



# 3 POTENTIAL CONSTRAINTS

Government policies, such as land use regulations, building standards, permit processing procedures, development fees and exactions, and environmental regulations, are intended to ensure that housing is safe and appropriate for the community. However, these requirements may act as barriers to housing production by inhibiting the feasibility of housing projects. Non-governmental constraints, such as land availability, land cost, and construction costs may also impact the availability and price of housing. This chapter examines these potential constraints under current conditions in Emeryville.

3.1 POTENTIAL GOVERNMENTAL CONSTRAINTS

Land Use Regulations

General Plan

The Emeryville General Plan was adopted in 2009. The General Plan provides a framework for development and is intended to guide the city’s continued transition from an industrial center to a diverse and vibrant community. The Land Use Element establishes allowed land uses and the intensity of residential development as described through density (units per acre), height, and floor area ratio (FAR).

Without considering density bonuses, existing policies allow residential densities ranging from 20 units per acre in the eastern neighborhoods to 115 units per

acre in the Powell/Christie core. These densities can be achieved with building intensities that range from 0.5 to 4.0 FAR and building heights that range from 30 to 100+ feet. **Table 3-1** provides an overview of land use categories that allow residential development as well as the corresponding zoning districts. Zoning district standards are further described below.

Area Plans

Area plans have been developed for specific neighborhoods to guide property improvements through tailored development standards and policies. These plans are intended to preserve and enhance neighborhood character and establish a cohesive aesthetic that strengthens neighborhood identity and fosters a sense of community.

North Hollis Area Urban Design Program

The North Hollis Area Urban Design Program is implemented through the North Hollis Overlay Zone. The plan covers the northeast corner of the city and calls for infill residential uses that complement the existing neighborhood. The plan is also intended to stimulate use of the greenway, discourage through traffic, balance automobile access with other transportation modes, provide sufficient public parking, and encourage private development that enhances neighborhood character and promotes pedestrian improvements of the area.

San Pablo Avenue Urban Design Plan

The San Pablo Avenue Urban Design Plan outlines a phased strategy for the development of San Pablo Avenue into an active, attractive neighborhood retail center. The document targets land use for a

Table 3-1. Residential Land Use Classifications

LAND USE CLASSIFICATION	IMPLEMENTING ZONING DISTRICT	DESCRIPTION
High Density Residential	High Density Residential (RH)	Mid or high-rise residential development, generally on sites with FARs greater than 2.5.
Medium High Density Residential	Medium High Density Residential (RMH)	Residential development generally at maximum FARs ranging from 0.8 to 1.9.
Medium Density Residential	Medium Density Residential (RM)	Residential development at FARs less than 0.8. Single-family attached and detached housing. Multi-family housing types may be allowed as a conditional use, subject to the Planning Regulations.
Mixed Use with Residential	Mixed Use with Residential (MUR) and Mixed Use with Residential South (MURS)	One or more of a variety of residential and nonresidential uses. On larger sites, a mix of residential and nonresidential uses is required; on smaller sites, a single use may be permitted.
Mixed Use with Nonresidential	Mixed Use with Nonresidential (MUN)	Not generally a residential classification; however, live/work units are permitted.
Industrial	Light Industrial (INL) and Heavy Industrial (INH)	Not generally a residential classification; however, “light” live/work is allowable in the east of Hollis and Horton Street industrial areas (corresponds to the INL zone), and “heavy” live/work (e.g., work involving manufacturing, welding, and assembly) is allowable in the industrial area west of Hollis (corresponds to the INH zone).

Source: City of Emeryville General Plan, 2009

few specific catalyst projects, establishes goals for public circulation and streetscape improvements, and provides design guidelines for new development. The plan was written in 1990 and the majority of it has already been implemented.

#### South Bayfront Design Guidelines

The South Bayfront Design Guidelines cover the area south of Powell Street between the railroad and Interstate 80 (I-80). The plan outlines eight high-level site design principles for the development of the district and presents three conceptual models. These guidelines were established in 1997. Since that time, much of the South Bayfront area has been developed accordingly.

#### Park Avenue District Plan

The Park Avenue District Plan establishes incentives and development guidelines intended to create a vibrant, mixed-use neighborhood. It seeks to preserve the area's small parcels and historic buildings and encourages private development of live/work housing, small-scale businesses, pedestrian and bicycle accessibility, and 24-hour community uses. Public investments, such as an arts center, public parking facilities, community open space, and improved sidewalks, will complement this improved district.

