

City of Emeryville  
**Multifamily & Mixed Use Residential  
Objective Standards**

Issues & Options Paper

April 13, 2021



**URBAN FIELD**

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# I. INTRODUCTION

## Overview

The State legislature has made several changes to State housing laws in recent years to streamline housing approvals. Specifically, the legislature has taken steps to reduce the amount of discretion jurisdictions have to deny or reduce the density of residential and residential mixed-use projects. In certain contexts, jurisdictions must rely solely on objective standards when taking action on a project. This objective standards project aims to respond to State law by making targeted changes to the City's planning regulations.

### What are Objective Standards?

The terms "objective zoning standards" and "objective design review standards" are narrowly defined by the State to mean "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal." (Gov. Code 66300)

Example: Front setback shall be a minimum of 10 feet.

## Objective Standards Project

### Purpose of the Project

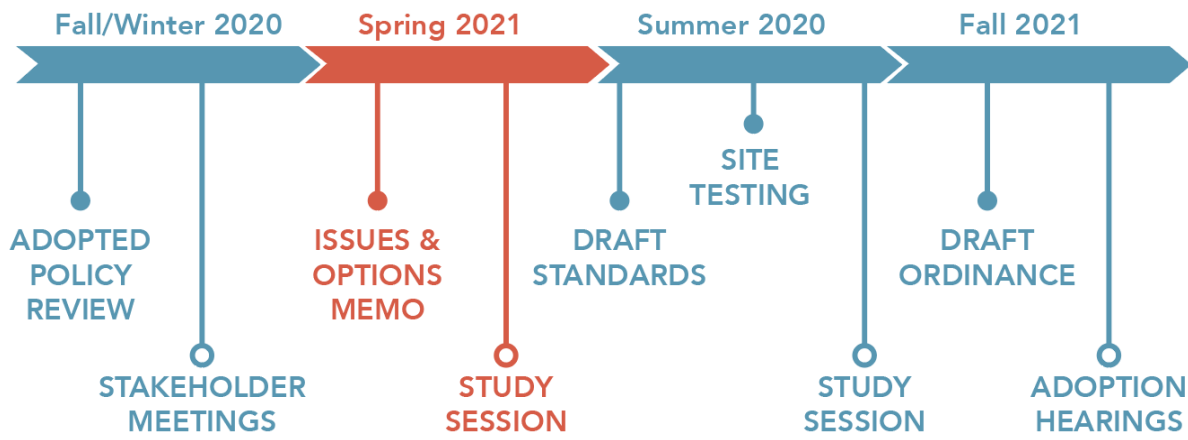
The City of Emeryville obtained an SB2 grant to streamline housing approvals through regulatory and process improvements, namely the development of objective standards. The changes would:

- Transform selected subjective criteria into objective standards to ensure that the City can continue to facilitate the development of high-quality housing and related public improvements;

- Simplify and clarify standards, guidelines, and procedural requirements for staff, decision-makers, and applicants; and
- Comply with recently passed legislation limiting the City’s subjective review of certain housing projects.

**Timeline and Process**

Key milestones in the project are outlined below. The entire process will take 12 months.



**Applicability**

This project focuses on multifamily residential and residential mixed use development.

**Purpose of this Report & Report Organization**

Section II of this report summarizes the requirements and effects of recent changes in State Law, and analyzes the City’s current set of policies and processes to identify gaps in objective standards. It also summarizes feedback from City staff and architects who are familiar with the City’s regulations about how these standards are applied. Section III of this report presents these findings as key issues, offers recommendations for how to address these issues and comply with State Law, and poses questions for decision-makers.

**Summary of Key Issues**

This report identifies three key issues that should be addressed as part of the project. These issues are further described and addressed in Section III:

1. **Subjective Criteria:** Some of the City's existing regulations, such as subjective Design Guidelines and subjective criteria in District-Level plans, may not be enforceable for certain types of multifamily and mixed-use projects under recent changes to State law that limit the City's ability to modify or deny such development projects. This is further detailed in Section II of the report.
2. **Complexity and Subjectivity in District-Level Plans:** As the District-Level plans were adopted prior to the General Plan, some regulations in these plans are not aligned with the General Plan and Planning Regulations. The City desires to translate certain subjective criteria into objective standards and bring these plans into alignment with the General Plan and Planning Regulations, as well as clarify requirements for City staff, decision-makers, and applicants.
3. **Thresholds of Review:** The City's existing review and approval process for most multifamily and mixed-use projects requires discretionary review, evaluation against subjective Design Guidelines, and the making of subjective findings for projects that comply with the Housing Accountability Act. However, recent State law promotes the use of objective rather than subjective criteria for evaluation of such projects in order to streamline review while ensuring smart planning. The City should clarify how subjective regulations and objective standards, apply to different types of projects and how City staff, the Planning Commission, and the City Council review projects.

