



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** February 5, 2019

**TO:** Christine Daniel, City Manager

**FROM:** Charles S. Bryant, Community Development Director

**SUBJECT:** **Study Session on Planning Regulations Amendments for Unit Mix and Design, and Tower Separation for High-Rise Buildings**

### RECOMMENDATION

Staff requests that the City Council consider the discussion questions below on unit mix and design, and tower separation for high-rise buildings and provide direction.

### BACKGROUND

At the City Council meeting on October 16, 2018, then Mayor Bauters requested 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. He cited the high cost of steel and other building materials, and the cost of labor, as factors that deter developers from proposing high-rise buildings given the City's requirements for a minimum percentage of two- and three-bedroom units, and suggested that developers might be more willing to construct needed housing in the City's high density, high-rise areas if these unit mix requirements were relaxed. A majority of the Council agreed to direct the Commission to consider this question. Staff has identified an additional regulation that needs to be examined, namely the minimum separation of buildings over 100 feet tall. The Planning Commission held a study session on these issues on December 13, 2018, as discussed further below.

### High-Rise Buildings

Policy Basis. The Emeryville General Plan encourages the development of high-rise buildings in the Powell/Christie core area, and in the northwest and southwest corners of the city.

The General Plan is based on ten "Guiding Principles", which ... "collectively ... express a community vision for Emeryville's evolution from a center of commerce into a livable and diverse city" and "... provide the platform for the goals, policies, and actions of the Plan." Guiding Principle number 10, "An imageable and memorable city", states, in part, that "the City will foster a dramatic skyline of slender and elegant high rise buildings stepping down to low-rise buildings in the older residential neighborhoods ... to foster Emeryville's character as a vibrant, connected, livable community, and a rising signature city from afar and within."

This vision is further elaborated in several General Plan goals and policies, including:

- **Land Use Goal 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.
- **Land Use Policy 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.
- **Land Use Policy 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.
- **Urban Design Goal 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.
- **Urban Design Policy 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.
- **Urban Design Policy 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.

Maximum Height and Tower Separation. The General Plan sets no absolute maximum height for buildings. Rather, the Maximum Building Heights map specifies that “High rises over 100 feet are required to have exemplary design, cause minimal impacts (e.g. wind, shadows) and provide community amenities. Bonus height is discretionary and will be awarded only after developers demonstrate that projects meet community goals.” Two related General Plan policies state:

- **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.”

## **Unit Mix Requirements**

Policy Basis. The General Plan does not contain any specific goals or policies related to unit mix. However, it does acknowledge a desire for more larger, family-friendly units. For example, the text of the Land Use chapter cites a “large proportion of three bedroom or larger housing units, [and] amenities for children such as play structures” as a possible basis for development bonuses, and notes that “[the] Emery Unified [School District] recognizes the need for an increase in affordable family friendly (3+ bedroom) housing ...” as a means of maintaining and increasing enrollment levels.

In addition, the Housing Element includes the following goals, policies and programs related to larger family-friendly units:

- **Housing Element Goal H-6.** Improve the balance in housing tenure and unit sizes to specifically address the need for family-friendly housing and increase owner occupancy.
- **Housing Element Policy H-6-1.** Support the development of a variety of housing types for families, the provision of family-friendly amenities, and family-friendly design in housing developments.
- **Housing Element Program H-6-1-1.** Adopt and implement an amendment to the City’s Design Guidelines that provides standards for the development of family-friendly housing. The guidelines will address site design as well as unit design, including unit sizes and layouts, relationship of units to outdoor areas, and other unit and community features.
- **Housing Element Program H-6-1-2.** Continue to evaluate City-controlled sites for potential redevelopment as affordable family-friendly housing, specifically designed to attract families with children. As opportunities are identified, partner with qualified affordable housing developers to provide site design, construction, and management.

The Emeryville Design Guidelines have been amended to include detailed guidelines for family-friendly building and unit design.

Unit Mix Regulations. On November 3, 2015, the City Council passed Ordinance No. 15-009 amending the Planning Regulations to add regulations for multi-unit residential developments. Among other things, these regulations (contained in Article 20 of Chapter 5 of the Planning Regulations) require that all residential developments of 10 units or

more include at least 50% two-bedroom or larger units, with at least 15% three-bedroom or larger units (part of the 50%), and no more than 10% studio units. The regulations further stipulate that all required two- and three-bedroom units shall comply with the applicable provisions of the Emeryville Design Guidelines pertaining to Family-Friendly Residential Unit Design.

Section 9-5.2005 of the regulations provides for exceptions to these unit mix and design requirements. Such exceptions must be approved by the City Council, and are based on a finding that “there is a demonstrated need for a housing type or types that deviate from the unit mix and/or design requirements [and that] the importance of meeting this need outweighs the importance of compliance with these requirements.” As stipulated in Section 9-5.2005, “examples include, but are not limited to, senior housing, special needs housing, and multi-generational housing.”