#### Planning Regulations (Zoning)

Emeryville's Planning Regulations, adopted in 2013, establish zoning districts that implement the General Plan land use classifications. **Table 3-2** shows residential uses, the zoning districts in which they are permitted, and whether they are permitted by right (without discretionary action) or with a conditional use permit (CUP). This flexible approach allows residential permitting on approximately 57 percent of the land in Emeryville. Emeryville has no low-density

residential zones because there are no neighborhoods exclusively zoned for single-family housing. Single-unit and two-unit residences are allowed by right in the RM and RMH zoning districts. Multi-unit (three or more units) residences are allowed by right in the RMH and MURS zoning districts. In addition, live/work housing is allowed as a conditional use in residential, commercial, and industrial zones.

Emeryville's Planning Regulations are consistent with the General Plan and provide ample opportunities for residential development. With standard housing developments permitted by right and less common use types allowed conditionally, the City's regulations encourage and facilitate a diverse variety of housing types and are not considered a constraint to housing production.

#### Special Housing Types

The City is committed to providing a variety of housing opportunities to members of the community, including those with special needs. Emeryville's Planning Regulations provide for a variety of housing types, living situations, and residents' needs. For example, recent updates to the Planning Regulations remove barriers to establishing group homes, allow emergency shelters by right, and provide opportunities for transitional and supportive housing. Additionally, the Planning Regulations were updated to simplify the permitting process for secondary dwelling units.

#### Manufactured and Mobile Homes

Factory-built homes are expressly treated the same as site-built homes. Mobile homes are allowed in the RM zoning district with a use permit.

#### Residential Care Facilities

Limited residential care facilities (providing care for six or fewer persons) are permitted by right in the RM, RMH, RH, MUR, and MURS zones. General residential care facilities (providing care for seven or more persons) are conditionally permitted in the RM, RMH, RH, MUR, and MURS zones.

#### Secondary Units

Secondary units are subject to ministerial review and are allowed by right in all residential zones, including the MUR and MURS zoning districts. Secondary units are generally subject to the requirements for two-unit or multi-unit dwellings in the corresponding base zone. However, second units must comply with specific standards regarding floor area, parking, height, and separation from the main unit. In addition, they are subject to an owner occupancy requirement. The owner of the property must occupy either the principal residence or the secondary unit.



Urban design guidelines for areas in Emeryville, such as the Park Avenue District, are intended to maintain and improve the area's unique identity.



Table 3-2: Zones Where Residential Uses Are Permitted

RESIDENTIAL USE	RM	RMH	RH	MUR	MURS	MUN	INL	INH
Single unit	P	—	—	—	—	—	—	—
Two units	P	—	—	—	—	—	—	—
Multi-unit	CM	P	P	P	P	—	—	—
Domestic violence shelter	C	C	C	C	C	—	—	—
Emergency shelter	—	—	—	C	P	C	C	—
<b>Group residential</b>								
Small	P	P	P	P	P	—	—	—
Large	C	C	C	C	C	—	—	—
Mobile home park	C	—	—	—	—	—	—	—
<b>Residential care facility</b>								
Limited	P	P	P	P	P	—	—	—
General	C	C	C	C	C	—	—	—
<b>Supportive housing</b>								
Single unit or two units	P	—	—	—	—	—	—	—
Multi-unit	CM	P	P	P	P	—	—	—
<b>Transitional housing</b>								
Single unit or two units	P	—	—	—	—	—	—	—
Multi-unit	CM	P	P	P	P	—	—	—
<b>Live/work unit</b>								
Heavy	—	—	—	—	—	—	—	CM
Light	C	C	C	C	C	C	C	—

Source: Emeryville Planning Regulations, 2013

Key: permitted (P), conditionally permitted (C), normally requiring a minor CUP (CM), and prohibited (—).

### Group Residential Uses

Small group residential uses (for six or fewer residents) are treated the same as other single-family (single-unit) uses and are permitted by right in the RM, RMH, RH, MUR, and MURS zoning districts. Large group residential uses (for seven or more residents) are conditionally permitted in the above-mentioned zones. Single-room occupancy (SRO) housing is considered group residential, which is further classified and permitted as small group residential and large group residential as explained above.

### Transitional and Supportive Housing

The Planning Regulations were updated in early 2014 to allow transitional and supportive housing, subject only to those restrictions that apply to other residential dwellings of the same type in the same zone. More specifically, single-unit or two-unit transitional housing and supportive housing are permitted by right in the RM zone, and multi-unit projects are conditionally allowed in the RM zone and permitted by right in the RMH, RH, MUR, and MURS zoning districts.

### Emergency Shelters

The Planning Regulations were updated for compliance with Senate Bill 2 (2007) by establishing a zoning district (the MURS zone) that allows emergency shelters by right (without discretionary action). The MURS zone (see **Figure 3-1**) encompasses roughly 24.5 acres, of which 2 acres are currently vacant. Emergency shelters are also conditionally permitted in the MUR, MUN, OT, OT/DH, and INL zoning districts. Sites in the MURS zone are well served by transit, services, and amenities.