## II. PLANNING CONTEXT

This chapter identifies relevant sections of State law that relate to objective standards and the review of housing development projects. It also provides an overview of the City’s planning regulations and guidelines, and the review and permitting process for housing projects.

### State Law Context

This section describes requirements in State law for objective standards in the City’s planning regulations. Objective standards fulfill requirements under Senate Bill (SB) 2 related to the Housing Accountability Act, SB330, SB35, and potential future State housing laws relying on objective standards.

### Senate Bill (SB) 2 Funding

This project, development of objective standards, is funded by SB2 (Government Code 27388.1). The program provides local governments with grants and technical assistance to prepare plans and process improvements that:

- streamline housing approvals;
- facilitate housing affordability; and/or
- accelerate housing production.

### Housing Accountability Act

Originally passed in 1982, the Housing Accountability Act (HAA) (Government Code section 65589.5, et seq.) generally limits the City’s ability to deny a “housing development project” without making specific findings that the project will have an adverse impact on public health or safety. A “housing development project” is defined as:

- Residential units only; or
- Mixed-use developments consisting of residential and nonresidential uses with at least two-thirds of the square footage designated for residential use; or

- Transitional housing or supportive housing.

Examples of projects meeting and not meeting the definition of “housing development project” are described in the text box below.

<p><b>HAA housing development project</b></p> <ul style="list-style-type: none"> <li>• Residential mixed use project in the MUR district with ground floor retail and 5 stories of residential (&gt; 2/3 floor area)</li> <li>• SB35 Project (see definition below, example: 3600 San Pablo)</li> <li>• SB330 Project (see definition on p. 7)</li> </ul>	<p><b>Residential project that does not meet HAA definition</b></p> <ul style="list-style-type: none"> <li>• Residential mixed use project in the MUR district with two stories of office and two stories of residential (&lt; 2/3 floor area)</li> <li>• Project seeking parking exceptions</li> </ul>
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With respect to residential only projects (no mixed use), the HAA applies to two or more residential units. As a practical matter, two units are allowed by right in the RM zoning district, so the HAA does not come into play as part of a discretionary action until a project has three or more units. For mixed use developments, the HAA does not require a minimum number of residential units but the project must dedicate 2/3 of its square footage to residential in order to fall within its purview.

The HAA states that a city cannot deny a project, reduce its density, or otherwise make a project infeasible, when the project complies with objective standards, unless the City makes findings based on a preponderance of evidence that specific adverse health or safety impact exist and there is no feasible method to mitigate or avoid impact. (See Appendix A, page 13, for details.) The HAA does not require a certain level of review for housing development projects, such as whether they need to be reviewed by City staff or boards and commissions.

For further details about the Housing Accountability Act, see Appendix A, a technical assistance brief from the Department of Housing & Community Development.



## Senate Bill 35 Streamlining for Eligible Projects

The California legislature enacted SB35 (Government Code Section 65913.4) in 2017 as a response to California's housing crisis. Specifically, the bill aimed to address the impact that the lack of housing production is having on the State's economic vitality, environmental goals, and socio-economic diversity. SB35 allows housing projects that meet certain criteria to undergo streamlined project review and ministerial approval. These criteria include, but are not limited to:

- The project is a multifamily housing development (2 or more units).
- The site is zoned or has a General Plan designation that allows residential or mixed-use residential, the project includes at least two-thirds of the square footage designated for residential use, and at least 75 percent of the perimeter of the project site adjoins parcels developed with urban uses.
- The project meets "objective zoning standards," and "objective design review standards".
- The project is outside each of the following areas: coastal zone, wetlands, earthquake fault zones, high or very high fire hazard severity zones, hazardous waste sites, FEMA designated flood plain, or protected species habitats.
- The project is not on a site that would require demolition of housing subject to recorded rent restrictions, rent control, or that has been occupied by tenants within past 10 years, or that would require demolition of historic structure(s) placed on a local, state, or federal register.
- The project proponent certifies that the entire development is a "public work" for purposes of prevailing wage law or that the construction workers will be paid at least the prevailing wage.

Under SB35, the review process is 90 to 180 days depending on the number of housing units. Such applications have and will continue to be ministerially reviewed by City staff for compliance with objective standards and to confirm eligibility under SB35. No discretionary review is permitted, though bodies such as the Planning Commission and/or City Council may still review such projects in a public forum. For example, these bodies could hold study sessions to confirm compliance with objective standards, provide an opportunity for public comment, and discuss

advisory non-binding design comments, as long as these meetings are conducted within the statutory timeframe. Because eligible projects must be ministerially approved, SB 35 projects are not subject to environmental review under the California Environmental Quality Act (CEQA).

In Emeryville, at present, SB35 applies to a limited number of projects, since a project must include at least 50% of the units as affordable to low-income households.<sup>1</sup> The City has approved one SB35 application, the 90-unit 100% affordable housing project at 3600 San Pablo Avenue.

