the original application and shall be subject to the same procedural requirements.

ARTICLE 11. DEVELOPMENT AGREEMENTS

9-7.1101 Purpose.

This Article establishes procedures and requirements for considering and entering into legally binding agreements with applicants for development projects pursuant to California Government Code Section 65864 et seq. The purpose of this Article is to facilitate large, phased projects for which there is significant private participation in infrastructure, public facilities, open space and amenities, and other programs of benefit to the City and its residents.

9-7.1102 Applicability.

The City of Emeryville, at its sole discretion, may enter into a binding agreement with any qualified applicant for the development of qualified property within the City of Emeryville pursuant to and in accordance with these regulations.

9-7.1103 Procedures.

An application for a development agreement shall be filed and processed in accordance with the provisions of Article 2, Common Procedures. A development agreement shall be considered by the City Council with a recommendation from the Planning Commission. Its approval shall be by ordinance authorizing the City Manager or his or her designee to execute the development agreement, and is subject to referendum. After the ordinance approving the development agreement takes effect, the City Manager shall execute the development agreement on behalf of the City. The effective date of the development agreement shall be the later of the effective date of the ordinance or the date the City Manager executes the development agreement on behalf of the City. Within ten days after the City Manager executes the development agreement on behalf of the City, the City Clerk shall have the development agreement and the ordinance approving it recorded with the County Recorder.

9-7.1104 Findings.

The Planning Commission in recommending, and the City Council in approving, a development agreement, must make both of the following findings:

(a) The development agreement is consistent with the General Plan and any applicable specific plan.

(b) The development agreement is in the public interest.

9-7.1105 Qualifications.

(a) **Applicants.** Only a qualified applicant may file an application to enter into a development agreement. A "qualified applicant" is a person who has legal or equitable interest in the real property which is the subject of the development agreement. The City Manager or his or her designee may require an applicant to submit proof of his or her interest in the real property. The City Manager may also require that all persons having a legal or equitable interest in the real property be made parties to the application and signatories to the development agreement, or otherwise assure the City, in form approved by the City Attorney, that they will be legally bound to comply with the terms and conditions of the development agreement; provided, that this requirement shall not apply

to owners or claimants of interests in easements, whether of record or otherwise, or other interests not deemed material by the City Manager, unless the City Attorney determines that their agreement or undertaking to be bound by the development agreement is necessary for the development agreement to be effective in achieving the City's objectives. The burdens of the development agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the development agreement. The qualified applicant and any successors in interest are referred to in this Article as "developer," which shall include the plural in the case of an applicant consisting of more than one party.

(b) **Property.** The property to be the subject of the development agreement shall be situated within the City limits and shall represent an appropriate parcel or parcels, as to ownership and parcel configuration, size and location, as determined by the City Manager, to assure the development of the property consistent with the policies, goals, standards and objectives of the General Plan and applicable City ordinances, laws, rules, regulations and policies.

9-7.1106 Contents of Development Agreement.

(a) Every development agreement shall be for a specified initial term. Such terms may be extended, from time to time, as provided in the development agreement.

(b) The development agreement shall specify (in the development agreement itself or by reference to other project approvals) the permitted uses of the property which is subject to the development agreement, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land for public purposes, the location of public improvements, and other applicable terms and conditions.

(c) The development agreement may contain a requirement that construction be commenced within a specified period of time or that the project or any phase thereof be completed within a specified time. If the development agreement expressly does not specify the timing of the commencement or completion of the project, or any phase thereof, the development agreement may specify that it is deemed nevertheless to have dealt with the issue of timing; provided, however, that specific time requirements of any subsequent special permit, subdivision map or other land use entitlement shall govern.

(d) The development agreement may contain a hold harmless agreement and an agreement to indemnify the City from suits and actions arising in connection with the development agreement, to the satisfaction of the City Attorney.

(e) The development agreement may include conditions, terms, restrictions and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the development agreement.

(f) A development agreement may provide that it constitutes a financing agreement within the meaning and scope of California Government Code Section 53511.

(g) The development agreement may contain such other provisions as the City Council deems appropriate.

9-7.1107 Periodic Review.

(a) The City Manager or designee shall, on an annual basis and at any other time that the City Manager determines to be appropriate, review the extent of good faith substantial compliance by the developer with the terms and conditions of the development agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of the development agreement pursuant to California Government Code Section 65865.1. The costs of notice and related costs incurred by the City for such annual review shall be borne by the developer.

(b) Unless otherwise specified in a development agreement, the City Manager shall provide 30 days' prior written notice of such periodic review to the developer. Such notice shall require the developer to demonstrate good faith compliance with the terms and conditions of the development agreement and to provide such other information as may be reasonably requested by the City Manager and deemed by him or her to be required in order to ascertain compliance with the development agreement. Such notice shall also include the statement that any review may result in amendment or termination of the development agreement.

(c) If, following such review, the City Manager is not satisfied that the developer has demonstrated good faith compliance with all the terms and conditions of the development agreement, or for any other reason, the City Manager may refer the matter along with his or her recommendation to the City Council.

(d) The City Council shall conduct a hearing on compliance at its first available agenda after referral by the City Manager. The City Council shall hear the matter de novo.

(e) If the City Council finds and determines, on the basis of substantial evidence, that any developer has not complied in good faith with each and every term and condition of the development agreement, the City Council may terminate or modify the development agreement as to that developer and the property in which that developer holds an interest. Failure of any developer to accept a modification of the development agreement shall result in termination of the development agreement as to that developer and the property in which that developer holds an interest. Termination of the development agreement shall not affect any developer's obligations to comply with the terms and conditions of any applicable zoning, specific plans, special permit, subdivision map or other land use entitlement approved with respect to the property subject to the development agreement, nor shall it affect other covenants of any developer specified in the development agreement to continue after the termination of the development agreement.

(f) A finding by the City Manager or the City Council of good faith compliance by a developer with the terms and conditions of the development agreement shall conclusively determine the issue up to and including the date of the review as to such developer.

(g) Failure of the City to conduct a periodic review shall not constitute a waiver by the City of its rights to enforce the provisions of a development agreement, nor shall a developer have or assert any defense to such enforcement by reason of such failure to conduct a periodic review.

9-7.1108 Amendment or Cancellation.

A development agreement may be amended or canceled, in whole or in part, by the mutual consent of the parties to the development agreement or their successors in interest and as otherwise provided in the development agreement. The procedure for a substantive amendment or cancellation shall be the same as the procedures for approval. If the parties to the development agreement or their successors in interest cancel or terminate the development agreement, the City Clerk shall have notice of such action recorded with the County Recorder.

9-7.1109 Modification or Suspension.

In the event that State or Federal laws or regulations, enacted after a development agreement has been entered into, prevent or preclude compliance with one or more provisions of the development agreement, such provisions of the development agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations. The procedure for modification or suspension of a substantive provision of a development agreement shall be the same as the procedures for approval.

ARTICLE 12. GENERAL PLAN AMENDMENTS

9-7.1201 Purpose.

This Article establishes a uniform process for the amendment of the General Plan when it is in the public interest to do so.

9-7.1202 Applicability.

The procedures in this Article apply to all proposals to amend the text or diagrams of the General Plan, including, but not limited to, the land use, building intensity (floor area ratio), height, and residential density maps.

9-7.1203 Initiation of Amendments.

An amendment to the General Plan may be initiated by:

(a) Any qualified applicant as identified in Article 2, Common Procedures; or

(b) An order of the City Council or Planning Commission, on its own motion or on the recommendation of the Director of Planning and Building.

9-7.1204 Procedures.

An application for an amendment to the General Plan shall be filed and processed in accordance with the provisions of Article 2, Common Procedures, and shall be considered by the City Council with a recommendation from the Planning Commission. It shall be processed in conformance with California Government Code Section 65350 et seq., its approval shall be by resolution, and it is subject to referendum.

(a) **Required Information.** In addition to any other application requirements, an application for a General Plan amendment shall include a statement, supported by documentation, that describes how the proposed amendment conforms to the General Plan's Guiding Principles and the benefit to the public that will result from approving the proposed change or changes to the Plan.

(b) **Director's Report.** The Director shall prepare a report and recommendation to the Planning Commission, which shall include, but is not limited to, a discussion of how the proposed amendment complies with the purposes of this Article and the General Plan's Guiding Principles, and a determination as to whether the proposed amendment will require amendment to other plans that the City Council has adopted.

(c) **Planning Commission Recommendation.** The Commission's recommendation shall be forwarded to the City Council for action on the proposed amendment except in the situation specified in Section 9-7.1206(a).

9-7.1205 Findings.

The Planning Commission in recommending, and the City Council in approving, an amendment to the General Plan, must make all of the following findings:

(a) The proposed amendment will contribute to the public health, safety, and general welfare or will be of benefit to the public.

(b) The proposed amendment is consistent with the General Plan Guiding Principles, unless the Guiding Principles themselves are proposed to be amended.

(c) The proposed amendment retains the internal consistency of the General Plan and is consistent with other adopted plans, unless concurrent amendment to those plans is also proposed and will result in consistency.

(d) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

(e) The proposed amendment complies with State law for the preparation, adoption, and amendment of general plans at California Government Code Section 65350 et seq.

9-7.1206 Planning Commission Action.

The Planning Commission shall hold a public hearing noticed and conducted as required by Article 2, Common Procedures and shall then vote on its recommendation on the proposed amendment. A recommendation for approval shall be made by the affirmative vote of not less than a majority of the total membership of the Commission.

(a) **Recommendation Against Private Application.** If the amendment under consideration was initiated by an applicant pursuant to Section 9-7.1203(a), and the Planning Commission recommends against the adoption of such amendment, the application is denied and the City Council shall not be required to take any further action on the amendment unless the Planning Commission's decision is appealed pursuant to Article 14.

(b) **All Other Situations.** Following the public hearing, the Planning Commission shall submit a recommendation on the proposed amendment and environmental determination to the City Council. The recommendation shall include the reasons for the recommendation; the extent to which the proposed amendment meets the purposes of this Article; the consistency of the proposed amendment with the General Plan Guiding Principles, other provisions of the General Plan, and any other adopted plan; and any changes to the amendment that the Commission deems necessary to ensure internal consistency of the General Plan and consistency with other adopted plans, or to reduce environmental impacts.

9-7.1207 City Council Action.

After receiving the report from the Planning Commission, the City Council shall hold a public hearing noticed and conducted as required by Article 2, Common Procedures. The notice shall include a summary of the Planning Commission recommendation. After the conclusion of the hearing, the City Council may approve, modify, or disapprove the recommendations of the Planning Commission, provided that any substantial modification of the proposed amendment by the City Council not previously considered by the Planning Commission during its hearing shall first be referred to the Planning Commission for report and recommendation. The Planning Commission is not required to hold a public hearing on the matter. If the Planning Commission fails to report back to the City Council within 60 days after the referral, the modification shall be deemed to have been recommended for approval. The City Council's approval of an amendment to the General Plan shall be by resolution, which shall be adopted by the affirmative vote of not less than a majority of the total membership of the Council.

ARTICLE 13. AMENDMENTS TO PLANNING REGULATIONS AND ZONING MAPS

9-7.1301 Purpose.

This Article establishes a uniform process for the amendment of these Planning Regulations, including the boundaries of base zones and overlay zones established pursuant to Chapter 3, provided that such amendment is consistent with the General Plan.

9-7.1302 Applicability.

