

EMERYVILLE PLANNING COMMISSION

STAFF REPORT

Agenda Date: May 23, 2019

Report Date: May 16, 2019

TO: Planning Commission

FROM: Charles S. Bryant, Director
Community Development Department

SUBJECT: **Tower Separation Requirement Amendment (ORD19-002)**

PROPOSAL SUMMARY: Consideration of amendments to Article 2 of Chapter 4 of the Planning Regulations concerning separation of buildings over 100 feet tall.

COMMISSION PROCEDURE: After taking public testimony on the proposed Resolution, the Planning Commission may take action to recommend or not recommend to the City Council adoption of the code amendments, with or without changes.

ENVIRONMENTAL

REVIEW: Environmental Impact Report for General Plan certified by the City Council on October 13, 2009.

RECOMMENDED COMMISSION ACTION:

1. Open the public hearing and take testimony on the proposed Resolution regarding amendments to the Planning Regulations.
2. Close the public hearing and consider the Staff Report and proposed Resolution.
3. Adopt the attached Resolution approving the proposed amendments to the Planning Regulations and recommending that the City Council adopt the amendments.

BACKGROUND

At the City Council meeting on October 16, 2018, the Council directed that the Planning Commission reconsider the Planning Regulations unit mix requirements for residential buildings that are taller than the California Building Code allows for wood-frame construction. In this context, staff also identified an additional regulation to be examined, namely the minimum separation of buildings over 100 feet tall, or “tower separation”. The Planning Commission held a study session on these issues on December 13, 2018, and the City Council held a study session on February 5, 2019. Although no consensus has yet been reached concerning the unit mix requirements, both the Planning Commission and City Council unanimously expressed support for modifying the tower separation requirement. Therefore, a code amendment to implement this Commission and Council direction is now being brought forward by staff.

DISCUSSION

The General Plan includes two policies related to tower separation:

- **Land Use Policy LU-P-14.** Heights greater than 100 feet are only permitted for buildings that meet specific criteria, such as minimal impacts on public views, sky exposure, wind, and shadows, adequate separation from other tall buildings, and exemplary design, and/or provide public amenities, through a discretionary review and approval process.
- **Urban Design Policy UD-P-35.** Tower separation shall be required to increase sky exposure for developments with multiple towers, and maintain separation standards for buildings taller than 100 feet.

These policies are implemented in the Planning Regulations through Section 9-4.204(f)(3), which specifies that bonus height over 100 feet will be awarded only if the project provides community benefits sufficient to earn 100 bonus points, “that the proposed project will minimize impacts on public views, wind, and shadows at the street level”, and “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).” Section 9-4.202(f) stipulates that “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.”

At their study sessions, the Planning Commission and City Council were offered the following options concerning the tower separation requirement:

1. Leave the regulations unchanged.
2. Add an exception to Section 9-4.202(f) to stipulate that the separation requirement does not apply to developments with multiple towers, provided that sky exposure is adequate.
3. Change the tower separation requirement to a specific number, such as 100 feet. Include the above stipulate that the separation requirement does not apply to developments with multiple towers, provided that sky exposure is adequate.
4. Eliminate the tower separation requirement of Section 9-4.202(f) and replace it with a modified finding in Section 9-4.204(f)(3) for bonus height over 100 feet that “the proposed tower or towers will be adequately separated from other buildings over 100 feet tall with consideration given to sky exposure and the effects on Emeryville’s skyline.”

The Planning Commission unanimously agreed with option number 4. The City Council also agreed with option number 4; however, the Council indicated that it would prefer to eliminate the last portion of the proposed finding, so the proposed code section now reads: “the proposed tower or towers will be adequately separated from other buildings over 100 feet tall”, or words to that effect. Therefore, the proposed Planning Regulations amendment includes the language for the finding as preferred by the City Council.