### **Senate Bill 330 Project Review & Streamlining**

Effective January 1, 2020 (and sunseting in 2025, unless extended), SB330 made several changes to existing State housing law, including the HAA (Government Code section 65589.5, et seq.) and Permit Streamlining Act (Government Code section 65920, et seq). SB 330 adopts the same definition of “housing development projects” as the HAA, and generally limits the City’s ability to “downzone” or otherwise adopt standards and policies that would have the effect of reducing a site’s density. For the purposes of the work described herein, the important elements are as follows:

- Prohibits the City from imposing subjective design standards established after January 1, 2020 on housing development projects. (Existing standards may continue to be applied.)
- Requires that a housing development project be reviewed pursuant to the ordinances, policies, and standards adopted and in effect when a preliminary application is submitted (vs. when the more detailed, regular application is deemed complete). If the project is consistent with all objective general plan and zoning standards, the City cannot hold more than 5 public hearings on the project.

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<sup>1</sup> This threshold is based on how the City is progressing in meeting its Regional Housing Needs Assessment (RHNA) targets and is typically adjusted annually by the Department of Housing and Community Development. Depending on whether a jurisdiction is meeting its below-market rate vs. market rate target, it may be subject to 10% vs. 50% affordability thresholds. If a jurisdiction is meeting its RHNA target in all income categories, it is not subject to SB35.

- Prohibits the City from enacting development policies, standards or conditions that would change current zoning and land use designations where housing is an allowable use. In such cases, the City cannot lessen the intensity of housing—such as reducing height, density or floor area ratio, requiring new or increased open space, lot size, setbacks or frontage, or limiting maximum lot coverage. (Effectively, this means that the City cannot modify development standards or downzone a property, unless it demonstrates that this change does not reduce the development envelope or it increases density/developable area elsewhere in the city.)<sup>2</sup>
- Requires replacement of units if the proposed project would demolish any existing “protected” rental units, defined as: affordable units deed-restricted to households earning below 80 percent of AMI, subject to a local rent control program, or occupied by low-income households earning below 80 percent of AMI. Also, identifies relocation and right-to-return requirements for displaced tenants.

## **Emeryville’s Regulations and Procedures**

There are several planning documents that applicants and City staff need to refer to in order to understand what regulations apply to a specific site. Depending on the type of document, standards may be objective or subjective. This paper examines which planning policies and procedures could be transformed into objective standards in order to retain Emeryville’s design priorities.

The City’s regulations—including the General Plan, Design Guidelines, Planning Regulations, and district plans—are all listed on the City of Emeryville’s [website](#). As shown in Figure 1, regulations generally fall into the following categories, with increasing levels of specificity. This is a typical policy structure that is fairly consistently applied across jurisdictions. It also complies with State law which requires consistency between the General Plan and Zoning Ordinance.

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<sup>2</sup> Gov. Code 66300(i)(1) states as follows: "This section does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity."

1. Goals and Policies - Goals are the broadest description of vision and intent. Policies aim to implement goals or provide direction for guidelines and standards. Goals and policies are found in the General Plan and district-level plans. For example, General Plan Goal UD-6 calls for unique districts throughout the city.
2. Design Guidelines - Guidelines are statements of design intent. Design guidelines may contain both objective and subjective standards, but typically address elements of design that are subjective and therefore may be met by applicants in various ways. Guidelines are found in the Citywide Design Guidelines and in district-level plans. For example, Design Guideline F-2 encourages creativity through architectural features, such as art, color, and design details, and in that way supports General Plan Goal UD-6.

**Figure 1: Emeryville's Regulatory Structure**



3. Standards - Standards are required regulations and are typically objective. They are found in the Planning Regulations and occasionally in the General Plan, Citywide Design Guidelines, and in district-level plans. For example, the General Plan requires undergrounding of utility wires on project frontage in new proposals. Zoning standards include measurements such as building height, setbacks, and open space ratios.
4. Conditions of Approval - Conditions are applied on individual projects to ensure that the regulations of other departments in the City, as well as other regional and State laws, are applied to a project through the building permit and construction process, and during

operation. Conditions of approval are a mix of objective and subjective standards. Planning staff maintains a list of conditions that are applied to most development projects, but these conditions have not been codified by ordinance or adopted by resolution, which means they do not qualify as standard conditions. Therefore, an applicant pursuing review under the HAA or SB35 may take issue with these conditions, since they are not necessarily “available and knowable by both the development applicant or proponent and the public official prior to submittal” as required per Gov. Code 66300.

Table 1 summarizes Emeryville’s existing planning policies and procedures by whether they are generally objective or subjective. These documents are further summarized below.