The procedures in this Article apply to all proposals to change the text of these Planning Regulations or to revise a zoning district classification or boundary line shown on the Zoning Maps in Section 9-3.103. These procedures do not apply to amendments to the building intensity (floor area ratio), height, and residential density maps in Article 2 of Chapter 4, which are part of the General Plan and may only be amended pursuant to the General Plan Amendment procedures in Article 12.

9-7.1303 Initiation of Amendments.

An amendment to these Planning Regulations or the Zoning Maps may be initiated by:

(a) Any qualified applicant as identified in Article 2, Common Procedures; or

(b) An order of the City Council or Planning Commission, on its own motion or on the recommendation of the Director of Planning and Building.

9-7.1304 Procedures.

An application for an amendment to these Planning Regulations and/or the Zoning Maps shall be filed and processed in accordance with the provisions of Article 2, Common Procedures, and shall be considered by the City Council with a recommendation from the Planning Commission. Its approval shall be by ordinance and is subject to referendum. The Director shall prepare a report and recommendation to the Commission, which shall include, but is not limited to, a discussion of how the proposed amendment meets the findings in Section 9-7.1305. The Commission's recommendation shall be forwarded to the City Council for action on the proposed amendment except in the situation specified in Section 9-7.1306(a).

9-7.1305 Findings.

The Planning Commission in recommending, and the City Council in approving, an amendment to these Planning Regulations or the Zoning Maps, must make all of the following findings:

(a) The proposed amendment is consistent with the General Plan.

(b) The proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public.

(c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

(d) For a change to the Zoning Maps, that the subject property is suitable for the uses permitted in the proposed zone in terms of access, size of parcel, relationship to similar or

related uses, and other relevant considerations, and that the proposed change of zoning district is not detrimental to the use of adjacent properties.

9-7.1306 Planning Commission Action.

The Planning Commission shall hold a public hearing noticed and conducted as required by Article 2, Common Procedures and shall then vote on its recommendation on the proposed amendment.

(a) **Recommendation Against Amendment to Rezone Property.** If the matter under consideration is an amendment to change property from one zone to another, and the Planning Commission recommends against the adoption of such amendment, the application is denied and the City Council shall not be required to take any further action on the amendment unless the Planning Commission's decision is appealed pursuant to Article 14.

(b) **All Other Situations.** Following the public hearing, the Planning Commission shall submit a recommendation on the proposed amendment and environmental determination to the City Council. The recommendation shall include the reasons for the recommendation; the extent to which the proposed amendment meets the purposes of this Article; the compatibility of the proposed amendment with the General Plan and any other adopted plan; and any changes to the amendment that the Commission deems necessary to comply with the General Plan and other adopted plans, or to reduce environmental impacts.

9-7.1307 City Council Action.

After receiving the report from the Planning Commission, the City Council shall hold a public hearing noticed and conducted as required by Article 2, Common Procedures. The notice shall include a summary of the Planning Commission recommendation. After the conclusion of the hearing, the City Council may approve, modify, or disapprove the recommendations of the Planning Commission, provided that any substantial modification of the proposed amendment by the City Council not previously considered by the Planning Commission during its hearing shall first be referred to the Planning Commission for report and recommendation. The Planning Commission is not required to hold a public hearing on the matter. If the Planning Commission fails to report back to the City Council within 60 days after the referral, the modification shall be deemed to have been recommended for approval. The City Council's approval of an amendment to these Planning Regulations and/or Zoning Maps shall be by ordinance.

ARTICLE 14. APPEALS

9-7.1401 Purpose.

This Article establishes uniform procedures for appeals of interpretations, determinations, and decisions made pursuant to the provisions of these Planning Regulations.

9-7.1402 Applicability.

Interpretations, determinations, and decisions made by the Director of Planning and Building may be appealed to the Planning Commission. Interpretations, determinations, and decisions made by the Planning Commission may be appealed to the City Council. Appeals may be filed by the applicant, by the owner of property, or by any other person aggrieved by a decision that is subject to appeal under the provisions of these Planning Regulations.

9-7.1403 Time Limits and Contents.

Unless otherwise specified in State or Federal law, all appeals shall be filed in writing within 15 days of the date of the interpretation, determination, or decision from which the appeal is taken. The appeal shall identify the decision being appealed and shall clearly and concisely state the reasons for the appeal.

(a) In the event that an appeal period ends on a Saturday, Sunday, or City holiday, the appeal period shall end at the close of business on the next City business day.

(b) The timely filing of an appeal shall stay all proceedings in the matter appealed including, but not limited to, the issuance of building permits and business licenses.

(c) If a basis of the appeal is that the Director's or the Commission's action constituted a taking of the subject property or any part thereof under the California or United States Constitutions, that ground and all evidence (including specific financial data and analyses, if any) and argument in support thereof shall be clearly stated as a separate ground of the appeal, or it shall be waived. If specific evidence is not presented as part of the appeal, the appellant shall be deemed to have waived any claim to sworn testimony and cross-examination.

9-7.1404 Appeals of Planning and Building Director Decisions.

Appeals to the Planning Commission of interpretations, determinations, and decisions made by the Director of Planning and Building shall be filed and processed in accordance with the provisions of Article 2, Common Procedures.

(a) **Transmission of Record.** The Director shall forward the appeal, decision letter or other documentation of the decision, and all other documents that constitute the record, to the Planning Commission. The Director shall also prepare a staff report that responds to the issues raised by the appeal and that may include a recommendation for action, and shall set the matter for consideration at the next available Planning Commission meeting.

(b) **Planning Commission Action.** The Planning Commission shall review the appeal, the record, and any written correspondence submitted after the appeal has been filed, and shall either:

(1) Affirm the decision of the Director and dismiss the appeal based on a determination that the facts ascertainable from the record do not warrant further hearing;

(2) Set a date for a public hearing on the appeal; or

(3) Remand the matter to the Director to cure a deficiency in the record or the proceedings.

(c) **Public Notice.** If the Commission votes to conduct a public hearing, notice shall be provided in the same manner as required for the action that was the subject of the appeal pursuant to the provisions of Article 2, Common Procedures. Notice shall also be provided to all persons who spoke on the matter at any prior hearings or submitted written comments only if they provided their names and addresses at the time they spoke at the prior hearing.

(d) **Planning Commission Action on Appeal.** Within 30 days after closing the public hearing, the Commission shall either:

(1) Continue the hearing and request a supplemental report from the Director, in which event the Commission may extend the time for rendering the decision an additional 30 days;

(2) Approve the Director's action upon finding that all applicable findings have been correctly made and all provisions of this Title have been complied with;

(3) Approve the Director's action but impose additional conditions and/or guarantees as it deems necessary to fulfill the purposes of this Title; or

(4) Disapprove the Director's action upon finding that all applicable findings have not been made or all provisions of this Title have not been complied with.

(e) **Majority Vote Required.** An action to grant an appeal shall require a majority vote of Planning Commission members present and voting. A tie vote shall have the effect of rejecting the appeal.

(f) **Commission's Decision is Final.** The decision of the Planning Commission is final and may not be appealed to the City Council.

9-7.1405 Appeals of Planning Commission Decisions.

Appeals to the City Council of interpretations, determinations, and decisions made by the Planning Commission shall be filed and processed in accordance with the provisions of Article 2, Common Procedures.

(a) **Transmission of Record.** The Director shall forward the appeal, decision letter or other documentation of the decision, and all other documents that constitute the record, to the City Clerk for forwarding to the City Council. The Director shall also prepare a staff report that responds to the issues raised by the appeal and that may include a recommendation for action. The City Clerk shall set the matter for consideration at the next available City Council meeting.

(b) **City Council Action on Appeal.** The Council shall review the appeal, the record, and any written correspondence submitted after the appeal has been filed, and shall either:

(1) Affirm the decision of the Commission and dismiss the appeal based on a determination that the facts ascertainable from the record do not warrant further hearing;

(2) Set a date for a public hearing on the appeal; or

(3) Remand the matter to the Commission to reconsider the application, identifying the issues that the Commission is directed to consider and specifying whether or not the Commission shall hold a new public hearing.

(c) **Public Notice.** If the Council votes to conduct a public hearing, notice shall be provided in the same manner as required for the action that was the subject of the appeal pursuant to the provisions of Article 2, Common Procedures. Notice shall also be provided to all persons who spoke on the matter at any prior hearings or submitted written comments only if they provided their names and addresses at the time they spoke at the prior hearing. In addition, the Planning Commission may be represented at the hearing.

(d) **City Council Action on Appeal.** Within 60 days after closing the public hearing, the City Council shall either:

(1) Continue the hearing and request a supplemental report from the Planning Commission, in which event the Council may extend the time for rendering the decision an additional 30 days;

(2) Approve the Commission's action upon finding that all applicable findings have been correctly made and all provisions of this Title have been complied with;

(3) Approve the Commission's action but impose additional conditions and/or guarantees as it deems necessary to fulfill the purposes of this Title; or

(4) Disapprove the Commission's action upon finding that all applicable findings have not been made or all provisions of this Title have not been complied with.

(e) **Majority Vote Required.** An action to grant an appeal shall require a majority vote of City Council members present and voting. A tie vote shall have the effect of rejecting the appeal.

9-7.1406 Calls for Review.

A majority of the City Council may call for review of a decision of the Planning Commission within the 15 day appeal period. The call for review shall be processed in the same manner as an appeal by any other person. Such action by the Council shall stay all proceedings in the same manner as the filing of an appeal. Such action shall not require any statement of reasons and shall not represent opposition to or support of an application or appeal.

9-7.1407 Standards of Review.

When reviewing a decision on appeal, the hearing body shall use the same standards for decision making required for the original decision. The hearing body may adopt the same decision and findings as were used for the original decision.

ARTICLE 15. ENFORCEMENT AND REVOCATION

9-7.1501 Purpose.

This Article establishes enforcement and revocation procedures. The purpose of these provisions is to provide uniform enforcement procedures for the requirements of this Title, and to provide a process for the revocation or modification for cause of any permit, including a variance, granted under this Title, except a sidewalk cafe permit, which shall be subject to the revocation procedure at Section 9-5.1510.

9-7.1502 Penalties.

It shall be unlawful for any person to violate any provision or to fail to comply with any requirement of this Title. Any person violating any provision of this Title shall be punishable as set forth in Chapter 2 of Title 1.

9-7.1503 Enforcement Responsibilities.

(a) The Director of Planning and Building or his or her designee is responsible for enforcing the provisions of this Title, and shall investigate all violations and suspected violations and ascertain the nature of the violation and its location, the names of the parties to the violation, and the number of the section of this Title that has been violated.

(b) All departments, officials, and public employees of the City vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Title and shall issue no permit or license for uses, buildings or purposes in conflict with the provisions of this Title. Any such permit or license issued in conflict with the provisions of this Title shall be null and void.

9-7.1504 Nuisance Declared.

Any structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of this Title; any use of any land, structure or premises established, conducted, operated or maintained contrary to the provisions of this Title; and failure to comply with any of the conditions of a permit or variance granted under this Title is hereby declared unlawful and a public nuisance. Public nuisance is as defined in California Civil Code Section 3480, and private nuisance is as defined in California Civil Code Section 3481.

9-7.1505 Remedies.

The remedies provided for in this Section shall be cumulative and not exclusive. Upon a finding of nuisance pursuant to this Article, and after giving the property owner an opportunity to cure the nuisance and determining that the nuisance still exists, the Planning Commission or City Council may impose any remedy available at law or in equity, which shall include, but is not limited to, any of the following or combination thereof:

(a) Ordering the cessation of the use in whole or in part.

(b) Imposing reasonable conditions upon any continued operation of the use, including those uses that constitute existing nonconforming uses.

(c) Requiring continued compliance with any conditions so imposed.