The intent of these regulations is to attract more families with children to live in Emeryville. They are based on a detailed analysis and were adopted following a lengthy public review process, including a special four-hour joint study session of the City Council and Planning Commission held on Saturday, May 2, 2015. The analysis cited two main reasons for wanting to attract more families with children to Emeryville. One is to promote a more “interesting” demographic mix by countering the trend towards smaller childless households, and the other is to increase enrollment levels in the Emery Unified School District (EUSD) in support of the heavy investment that the City and School District have made in the Emeryville Center of Community Life.

The analysis reviewed test scores and enrollment levels at all school districts in Alameda County, and included an examination of various demographic characteristics of all Census tracts in the Bay Area as a means of predicting how many families with children could be expected based on various housing unit characteristics. It relied on a *Demographic Analysis and Enrollment Forecast for the Emery Unified School District* prepared for EUSD in 2008 by Lapkoff & Gobalet Demographic Research, Inc. This report concluded that, to increase enrollment levels, the average “student yield” per household would need to be increased, and that the district’s Academic Performance Index (API) test scores would also need to improve. A comparison of the test scores of all school districts in Alameda County showed that Emery Unified was near the bottom, just above Oakland and Hayward, and below San Lorenzo and San Leandro. The report stated that “we believe yields would increase if Emery could achieve test scores above those in Oakland, Hayward, San Leandro, and San Lorenzo Unified.”

To increase student yields, staff’s analysis determined that the percent of families with children in Emeryville would need to increase from the current rate of about 12.5% to about 20%, closer to that of school districts such as San Leandro and San Lorenzo. The analysis of Bay Area Census tracts determined that, in order to achieve 20% families with children, the city would need to have about 50% two-bedroom units, and about 10% three bedroom units. In the draft regulations, this was the unit mix that was recommended by staff, and that was approved by the Planning Commission. When the ordinance was introduced and first read by the City Council on October 20, 2015, the Council increased the three-bedroom requirement to 15%.

It should be noted that family-friendly housing is not the only factor potentially affecting EUSD enrollment levels. The Lapkoff & Gobalet report notes: “We were asked to consider what would happen to Emery’s enrollments if Emeryville became substantially more attractive to families with children. On the school district’s part, this would mean a substantial increase in test scores, and perhaps other programs that, if publicized, would increase the school district’s attractiveness. On the city’s part, this might mean an increase in parks, programs for youth, and housing that is more attractive to families with children.”

It should also be noted that the unit mix and design requirements are separate and apart from the requirements for affordable units. All projects seeking a development bonus must provide affordable units. Projects over 100 feet tall require 100 bonus points, and therefore require that the project include at least 17% affordable units, including 3.9% very low income units, 5.9% low income units, and 7.2% moderate income units. These affordability requirements are not proposed to be modified.

## **DISCUSSION**

### **Effect of Unit Mix and Tower Separation Regulations on High-Rise Feasibility**

In the recent past, Planning Commissioners have expressed a desire for high-rise development on various sites in the 100+ foot height district, including the former “BRE Gateway Site” at 5801 Christie Avenue, the “Nady Site” at 6701 Shellmound Street, and the 5850 Shellmound Way site.

The Commission held a study session for the 5850 Shellmound Way site on September 28, 2017, and advised the applicant that they would be interested in a proposal for a high-rise building. The applicant analyzed the viability of constructing a high-rise multi-family rental or condominium project. The project was analyzed as a 20-story, 225-foot tower with approximately 380 units, and an adjacent parking garage. This project would have included 40% two-bedroom and larger units, including 5% three-bedroom units and 35% two bedroom units, 60% one-bedroom units, and no studios. The developer and the property owner solicited input from multiple high-rise developers who are active on the west coast, specifically in San Francisco and/or Oakland. This included developers such as Lennar, Harvest Properties, Holland Partners, and Equity Residential. In addition, input from two firms from Vancouver, Canada was solicited. Ultimately, the applicant determined that the economics of a high-rise project at this location are not viable to attract capital. The applicant noted that it was recently reported in the business press that the San Francisco Bay Area has the highest construction costs of any metropolitan market in the world, and therefore the East Bay market rents do not justify the underlying development costs of high-rise construction. This was exacerbated by the City’s required unit mix of 50% two-bedroom or larger units, including 15% three-bedroom or larger units, which reduce rents per square foot that a developer is able to realize in order to justify the cost of high-rise construction.