**Table 1: Existing Regulations and Procedures, by Objective or Subjective Criteria**

<b>Process/Regulation</b>	<b>Contents</b>	
Planning Regulations	Contain primarily objective standards, with some subjective regulations	Objective ↑
Conditions of Approval		
Design Guidelines	Contain primarily subjective regulations, with some objective standards	↓
District-Level Plans		
Findings		
Legislative Actions (e.g., zone changes)	Subjective, subject to discretionary review	Subjective

**General Plan**

California State Law requires that each charter city, such as the City of Emeryville, adopt a General Plan, and keep it updated. Adopted in 2009, and amended most recently in 2019, the General Plan articulates a vision for the City focusing on broad principles such as “quality of life” and “community character.” It aims to enhance livability and quality of life, foster responsible sustainable development; increase connectivity; and improve the public realm. The General Plan guides growth and development in the city, including objective density, height, and use standards. Some of the Plan’s policies may be construed as subjective and, as a result, the City cannot impose them on certain housing development projects seeking HAA or SB 35 approvals.

## **Title 9 (Planning Regulations)**

Title 9 of the Municipal Code represents the City's Planning Regulations, also known as the Zoning Ordinance. These are primarily objective standards that regulate uses, development standards (e.g., density, height), parking requirements, and design standards. The City undertook a comprehensive zoning update following adoption of the General Plan. As a result, the Planning Regulations are consistent with the General Plan.

Title 9 also includes a Local Density Bonus Program, which offers developers the opportunity to build additional residential density, floor area ratio, and/or height in exchange for the provision of below-market rate housing and other community benefits. This program represents an alternative to State Density Bonus Law.<sup>3</sup>

The local program is designed as a "menu of options", which allows developers flexibility in how to obtain a bonus, but also certainty in that all of the prescribed options are objective standards. At the same time, the program offers flexibility to the City and its decision-makers to amend the benefits and what is contained in the menu over time as priorities change and offers a catch-all flexible community benefit that may be considered by the developer and the City.

## **Plans and Programs**

The City has adopted several other plans in recent years that may affect development projects and which City Planning Staff may refer to as they are reviewing project applications. These plans are not proposed for modification as part of this project, though the project may recommend cross-references to these documents or clarification about their applicability in the form of handouts or submittal requirements.

- [Climate Action Plan](#)
- [Complete Streets Policy](#)

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<sup>3</sup> Until recently, the City's program offered greater bonuses and higher unit yield compared to State Law, and therefore was typically a more attractive alternative. However, recent changes in State law allow for up to 50% density bonuses in exchange for more affordable units, similar to the City's program. As a result, the City has started receiving applications under State Density Bonus law rather than the City's local density bonus program.

- [Housing Element](#)
- [Parks and Recreation Strategic Plan](#)
- [Pedestrian and Bicycle Plan](#)
- [Sustainable Transportation Plan](#)
- [Stormwater Guidelines for Green, Dense Redevelopment](#)
- [Stormwater Quality Control Requirements](#)
- [Stormwater Sizing Worksheet](#)