(d) Requiring the user to guarantee that such conditions shall in all respects be complied with.

(e) Imposing additional conditions or ordering the cessation of the use in whole or in part upon a failure of the user to comply with any conditions so imposed.

9-7.1506 Nuisance Abatement.

(a) **Initiation.** Proceedings under this Section to terminate, modify or condition (hereinafter abate or if context requires, abatement) any use, structure or building may be initiated by resolution of the Planning Commission or the City Council on its own motion or following recommendation by the Director of Planning and Building. The resolution shall identify the use, building, or structure being considered, identify the property involved, set forth the reason or reasons for the proposed abatement, and fix a time and place for a public hearing on the proposed abatement. In the case of proceedings initiated by the Council, the resolution shall refer the matter for a public hearing before the Commission. A resolution initiating abatement proceedings may be adopted without a public hearing.

(b) **Notice.** Upon initiation of abatement proceedings, the Director shall give notice of a public hearing before the Commission as required by Article 2, Common Procedures.

(c) **Public Hearing.** The Planning Commission shall hold a public hearing conducted as required by Article 2, Common Procedures and shall provide for testimony by City staff and the owner of the use, structure, or property that is the subject of the proceeding. Any other interested person shall also be given an opportunity to provide testimony.

(d) **Action.** The Planning Commission shall consider the staff report and the evidence, testimony, and facts presented at the hearing before taking action. If the Commission finds that the use, building, or structure constitutes a nuisance, it may impose any remedy as provided for in this Title.

(e) **Decision and Notice.** After the Commission takes abatement action, the Director shall issue a Notice of Action describing the Commission's action, with its findings. The Director shall mail the notice to the permit holder and to any person who has requested such notification by filing a written request with the Director, and shall file a copy of the Notice of Action with the City Clerk. The Clerk shall present the Notice of Action to the Council at its next regular meeting. A decision to abate a nuisance shall become effective at the end of the appeal period unless appealed.

(f) **Appeals.** A decision to abate a nuisance may be appealed to the City Council pursuant to Article 14. Upon receiving an appeal, the City Clerk shall schedule and notice a hearing before the Council as required by Article 2, Common Procedures. Following the hearing the Council shall decide whether the use, structure or building constitutes a nuisance as defined by this Article. If the Council finds, based on the testimony, that the use, structure or building constitutes a nuisance, it may impose any remedy provided for in this Title. If the Council finds that the use, structure or building is not a nuisance, it shall reverse the decision of the Commission.

(g) **City Attorney Action.** The City Attorney shall, upon order of the City Council, or on his or her own initiative, immediately commence action or proceedings for the abatement and removal and enjoinment of said public nuisance in the manner prescribed by law, and

shall take such other steps and shall apply to such courts as may have jurisdiction to grant such relief as will abate and remove such building or structure, and restrain and enjoin any person, firm, or corporation from setting up, erecting, building, maintaining, or using any such building contrary to the provisions of this Chapter.

9-7.1507 Recording a Notice of Violation.

(a) If there is not compliance with an order to correct violations of this Title within the time specified in the order, the City Manager may file for recording in the Office of the Alameda County Recorder a Notice of Violation describing the property and certifying that:

(1) The property and/or structure is in violation of this Title; and

(2) The owner has been so notified. The notice shall specifically describe the violations and a proof of service shall also be recorded with the Notice of Violation.

(b) Whenever the ordered corrections have been completed, the City Manager shall file for recording in the Office of the Alameda County Recorder a new statement certifying that all required corrections have been made so that the property and/or structure is no longer in violation of this Title.

9-7.1508 Revocation of Permits.

(a) **Grounds for Revocation or Modification.** A permit may be revoked or modified pursuant to the provisions of this Article upon a finding of any one or more of the following grounds:

(1) The permit was obtained or extended by fraud;

(2) The permit holder has failed to comply with one or more of the conditions upon which the permit was granted;

(3) The use, building, or structure has been substantially expanded beyond what is set forth in the permit or substantially changed in character; or

(4) The use or facility for which the permit was granted is being conducted or maintained as to be detrimental to the public health or safety, or as to be a nuisance.

(b) **Initiation of Action.** An action to revoke or modify a permit may be initiated by order of the City Council or Planning Commission, whichever granted or modified the permit, on its own motion or on the request of any City officer; provided, however, that the City Council may initiate an action to revoke or modify any permit granted or modified by the Planning Commission. An action to revoke or modify a permit granted or modified by the Director of Planning and Building may be initiated by order of the City Council or Planning Commission on its own motion or on the request of any City officer. The order shall set forth grounds for revocation or modification.

(c) **Revocation Procedure.** The Planning Commission shall hold an evidentiary hearing, in accordance with the provisions of Article 2, Common Procedures, regarding the order

proposing the revocation or modification of a permit. The Commission shall conduct the hearing according to the following procedure:

(1) The Planning Commission shall hear and consider all relevant evidence, including but not limited to applicable staff reports, objections or protests relative to the existence of violations of required conditions, and recommendations proposed by staff. The Commission may by motion continue the public hearing to a fixed date, time and place or may continue the item to an undetermined date and provide notice of the continued hearing.

(2) The hearing shall be conducted in accordance with the following rules:

a. The hearing need not be conducted according to the technical rules of evidence.

b. Oral evidence shall be taken only on oath or affirmation.

c. Hearsay evidence may be used for the purpose of supplementing or explaining direct evidence, but hearsay evidence shall not be sufficient in itself to support a finding.

d. Any relevant evidence shall be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs.

e. Irrelevant or unduly repetitious evidence shall be excluded.

(3) The permit holder and staff members shall have the following rights among others as parties to the proceeding:

a. To call and question witnesses on any matter relevant to the hearing.

b. To introduce documentary and physical evidence.

c. To question opposing witnesses on any matter relevant to the hearing;

d. To impeach any witness, regardless of which party first called such witness to testify.

e. To rebut the evidence against such parties.

f. To represent himself or herself or to be represented by anyone of his or her choice who is lawfully permitted to do so.

(4) In reaching a decision, official notice may be taken, before or after submission of the case for decision, of any fact, which may be noticed by the courts of this State, or official records of the City Council, City departments, City ordinance, and other rules and regulations adopted by the City Council.

(5) Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority. The Commission may determine the manner of refutation.

(d) **Planning Commission Recommendation.** At the conclusion of the public hearing, the Planning Commission may, on the basis of the evidence presented at the hearing, make a

finding on any one or more of the grounds listed in subsection (a) and make a recommendation to the City Council to revoke or modify the permit.

(e) **City Council Action.**

(1) Upon receipt of the transcript of the evidentiary hearing conducted by the Planning Commission, the Director shall transmit the recommendation to the City Council at its next regular meeting with a recommendation that the Council schedule a hearing on the matter. The hearing shall be scheduled within 30 days of the date of the Council's receipt of the recommendation of the Planning Commission. A copy of the transcript of the evidentiary hearing shall accompany the staff report.

(2) At the regular meeting at which the City Council is scheduled to act on the recommendation of the Planning Commission, the Council shall hear brief arguments by the permittee and City staff, and take action based upon the record of proceedings and the recommendation contained in the hearing transcript, the findings contained in the staff report, and the arguments presented to the Council and revoke, modify, or let stand the permit in question. A decision by the City Council to revoke or modify a permit shall be accompanied by a directive to the City Clerk to prepare a minute order setting forth that action.

(f) **Related Permits.** In addition to the remedies provided above, any person violating a provision of this Title or failing to comply with the mandatory requirements of this Title shall be subject to having any other related permits and/or any related business license revoked by the issuing authority for said violation.

(g) **Automatic Revocation of Permit.** If a permit is granted or modified subject to one or more conditions, such permit shall cease to be valid, and all rights or privileges granted thereby shall lapse, notwithstanding any other provisions of this Title to the contrary, whenever there becomes final any judgment of a court of competent jurisdiction declaring one or more of such conditions to be void or ineffective, or enjoining or otherwise prohibiting the enforcement or operation of one or more of such conditions.

CHAPTER 8.
DEFINITIONS

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ARTICLE 1. GENERAL PROVISIONS

9-8.101 Title, Purpose, and Applicability.

The provisions of this Chapter shall be known as the definitions. The purpose of these provisions is to promote consistency and precision in the interpretation of the Planning Regulations. The meaning and construction of words and phrases as set forth shall apply throughout the Planning Regulations, except where the context of such words and phrases clearly indicates a different meaning or construction. These definitions do not include use types, which are defined in Chapter 2, or specialized definitions as listed in Section 9-8.103. Definitions contained in the Building Regulations in Title 8 shall be applicable except when in conflict with definitions contained in these Planning Regulations, in which case the Planning Regulations definition shall prevail. For rules of construction of language, see Section 9-1.202.

9-8.102 General Terms.

(a) "Chief Building Official" or "Building Official" means the Chief Building Official of the City of Emeryville or his or her designee.

(b) "City" means the City of Emeryville.

(c) "City Attorney" means the City Attorney of the City of Emeryville or his or her designee.

(d) "City Council" or "Council" means the City Council of the City of Emeryville.

(e) "City Engineer" means the person designated to serve as the City Engineer of the City of Emeryville or his or her designee.

(f) "City Manager" means the City Manager of the City of Emeryville or his or her designee.

(g) "County" means the County of Alameda.

(h) "Department" means the Planning and Building Department of the City of Emeryville.

(i) "Director" means the Director of Planning and Building of the City of Emeryville or his or her designee.

(j) "Federal" means the government of the United States of America.

(k) "Fire Marshal" means the person designated to serve as the Fire Marshal of the City of Emeryville or his or her designee.

(l) "General Plan" means the City of Emeryville General Plan adopted by the City Council by Resolution No. 09-208 on October 13, 2009, as it may be amended from time to time.

(m) "Planning Commission" or "Commission" means the Planning Commission of the City of Emeryville.

(n) "Planning Regulations" or "these Planning Regulations" means Title 9 of the Emeryville Municipal Code, that is, this Title.

(o) "Subdivision Regulations" means Chapter 6 of these Planning Regulations.

(p) "State" means the State of California.

9-8.103 Specialized Definitions.

Throughout these Planning Regulations, in various Articles and Sections, are specialized definitions pertaining to the topics covered by those Articles and Sections. Specialized definitions pertaining to the following topics, and the Sections where they may be found, include:

(a) Adult oriented businesses: see Section 9-5.309.

(b) Affordable Housing Set-Aside Program: see Section 9-5.415.

(c) Bicycle parking: see Section 9-4.408(g).

(d) Density bonus for affordable housing: see Section 9-5.510.

(e) Firearms and ammunition sales: see Section 9-5.607.

(f) Hazardous waste facilities, off-site: see Section 9-5.702.

(g) Mix of use groups: see Section 9-3.303(b)(2)d.

(h) Nuisance: see Section 9-7.1504.

(i) Open space:

  (1) Common open space: see Section 9-4.303(b)(3)a.

  (2) Private residential open space: see Section 9-4.303(b)(2)a.

  (3) Privately owned public open space: see Section 9-4.303(b)(4)a.

(j) Preservation of significant and residential structures: see Section 9-5.1212.

(k) Reasonable accommodation: see Section 9-7.908.

(l) Residential care facilities for the elderly: see Section 9-5.212(a).

(m) Setbacks and yards: see Section 9-4.301(b).

(n) Sidewalk cafes: see Section 9-5.1515.

(o) Signs: see Section 9-5.1615.

(p) Telecommunication facilities: see Section 9-5.1708.

(q) Trees, small-, medium-, and large-canopy: see Section 9-4.503(h)(1).