Emergency shelters are subject to operating standards that stipulate the maximum number of beds per

facility (60 beds), a minimum size for the waiting/intake area, a time frame and location for outdoor activities (e.g., food distribution), a minimum distance between shelters (300 feet), lighting requirements, ample security, a written management plan, on-site staffing, and compliance with licensing requirements and all applicable health and safety codes.

### Housing for Disabled Persons

Pursuant to the federal Fair Housing Amendments Act, the Americans with Disabilities Act, and the California Fair Employment and Housing Act, Emeryville's Planning Regulations (Title 9, Chapter 7, Article 9) provide for reasonable accommodation by allowing modifications to the application of land use policies and zoning regulations for persons with disabilities. These provisions are intended to provide a clear process for the submittal and processing of requests for reasonable accommodation. Requests for accommodation are referred to the Planning and Building Director, or designee, who must issue a decision within 45 days. There are provisions for appeal of the director's decision.

The Magnolia Terrace project provides an example of a recent request for reasonable accommodation. In 2009, the Housing Consortium of the East Bay (HCEB) received entitlements to restore a relocated building into five independent units for people with developmental disabilities. The project offers long-term, affordable, accessible apartment units for adults and households with developmental disabilities, with leasing preferences for very low-income households.

The relocated building met setback requirements except that a small portion of the front entry porch roof encroached into the 10-foot front setback. The

applicant made a request for accommodation for the encroachment of the front entry into the setback to minimizing slippery conditions for a person in a wheelchair. The request was approved by the Planning and Building Director.

The Planning Regulations establish the dimensions of accessible parking stalls and set the parking requirement for general residential care facilities (providing care for more than six persons) at 0.5 spaces per bed (and multiplying this parking calculation by 33 percent for the final calculation). There is no parking requirement for limited residential care facilities (providing care for six or fewer persons). Parking requirements for senior housing developments range from 0.75 to 1 spaces per dwelling unit, depending on the number of bedrooms (and multiplying this calculation by 33 percent for the final calculation). Residential parking requirements for housing for persons with disabilities are the same as for the nondisabled.

In addition, the Planning Regulations offer a density bonus for projects that include units with universal design features. Features include a minimum turn radius in the kitchen and bathroom, appliances with side- or front-mounted controls, repositionable countertops, reinforced bathroom walls to allow for grab bars, and other standards. Program H-3-1-3 commits the City to evaluating the feasibility and appropriateness of amending the Planning Regulations to require the provision of universal design features in a portion of residential units in new developments.

Title 24, the California Building Standards Code, covers construction-related accessibility requirements for persons with disabilities.



## Residential Development Standards and Parking Requirements

Residential development standards and parking requirements are intended to maintain and preserve the aesthetic quality of Emeryville's residential neighborhoods. Standards address physical qualities such as structure heights, yard setbacks, and open space requirements. They are not meant to limit residential development; instead they are aimed at creating attractive and inviting buildings at appropriate scales and in consideration of adjacent properties.

**Table 3-3** describes residential development standards. Density, building intensity (FAR), and building height are established in the Land Use Element. These standards are established in separate maps and do not correspond directly to the land use or zoning maps (Figures 2-6, 2-3, and 2-4 in the Land Use Element). Density, intensity, and height bonuses may be conditionally permitted for projects demonstrating a significant public benefit, such as public open space, family-friendly housing, sustainable design, etc. However, specific findings are required to approve a public benefit bonus.

All development and improvement projects must provide adequate parking. The required number of parking spaces is determined by use type, number of units, and number of bedrooms. A breakdown of the residential parking standards is provided in **Table 3-4**.

Parking standards stated in **Table 3-4** are minimum requirements. The maximum is established at 10 percent more than the minimum. The understands that in certain instances, it may be appropriate for a developer to provide more or less parking than is set forth in the standard. For example, residential developments that are located in close proximity to

transit and promote bicycle use may demonstrate a reduced need for parking. Developers may apply for a conditional user permit to seek variations in parking standards.

As noted in **Table 3-4**, the City offers reduced parking requirements for senior and low-income residential developments.

### Effect of Standards and Parking Requirements on Residential Density

Specific development standards may impose constraints on development so that the maximum density allowed under the General Plan and zoning may not be achievable. Three hypothetical examples of residential projects are provided below to illustrate the effect of Emeryville's development standards on densities permitted under the General Plan and zoning regulations. None of the examples illustrated result in lower densities than under normal development standards. (For the purpose of simplification, the illustrations below do not factor increases in densities, height, and floor area that may be achieved with bonuses.)

#### Example #1: RM zone with 20 units per acre

This example is based on a 5,000-square-foot lot.