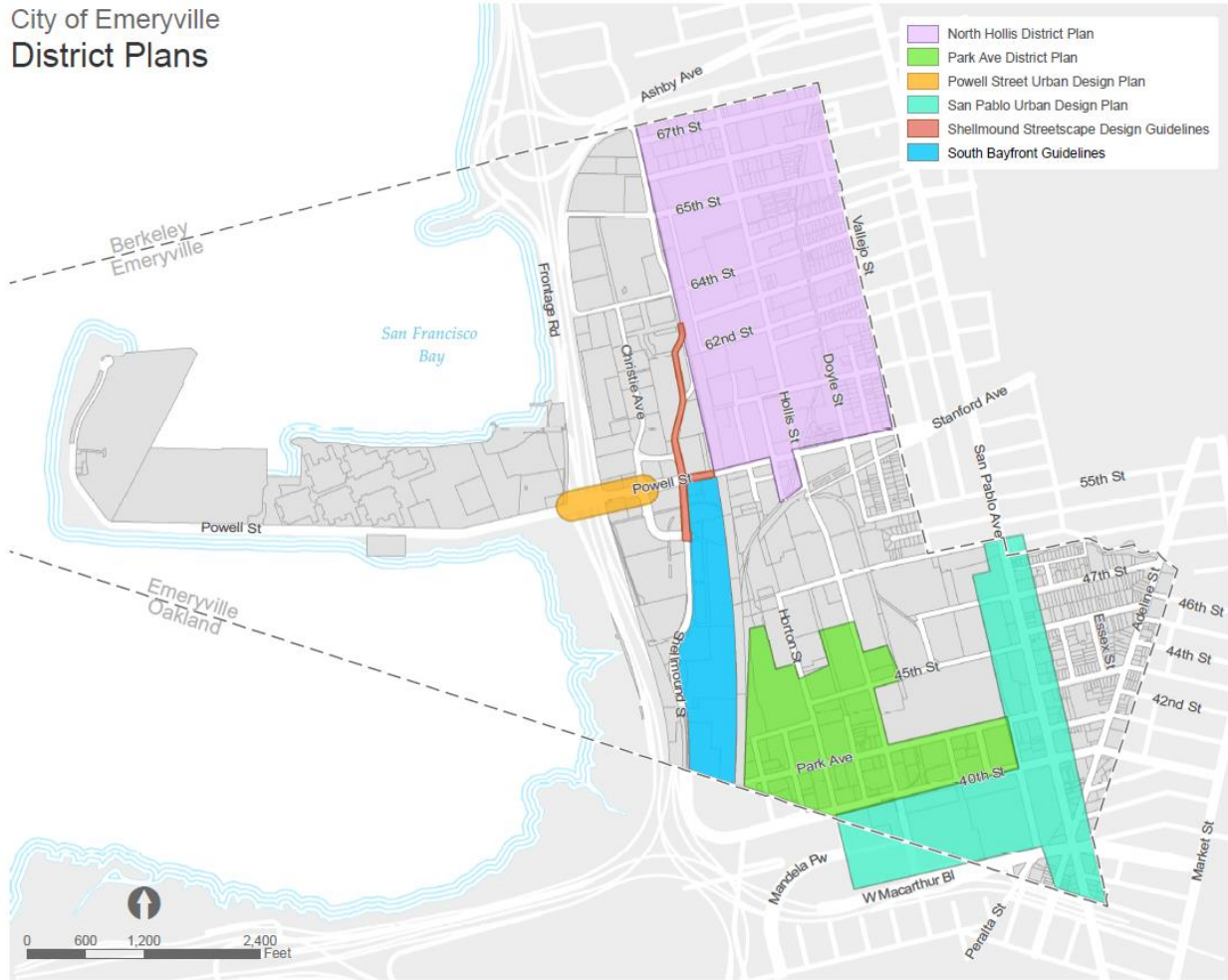
## **District-Level Plans**

The City has adopted six district-level plans which regulate development projects and/or streetscape design in specific neighborhoods and districts (see Figure 2). These District Plans were written between 1990 and 2012, and therefore precede the General Plan and comprehensive zoning update. Some plans suggest changes to the General Plan and Planning Regulations, many of which were subsequently adopted. Notably, the General Plan and Planning Regulations codified overlay zones on North Hollis and Park Avenue, as a result of these plans. Nearly all of the plans describe City programs and projects that were championed at the time of drafting and are now completed. This is an achievement that should be celebrated.

However, each plan includes parts that are no longer relevant. For example, the Park Avenue District Plan identifies height and FAR standards (p. 18 and 53) that have been superseded by the General Plan and implementing Planning Regulations. District plans capture the values and priorities of its time, which can shift over the decades. A few of the plans were written to address projects that have already been built out (e.g., Bay Street) or anticipated by the City's former Redevelopment Agency, but are no longer under consideration (e.g., a parking garage in the Park Avenue District).

Central to this objective standards project is the identification of policies that are unique to the respective district that should be carried forward and implemented through individual development projects. Additionally, several plans contain good design principles that may be relevant citywide. Many of the plans discuss similar topics, but in slightly different ways, such as how to break down building mass or methods to articulate a building. Taken together, this set of plans both promotes the character of development appropriate for that district, but also may contain redundancies and obsolete provisions that should be deleted.

**Figure 2: District-Level Plans**



[Shellmound Streetscape Design Guidelines](#) (8/7/2012) (WRT). The Shellmound Streetscape Design Guidelines primarily address the public realm, including sidewalk design, landscaping, amenity zones, and public art in more detail than the Citywide Design Guidelines. Some of these streetscape improvements have been implemented, with the recent development of the Public Market and Avalon apartments. Additional redevelopment sites in the planning area remain.

[Powell Street Urban Design Plan](#) (4/5/2011) (WRT). The Powell Street Urban Design Plan addresses the Powell Street gateway to the City of Emeryville. This plan primarily addresses the streetscape and public right-of-way (i.e., not private development).

[Park Avenue District Plan](#) - (8/2006) (BMS). This plan was an update to the Park Avenue District Plan prepared in 1995. Portions of this plan have been implemented, including the buildout of



the sidewalk and streetscape on Park Avenue, west of Hollis. The Plan addresses the historic identity in the area through a range of subjective design guidelines and objective standards. The Plan identified historic standards that were subsequently incorporated into the Planning Regulations as the significant buildings ordinance.

[North Hollis Urban Design Program](#) (4/2002) (ROMA)

This plan resulted in a significant transformation from industrial uses to a mixed use neighborhood. Portions of this plan have been implemented, including the greenway between Powell Street and the Berkeley border.

[San Pablo Avenue Urban Design Plan](#) (1990) (ELS). The San Pablo Avenue Urban Design Plan was written 30 years ago for the Redevelopment Agency and effectively resulted in streetscape transformation on San Pablo Avenue and both residential and commercial development. The streetscape and retail ideas may still be relevant as design guidelines for the corridor, but they are not written as objective design standards. The design standards contained in this Urban Design Plan largely address low-density commercial, which do not reflect today's mixed-use retail and residential context.