(r) Water use: see Section 9-4.605.

For convenience, cross-references to these specialized definitions are also included in Article 2 below.

ARTICLE 2. GENERAL DEFINITIONS

9-8.201 "A" Terms.

(a) Abandoned bicycle (as pertains to Bicycle Parking). See Section 9-4.408(g)(1).

(b) "Abutting" means having a common boundary. Parcels having no common boundary other than a common corner shall not be considered abutting. See also "adjacent".

(c) "Access" means the place, means, or way by which pedestrians, bicycles and vehicles have safe, adequate and usable ingress and egress to a property or use.

(d) Accessory building. See "Building, Accessory".

(e) Accessory structure. See "Structure, Accessory".

(f) Accessory Use. See "Use, Accessory".

(g) "Acre, Gross" means a measure of total land area of a lot or site, including areas to be dedicated for public rights-of-way, streets, schools, or other dedications. It does not include the area of adjacent public rights-of-way that are not part of the site. One acre equals 43,560 square feet.

(h) Act (as pertains to Reasonable Accommodation). See Section 9-7.908(a).

(i) "Adjacent" means having a boundary or lot line in common or separated only by an alley, street, highway or recorded easement. Parcels having no common boundary other than a common corner shall be considered adjacent. See also "abutting".

(j) Adjoining. See "Abutting".

(k) Adult arcade (as pertains to Adult Oriented Businesses). See Section 9-5.309(a)(1).

(l) Adult bookstore (as pertains to Adult Oriented Businesses). See Section 9-5.309(a)(2).

(m) Adult entertainment businesses (as pertains to Adult Oriented Businesses). See Section 9-5.309(a).

(n) Adult motion picture theater (as pertains to Adult Oriented Businesses). See Section 9-5.309(a)(3).

(o) Adult theater (as pertains to Adult Oriented Businesses). See Section 9-5.309(a)(4).

(p) Affordable (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(a).

(q) Affordable (as pertains to Density Bonus for Affordable Housing). See Section 9-5.510(a).

(r) "Alley" means a public way permanently reserved for secondary vehicular service access to the rear or side of properties otherwise abutting on a street.

(s) "Alteration" means any change, addition, or modification in construction or appearance.

(t) "Alternative energy" means solar panels, wind turbines, or other renewable sources of electricity.

(u) "Americans with Disabilities Act (ADA)" means United States Public Law 101-336, 104 Stat. 327 (July 26, 1990), codified at 42 U.S.C. Section 12101 et seq.

(v) Ammunition (as pertains to Firearms and Ammunition Sales). See Section 9-5.607(a).

(w) Animated sign (as pertains to Sign Types). See Section 9-5.1615(b)(1).

(x) "Antenna" means any system of wires, poles, rods, reflecting discs, or similar devices used for the transmission or reception of electromagnetic waves.

(y) "Apartment" means a dwelling unit in a Two Unit or Multi-Unit Residential structure that is not a condominium unit, and is typically not owner-occupied.

(z) Applicant (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(b).

(aa) Applicant (as pertains to Reasonable Accommodation). See Section 9-7.908(b).

(bb) Area Median Income (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(c).

(cc) At one location (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(d).

(dd) "Attached structure" means a structure that has a wall in common with another structure or is connected to another structure by a continuous roof.

(ee) "Awning" means a roof-like cover, often made of fabric, metal, or glass, designed and intended for protection from the weather or as a decorative embellishment, and which projects from a wall or roof of a structure, typically over a window or door.

(ff) Awning sign (as pertains to Sign Types). See Section 9-5.1615(b)(2).

9-8.202 "B" Terms.

(a) "Balcony" means a platform that projects from the wall of a building 30 inches or more above grade that is accessible from the building's interior, is not accessible from the ground and is not enclosed by walls on more than two sides, as further regulated at Section 9-4.303(b)(2). See also "Deck".

(b) Banner sign (as pertains to Sign Types). See Section 9-5.1615(b)(3).

(c) Base zone. See "Zone, base".

(d) "Basement" means a non-habitable space, as defined by the California Building Code, beneath the first or ground floor of a building, the ceiling of which does not extend more than four feet above finished grade.

(e) Bathhouse (as pertains to Adult Oriented Businesses). See Section 9-5.309(a)(5).

(f) "Bedroom" means any room having the potential of being a bedroom and meeting the standards of the California Building Code as a sleeping room.

(g) Bedroom(s) (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(e).

(h) "Bicycle" means a device upon which any person may ride, propelled exclusively by human power through a belt, chain, or gears, and having one or more wheels, as defined in California Vehicle Code Section 231. A "bicycle" is not a "vehicle", but, pursuant to California Vehicle Code Section 21200 et seq., a person riding a bicycle upon a highway has all the rights and is subject to all the provisions applicable to the driver of a vehicle except those provisions which by their very nature can have no application.

(i) Bicycle (as pertains to Bicycle Parking). See Section 9-4.408(g)(2).

(j) Bicycle locker (as pertains to Bicycle Parking). See Section 9-4.408(g)(3).

(k) Bicycle parking space (as pertains to Bicycle Parking). See Section 9-4.408(g)(4).

(l) Blackwater (as pertains to Water Use). See Section 9-4.605(a).

(m) Blade sign (as pertains to Sign Types). See Section 9-5.1615(b)(4).

(n) "Block" means property bounded on all sides by a public right-of-way or shoreline.

(o) "Boarding house" means any residential building or portion thereof where lodging is provided for compensation. Meals may or may not be provided, but there is a single common kitchen facility. This definition does not include Residential Care Facilities, Supportive Housing, Transitional Housing, Emergency Shelters, Hotels, Motels, or Bed and Breakfast facilities.

(p) "Building" means any structure having a roof supported by columns or walls and used or intended for supporting or sheltering any use or occupancy, but not including a mobile home, manufactured home, commercial modular, recreational vehicle, or multifamily manufactured home.

(1) "Accessory building" means a detached subordinate building, the use of which is incidental to that of the principal building or to the main use of the land and which is located on the same lot with the principal building or use.

(2) "Principal building" means a building in which is conducted the principal use of the lot on which it is situated.

(q) "Building Code" means the Building Regulations codified in Title 8 of this Code.

(r) Building footprint. See "Footprint".

(s) Building height. See "Height".

(t) Building intensity. See "Floor area ratio".

(u) Building site. See "Site".

(v) Business sign (as pertains to Sign Types). See Section 9-5.1615(b)(5).

9-8.203 "C" Terms.

(a) "California Environmental Quality Act (CEQA)" means California Public Resources Code Section 21000 et seq., which requires public agencies to document and consider the environmental effects of a proposed project before making a decision on the project.

(b) "Call for review" means a motion of the City Council to review a decision of the Planning Commission, processed in the same manner as an appeal by any other person. See Section 9-7.1406.

(c) "Canopy" means a roofed shelter projecting over a sidewalk, driveway, entry, window, or similar area that may be wholly supported by a building or may be wholly or partially supported by columns, poles, or braces extending from the ground.

(d) Canopy, Tree. See "Tree canopy".

(e) "Carport" means a roofed space having no vehicle entrance door, enclosed on not more than two sides, and designed, constructed and maintained for the parking or storage of one or more motor vehicles.

(f) CEQA. See "California Environmental Quality Act".

(g) CEQA Guidelines. See "State CEQA Guidelines".

(h) "Certificate of Compliance" means a legal recorded document which certifies that a parcel of land complies with the Subdivision Map Act and the Subdivision Regulations of this Title.

(i) "Certificate of Correction" means a legal recorded document used to make minor changes to a recorded final map or parcel map pursuant to the requirements of the Subdivision Map Act and the Subdivision Regulations of this Title.

(j) Changeable copy sign (as pertains to Sign Types). See Section 9-5.1615(b)(6).

(k) Channel letters (as pertains to Sign Types). See Section 9-5.1615(b)(7).

(l) Child care facility (as pertains to Density Bonus for Affordable Housing). See Section 9-5.510(b).

(m) Cistern (as pertains to Water Use). See Section 9-4.605(b).

(n) Co-location (as pertains to Telecommunication Facilities). See Section 9-5.1708(a).

(o) Common interest development (as pertains to Density Bonus for Affordable Housing). See Section 9-5.510(c).

(p) Common open space. See Section 9-4.303(b)(3)a.

(q) "Community apartment project" means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon pursuant to California Civil Code Section 4100.

(r) "Compatible" means that which is harmonious with and will not adversely affect surrounding buildings and/or uses.

(s) Concession (as pertains to Density Bonus for Affordable Housing). See Section 9-5.510(d).

(t) "Conditional use permit" means a discretionary planning permit that may be granted by the appropriate City of Emeryville authority to provide for the accommodation of land uses with special site or design requirements, operating characteristics, or potential adverse effects on surroundings, which are not permitted by right but which may be

approved upon completion of a review process and, where necessary, the imposition of conditions of approval by the permit granting authority. See Article 5 of Chapter 7.

(u) "Conditionally permitted use" means a use that is not permitted by right in the zoning district in which it is located but which may be allowed subject to the approval of a conditional use permit.

(v) "Conditions of approval" means conditions imposed on a project as part of a discretionary planning permit that are deemed necessary by the permit granting authority to ensure that the project will comply with the General Plan, these Planning Regulations, and any other applicable City regulations.

(w) "Condominium" means an undivided interest in common in a portion of real property coupled with a separate interest in space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof pursuant to California Civil Code Section 4100.

(x) "Construction" means the on-site erection, fabrication, installation, alteration, demolition, or removal of any structure, facility, or addition thereto, including all related activities, including, but not limited to, clearing of land, earth moving, pile driving, and landscaping.

(y) Construction sign (as pertains to Sign Types). See Section 9-5.1615(b)(8).

(z) "Conversion" means a change in the characteristics of a use, including but not limited to, a change of rental residential property to condominium units, a change of nonresidential property to residential use and vice versa, or a change of a live/work unit to wholly residential or wholly nonresidential use.

(aa) "Court" means an open space between facing exterior walls of residential buildings on the same lot, pursuant to the requirements of Section 9-4.302.

(bb) "Covenants, conditions and restrictions" means limitations and rules placed on a group of homes or condominium units by a builder, developer, neighborhood association and/or homeowner association pursuant to California Civil Code, Division II, Part IV, Title 6.

(cc) "Covenant of easement" means a recorded covenant of easement made by an owner of real property to the City of Emeryville pursuant to Article 8 of Chapter 6 of these Planning Regulations for parking, ingress, egress, emergency access, light and air access, landscaping, or open-space purposes, as authorized by California Government Code Section 65870 et seq.

9-8.204 "D" Terms.

(a) "Deck" means a platform, either freestanding or attached to a building, that is supported by pillars or posts, but is not enclosed by walls or a roof, and that may be accessible from the ground. See also "Balcony."

(b) Declaration of Covenants, Conditions and Restrictions. See "Covenants, Conditions and Restrictions".

(c) "Dedication" means the turning over by an owner or developer of private land for public use, and the acceptance of land for such use by the governmental agency having jurisdiction over the public function for which it will be used.

(d) Demolish (as pertains to Preservation of Structures). See Section 9-5.1212(a).

(e) "Demolition" means the intentional destruction of any structure.

(f) Density, residential. See "Residential density".

(g) "Design Review" means a discretionary planning permit involving the review of the design of proposed construction to ensure that it complies with adopted design guidelines and other design criteria. See Article 4 of Chapter 7.

(h) "Detached structure" means a structure that is not connected to another structure either by a common wall or a continuous roof.