**Density:** 20 units per acre allowing 2 units

**Intensity:** FAR maximum is 0.5 so that total floor area would be limited to 2,500 square feet or an average unit size of 1,250 square feet

**Height:** 30 feet, 2 stories

**Minimum dwelling size:** 500 square feet

**Parking:** Assuming two units with two or three bedrooms each, the parking requirement would be three spaces, two of which can be tandem (parking is not included as floor area)

Yard requirements plus a 10-foot driveway would result in a potential building footprint of 2,775 square feet, which exceeds the maximum FAR.

In this example, the development standards would not limit the density. The most limiting factor is the FAR of 2,500 square feet, which can generously accommodate two units. A common constraint in the RM zone is designing on-site parking on narrow lots. Three units may be achieved through a conditional use permit in the RM zone. In that case, the lot would need to be large enough to accommodate on-site parking without it dominating the appearance from the street.

#### Example #2: MUR zone with 85 units per acre

This example assumes a 20,000-square-foot site.

**Density:** 85 units per acre allowing 39 units

**Intensity:** FAR maximum is 2.0 or 40,000 square feet

**Height:** 55 feet (4 to 5 stories)

**Parking:** Assuming 39 two-bedroom units, 59 spaces plus 10 guest spaces in two-level structure – not included as floor area

**Yard requirements:** None

**Open space requirements:** 60 square feet per dwelling unit (40 square feet of private open space and 20 square feet of common open space), for a total of 2,340 square feet

This example assumes residential development with two levels of structured parking. The floor area limitation of 40,000 square feet would occupy two full residential floors. When this floor area is reduced by 25 percent for corridors and for mechanical and common areas, approximately 30,000 square feet would be available for living space. This area can accommodate 39 units averaging 770 square feet each.

Table 3-3: Residential Development Standards

	ZONE					UNIT TYPE	
	RH	RMH	RM	MUR	MUR, ABUTTING OTHER RESIDENTIAL ZONES	SECOND UNITS	LIVE/WORK
Front yard setback (minimum)							
If the two adjacent lots are developed	Average of adjacent front yards	Average of adjacent front yards	Average of adjacent front yards	None	When street frontage abuts a lot in a res. zone, setback shall be the same as required on the adjacent res. lot	A detached dwelling unit shall be separated by a minimum of 10 feet	Pursuant to the zone in which the unit is located
If only one of the adjacent lots is developed	Same as front yard on developed lot but not less than 5 feet	Same as front yard on developed lot but not less than 5 feet	Same as front yard on developed lot but not less than 10 feet				
If neither of the adjacent lots are developed	5 feet	5 feet	10 feet				
For all corner lots	5 feet	5 feet	10 feet				
Other setbacks (minimum)							
Street side	3 feet	3 feet	3 feet	None	When street frontage abuts a lot in a res. zone, setback shall be the same as required on the adjacent res. lot	3 feet	Pursuant to the zone in which the unit is located
Interior side	3 feet	3 feet	3 feet		10' plus an additional 2'for each 1' by which the height of the building on the nonresidential lot exceeds 30'	3 feet	
Rear	15 feet	15 feet	15 feet		10 feet		
Unit size							
Minimum (square feet)	—	—	500	—	—	Varies <sup>1</sup>	750
Maximum (square feet)	—	—	—	—	—	1/2 gross floor area of the existing dwelling unit	2,000
Open space							
Usable open space per unit (square feet)	60	60	60	60	60	—	60

Source: City of Emeryville Planning Regulations, 2013  
1. If the principal single unit is less than 1,000 square feet, the maximum size of the secondary unit is 500 square feet; if the principal single unit is 1,000 to 1,800 square feet, the maximum size of the secondary unit can not exceed 50% of the floor area of the principal unit; if the principal unit is larger than 1,800 square feet, the maximum size of the secondary unit is 900 square feet.



**Table 3-4: Residential Parking Standards**

RESIDENTIAL USE	REQUIRED PARKING SPACES
Single unit	1 space
<b>Two units and multi-unit</b>	
Studio and 1-bedroom units	1 space/unit
2-bedroom and larger units	1.5 spaces/unit
Guest parking (for 5+ units)	0.25 spaces/unit
<b>Two units and multi-unit senior and low-income housing</b>	
Studio and 1-bedroom units	0.5 spaces/unit
2-bedroom and larger units	0.75 spaces/unit
Guest parking (for 5+ units)	0.25 spaces/unit
<b>Domestic violence shelter</b>	0.25 spaces/bed
<b>Group residential</b>	
Small	None
Large	0.25 spaces/bed
<b>Mobile home park</b>	1 space/mobile home
<b>Residential care facility</b>	
Limited	None
General	0.25 spaces/bed
<b>Supportive Housing</b>	0.25 spaces/bed
<b>Transitional Housing</b>	0.25 spaces/bed

Source: City of Emeryville Planning Regulations, 2013

**Example #3: MUR zone with 115 units per acre**

This example is based on a 40,000-square-foot site in the core area.