[South Bayfront Design Guidelines](#) (1997) (Field Paoli)

These guidelines were written for the Redevelopment Agency and effectively resulted in Emeryville's Bay Street mixed-use retail destination. The Guidelines address streetscape design, but also massing and development schemes for private development, which have been achieved.

## **Design Guidelines**

Design guidelines are included in most of the district-level plans, but the City also has Citywide Design Guidelines.

[Citywide Design Guidelines](#) (Adopted 11/7/2010, Amended 8/7/2012 and 5/19/2015)

The Citywide Design Guidelines apply to all new projects and address both building and site design. The Citywide Design Guidelines is the primary source for designers and developers to

reference, along with the Planning Regulations. The City prepared the Citywide Design Guidelines following the General Plan and in coordination with the Planning Regulations; therefore, these documents are internally consistent.

## **Other Design Documents**

[Street Furniture Catalog](#) (Adopted 11/16/2010, updated January 2019)

This catalog is commonly referenced by City Staff to provide consistency in streetscape amenities citywide. The catalog includes selections of trash receptacles, bike racks, benches, bollards, street lights, newsracks and includes district-specific amenities for Doyle Street Park, the Greenway, and Park Avenue. The catalog is an objective design document. It is on the City's website, but it may not be apparent to applicants since it is not currently referenced in the Design Guidelines.

## **Design Topics**

As described at the outset of the paper, the purpose of this project is to generate objective standards. In order to better understand the City of Emeryville's Design Guidelines and other adopted design guidelines and standards, consultants organized them in a spreadsheet and categorized them by topic, applicability, and whether or not they were objective.

Table 2 shows which topics are addressed in each plan. The Citywide Design Guidelines apply to all areas of the city, while the other plans address specific districts. Good design principles that currently apply to a specific district but may be relevant citywide are noted with a star (★).

For example, the North Hollis Area Urban Design Program includes sidewalk standards that require additional sidewalk area on private property and have resulted in wider more pedestrian-oriented sidewalks compared to other parts of the city. Similar standards may be appropriate in other areas of the city.

**Table 2: Topics Addressed in Existing Plans**

<b>Topic</b>	<b>Citywide Design Guidelines</b>	<b>Park Avenue District Plan</b>	<b>North Hollis Area Urban Design Program</b>	<b>Powell Street Urban Design Plan</b>	<b>Shellmound Streetscape Design Guidelines</b>	<b>San Pablo Avenue Design Plan</b>	<b>South Bayfront Design Guide.</b>
<i>Year Adopted</i>	2015	2006	2002	2011	2012	1990	1997
Multifamily Residential	✓	x	x	x	x	x	✓
Street Typologies	✓	✓	✓	✓	✓	x	✓
Streetscape	✓	✓	✓	✓	✓	✓	✓
Sidewalks	✓	✓	★	★	★	x	✓
Bicycles	✓	✓	✓	★	✓	✓	x
Transit	✓	✓	✓	★	★	✓	x
Landscaping	✓	✓	✓	✓	★	✓	✓
<i>Land Use*</i>	✓	✓	✓	x	x	✓	✓
Site Planning	✓	✓	✓	✓	x	✓	✓
Building and Use Typologies	✓	✓	✓	✓	x	✓	✓
Open Space	✓	✓	x	x	✓	x	✓
Plaza/Park Design/ Amenity Zones	✓	✓	x	✓	★	x	✓
Parking	✓	✓	✓	x	x	✓	✓
<i>Design Standards</i>	x	✓	✓	x	x	✓	x
Building Form and Massing	✓	✓	✓	✓	✓	✓	✓
Building Articulation and Facade	✓	✓	✓	x	x	✓	x
Architectural Expression	✓	✓	✓	x	x	✓	✓
Building Materials	✓	✓	✓	x	x	✓	✓
Arts	x	✓	x	✓	★	✓	x
Signage, Signs	✓	✓	x	x	x	✓	x

**Notes:**

x = Not Addressed;

✓ = Addressed;

★ = particularly detailed/relevant policies that could be considered citywide.

Consultants reviewed each guideline/policy for objectivity, relevance, and consistency with other planning documents. There are opportunities to consolidate guidelines, which would make it simpler for developers and designers to find information, and for staff to review applications. Guidelines that reflect specific characteristics or aesthetics of the district should be retained. This issue is further discussed in Section III of this report.

City staff and consultants are interested in decision-makers' feedback regarding the saliency of these plans and individual guidelines.

### Project Review Process

Evaluating the City's project review process can help identify opportunities for streamlining. Figure 3 illustrates the City's current review process, which depends on the type of project and permit required.

**Figure 3: Levels of Project Review**



The process begins with review by Planning Staff and other departments (e.g., Building, Fire, Public Works), as applicable. City staff review all projects and are the approving body for ministerial projects which require no discretion, such as SB35 or Zoning Compliance

applications. City staff also conduct administrative review on projects seeking Minor Use Permit approval, which require discretion to determine consistency with required findings.