Most recently, Onni Group has proposed a high-rise residential tower at the former BRE Gateway Site (now called the “Onni Christie Mixed Use Project”). Onni’s proposal would include 28.2% two-bedroom and larger units, including 8.6% three-bedroom units and 19.6% two bedroom units, 52.1% one-bedroom units, and 19.7% studios. This is the unit mix that Onni feels is viable to justify their proposed high-rise building, and would require an exception to the City’s unit mix requirement.

In addition, Onni’s proposal would include two towers, a residential tower about 638 feet tall, and an office tower about 202 feet tall. They would be separated from each other by about 100 feet. This would violate Planning Regulations Section 9-4.202(f), which requires them to be separated by at least 638 feet, the taller of the two towers, and would therefore require a variance. It should also be noted that, if Onni’s proposal for a 638-foot tower is approved, it would preclude any other buildings over 100 feet tall within 638 feet of it. This would mean that a high-rise building on the 5850 Shellmound Way site would not be possible because it is less than 638 feet from the proposed Onni tower.

### **Effect of Unit Mix Regulations on EUSD Enrollment Levels**

It is too early to determine whether the City’s unit mix and family-friendly design requirements have had any effect on EUSD enrollment levels, because no developments have yet been completed and occupied that were approved under these regulations. The first will be Sherwin Williams, for which building permit applications have been submitted for all four new buildings and construction is expected to commence in early 2019; they will probably be completed and occupied in late 2020 or early 2021. Any effects on EUSD enrollment levels would be expected to be seen after that.

A review of enrollment data for EUSD shows that, in the three years since the regulations were adopted, and the two years since ECCL opened, enrollment has been basically flat. In 2015-16, the last year before ECCL was opened, total enrollment was 698 students; in 2017-18 it was 690. These figures are down from an all-time high of 991 in 2001-02.

EUSD’s relative position vis-à-vis other school districts in Alameda County has also remained unchanged. As noted above, based on API test scores, Emery ranked near the bottom, just above Hayward and Oakland and below San Lorenzo and San Leandro. The API system was discontinued in 2013 and has been replaced by a series of performance indicators. Comparing the indicators for EUSD to those for other school districts in the county for the 2017-18 school year shows that Emery is still below San Lorenzo and San Leandro, and just above Hayward and Oakland.

### **Options for Council Consideration**

Based on the above discussion, staff has identified several options for addressing the issues of unit mix and tower separation for buildings over 100 feet tall. In considering these options, the Council needs to weigh the relative importance to the City of high-rise development versus unit mix and design mandates for family-friendly housing.

Unit Mix. Staff has identified the following four options for consideration:

1. Leave the regulations unchanged.
2. Modify the exception language in Section 9-5.2005 to include high-rise buildings as one basis for an exception. The language could be modified as follows:

“Exceptions to the unit mix and design requirements of [this Article] 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, and high-rise buildings. To grant such a conditional use permit, one of the following findings 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.
- (b) Strict compliance with the unit mix and design requirements would preclude the development of a high-rise building in conformance with General Plan guiding principles, goals, and policies.

3. Modify the unit mix requirements in Section 9-5.2003 to require fewer two- and three-bedroom units, and to allow more studio units, for buildings over 100 feet tall. For example, the two-bedroom and larger requirement could be reduced from 50% to 30%; the three-bedroom and larger requirement could be reduced from 15% to 5% (included in the 30%), and the maximum amount of studios could be increased from 10% to 20%.
4. Modify the unit mix requirement in Section 9-5.2003 to stipulate that they do not apply to buildings over 100 feet tall, and add a finding to Section 9-4.204(f)(3) for bonus height over 100 feet that “the proposed project includes an adequate amount of two-bedroom and three-bedroom and larger units, and does not include an excessive amount of studio units.”

Tower Separation. Staff has identified the following four options for consideration:

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 stipulation 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.”

### **Discussion Questions**

Staff requests the Council’s direction on the following discussion questions:

1. Which of the above options for unit mix regulations does the Council prefer? Are there other options that should be considered?
2. Which of the above options for tower separation regulations does the Council prefer? Are there other options that should be considered?
3. Are there other issues related to high-rise development that need to be addressed? If so, how should they be addressed?

### **PLANNING COMMISSION ACTION**

The Planning Commission held a study session on these issues on December 13, 2018. The consensus of the Commission was to pursue Option 3 for unit mix, namely to modify the requirements for buildings over 100 feet tall to require fewer two- and three-bedroom units, and to allow more studio units, and to pursue Option 4 for tower separation, namely to eliminate the current requirement and replace it with a finding that the proposed tower separation is adequate.

### **CONCLUSION**

Following this study session, based on the direction from the Council, staff will prepare an ordinance with proposed modifications to the Planning Regulations for future consideration by the Planning Commission and City Council.

### **APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Christine Daniel, City Manager