

ORDINANCE NO. 19-____

Ordinance Of The City Council Of The City Of Emeryville Amending The Planning Regulations To Modify The Tower Separation Requirements In Article 2 Of Chapter 4 Of Title 9 Of The Emeryville Municipal Code (CEQA Status: General Plan EIR Certified By City Council On October 13, 2009)

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, Article 2 of Chapter 4 of Title 9 of the Emeryville Municipal Code, as set forth in this Ordinance; 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 then voted unanimously to recommend approval of the proposed amendment to the City Council; and

WHEREAS, the City Council held a duly and properly noticed public hearing on the proposed amendment to the Planning Regulations on July 9, 2019 to solicit public comments and review and consider the proposed amendment; and

WHEREAS, the City Council has 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 Ordinance and the applicable standards of the Emeryville Planning Regulations ("the Record");

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EMERYVILLE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE. PURPOSE AND INTENT

The purpose and intent of this Ordinance is to amend the Planning Regulations to modify the tower separation requirements in Article 2 of Chapter 4.

SECTION TWO. REQUIRED FINDINGS FOR ADOPTING ORDINANCE

The City Council of the City of Emeryville 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.

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.

SECTION THREE. AMENDING ARTICLE 2, OF CHAPTER 4 OF TITLE 9 OF THE EMERYVILLE MUNICIPAL CODE, “BUILDING INTENSITY, HEIGHT AND RESIDENTIAL DENSITY”.

Sections 9-4.202 and 9-4.204 of Article 2 of Chapter 4 of Title 9 of the Emeryville Municipal Code are hereby amended to read as follows. Changes are denoted by ~~strike through type~~ for language that is deleted and double underlined type for new language. Provisions not explicitly listed remain unchanged.

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, with consideration given to solar access as specified in Section 9-4.202(f).~~

SECTION FOUR. CEQA DETERMINATION

The City Council finds and determines that the General Plan Environmental Impact Report (EIR) (Resolution No. 09-207) applies to the proposed Planning Regulations Amendment. The EIR 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.

SECTION FIVE. SEVERABILITY

The City Council hereby declares that every section, paragraph, clause and phrase of this Ordinance is severable. If, for any reason, any section, paragraph, clause and phrase is held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining sections, paragraphs, clauses or phrases.

SECTION SIX. CODIFICATION

Section Three of this Ordinance shall be codified in the Emeryville Municipal Code. Sections One, Two, Four, Five, Six and Seven shall not be codified.

SECTION SEVEN. EFFECTIVE DATE AND POSTING

This Ordinance shall take effect 30 days following its final passage. The City Clerk is directed to cause copies of this Ordinance to be posted or published as required by Government Code Section 33693.

This Ordinance was introduced and first read by the City Council of the City of Emeryville at a regular meeting held on Tuesday, July 9, 2019 and **PASSED AND ADOPTED** by the City Council at a regular meeting held on Tuesday July 23, 2019 by the following vote:


AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:



CITY ATTORNEY