(i) "Determination of merger" means a legal recorded document determining that two or more lots are to be merged pursuant to the requirements of the Subdivision Map Act and the Subdivision Regulations of this Title.

(j) "Development" means any manmade change to improved or unimproved real estate, including, but not limited to, the division of a parcel of land into two or more parcels; the construction, reconstruction, conversion, alteration, relocation, or enlargement of any structure; any excavation, landfill or land disturbance; and any use or extension of the use of land.

(k) "Development agreement" means an agreement between the City of Emeryville and any person having a legal or equitable interest in real property for the development of such property and which complies with the applicable provisions of the California Government Code for such development agreements.

(l) Disability (as pertains to Reasonable Accommodation). See Section 9-7.908(c).

(m) Drive-in facility. See "Drive-through facility".

(n) "Drive-through facility" means a facility designed to enable persons to receive a service or purchase or consume goods while remaining within a motor vehicle, typically associated with banks, eating and drinking establishments, pharmacies, and other commercial uses, not including services or goods directly related to the motor vehicle, such as car washing or gasoline.

(o) "Driveway" means an accessway that provides vehicular access to off-street parking or loading facilities.

(p) "Dwelling" means a building or portion thereof used exclusively for residential purposes and accessory uses thereto, including One Unit, Two Unit, and Multi-Unit residential uses, but not including hotels, motels, boardinghouses, residential care facilities, or other use types classified as Residential.

(q) "Dwelling unit" means one or more habitable rooms including provisions for sleeping, eating, cooking, and sanitation intended to be occupied by a single household.

(r) Dwelling unit (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(f).

(s) "Dwelling, multiple" means a building or portion thereof used and designed as a residence for three or more households living in independent dwelling units, including apartment houses and residential condominiums.

9-8.205 "E" Terms.

(a) "Easement" means the right to use property owned by another for specific purposes or to gain access to another property.

(b) "Emeryville Design Guidelines" means the citywide design guidelines adopted by the City Council for use in the design review process of development projects, and for the review of other public improvement projects.

(c) "Enlarged" means expanded or made larger.

(d) Entry gateway sign (as pertains to Sign Types). See Section 9-5.1615(b)(9).

(e) "Environmental Impact Report (EIR)" means a report that analyzes the environmental effects of a proposed project pursuant to the California Environmental Quality Act. An EIR, as opposed to a Negative Declaration or Mitigated Negative Declaration, is required if there are potentially significant environmental effects of the project that cannot be mitigated to a level of insignificance.

(f) "Environmental review" means a formal evaluation process under the California Environmental Quality Act to determine whether a proposed project may have a significant impact on the environment.

(g) "Environmental Site Assessment" means a formal evaluation process to determine the probable existence of any hazardous waste on a property, including contamination of soil, groundwater, or surface water.

(h) Equivalent financial value (as pertains to Density Bonus for Affordable Housing). See Section 9-5.510(e).

(i) "Erect" means to build, construct, attach, hang, place, install, suspend or affix to or upon any surface, including the painting of wall signs.

(j) Establishment (as pertains to Adult Oriented Businesses). See Section 9-5.309(d)(1).

(k) "Exceptions to Standards" means a discretionary planning permit involving minor deviations from dimensional and design standards when strict application would preclude an effective design solution improving livability, operational efficiency, or appearance, while fulfilling the basic intent of the applicable regulation. See Article 8 of Chapter 7.

9-8.206 "F" Terms.

(a) "Façade" means the portion of any exterior elevation of a building exposed to public view and extending vertically from the grade to the top of a parapet wall or eave, and horizontally across the entire width of the building elevation.

(b) "Facility" means a building, structure, or any improvement to land such as a parking lot or sign.

(c) "Factory-built housing" means a residential building, dwelling unit, or an individual dwelling room or combination of rooms, or building component, assembly, or system manufactured in such a manner that all concealed parts or processes of manufacture cannot be inspected before installation at the building site without disassembly, damage, or destruction of the part, including units designed for use as part of an institution for resident or patient care, which is either wholly manufactured or is in substantial part

manufactured at an off-site location to be wholly or partially assembled on-site in accordance with the California Building Code and other regulations adopted by the State Building Standards Commission pursuant to California Health and Safety Code Section 19990. Factory-built housing does not include a mobile home, as defined in California Health and Safety Code Section 18211, mobile accessory building or structure, as defined in Section 18213, a recreational vehicle, as defined in Section 18215.5, or a commercial coach, as defined in Section 18218.

(d) "Family" means two or more persons occupying a dwelling unit and living together as a single housekeeping unit and sharing common living, sleeping, cooking and eating facilities. Members of a family need not be related by blood but are distinguished from a group occupying a hotel, club, fraternity or sorority house.

(e) "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, technological, and other relevant factors.

(f) "Fence" means an artificially constructed barrier of any material or combination of materials erected to enclose or screen an area of land.

(g) "Final development plan" means a discretionary planning permit that describes in detail a development phase of a planned unit development, and that substantially conforms to the preliminary development plan for the planned unit development.

(h) "Final map" means the map of a major subdivision in final form for recordation with the County Recorder, prepared in compliance with the Subdivision Map Act and the Subdivision Regulations of this Title.

(i) "Findings" means statements in support of the approval or denial of a permit application indicating the method by which the facts were analyzed and City policies were applied in reaching the conclusion to approve or deny the application.

(j) Finished grade. See "Grade, finished".

(k) Firearm (as pertains to Firearms and Ammunition Sales). See Section 9-5.607(c).

(l) Fixed (as pertains to Bicycle Parking). See Section 9-4.408(g)(5).

(m) "Floor area, gross" means the total horizontal enclosed area of all floors of a building within the surrounding exterior finish wall surfaces including mezzanines and interior balconies, but excluding the area of spaces having a height of less than seven feet, non-habitable basements, and the area used exclusively for vehicle parking and loading. "Gross floor area" includes residential uses except for projects approved prior to the adoption of these Planning Regulations.

(n) "Floor area ratio (FAR)" means a measure of building intensity equal to the ratio of the total gross floor area of all buildings on a lot or building site to the area of the lot or building site.

(o) "Footcandle" means a quantitative unit of measure of light output equal to the amount of light generated by one candle at a distance of one foot.

(p) "Footprint" means the horizontal area, as seen in plan view, of a building or structure, measured from the outside of exterior walls and supporting columns, and excluding eaves.

(q) Freedom of speech sign (as pertains to Sign Types). See Section 9-5.1615(b)(10).

(r) "Freeway" means a highway to which the owners of abutting lands have no right or easement of access or only limited or restricted right or easement of access to or from their abutting lands.

(s) Freeway-oriented sign (as pertains to Sign Types). See Section 9-5.1615(b)(11).

(t) Frontage, public. See "Public frontage".

(u) Frontage, street. See "Street frontage".

9-8.207 "G" Terms.

(a) "Garage" means a building or structure, or part thereof, intended to be used for the parking and storage of vehicles.

(b) "Glare" means the effect produced by a light source within the visual field that is sufficiently brighter than the level to which the eyes are adapted, such as to cause annoyance, discomfort or loss of visual performance and ability.

(c) Grade, see "Grade, finished".

(d) "Grade, finished" means the final elevation of the ground surface after man-made alterations, such as grading, filling, or excavating, have been made.

(e) Graywater (as pertains to Water Use). See Section 9-4.605(c).

(f) Gross acre. See "Acre, gross".

(g) Gross floor area. See "Floor area, gross".

(h) "Ground floor" means the first floor of a building other than a basement, generally with direct access to the ground.

(i) Ground sign (as pertains to Sign Types). See Section 9-5.1615(b)(12).

9-8.208 "H" Terms.

(a) "Habitation" means regular and exclusive use of a space or structure for shelter and other residential purposes in a manner that is private and separate from another residence on the same lot.

(b) "Hazardous material" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment.

(c) Hazardous waste facilities, off site (as pertains to Hazardous Waste Facilities). See Section 9-5.702(a).

(d) Hazardous waste facilities, permanent on-site (as pertains to Hazardous Waste Facilities). See Section 9-5.702(b)(2).

(e) "Height" means the vertical distance from a point on the ground to a point directly above. See Section 9-4.202(b) for rules for measuring height of buildings and other structures.

(f) High-rise identification sign (as pertains to Sign Types). See Section 9-5.1615(b)(13).

(g) "Household" means all persons who occupy a dwelling unit as their usual place of residence.

(h) Housing costs (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(g).

9-8.209 "I" Terms.

(a) "Illegal Use" means a use of land, use of structure, lot, or structure that was not legally established under the regulations that were applicable at the time it was established, whether before or after the adoption of these Planning Regulations.

(b) "Immobile populations" means populations posing special problems in cases of emergency evacuation, including schools, hospitals, convalescent homes, prisons, facilities for the mentally ill, day care centers, and homeless shelters.

(c) Improvements. See "Public improvements".

(d) "Improvement Agreement" means a legally binding contract between a developer or subdivider and the City providing for the construction of required improvements by the developer or subdivider.

(e) "Improvement plans" means a complete set of plans, profiles, cross sections, and other drawings for all required improvements, together with a complete set of detailed specifications for the work, prepared according to City standards and specifications.

(f) "In-lieu fee" means a cash payment required as a substitute for a dedication and/or improvement of land by an owner or developer of property.

(g) Incentive (as pertains to Density Bonus for Affordable Housing). See Section 9-5.510(d).

(h) Income eligibility (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(h).

(i) "Incompatible" means that which is not harmonious with and may adversely affect surrounding buildings and/or uses. See also "Use, incompatible, live-work" and "Use, incompatible, nonconforming".

(j) Intensity. See "Floor area ratio".

9-8.210 "J" Terms.

[None.]

9-8.211 "K" Terms.

(a) "Kitchen" means any room or space within a building intended to be used for the cooking or preparation of food.

9-8.212 "L" Terms.

(a) "Landscaping" means living vegetation, planted in the ground, including some combination of trees, ground cover, shrubs, vines, flowers, or lawns. In addition, the combination or design may include natural features such as rock and stone; and structural features, including but not limited to, fountains, reflecting pools, artworks, screen walls, fences and benches, but not including swimming pools or spas.

(b) Large-canopy trees (as pertains to Landscaping of Open Parking Lots). See Section 9-4.503(h)(1)c.

(c) "Light Fixture" means the assembly that holds a lamp and may include an assembly housing, a mounting bracket or pole socket, a lamp holder, ballast, a reflector or mirrors, and a refractor or lens.

(d) "Livestock" means domestic animals including, but not limited to, cattle, horses, sheep, hogs, and goats, raised for home use or for profit.

(e) "Living room" means the principal room in a dwelling unit designed for general living purposes rather than for sleeping.

(f) "Loading, off-street" means the portion of a site devoted to the loading or unloading of motor vehicles or trailers, including loading berths, aisles, access drives, and landscaped areas.

(g) "Local-serving" means having a market area generally not exceeding one mile in radius.

(h) Long-term bicycle parking (as pertains to Bicycle Parking). See Section 9-4.408(g)(6).

(i) "Lot" means a parcel, tract, or area of land whose boundaries have been established by a legal instrument such as a deed or map recorded with the County, and which is recognized as a separate legal entity for purposes of transfer of title, except public easements or rights-of-way. For development projects, "lot" refers to the entire site of an existing or proposed development, not to any individual properties that may comprise that site. The classification of lots is:

(1) "Corner lot" means a lot abutting both of two intersecting streets at their intersection.

(2) "Interior lot" means a lot other than a corner lot.

(3) "Through lot" means an interior lot having frontage on two parallel or approximately parallel streets.

(j) "Lot, abutting" means a lot having a common property line with the lot or public right-of-way in question.