**Density:** 115 units per acre allowing 106 units

**Intensity:** FAR maximum is 4.0 so that floor area would be limited to 160,000 square feet

**Height:** 100+ feet (over 8 stories)

**Parking:** Assuming 106 two-bedroom units, 159 spaces plus 27 guest spaces accommodated in two levels of structured parking – not included as floor

area

**Yard requirement:** None

**Open space requirements:** 60 square feet per dwelling unit (40 square feet of private open space and 20 square feet of common open space), for a total of 6,360 square feet

This example assumes residential development over structured parking. Floor area is limited to 160,000 square feet. When reduced by 25 percent for corridors and for mechanical and common areas, approximately

120,000 square feet would be provided for residential space, which would accommodate 106 units averaging 1,132 square feet in size.

**Public Benefit Bonuses**

If a public benefit can be demonstrated, the City offers bonuses for FAR, height, and/or residential density with issuance of a conditional use permit. Such benefits must clearly exceed normal requirements and must be determined according to specific standards outlined in the Planning Regulations. Similarly, the Planning Regulations provide detailed information on calculating bonus rewards. A variety of project enhancements and amenities can trigger development bonuses, including open space, sustainable development, public improvements, Transportation Demand Management (TDM) programming, family-friendly housing, neighborhood centers, small businesses, public art, public parking, bike stations, preservation of significant structures, electric vehicle (EV) charging stations, and universal design features.

The City recognizes that parking requirements can create a challenge and offers reductions in minimum requirements through issuance of a CUP if developers promote alternate modes of transit and show no impacts from overflow parking. In addition, in the Transit Hub Overlay Zone, all parking requirements are reduced by 50 percent.

**Density Bonus for Affordable Housing**

In compliance with state law, the City provides density bonuses for residential development projects that agree to provide affordable housing units. Density bonuses can reach up to 35 percent and are based on both the type and the amount of benefits provided. The following types of projects are eligible for a density bonus:

- A residential development project that agrees to construct at least 10 percent of its units for low-income households
- A residential development projects that agrees to construct at least 5 percent of its units for very low-income households
- A senior citizen housing development or mobile park that limits residency based on age
- A residential development project where 10 percent of its units are in a common interest development for persons and families of moderate income, provided that all units in the development are offered to the public for purchase
- A residential development project that donates land to the City
- A residential development project that includes childcare facilities
- A condominium conversion project that agrees to make at least 33 percent of its units affordable to moderate-income households or at least 15 percent of its units affordable to low-income households

Note that density bonuses for affordable housing are distinguished from and are in addition to the public benefit bonuses discussed above.

## Permits and Procedures

### Permit Processing

As a small city, Emeryville's zoning permit process is generally less time-consuming than that of many East Bay cities. Staff is able to provide a higher level of customer service than seen in larger cities.

Emeryville's permit procedures are straightforward. The City has no design or historical review boards. Analysis associated with California Environmental

Quality Act (CEQA) can prolong project review, but many projects are eligible for urban infill exemption.

Administrative planning approvals of complete applications, including minor (staff-level) design review, minor conditional use permits, sign permits, and other small projects generally take about three days to three weeks to process but can take up to 30 days.

Planning Commission approvals (conditional use permits, design review, variances, sign permits, and subdivision) take about two months for simple projects, once the application is complete. Appeals to the City Council may add up to two months.

An application for a project involving new construction, requiring a conditional use permit, design review, a planned unit development, an amendment to the Zoning Ordinance, and/or a General Plan Amendment will take longer due to required hearings by the Planning Commission and City Council.

The processing time, depending on the size and complexity of the project and environmental review, can take up to a year for complex projects requiring redesign and an environmental impact report.

Building permits and the related reviews (plan, energy, electrical, plumbing, mechanical, fire) are processed together. For a mid-size, uncomplicated project with complete drawings and other submittal requirements, it generally takes about six weeks to produce first comments and two to three weeks to respond to the developer's response, for a total of two to three months. Larger, more complex projects can take several additional months to receive building permits.

To reduce staff time, the City has implemented a permit tracking system allowing computerized access to files. Ultimately, this will result in public access to records online and will enable applicants to submit applications through the Internet.

Overall, the permit process in Emeryville is efficient and as demonstrated by the City's success at developing housing, does not impede housing production.

### Conditional Use Permits

Conditional use permits (CUP) provide flexibility and address complexities encountered with Emeryville's infill development. Because of the city's unique land use history and its small size, projects often have to consider site irregularities, complex environmental conditions, and adjacent industrial or commercial land uses.