The Planning Commission reviews projects that require Major Use Permits and/or Design Review. The City Council hears such projects on appeal and reviews projects that request demolition of residential units or seek a legislative action (e.g., a General Plan or Zoning amendment).

Each permit type requires a different level of scrutiny:

1. Ministerial Review: City staff review projects proposed under SB35 or Zoning Compliance approval for consistency with objective zoning standards; no findings or discretion is required.
2. Discretionary Review: City staff and the Planning Commission and/or City Council review these projects (see examples in Figure 3) for consistency with objective zoning standards, design guidelines, and use permit requirements, subject to required findings. Making these discretionary findings and reviewing projects against subjective design guidelines can be useful tools for City staff and decision-makers to make recommendations for project design changes.

## **Relationship Between City's Review Process and State Law**

### **Housing Accountability Act Projects**

As described above, State law limits the City's ability to deny or condition a housing development project meeting the requirements the Housing Accountability Act, including consistency with applicable objective standards. However, the City's current review process and standards preceded certain changes in State law that the City should consider as part of this project. City staff currently review HAA projects for consistency with objective standards, as required by State law. However, the City's review process also requires findings and analysis of compliance with subjective design guidelines for housing development projects without any specific consideration of HAA projects. The Planning Commission and City Council consider

these analyses and findings in their action--even though these subjective criteria cannot be used to deny or reduce the density of a project.

The City can rely on objective criteria for HAA projects. For example, the City's demolition findings in Emeryville Municipal Code Section 9-5.1206(b)(2) state that an applicant must provide at least the same number of dwelling units as the demolished structure, either on-site or elsewhere within the City of Emeryville. This is an objective standard. However, the City may not rely on subjective criteria, such as compatibility with neighborhood context, nor subjective criteria in Use Permit or Design Review findings, to deny or reduce the density of a project. City staff have documented this relationship between the City's findings and the HAA in recent staff reports, including for 47th Street Homes at 1034-1042 47th Street (UPDR18-002).

### **Non-Housing Accountability Act Projects**

Projects that do not meet the definition of a "housing development project" or that otherwise do not comply with the HAA requirements to qualify for HAA review may be subject to the City's subjective standards. Further, if an applicant seeks an exception to an objective standard, the project is no longer covered by the HAA. Decision-makers may then rely on the findings required or criteria for approval of that specific modification.

For projects not covered by the HAA (such as projects with less than 2/3 residential floor area), the Planning Commission and City Council have more discretion--through design guidelines and required findings--to apply conditions, suggest modifications, or recommend alternative actions to approval.

### **Summary and Streamlining Opportunities**

This objective standards project can help to streamline the review and approval process by strengthening and adding objective standards, providing a path for meaningful feedback by community members and the reviewing body, and removing unnecessary preparation of subjective findings that cannot be enforced for HAA projects. This is further discussed in Section III.

## Stakeholder and City Staff Feedback

To understand how the City's regulations are applied, consultants interviewed City of Emeryville Planning Division Staff and architects/applicants who have completed multiple multifamily housing and mixed-use projects in the city and frequently review the City's regulations. These interviews were intended to determine how regulations are applied to project applications, how effective policies are in achieving objectives, and how the City staff and decision-maker review process works in the context of State law. Consultants asked the architects about how standards and guidelines affected the outcomes of their projects and related to the review and approval process.

The interviews revealed the following key findings:

- Current regulations are generally resulting in good projects, in part because they are not seen as overly extensive or prescriptive.
- Development standards (e.g., building height and density limits) generally make sense for individual sites.
- Design guidelines are flexible, which is positive, but this flexibility also leads to uncertainty. The decision-making design review process can be subjective as a result.
- Subjective guidelines and policies in adopted plans are not always applied consistently, especially for smaller projects, since they are not tied to objective criteria. Guidelines for off-site improvements (e.g., frontage, public right-of-way) are often the most unclear and end up getting applied very late in the planning or building permit process.
- City staff and architects agreed that the subjective design guidelines for residential and commercial projects are still needed regardless of the review process. They help establish the intent for project design, based on the use, location, and size of the project.
- City staff and architects generally agreed that the design review process often helps to improve the aesthetics, functionality, and compatibility of new development. However, the subjective nature of design guidelines and other requests can lead to uncertainty about what the City will require for individual development projects (e.g., architectural design features, street improvements).