(k) "Lot area" means the area of a lot measured horizontally between bounding lot lines.

(l) "Lot depth" means the average distance from the front lot line to the rear lot line measured in the general direction of the side lines.

(m) "Lot, flag" means a lot so shaped that the main portion of the lot area does not have access to a street other than by means of a corridor having less than 20 feet of width.

(n) "Lot line" means any boundary of a lot. The classifications of lot lines are:

(1) "Front lot line" means the lot line abutting a public street. Where more than one lot line abuts a public street, the front shall be determined pursuant to Section 9-4.301(b)(2).

(2) "Rear lot line" means the lot line most distant from and most closely parallel to the front lot line.

(3) "Side lot line" means a lot line that is neither front nor rear.

a. "Street side lot line" means a side lot line that abuts a street.

b. "Interior side lot line" means a side lot line that does not abut a street.

(o) "Lot line adjustment" means the changing of the boundary or boundaries between four or fewer existing adjoining parcels, with no resulting change in the number of parcels, as provided in the Subdivision Map and the Subdivision Regulations of this Title.

(p) "Lot width" shall mean the average distance between the side lot lines, measured at right angles to the lot depth at quarter points between the front and rear lot lines.

9-8.213 "M" Terms.

(a) "Maintenance and Repair" means the repair or replacement of an exterior facility or of nonbearing walls, fixtures, wiring, roof or plumbing that restores the character, scope, size or design of a structure to its previously existing, authorized, and undamaged condition.

(b) "Major conditional use permit" means a conditional use permit subject to approval by the Planning Commission or City Council pursuant to Section 9-7.503(b).

(c) "Major design review" means design review subject to approval by the Planning Commission or City Council pursuant to Section 9-7.404(b).

(d) "Major subdivision" means a subdivision subject to approval by the Planning Commission pursuant to Article 2 of Chapter 6.

(e) "Mansard" means a wall that has a slope equal to or greater than two vertical feet for each horizontal foot and has been designed to look like a roof.

(f) "Manufactured home" means a structure that was constructed on or after June 15, 1976, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width, or 40 body feet or more in length, or, when erected on-site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein; except that "manufactured home" shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification and complies with the standards established under the National Manufactured Housing Construction and Safety Act of 1974. See also "Mobile home".

(g) Map Act. See "Subdivision Map Act".

(h) Market-rate unit (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(i).

(i) "Marquee" means a permanent roofed structure attached to and supported wholly by a building and projecting from the wall of the building, upon which changeable sign copy may be placed, and which often provides shelter at the attached building's entrance.

(j) Marquee sign (as pertains to Sign Types). See Section 9-5.1615(b)(14).

(k) Medium-canopy trees (as pertains to Landscaping of Open Parking Lots). See Section 9-4.503(h)(1)b.

(l) "Mezzanine" means an intermediate floor within a building interior that is not completely enclosed by walls or partitions, that is not separated from the floor or level below by a wall, and that has a floor area no greater than one-third of the total floor area of the floor below. (See also "Story".)

(m) "Minor conditional use permit" means a conditional use permit subject to approval by the Director of Planning and Building pursuant to Section 9-7.503(a).

(n) "Minor design review" means design review subject to approval by the Director of Planning and Building pursuant to Section 9-7.404(a).

(o) "Minor Subdivision" means a subdivision subject to approval by the Director of Planning and Building pursuant to Article 3 of Chapter 6.

(p) "Mitigated Negative Declaration" means a report that analyzes the environmental effects of a proposed project pursuant to the California Environmental Quality Act, that identifies potentially significant environmental effects of the project, and that also identifies mitigation measures sufficient to reduce all identified environmental effects to a level of insignificance.

(q) "Mitigation measure" means an action that may be taken to reduce a potentially significant environmental effect of a project, as identified in a Mitigated Negative Declaration or an Environmental Impact Report. Mitigation measures are usually implemented through project conditions of approval.

(r) Mix of use groups requirement. See Section 9-3.303(b)(2)d.

(s) Mixed use groups. See "Use, mixed use groups".

(t) "Mobile home" means a structure constructed prior to June 15, 1976 as defined in California Health and Safety Code Section 18008. See also "Manufactured home".

(u) Moderate, low and very low income households (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(j).

(v) Monument sign (as pertains to Sign Types). See Section 9-5.1615(b)(15).

(w) Moving sign (as pertains to Sign Types). See Section 9-5.1615(b)(16).

(x) Multiple dwelling. See "Dwelling, multiple".

9-8.214 "N" Terms.

(a) "Negative Declaration" means a report that analyzes the environmental effects of a proposed project pursuant to the California Environmental Quality Act, and that identifies no potentially significant environmental effects of the project.

(b) "Neighborhood center" means an area identified as a Neighborhood Center in the General Plan, as implemented through the NR Neighborhood Retail Overlay Zone at Section 9-3.404.

(c) "Noise" means a sound or series of sounds that are intrusive, irritating, objectionable and/or disruptive to daily life.

(d) Noncommercial sign (as pertains to Sign Types). See Section 9-5.1615(b)(17).

(e) "Nonconforming lot" means a legal parcel of land having less area, frontage, or dimensions than required in the zoning district in which it is located. See Article 10 of Chapter 5, Nonconforming Uses and Structures.

(f) "Nonconforming structure" means a building or structure, or portion thereof, which was lawfully erected or altered or maintained, but which, because of the application of these Planning Regulations to it, no longer conforms to the specific regulations applicable to the zoning district in which it is located. See Article 10 of Chapter 5, Nonconforming Uses and Structures.

(g) "Nonconforming use" means the use of a building, structure, or site, or portion thereof, which was lawfully established and maintained, but which, because of the application of these Planning Regulations to it, no longer conforms to the specific regulations applicable to the zoning district in which it is located. See Article 10 of Chapter 5, Nonconforming Uses and Structures.

(h) Nonpotable water uses (as pertains to Water Use). See Section 9-4.605(d).

(i) "Notice of Determination" means a required notice that must be filed with the Alameda County Clerk after a project has been approved for which a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report was prepared, pursuant to the requirements of the California Environmental Quality Act.

(j) "Notice of Exemption" means an optional notice that may be filed with the Alameda County Clerk after a project has been approved that was determined to be exempt from environmental review, pursuant to the requirements of the California Environmental Quality Act.

(k) "Notice of Intention to Determine Status" means a legal recorded document which notifies the owner of two or more abutting parcels that the City intends to consider merging those parcels, and that the property owner may request a hearing on the determination of status before the Planning Commission to present evidence that the property does not meet the criteria for merger, pursuant to the requirements of the Subdivision Map Act and the Subdivision Regulations of this Title.

(l) "Notice of Violation" means a legal notice served on a property owner advising him or her of violations of these Planning Regulations or other provisions of the Emeryville Municipal Code and prescribing a timeframe for the violation to be abated.

(m) "Nuisance" is as defined in California Civil Code Division 4, Part 3. Specifically:

(1) "Public Nuisance" is as defined in California Civil Code Section 3480.

(2) "Private Nuisance" is as defined in California Civil Code Section 3481.

(n) Nuisance declared. See Section 9-7.1504.

(o) Nursery School. See Day Care Center use type at Section 9-2.317.

9-8.215 "O" Terms.

(a) "Occupied" means used, possessed, employed, or inhabited.

(b) Off site hazardous waste facilities (as pertains to Hazardous Waste Facilities). See Section 9-5.702(a).

(c) Off-street Parking, see "Parking, off-street".

(d) "On-site" means located on the lot that is the subject of discussion.

(e) "Open space" means an area that is open to the air and intended to provide high quality space for active and passive recreation. See Section 9-4.303 for open space types and regulations.

(f) Open space, common. See Section 9-4.303(b)(3)a.

(g) Open space, private residential. See Section 9-4.303(b)(2)a.

(h) Open space, privately owned public (POPOS). See Section 9-4.303(b)(4)a.

(i) "Open storage" means any storage in any area which is unroofed or not contained on all sides by walls that are pierced only by windows, vents, or customary entrances and exits, and that is accessory to another use, as opposed to the principal use of "Outdoor Storage" defined at Section 9-2.425(b).

(j) Operating agent of the City (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(k).

(k) Organization sign (as pertains to Sign Types). See Section 9-5.1615(b)(18).

(l) Overlay zone, see "Zone, overlay".

(m) "Owner" means an individual, firm, association, organization, partnership, trust, company, corporation, or any other legal entity that owns or holds title to real property.

9-8.216 "P" Terms.

(a) "Parapet wall" means an extension of the main walls of a building above the roof level.

(b) "Parcel" generally means the same as "lot", except that "parcel" can sometimes refer to an Assessor's parcel, which is not always the same as "lot" for development purposes. When evaluating an existing or proposed development, the term "lot" should be used, which applies to the entire site of the development, and not to any individual Assessor's parcels that may comprise that site.

(c) "Parcel Map" means the map of a minor subdivision in final form for recordation with the County Recorder, prepared in compliance with the Subdivision Map Act and the Subdivision Regulations of this Title.

(d) "Parcel merger" means the combining of two or more contiguous parcels of land into a single parcel pursuant to the requirements of the Subdivision Map Act and the Subdivision Regulations of this Title.

(e) "Parking" means the temporary storage of operable motor vehicles.

(f) "Parking aisle" means an area within a parking facility intended to provide ingress and egress to parking spaces.

(g) "Parking area" means any public or private land area or structure designed and used for parking motor vehicles, together with driveways, aisles, turning and maneuvering areas, and similar features, and landscaping.

(h) "Parking lift" means a mechanical device that allows automobiles to be stacked vertically within the same horizontal space.

(i) "Parking lot" means an off-street ground level area improved for the temporary storage of motor vehicles.

(j) "Parking, off-street" means a parking area located on private or public property, and not on a street, including parking lots, carports, covered garages, and parking structures.

(k) "Parking space" means an area reserved for the parking of a motor vehicle.

(l) "Parking structure" means a structure or portion thereof composed of one or more levels or floors used exclusively for the parking of motor vehicles. A parking structure may be totally below grade or either partially or totally above grade with those levels being either open or enclosed.

(m) Parking, surface lot. See "Parking lot".

(n) Parklet (as pertains to Sidewalk Cafes). See Section 9-5.1515(a).

(o) "Patio" means a level, surfaced area directly adjacent to a principal building without a permanent roof intended for outdoor lounging, dining, and the like.

(p) Permanent on-site hazardous waste facilities (as pertains to Hazardous Waste Facilities). See Section 9-5.702(b)(2).

(q) Permanent sign (as pertains to Sign Types). See Section 9-5.1615(b)(19).

(r) "Permitted use" means a use that is permitted by right in the zoning district in which it is located but that is subject to any restrictions applicable to that zoning district.

(s) "Person" means any individual, firm, association, organization, partnership, business trust, company, or corporation.

(t) Person (as pertains to Adult Oriented Businesses). See Section 9-5.309(d)(2).

(u) Person (as pertains to Sidewalk Cafes). See Section 9-5.1515(b).

(v) "Persons with disabilities" means persons who have medical, physical, or mental conditions, disorders or disabilities as defined in the Federal Fair Housing Amendments Act or the California Fair Employment and Housing Act, that limit one or more major life activities.

(w) "Pervious surface" means an area maintained in its natural condition, or covered by a material that permits infiltration or percolation of water into the ground.

(x) "Planned unit development" means a group of residential, commercial, industrial or institutional buildings, or a mixture thereof, and associated site improvements, designed

to encourage the creative development of large sites so as to permit flexibility in physical design, achieve attractive designs which encourage large-scale site planning, and ensure that the applicable provisions of the General Plan are established early in the formation of such development proposals.