The City created a minor CUP to reduce costs and processing times for certain qualifying projects, such as conditionally permitted uses in existing buildings (except in RM zones) and the preservation and reuse of a significant or residential structure. The fee for a minor CUP is 471. The fee for a major CUP is \$471 for a residential project of three units or less. Larger projects require a \$2,000 deposit and are charged on a cost recovery basis.

Planning Regulations mandate that specific findings be made upon approval of a CUP. Emeryville's findings, listed below, are based on standard findings provided by the state Office of Planning and Research:

- The proposed use is consistent with the General Plan.

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- 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.
- The proposed use is consistent with the capability of the water supply, wastewater disposal, fire, and police systems to operate adequately and cost effectively.
- 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.
- The proposed use complies with all applicable standards and requirements of the Planning Regulations.

### Design and Site Plan Review

The Planning Regulations establish a design review procedure for development proposals that involve construction or exterior alterations. Smaller-scale proposals are reviewed administratively. Design review applications are reviewed concurrently with any applicable use permit or variance. For minor design review, the fee is \$471. Major design review requires a \$2,000 deposit and is charged on a cost recovery basis.

For larger projects, the developer is asked to meet with neighbors prior to seeking approval from the Planning Commission. Informal study sessions with the Planning Commission, City Council, or both are also recommended for larger projects prior to filing of an application. Study sessions are beneficial to the applicant because any concerns of the Planning Commission and City Council can be aired prior to large investment into design. Likewise, applicants

receive preliminary review by staff to determine conformance with zoning and the General Plan and to identify the permits required. By the time the project appears before the Planning Commission, significant issues have often been resolved.

### Building Code and Code Enforcement

The Emeryville Building Division provides information and assistance to those planning a construction project in Emeryville, as well as providing timely services for projects already under construction. Project design teams are encouraged to meet with the building official, the plan check engineer, and Fire Department staff in the early stages of the project in order to discuss significant code issues that will impact the project. By working out potential problems early, applicants can usually proceed more efficiently through the plan review stage of a project. On January 1, 2014, a new International Building Code went into effect in California. The City of Emeryville has transitioned to this new code.

The code enforcement program focuses on enforcing ordinances and laws that require abatement to properties which are dangerous to the public or are a public nuisance. Building inspectors respond to complaints, issuing notices of violations and informing property owners about rehabilitation programs. Building owners are given a reasonable period of time to correct code violations, and the buildings are re-inspected. If violations are not corrected, the owners can be cited or nuisance abatement proceedings can be initiated.

In response to construction issues in large multi-family projects with modern design features, the Building Division now requires third-party testing at key stages in the development process. While this requirement adds to construction costs, it has already proven

effective in preventing potentially significant issues that would later impact project owners and residents. While added costs may constrain development, this has been determined to be an important and successful method for ensuring quality construction and creating longer-term stability in multi-family housing.

### Fees and Exactions

The City charges planning and building fees and impact fees to cover staff costs and ensure new development contributes to the added costs of providing necessary services and amenities. Fee schedules are updated regularly and are in alignment with fees typical of jurisdictions in the East Bay. The City's master fee schedule, effective July 1, 2014, is provided as **Appendix B**. Fees are subject to change, and interested parties should contact City staff to confirm fee amounts.

In addition to those fees shown in **Appendix B**, the City Council adopted transportation facilities, parks, and affordable housing impact fees in July 2014. The fees were adopted following extensive studies with the input of various City committees and members of the public. The transportation facilities fee is set at \$1,555 per unit for rental apartments, \$1,304.20 per unit for condominiums, and \$2,508.20 for single-family homes. The parks fee is set at \$3,601.50 per unit for multifamily and \$3,742.25 for single-family homes and townhomes. These fees are comparable to those charged in nearby jurisdictions and are not expected to negatively impact residential development in Emeryville.

The affordable housing impact fee is set at \$20,000 per unit for rental housing. The fee does not apply to ownership projects, which are subject to inclusionary requirements under the City's Affordable Housing

Program. Developers of rental housing may also opt to provide on-site affordable units, rather than paying the affordable housing impact fee (this is provided for in the City's Affordable Housing Program).

Planning application fees are due at the time of filing. For cost recovery, a deposit is required up front and billings will be made as costs incur. Building permit and impact fees are collected in three phases. Plan review fees and energy fees are due at plan check submittal. At the time the permits are issued, the following fees are due: building, electrical, plumbing, and mechanical permit fees, Fire Department fees, general plan maintenance fee, sewer connection fees, and school and public art fees. The traffic impact fee and any business license fee, as well as any remaining planning fee, are due with the final inspection.

School facilities development fees are waived for affordable housing units. Additionally, to relieve any undue burden on developers who are required to provide moderate-income set-aside units under the Affordable Housing Program (formerly named the Affordable Housing Set-Aside Ordinance), the City may subsidize the cost of any traffic fees, building fees, and other City fees applicable to the required below-market-rate units.