ENVIRONMENTAL REVIEW

The environmental impacts of the Emeryville General Plan were identified and analyzed in the Environmental Impact Report (EIR) adopted and certified by the City Council for the Emeryville General Plan adopted in 2009 (Resolution No. 09-207), and the proposed amendments to Article 2 of Chapter 4 of the Planning Regulations are minor in substance and effect and thus the impacts of the proposed Planning Regulations Amendment are no different than those analyzed in the EIR; and since the certification of the EIR (i) there are no substantial changes in the Emeryville General Plan which will require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects, (ii) there are no substantial changes with respect to the circumstances under which the Emeryville General Plan is undertaken which will require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects, and (iii) there is no new information of substantial importance which was not known at the time the EIR was certified which would show that (a) the project will have one or more significant effects not discussed in the EIR, or (b) significant effects previously examined will be more severe than shown in the EIR, or (c) mitigation measures or alternatives found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the General Plan, or (d) mitigation measures or alternatives which are considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment. Accordingly, no Subsequent EIR is required pursuant to Section 15162 of the State CEQA Guidelines and likewise no Supplement to the EIR is required pursuant to Section 15163 of the State CEQA Guidelines.

Specifically, the General Plan EIR identifies the following potential impact on visual resources:

“3.12-1 Future proposed development in Emeryville has the potential to affect scenic vistas to the San Francisco Bay and Berkeley-Oakland hills.”

The EIR states that this impact is “Less than Significant”. It goes on to say that “Proposed new development in the proposed General Plan is not expected to significantly affect scenic vistas or views in Emeryville. While new buildings will inevitably block some views, significant vistas of the Bay and East Bay Hills will remain unobstructed. ... Although views may be obstructed in localized areas due to proposed new development, views would not be impacted on an area-wide basis.

“Further, the proposed General Plan encourages the creation of a more cohesive skyline for Emeryville by focusing higher-intensity development within a central core. Building intensity and heights are greatest in this area, just to the north and south of Powell Street in the Bayfront district and the eastern edge of the Peninsula. These areas build off of the existing Emeryville skyline, providing the opportunity for a more contiguous high-rise zone in the city. Outside of this zone, building heights taper to provide a gradual transition to lower-scale development in the remainder of the city. This will create a more coherent skyline, and thereby improve views to Emeryville and views that encompass Emeryville.”

The EIR then cites a number of proposed General Plan policies related to urban design and views that would help preserve existing visual resources and would reduce potential impacts on scenic vistas or views, including UD-P-34 [later renumbered UD-P-35], “Tower separation shall be required to increase sky exposure for developments with multiple towers, and maintain separation standards for buildings taller than 100 feet.”

The EIR concludes that no mitigation is required for this less than significant impact.

REQUIRED FINDINGS

In order to approve an amendment to the Planning Regulations, the Planning Commission must be able to make the findings listed in the Amendment Procedure at Section 9-7.1305. In staff’s view, these findings can be made, as follows:

- (a) The proposed amendment is consistent with the General Plan.

The General Plan includes two policies related to tower separation:

LU-P-14 *Heights greater than 100 feet are only permitted for buildings that meet specific criteria, such as minimal impacts on public views, sky exposure, wind, and shadows, adequate separation from other tall buildings, and exemplary design, and/or provide public amenities, through a discretionary review and approval process.*

UD-P-35 *Tower separation shall be required to increase sky exposure for developments with multiple towers, and maintain separation standards for buildings taller than 100 feet.*

These policies indicate that there should be tower separation standards and that the separation should be “adequate”, but they do not prescribe a distance for that separation. The proposed Planning Regulations amendment replaces the current proscriptive regulation that buildings over 100 feet in height be separated from each other by a minimum horizontal distance equal to no less than the height of the taller building with a more flexible finding that tower separation is adequate, which facilitates the implementation of the following General Plan goals and policies that encourage the development of tall buildings in the Powell/Christie core area:

LU-G-7 *A varied skyline—with the highest intensities/heights grouped in the Powell Street/Christie Avenue area, with heights stepping down from this urban core.*