(y) "Planning permit" means any discretionary permit for development and/or use of property granted pursuant to the requirements of these Planning Regulations, including design review, conditional use permits, temporary use permits, variances, exceptions to standards, and planned unit developments.

(z) "Planted area" means an area covered by landscaping. See also "Landscaping".

(aa) Political sign (as pertains to Sign Types). See Section 9-5.1615(b)(20).

(bb) POPOS (Privately owned public open space). See Section 9-4.303(b)(4)a.

(cc) Potable water (as pertains to Water Use). See Section 9-4.605(e).

(dd) "Preliminary development plan" means a discretionary planning permit that describes in general terms the overall design concept of a planned unit development.

(ee) Preschool. See Day Care Center use type at Section 9-2.317

(ff) Preserve and reuse (as pertains to Preservation of Structures). See Section 9-5.1212(b).

(gg) Primary use. See "Use, principal".

(hh) Principal building. See "Building, principal".

(ii) Primary building. See "Building, principal".

(jj) Principal use. See "Use, principal".

(kk) Private nuisance. See "Nuisance, private".

(ll) Private residential open space. See Section 9-4.303(b)(2)a.

(mm) "Private or Public Property" means any parcel of land that is not within a public street right-of-way. Private property is land that is not owned by a public agency; public property is land that is owned by a public agency.

(nn) "Private street" means a private thoroughfare that affords the principal means of access to abutting property and that is constructed and maintained by private parties.

(oo) Privately owned public open space (POPOS). See Section 9-4.303(b)(4)a.

(pp) "Prohibited use" means a use that is not permitted in the zoning district in which it is located either by right or subject to the approval of a conditional use.

(qq) "Project" means any proposal for a new or changed use or for new construction, alteration, or enlargement of any structure that is subject to the provisions of these Planning Regulations. This term also refers to any action that qualifies as a "project" as defined by the California Environmental Quality Act.

(rr) Project (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(l).

(ss) Projecting sign (as pertains to Sign Types). See Section 9-5.1615(b)(21).

(tt) "Public benefit" means a feature of a development project that is of benefit to the overall community, and for which bonus points may be awarded for floor area ratio, height, and/or residential density pursuant to Section 9-4.204.

(uu) "Public frontage" means the façade of an establishment on which the main entrance is located and that either fronts on a public street or that is accessible to the public.

(vv) "Public improvements" means public facilities constructed in conjunction with a development project or subdivision, including but not limited to streets, curbs, gutters, sidewalks, alleys, street trees, street lights, driveway approaches and transitions, right-of-way surfaces, pedestrian ways, bikeways, trails and greenways, parks, storm drainage, sanitary sewers, water supply, utilities, and fire hydrants.

(ww) Public nuisance. See "Nuisance, public".

(xx) "Public open space" means open space that is available to the general public.

(yy) Public park (as pertains to Adult Oriented Businesses). See Section 9-5.309(d)(3).

(zz) Public park (as pertains to Firearms and Ammunition Sales). See Section 9-5.607(d).

(aaa) "Public parking" means off-street parking that is available to the general public with or without a fee.

(bbb) Public right-of-way (as pertains to Sidewalk Cafes). See Section 9-5.1515(c).

(ccc) "Public street" means a public thoroughfare that has been or is intended to be dedicated for public use by motor vehicles, pedestrians, bicyclists, and public transit, and that affords the principal means of access to abutting property.

(ddd) "Public utility" means a public utility as defined in California Public Utility Code Section 216.

(eee) Publicly accessible (as pertains to Bicycle Parking). See Section 9-4.408(g)(7).

9-8.217 "Q" Terms.

[None.]

9-8.218 "R" Terms.

(a) Rack element (as pertains to Bicycle Parking). See Section 9-4.408(g)(8).

(b) Rain barrel (as pertains to Water Use). See Section 9-4.605(f).

(c) Rainwater capture (as pertains to Water Use). See Section 9-4.605(g).

(d) "Reasonable Accommodation" means a modification in the rules, policies, practices and procedures regulating the siting, funding, development or use of housing to make specific housing available to an individual with a disability, pursuant to Article 9 of Chapter 7.

(e) "Recreational vehicle" means a vehicular unit that is designed as a temporary dwelling for travel, recreational, and vacation use, and which is either self-propelled, mounted on, or pulled by another vehicle, including but not limited to a travel trailer, camping trailer, truck camper, motor home, fifth-wheel trailer, or van.

(f) Recycled water (as pertains to Water Use). See Section 9-4.605(i).

(g) Recycled water project area (as pertains to Water Use). See Section 9-4.605(h).

(h) "Regional-serving" means having a market area generally exceeding one mile in radius.

(i) Rehabilitated landscape (as pertains to Water Use). See Section 9-4.605(j).

(j) Religious institution (as pertains to Adult Oriented Businesses). See Section 9-5.309(d)(4).

(k) Religious institution (as pertains to Firearms and Ammunition Sales). See Section 9-5.607(d).

(l) Resale controls (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(m).

(m) "Reservation" means an area set aside in a subdivision for a park, recreational facility, fire station, library or other public use pursuant to the requirements of the Subdivision Map Act and the Subdivision Regulations of this Title.

(n) Residential care facilities for the elderly. See Section 9-5.212(a).

(o) "Residential density" means the ratio of the number of dwelling units on a lot to the lot area in acres, rounded to the nearest whole number.

(p) Residential structure (as pertains to Preservation of Structures). See Section 9-5.1212(c).

(q) Restaurant (as pertains to Sidewalk Cafes). See Section 9-5.1515(d).

(r) "Right-of-Way" means a strip of land acquired by reservation, dedication, prescription or condemnation and occupied or intended to be occupied by a road, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer or other similar use.

(s) Right-of-way (as pertains to Bicycle Parking). See Section 9-4.408(g)(9).

(t) Roadway (as pertains to Sidewalk Cafes). See Section 9-5.1515(e).

(u) Roof sign (as pertains to Sign Types). See Section 9-5.1615(b)(22).

9-8.219 "S" Terms.

(a) "Satellite dish antenna" means a signal-receiving device, the purpose of which is to receive communications or other signals directly from satellites in earth orbit and from other extraterrestrial sources.

(b) School (as pertains to Adult Oriented Businesses). See Section 9-5.309(d)(5).

(c) School (as pertains to Firearms and Ammunition Sales). See Section 9-5.607(f).

(d) "Screening" means a wall or fence provided for the purpose of concealing a building or portion thereof, structure, or activity from neighboring areas or from the street. See Section 9-4.503(d) for required screening materials.

(e) Secured bicycle parking (as pertains to Bicycle Parking). See Section 9-4.408(g)(10).

(f) Senior citizen housing development (as pertains to Density Bonus for Affordable Housing). See Section 9-5.510(f).

(g) "Senior housing" means housing that is restricted to older adults, in which at least one resident of each unit must be a "senior citizen" as defined in California Civil Code Section 51.3.

(h) Set-aside unit (as pertains to Affordable Housing Set-Aside Program). See Section 9-5.415(n).

(i) Setback. See Section 9-4.301(b).

(j) Shingle sign (as pertains to Sign Types). See Section 9-5.1615(b)(23).

(k) Short-term bicycle parking (as pertains to Bicycle Parking). See Section 9-4.408(g)(11).

(l) Sidewalk (as pertains to Sidewalk Cafes). See Section 9-5.1515(f).

(m) Sidewalk cafe (as pertains to Sidewalk Cafes). See Section 9-5.1515(g).

(n) Sidewalk cafe permit (as pertains to Sidewalk Cafes). See Section 9-5.1515(h).

(o) Sign. See Section 9-5.1615(a).

(p) Sign Types. See Section 9-5.1615(b).

(q) Significant structure (as pertains to Preservation of Structures). See Section 9-5.1210.

(r) "Site" means a parcel or group of contiguous parcels that is in a single ownership or under unified control and is occupied or is proposed to be occupied by development in accordance with the provisions of these Planning Regulations. See also "lot".

(s) Small-canopy trees (as pertains to Landscaping of Open Parking Lots). See Section 9-4.503(h)(1)a.

(t) "Specific plan" means a plan for the systematic implementation of the general plan for all or part of the area covered by the general plan pursuant to the provisions of the California Government Code Section 65450 et seq.

(u) Specified anatomical areas (as pertains to Adult Oriented Businesses). See Section 9-5.309(c).

(v) Specified sexual activities (as pertains to Adult Oriented Businesses). See Section 9-5.309(b).

(w) Square footage, gross. See "Floor area, gross".

(x) "State CEQA Guidelines" means guidelines that are prepared by the California Office of Planning and Research for implementation of the California Environmental Quality Act, and that are codified in California Code of Regulations Title 14, Section 15000 et seq.

(y) "Statement of Overriding Considerations" means a statement explaining why any specific economic, legal, social, technological, or other benefits of a proposed project outweigh any unavoidable adverse environmental effects, and that the adverse environmental effects are therefore considered acceptable. A statement of overriding considerations is required to approve a project for which an Environmental Impact Report has identified significant adverse environmental impacts that cannot be mitigated to a level of insignificance.

(z) "Stock cooperative" means a development in which a corporation is formed or availed of, primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation, pursuant to California Civil Code Section 4100.

(aa) "Story" means that portion of a building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the upper surface of the roof above. A mezzanine with a floor area that exceeds one third of the total floor area of the floor or level below constitutes a story.

(bb) Street. See "Private street" and "Public street".

(cc) "Street frontage" means that portion of a lot or parcel of land that borders a public street. As a linear dimension, "street frontage" means the length of the front and street side lot lines of a lot.

(dd) "Street line" means the boundary between a street and a parcel of land.

(ee) "Structure" means anything constructed or built, any edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner which require location on the ground, excepting outdoor areas such as patios, paved areas, walks, swimming pools, tennis courts, and similar recreation areas.

(1) "Accessory structure" means a detached subordinate structure, used only as incidental to the principal structure on the same lot.

(2) Primary structure. See "Principal structure".

(3) "Principal structure" means a structure housing the principal use of a site or functioning as the principal use.

(4) "Temporary structure" means a structure without any foundation or footings and which is intended to be removed when the designated time period, activity, or use for which the temporary structure was erected has ceased.

(ff) "Subdivider" means any person who proposes to divide, or causes to be divided, real property into a subdivision for him or herself or for others.

(gg) "Subdivision" means the division of any improved or unimproved land, shown on the latest equalized County assessment roll as a unit or as contiguous units, for the purposes of sale, lease, or financing, whether immediate or future. Property shall be considered as contiguous units even if it is separated by roads, streets, utility easements, or railroad rights-of-way. Subdivision shall include a condominium project or a community apartment project, as these terms are defined in California Civil Code Section 4100. Any conveyance of land to the City shall not be considered a division of land for the purposes of computing the number of parcels.

(hh) "Subdivision Map Act" or "Map Act" means the act set forth in California Government Code Sections 66410 et seq.

(ii) "Sustainable design" means design that adheres to the principles of sustainable development.

(jj) "Sustainable development" means development that maintains or enhances economic opportunity and community well-being while protecting and restoring the natural environment upon which people and economies depend. Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs.

(kk) "Swimming Pool" means an artificial basin of water constructed or erected for wading or swimming.

9-8.220 "T" Terms.

(a) Tandem (as pertains to Bicycle Parking). See Section 9-4.408(g)(12).

(b) "Tandem parking" means an arrangement of parking spaces such that one or more spaces must be driven across in order to access another space or spaces. Parking lifts are considered tandem parking if it is necessary to remove one vehicle from the lift to access another vehicle.