To illustrate the cumulative effect of fees on a project, four examples are provided below. Note that fee calculations are representative of the fee schedule in place at the time of approval and vary from the fees stated in the 2014-2015 fee schedule.

**Apartments: Parc at Powell (formerly "Parkside"), 98 units**

**Construction cost:** \$41,491,288  
 Building permit and other fees: \$950,050  
 Approximate planning fees: \$132,000

**Total fees:** \$1,082,050  
 Total fees per unit: \$6,148  
 Construction cost per unit: \$235,746  
**Proportion of fees to development costs:** 3%

**Apartments: Ambassador, 68 Units**  
**Construction cost:** \$18,238,808  
 Building permit and other fees: \$742,741  
 Approximate planning fees: \$35,000  
**Total fees:** \$777,741  
 Total fees per unit: \$11,437  
 Construction cost per unit: \$268,218  
**Proportion of fees to development costs:** 4%

**Townhomes: Ocean Avenue, 5 units**  
**Construction cost:** \$1,275,085  
 Building permit and other fees: \$70,365  
 Approximate planning fees: \$14,500  
**Total fees:** \$84,865  
 Total fees per unit: \$16,973  
 Construction cost per unit: \$255,017  
**Proportion of fees to development costs:** 7%

**Apartments: Emme (formerly "64th and Christie"), 196 units**  
**Construction cost:** \$41,790,399  
 Building permit and other fees: \$2,356,367  
 Approximate planning fees: \$35,500  
**Total fees:** \$2,391,867  
 Total fees per unit: \$12,203  
 Construction cost per unit: \$213,216  
**Proportion of fees to development costs:** 7%

As indicated in the above examples, planning and building fees are a small percentage of the total cost of developing housing in Emeryville.

## Site Improvement Requirements

Because many sites are small and being reused, improvements consist of upgrading water and sewer lines if needed for intensification of use, providing parking and on-site circulation, and placing utilities underground. The City uses standard conditions of approval that are applied to projects as warranted. Public improvements may also be required to improve the safety and livability of the city. These include curbs, gutters, and sidewalks, street trees, street reconstruction, traffic signals, utility lines, and park and greenway improvements.

## Inclusionary Housing Ordinance (Affordable Housing Program)

In July 2014, the City of Emeryville adopted the Affordable Housing Program, an inclusionary housing ordinance that replaced the City's Affordable Housing Set-Aside (AHSA) Ordinance (adopted in 1990 and revised in 2008). The Affordable Housing Program updated the City's former policy to lower the threshold of residential development project applicability from 30 or more units to 10 or more units and establish fees to be imposed on rental housing developments and non-residential development to mitigate the impacts of these development types on the City's ability to provide affordable housing. The Affordable Housing Program establishes an affordable housing fund where fees will be deposited and provides authority to expend the fund for the provision of affordable housing.

In ownership residential developments of 10 or more units, 20 percent of units must be set aside for and affordable to moderate-income households. The City imposes resale conditions for 45 years after recordation of each grant deed in order to keep units in the program and maintain affordability for moderate-income households. The affordability percentage



may be reduced with permission from the City Council in exchanged for deeper levels of affordability on units provided.

Rental residential projects of 10 or more units are subject to an affordable housing impact fee or may instead elect to provide 6.9 percent of units as affordable units for low-income households for a period of at least 55 years.

As stated in Program H-2-1-2, the City will continue to implement the Affordable Housing Ordinance to facilitate the development of new affordable units.

#### Production of Affordable Housing Under the Inclusionary Ordinance

Although the City's AHSA Ordinance was originally adopted in 1990, much of the residential development built in Emeryville during the 1990s was the result of public-private partnerships between developers and the City through its former Redevelopment Agency. The agency provided financial assistance through its Low and Moderate Income Housing Fund for several residential projects developed by private, for-profit and nonprofit residential developers, and in one case, the Alameda County Housing Authority. Some of these developments did not exceed the 30-unit threshold of the AHSA Ordinance, while others provided a percentage of affordable units greater than the inclusionary requirement by leveraging Agency assistance with other federal, state, and private sources.

From 2006 to 2013, 51 very low- and low-income units were added to the city's housing stock in larger residential projects subject to the ASHA Ordinance. The inclusionary units provided through the AHSA Ordinance helped the City address critical housing needs and meet a portion of the previous RHNA as discussed in Chapter 5. Given the significant amount

of development in Emeryville over the past decade, it is clear that the ordinance has not acted as a constraint on housing development.