LU-P-23 *The Powell Street Plaza site shall be encouraged to redevelop as a high-intensity, high-rise, mixed-use development that complements the Powell Street entrance to the city from the freeway.*

- LU-P-24*** ***The Marketplace and adjacent parcels shall be encouraged to redevelop with a mix of uses, and iconic mid to high-rise development.***
- UD-G-10*** ***A skyline with the tallest buildings concentrated in the central core— The tallest buildings at the Powell Street/Christie Avenue area, with a gradual transition to lower building heights to the mid- to lower-scale development to the east and west.***
- UD-P-5*** ***The tallest buildings and highest development intensities in the city shall be located within the Powell Street/Christie Avenue core, with the exception of the northwest and southwest corners of the city.***
- UD-P-7*** ***A high-intensity mixed-use core will be located near Powell Street and Christie Avenue, and built to the street edge to maintain a vibrant pedestrian-oriented district.***

Furthermore, according to the General Plan EIR, the following General Plan policies related to urban design and views would help preserve existing visual resources and would reduce potential impacts on scenic vistas or views:

- UD-P-8*** ***Improved streetscape treatments, open space connections, and extension of the street grid through Powell Street Plaza.***
- UD-P-19*** ***The street grid shall be extended as redevelopment on larger sites occurs.***
- UD-P-20*** ***Full or partial public street closures by private development shall be prohibited. Where a street closure to vehicular traffic is necessary for public projects, as called for in this General Plan, access for pedestrians and bicycles should still be maintained.***
- UD-P-22*** ***Opportunities to extend the street grid through internal connections in large parcel developments should be considered. Single-point access to new development should be avoided.***
- UD-P-28*** ***Public views of the San Francisco Bay and the East Bay hills shall be maintained***
- UD-P-29*** ***Streetscape features should not block public views.***
- UD-P-32*** ***Bulky and monolithic buildings shall be prevented through:***
- ***Vertical articulation, such as step backs at higher floors, and less floor area as heights increase to reduce the apparent bulk of buildings.***

- *Horizontal articulation, such as varied setbacks, recessions/projections, change in materials, and building transparency, especially in Pedestrian Priority Zones.*

UD-P-35 *Where large floorplates are permitted, buildings shall be required to adhere to height, setback, and stepback standards, as required for view and sun access, but less stringent bulk standards shall be permitted.*

- (b) The proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public.

The proposed amendment to the Planning Regulations will be of benefit to the public by facilitating high-rise development in appropriate locations, thereby providing needed housing and jobs and fostering “a dramatic skyline of slender and elegant high rise buildings stepping down to low-rise buildings in the older residential neighborhoods” as called for by General Plan Guiding Principal number 10, “An imageable and memorable city”.

According to the most recent General Plan annual progress report, at 56% of the way through the current Regional Housing Needs Allocation (RHNA) implementation period, only 39% of the City’s RHNA total dwelling units, and only about 18% of the City’s RHNA affordable dwelling units, have received building permits. The proposed amendment to the Planning Regulations will help to facilitate housing production, including affordable units, in conformance with the following General Plan Housing Element policies:

Policy H-2-1. Ensure that the Planning Regulations continue to facilitate the development of affordable housing.

Policy H-4-1. Ensure the Zoning Ordinance facilitates the development of a variety of housing types.

- (c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

The Environmental Impact Report for the General Plan was certified by the City Council by Resolution No. 09-207 on October 13, 2009. Since that time, there have been no substantial changes in the General Plan nor in the circumstances under which it is undertaken, nor any new information of substantial importance, that would require the preparation of a Subsequent EIR or Supplement to the EIR. Thus, the General Plan EIR applies to the proposed Planning Regulations Amendment. Furthermore, according to the General Plan EIR, development under the General Plan, including the development of high-rise towers, will have a less than significant impact on visual resources, and no mitigation is required.

- (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.

No changes to the Zoning Map in Figure 3.103(a) or the Zoning Overlay Map in Figure 9-3.103(b) of the Planning Regulations are proposed.