(c) Temporary sign (as pertains to Sign Types). See Section 9-5.1615(b)(24).

(d) "Temporary use permit" means a discretionary planning permit that may be granted by the Director of Planning and Building to allow a temporary use with any necessary conditions of approval. See Article 6 of Chapter 7.

(e) Temporary Use. See Section 9-2.104(b).

(f) "Tentative Map" means the preliminary map of a major subdivision to be reviewed and approved prior to the preparation of the final map in compliance with the Subdivision Map Act and the Subdivision Regulations of this Title.

(g) To engage in the business of selling, leasing or otherwise transferring any firearm or ammunition (as pertains to Firearms and Ammunition Sales). See Section 9-5.607(b).

(h) Tower sign (as pertains to Sign Types). See Section 9-5.1615(b)(25).

(i) Transportable treatment units (TTU) (as pertains to Hazardous Waste Facilities). See Section 9-5.702(b)(1).

(j) "Transportation Demand Management (TDM)" means a comprehensive strategy to reduce driving by promoting alternatives such as public transit, carpooling, bicycling, walking, and telecommuting.

(k) "Tree canopy" means the area within the circumference of the drip line of a tree. See also Section 9-4.503(h)(1).

(1) Large-canopy tree. See Section 9-4.503(h)(1)c.

(2) Medium-canopy tree. See Section 9-4.503(h)(1)b.

(3) Small-canopy tree. See Section 9-4.503(h)(1)a.

9-8.221 "U" Terms.

(a) Unit. See "Dwelling unit".

(b) "Universal Design" means designing all products and the built environment to be aesthetic and usable to the greatest extent possible by everyone, regardless of their age, ability, or status in life.

(c) "Use" means the purpose for which land or a building, structure, or facility is designed, arranged, or intended, or for which it is or may be occupied or maintained.

(1) Accessory and Principal Uses.

a. "Accessory use" means a use that is customarily associated with, and is incidental and subordinate in function and area to, the principal use and located on the same lot as the principal use except as otherwise expressly authorized by the provisions of these Planning Regulations. See Section 9-2.702 for uses that are always accessory uses.

b. Primary use. See "Principal use".

c. "Principal use" means a use that fulfills a primary or predominant function of an establishment, institution, household, or other entity, or that most closely portrays the overall nature of an establishment. . See Section 9-2.701 for uses of special concern that are always principal uses and Section 9-3.202 for the regulation of principal uses by zoning district.

(2) Permanent and Temporary Uses.

a. "Permanent use" means a use that is intended to be continuously ongoing at the same location for more than 90 days. See Section 9-2.104(a).

b. "Temporary use" means a use that is either not intended be ongoing for more than 90 days, or that is not intended to be continuously ongoing. See Section 9-2.104(b).

(d) "Use classification" means a system of classifying uses into a limited number of use types on the basis of common functional, product, or compatibility characteristics. See Chapter 2, Use Classifications.

(e) Use, incompatible, live-work. See Section 9-5.906.

(f) Use, incompatible, nonconforming. See Section 9-5.1007.

(g) "Use, mixed use groups" means groups of use types with similar characteristics for purposes of regulating development in the Mixed Use zones. See Article 8 of Chapter 2 for a list of mixed use groups.

(h) Use groups, mix of. See Section 9-3.303(b)(2)d.

(i) Use Permit. See "Conditional use permit".

(j) "Use type" means a category which classifies similar uses based on common functional, product, or compatibility characteristics.

(k) "Utility undergrounding" means the relocation of electrical, telephone, cable television, and other utility wires from overhead poles to underground conduit.

9-8.222 "V" Terms.

(a) "Variance" means a discretionary planning permit that provides relief from the strict application of these Planning Regulations where strict application would deprive the property owner of privileges enjoyed by owners of similar properties because of the property's unique and special conditions. See Article 7 of Chapter 7.

(b) "Vehicle" means a device by which any person or property may be propelled, moved, or drawn upon a highway, except a device moved exclusively by human power or used exclusively upon stationary rails or tracks, as defined in California Vehicle Code Section 670, including any automobile, truck, motorcycle, camper, camp trailer, trailer, trailer coach, or similar conveyance, but not including bicycle.

(c) "Vesting Tentative Map" means a tentative map for a subdivision, filed and processed in accordance with the provisions of Section 9-6.205, that has printed conspicuously on its face the words "Vesting Tentative Map" at the time it is filed, pursuant to the requirements of the Subdivision Map Act and the Subdivision Regulations of this Title.

(d) "Vibration" means a motion that repeatedly and rapidly reverses itself.

(e) "Visible" means capable of being seen, whether or not legible, by a person of normal height and visual acuity.

9-8.223 "W" Terms.

(a) "Wall" means the vertical exterior surface of a building or structure; or a constructed solid barrier that encloses or borders a field, yard or lot and that limits its visibility and restricts the flow of air, light, and noise.

(b) Wall sign (as pertains to Sign Types). See Section 9-5.1615(b)(26).

(c) Window sign (as pertains to Sign Types). See Section 9-5.1615(b)(27).

(d) Wireless Communications Antenna (as pertains to Telecommunication Facilities). See Section 9-5.1708(b).

(e) Wireless Communications Facility (as pertains to Telecommunication Facilities). See Section 9-5.1708(c).

9-8.224 "X" Terms.

[None.]

9-8.225 "Y" Terms.

(a) Yard. See Section 9-4.301(b).

9-8.226 "Z" Terms.

(a) Zone. See "Zoning district".

(b) "Zone, base" means a basic zoning district regulating the use of land and establishing standards for development, the regulations of which shall apply uniformly within the district unless modified by the provisions of an overlay zone.

(c) "Zone, overlay" means a zoning district mapped over a base zone, where certain additional requirements are superimposed upon the base zone and where the requirements of the base zone may or may not be altered.

(d) "Zoning" means the division of the city into districts that specify use and development regulations that are uniform within each district.

(e) "Zoning compliance review" means a ministerial procedure for reviewing new or expanded uses or structures to ensure that they comply with the applicable requirements of these Planning Regulations. See Article 3 of Chapter 7.

(f) "Zoning District" means a base zone or overlay zone, as delineated on the zoning maps, in which use and development regulations are prescribed pursuant to the provisions of Chapter 3, "Zoning Districts".

(g) "Zoning maps" means the base zone and overlay zone maps at Sections 9-3.103(a) and 9-3.103(b), respectively.

(h) "Zoning ordinance" or "Zoning Regulations" means Chapters 2 through 5 of these Planning Regulations.

Table of Ordinances Adopting and Amending These Planning Regulations

Number	Title	Planning Regulations Sections Affected	Introduced	Passed	Effective
13-001	An Ordinance of the City Council of the City of Emeryville Amending the Emeryville Municipal Code to Implement the General Plan by Repealing Title 9, "Planning and Zoning", Replacing it in its Entirety With a New Title 9, "Planning Regulations", and Making Related Modifications to the Building Regulations in Title 8.	All	1/15/13	2/5/13	3/7/13
14-001	An Ordinance of the City Council of the City of Emeryville Amending Chapter 2 of Title 1 of the Emeryville Municipal Code, "Penalty Provisions"; and Amending Title 9 of the Emeryville Municipal Code, "Planning Regulations".	9-1.103(d)(1), 9-1.301, 9-2.353(a), 9-2.803, 9-2.805, 9-3.402(a)(2), 9-3.403(a)(3), 9-4.204(c), 9-4.301(e), 9-4.303(b), 9-5.803, 9-5.910, 9-5.1008, 9-5.1013(b), 9-5.1504(j), 9-5.1607(c), 9-5.1609(a), 9-5.1610, 9-6.203(k), 9-6.609(f), 9-6.609(g), 9-6.609(h), 9-6.609(i), 9-6.703(f), 9-6.703(g), 9-6.703(h), 9-7.102(i), 9-7.102(j), 9-7.102(k), 9-7.102(l), 9-7.102(m), 9-7.205(e), 9-7.208(b), 9-7.502(l), 9-7.804(e), 9-7.1005(b), 9-7.1508(c), 9-8.201(l), 9-8.216(vv)	12/17/13	2/4/14	3/6/14
14-003	An Ordinance of the City Council of the City of Emeryville Amending the Planning Regulations by Adding Article 18 to Chapter 5 of Title 9 of the Emeryville Municipal Code Concerning Standards for Emergency Shelters and Making Modifications to Table 9-3.202 in Section 9-3.202: "Uses Permitted, Conditionally Permitted and Prohibited" Concerning Supportive Housing and Transitional Housing.	9-3.202, all of Article 18 of Chapter 5 (added)	3/4/14	3/18/14	4/17/14
14-008	An Ordinance of the City Council of the City of Emeryville Adding Article 19 to Chapter 5 of Title 9 of the City of Emeryville Planning Regulations Titled "Development Impact Fees" and Repealing Article 3 of Chapter 2 of Title 3 of the City of Emeryville Municipal Code Titled "Traffic Facilities Impact Fee Fund".	All of Article 19 of Chapter 5 (added)	7/1/14	7/15/14	8/14/14
14-009	An Ordinance of the City Council of the City of Emeryville Amending Article 4 of Chapter 5 of Title 9 of the City of Emeryville Planning Regulations Titled "Affordable Housing Set Aside Program" and Retitling as "Affordable Housing Program".	All of Article 4 of Chapter 5 (retitled and amended in its entirety)	7/1/14	7/15/14	8/14/14
14-010	An Ordinance of the City Council of the City of Emeryville Amending the Planning Regulations by Modifying the Zoning Map in Figure 9-3.103(a) of Chapter 3 of Title 9 of the Emeryville Municipal Code to Rezone the Proposed Pain & Rehabilitation Consultants' (PRC) Management Group Parking Lot Parcel at the Northwest Corner of Stanford Avenue and Doyle Street from PO Park/Open Space to MUR Mixed Use with Residential.	Figure 9-3.103(a) (Zoning Map) [Figure 9-4.201(a), Maximum Floor Area Ratios, Figure 9-4.202(a) Maximum Building Heights, and Figure 9-4.203(a) Maximum Residential Densities, which are incorporated by reference from the General Plan, were also amended by concurrent Resolution No. 14-92 amending the General Plan.]	7/1/14	9/2/14	10/2/14

Number	Title	Planning Regulations Sections Affected	Introduced	Passed	Effective
15-009	An Ordinance of the City Council of the City of Emeryville Amending the Planning Regulations in Title 9 of the Emeryville Municipal Code Relating to Multi-Unit Residential Development to Address Unit Mix, Family Friendly Design, Affordable Housing, and Ownership Housing	9-2.207, 9-4.201(a), 9-4.202(a), 9-4.203(a), 9-4.204, 9-4.404, 9-5.406, 9-5.407(a), 9-5.408(b), 9-5.409, 9-5.412, 9-5.501, 9-5.503(a), 9-5.509, 9-6.208(e)(5), 9-6.307(d)(4), 9-6.702, 9-6.705(d), 9-7.102, 9-7.202, 9-7.502, all of Article 20 of Chapter 5 (added)	10/20/15	11/3/15	12/3/15
15-011	An Ordinance of the City Council of the City of Emeryville Amending Article 12 of Chapter 5, Article 4 of Chapter 3, and Article 4 of Chapter 4 of Title 9 of the Emeryville Municipal Code Regarding Preservation of Significant Structures	9-3.403, 9-4.404, 9-5.1203(a), 9-5.1206(a)(1), 9-5.1210, 9-5.1211, 9-5.1212	12/1/15	12/15/15	1/14/16