The City offers a number of options to mitigate potential hardships in complying with the Affordable Housing Program. These include:

- The developer has the ability to reduce the number of inclusionary units in a project if the developer agrees to provide more deeply affordable below market rate (BMR) units instead of the level required by the ordinance.
- If the developer can show economic hardship in providing the set-aside BMR units, the developer can, with City approval, reduce the amenity level and square footage of the BMR units below that of the market-rate units.
- Developers may seek a density bonus that is in addition to any other development bonuses.
- The developer, with City approval, has the option of transferring credit for BMR units at one location within the city to satisfy the ordinance requirement.
- The ordinance contains a process for appealing the requirements of the inclusionary requirement.

The City Council has approved projects where a lesser inclusionary percentage was required in exchange for deeper affordability. In these cases, City staff worked with the developer to determine a cost-neutral point at which the provision of units at low or very low income levels, in lieu of moderate-income units, would not negatively impact the development costs.

In addition to the incentives and concessions outlined in the Affordable Housing Program directly, the City

commits staff time and financial resources to facilitate implementation of the Affordable Housing Program in the following ways:

- Staff participates actively with the developers' marketing and sales/leasing teams in crafting marketing plans for the BMR units aimed at successfully leasing up or selling the BMR units.
- The City provides developers with its mailing list of over 2,500 people who have expressed interest in Emeryville housing to assist in marketing outreach.
- The City participates in open houses and information workshops for prospective tenants and purchasers of BMR units within the developments.
- The City actively markets new BMR units at the City Hall information area, on the City's website, through citywide mailings, and via notices to the Emeryville Chamber of Commerce and neighborhood-based groups.
- If the developer is unable to sell some or all of the BMR ownership units at the end of the marketing period, the City can sell or purchase the units.

## 3.2 ENVIRONMENTAL CONSIDERATIONS

### Environmental Regulations

Environmental review, in compliance with state and federal requirements, runs concurrent with other aspects of the local development approval process. Pursuant to the California Environmental Quality Act (CEQA), if a project has no significant impacts or the impacts can all be mitigated to a less than significant level, an initial study and mitigated negative declaration is adequate. This process usually takes four to six months. If the project has potentially unavoidable significant impacts, it requires an environmental impact report (EIR), which can take nine to 12 months and sometimes longer. Use of an exemption for urban infill housing projects is often used to expedite environmental review if there are no identified impacts. The environmental impact report prepared for the update of the other elements of the General Plan is a program EIR that will enable development projects in the near future to tier off the evaluation provided by the EIR. This means that future projects will require less evaluation under CEQA.

As a small city, Emeryville's environmental concerns are limited to a few areas. Landslides are not of concern because the entire city is on flat terrain. The city is not in a flood hazard zone, and seismicity issues are addressed by building codes. Sensitive biologic resources are confined to bayshore areas that are designated and zoned for parks and open space. Toxic contamination from previous industrial uses has been a key environmental concern. Noise is also a localized problem associated with the location of sensitive receptors relative to commercial and light industrial uses and the existence of freeways and a major rail line.

### Toxic Cleanup

Site characterization, health risk assessment, and site remediation in accordance with state mandates can present major development expenses. The City has implemented a Brownfield Program to use grant funds to clean up City-owned land and to distribute assessment and cleanup loans to private property owners. This program has been instrumental in expediting the cleanup of many sites.

### Noise

The I-80 and I-580 freeways and the Union Pacific and Amtrak rail facilities continue to be a major source of noise in the western and southern portions of Emeryville. With a growing residential population in a mixed-use environment, there is an increasing awareness of noise from nonresidential uses, including newer high-tech uses. The Emeryville Municipal Code prohibits excessive and annoying noises from all sources and limits the hours for construction and other noisy activities. However, some noises occur on a continual or continual but intermittent basis, such as freeway and train noise, and emitted by mechanical equipment such as heating and cooling facilities. The Conservation, Safety, and Noise Element of the General Plan contains policies and actions to address noise.

## 3.3 MARKET CONSTRAINTS

Land costs vary greatly depending on the existing use, condition, and potential constraints on the property. During the past decade, Emeryville has seen the land values of for-sale residential projects increase dramatically, from a median land value per square foot of \$23.02 in 1990–1999 to \$34.27 in 2000–2012, a 49 percent increase. There is limited vacant land in Emeryville; thus, land acquisition costs generally include the purchase of an existing commercial or residential structure. In early 2014, a 4-unit property sold at a cost per square foot of over \$100.

Construction costs vary from site to site and may increase or decrease depending on project size, construction type (wood frame versus steel), the number of funding sources involved, developer capacity, and the level of amenities or services being provided in the development. As described in the fee analysis earlier in the chapter, a sample of recent residential developments that have been approved in Emeryville shows construction and soft costs of approximately \$213,000 to \$268,000 per unit (without the cost of land). These high costs can be viewed as a constraint to affordable housing development because the cost of the units far exceeds the revenue potential from the affordable units. As stated in Program H 2 2-5, the City will work with affordable housing developers to identify and maximize available funding assistance programs.