RECOMMENDATION

1. Open the public hearing and take testimony on the proposed Resolution regarding amendments to the Planning Regulations.
2. Close the public hearing and consider the Staff Report and proposed Resolution.
3. Adopt the attached Resolution approving the proposed amendments to the Planning Regulations and recommending that the City Council adopt the amendments.

Attachment: Draft Resolution

RESOLUTION NO. ORD19-002

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF EMERYVILLE RECOMMENDING THAT THE CITY COUNCIL APPROVE AN AMENDMENT TO THE PLANNING REGULATIONS IN ARTICLE 2 OF CHAPTER 4 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE TO MODIFY THE TOWER SEPARATION REQUIREMENTS

WHEREAS, the Emeryville General Plan Environmental Impact Report (EIR) was certified by the City Council by Resolution No. 09-207, and the Emeryville General Plan was adopted by the City Council by Resolution No. 09-208, both on October 13, 2009; and

WHEREAS, at study sessions held on December 13, 2018, and February 5, 2019, the Planning Commission and City Council, respectively, expressed unanimous support for amending the tower separation requirements of the Planning Regulations as set forth in this resolution; and

WHEREAS, the Emeryville Planning Commission held a duly and properly noticed public hearing on the proposed amendment to the Planning Regulations on May 23, 2019 to solicit public comments and review and consider the proposed amendment; and

WHEREAS, the Emeryville Planning Commission reviewed and considered the staff report and attachments thereto and all public comments for the proposed amendment to the Planning Regulations as set forth in this Resolution and the applicable standards of the Emeryville Planning Regulations (“the Record”); now, therefore, be it

RESOLVED, that in approving this amendment to the Planning Regulations and making a recommendation for adoption by the City Council, the Planning Commission makes the following findings as required by Emeryville Municipal Code Sections 9-7.1305:

- (a) The proposed amendment is consistent with the General Plan.

The General Plan includes two policies related to tower separation:

LU-P-14 Heights greater than 100 feet are only permitted for buildings that meet specific criteria, such as minimal impacts on public views, sky exposure, wind, and shadows, adequate separation from other tall buildings, and exemplary design, and/or provide public amenities, through a discretionary review and approval process.

UD-P-35 Tower separation shall be required to increase sky exposure for developments with multiple towers, and maintain separation standards for buildings taller than 100 feet.

These policies indicate that there should be tower separation standards and that the separation should be “adequate”, but they do not prescribe a distance for that separation. The proposed Planning Regulations amendment replaces the current proscriptive regulation that buildings over 100 feet in height be separated from each other by a minimum horizontal distance equal to no less than the height of the taller building with a more flexible finding that tower separation is adequate, which

facilitates the implementation of the following General Plan goals and policies that encourage the development of tall buildings in the Powell/Christie core area:

- LU-G-7 A varied skyline—with the highest intensities/heights grouped in the Powell Street/Christie Avenue area, with heights stepping down from this urban core.*
- LU-P-23 The Powell Street Plaza site shall be encouraged to redevelop as a high-intensity, high-rise, mixed-use development that complements the Powell Street entrance to the city from the freeway.*
- LU-P-24 The Marketplace and adjacent parcels shall be encouraged to redevelop with a mix of uses, and iconic mid to high-rise development.*
- UD-G-10 A skyline with the tallest buildings concentrated in the central core—The tallest buildings at the Powell Street/Christie Avenue area, with a gradual transition to lower building heights to the mid- to lower-scale development to the east and west.*
- UD-P-5 The tallest buildings and highest development intensities in the city shall be located within the Powell Street/Christie Avenue core, with the exception of the northwest and southwest corners of the city.*
- UD-P-7 A high-intensity mixed-use core will be located near Powell Street and Christie Avenue, and built to the street edge to maintain a vibrant pedestrian-oriented district.*

Furthermore, according to the General Plan EIR, the following General Plan policies related to urban design and views would help preserve existing visual resources and would reduce potential impacts on scenic vistas or views:

- UD-P-8 Improved streetscape treatments, open space connections, and extension of the street grid through Powell Street Plaza.*
- UD-P-19 The street grid shall be extended as redevelopment on larger sites occurs.*
- UD-P-20 Full or partial public street closures by private development shall be prohibited. Where a street closure to vehicular traffic is necessary for public projects, as called for in this General Plan, access for pedestrians and bicycles should still be maintained.*
- UD-P-22 Opportunities to extend the street grid through internal connections in large parcel developments should be considered. Single-point access to new development should be avoided.*

UD-P-28 Public views of the San Francisco Bay and the East Bay hills shall be maintained

UD-P-29 Streetscape features should not block public views.

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- Vertical articulation, such as step backs at higher floors, and less floor area as heights increase to reduce the apparent bulk of buildings.*
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UD-P-35 Where large floorplates are permitted, buildings shall be required to adhere to height, setback, and stepback standards, as required for view and sun access, but less stringent bulk standards shall be permitted.

- (b) The proposed amendment is necessary for public health, safety, and general welfare or will be of benefit to the public.

The proposed amendment to the Planning Regulations will be of benefit to the public by facilitating high-rise development in appropriate locations, thereby providing needed housing and jobs and fostering “a dramatic skyline of slender and elegant high rise buildings stepping down to low-rise buildings in the older residential neighborhoods” as called for by General Plan Guiding Principal number 10, “An imageable and memorable city”.

According to the most recent General Plan annual progress report, at 56% of the way through the current Regional Housing Needs Allocation (RHNA) implementation period, only 39% of the City’s RHNA total dwelling units, and only about 18% of the City’s RHNA affordable dwelling units, have received building permits. The proposed amendment to the Planning Regulations will help to facilitate housing production, including affordable units, in conformance with the following General Plan Housing Element policies:

Policy H-2-1. Ensure that the Planning Regulations continue to facilitate the development of affordable housing.

Policy H-4-1. Ensure the Zoning Ordinance facilitates the development of a variety of housing types.

- (c) The proposed amendment has been reviewed in compliance with the requirements of the California Environmental Quality Act.

The Environmental Impact Report for the General Plan was certified by the City Council by Resolution No. 09-207 on October 13, 2009. Since that time, there have been no substantial changes in the General Plan nor in the circumstances under which it is undertaken, nor any new information of substantial importance, that would require the preparation of a Subsequent EIR or Supplement to the EIR. Thus, the General Plan EIR applies to the proposed Planning Regulations Amendment. Furthermore, according to the General Plan EIR, development under the General Plan, including the development of high-rise towers, will have a less than significant impact on visual resources, and no mitigation is required.

- (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.

No changes to the Zoning Map in Figure 3.103(a) or the Zoning Overlay Map in Figure 9-3.103(b) of the Planning Regulations are proposed.

and be it further

RESOLVED that the Planning Commission hereby recommends to the City Council that the following amendments be made to Article 2 of Chapter 4 of the Planning Regulations in Title 9 of the Emeryville Municipal Code. The proposed amendments are denoted by ~~striketrough type~~ for language that is deleted and double underlined type for new language.

CHAPTER 4. SITE DEVELOPMENT REGULATIONS

ARTICLE 2. BUILDING INTENSITY, HEIGHT AND RESIDENTIAL DENSITY

9-4.202 Height and Bulk.

- ~~(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)~~(f) **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.

9-4.204 Development Bonuses.

- (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:

- (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 adequately separated ~~by an adequate distance from any other buildings with a height greater than~~ over 100 feet tall ~~as specified in Section 9-4.202(f).~~

APPROVED by the Planning Commission of the City of Emeryville at a regular meeting held on Thursday, May 23, 2019 by the following votes:

AYES: _____

NOES: _____ **ABSTAINED:** _____

EXCUSED: _____ **ABSENT:** _____

CHAIRPERSON

APPROVED AS TO FORM:



RECORDING SECRETARY



ASSISTANT CITY ATTORNEY
MG