- Objective design standards may have the appearance of narrowing design options and describing what “good” design looks like. Design preferences can change over time and are typically influenced by the market and technology available, which is a concern that was raised by some of the stakeholders regarding implementation of purely objective standards.
- It is hard to regulate good design. Design standards have typically been used to mitigate bad design, and to make sure a building doesn’t look too flat, monotonous, “maxed-out,” or out of scale with the adjacent environment. These are subjective qualities of design that might be definable by objective standards, but may also limit design expression and may not ultimately lead to “good” design.
- Designers, representing developers’ perspectives, are concerned that requiring purely objective design standards may preclude the potential for design innovation and be unresponsive to how design and building practices evolve over time. One example of current design innovation is Type III construction or modular construction. Designers therefore recommend providing incentives for specific amenities or characteristics, rather than mandates. Providing an alternative path to any objective design standards (i.e., discretionary design review) could allow a designer to retain more flexibility in terms of the project’s aesthetic.
- There is a desire for objective standards that allow for design variety rather than narrowly emphasize one style, mass, or outcome.
- The Building Code regulates many aspects of building design, which do not need to be repeated in planning regulations. These include Title 24 energy requirements, window sizes for fire access, noise and air quality standards, and ADA access/parking requirements.

### **III. KEY ISSUES & RECOMMENDATIONS**

This section identifies three key issues that the project should address, identifies options for how to address them, and poses questions for decision-makers about how to move forward with this objective standards project.



## Subjective Criteria

**Issue #1: Failure to meet existing subjective criteria, such as Design Guidelines, may not be used to deny approval to certain types of multifamily and mixed-use projects under State law. This limits the City's ability to modify or deny such development projects.**

Planning Regulations in Title 9 are generally objective standards that apply to all development projects regardless of size, use, or location. However, Design Guidelines and regulations in District-Level plans are mostly subjective criteria. For example, regulations call for neighborhood and district identity in the design of buildings. These regulations are not "measurable" by any objective standard and therefore may not be applied to certain housing development projects for which State law only requires demonstration that the City's objective standards have been met.

Therefore, the City might consider creating new standards that employ the concepts and design visions in the existing subjective regulations, but that are objective in nature and can be applied to HAA-qualifying and other housing development projects for which subjective standards are prohibited. The City could try to "transform" all guidelines into standards, but this would be challenging to complete, overly prescriptive for architects, and could result in a single architectural style and massing. Rather, City staff and consultants recommend a more targeted approach to prioritize key standards, using several translation methods:

- Simple Numeric Transformation: Addition of a measurement, dimension, range, ratio, or other numeric value to make a subjective standard objective. This may be appropriate for architectural elements (e.g., window recesses, facade length), off-site improvements (e.g., street trees every x linear feet), some family-friendly design guidelines (e.g., dimensions of a foyer) or gaps in regulations (e.g., treatment of podium massing on larger sites and high rise projects).
- Menu of Options: Two or more options to provide flexibility in how standards may be met to allow flexibility for how a project can meet a requirement depending on its site

condition and/or unit type. The City's local density bonus program is an example of a menu of options strategy. As an example, the City could develop a street tree list so that applicants select species that are recommended by the City Arborist.

- Points System: A prioritized list of amenities that can be changed over time to reflect the City's values, while providing flexibility for the applicant. The City's local density bonus program is also an example of a points system, where the City has identified relative weights for different benefits (for example, affordable housing is required for all density bonus projects, whereas other benefits can be selected by the applicant).
- Alternative Path for Compliance: If applicants chose not to meet objective design standards, for whatever reason (e.g., architectural innovation, site constraints), they could instead choose to meet the design guidelines, as determined by the Planning Director or Planning Commission. In choosing this option, applicants would be electing to go through discretionary review. Notably, this option would not be available for SB35, SB330, or Housing Accountability Act projects since such projects would no longer meet objective standards.

**Recommendation #1: Identify priority design guidelines and transform subjective criteria into objective standards, using the range of methods described above.**

Question #1A: Do you have any thoughts on how we can turn design guidelines into objective standards? What aspects of design are important to you and would you want addressed in the objective standards?

Question #1B: What are the most important features that you would like captured in objective standards? Examples: 3-inch recessed windows, using non-reflective materials, mullions on the exterior of windows (not interior).

Question #1C: Thinking about a project that has come before the City and how you shaped it, what would you want to make sure is part of the project if the standards were only objective?

## **Complexity and Subjectivity in District-Level Plans**

**Issue #2: Portions of the City's District-Level plans have been completed, while other aspects of these plans are out of date, having been superseded by the General Plan and Planning Regulations. As a result, City staff, applicants, and decision-makers have to reference multiple documents to capture all regulations and determine which is more recent, relevant, and applicable. Additionally, portions of these plans include subjective criteria, and failure to meet such subjective criteria cannot be used to deny approval for projects for certain types of multifamily and mixed-use projects under State law, as described in Issue #1.**

The City has done an exceptional job of implementing its planning documents, both the vision of the General Plan and the district-level plans described in Section II. However, there are two related issues that result from these District-Level plans.

First, many of these plans precede the General Plan and comprehensive update to the Planning Regulations. As a result, they sometimes do not reflect updated standards in the Design Guidelines and Planning Regulations. This includes updates regarding sidewalk widths, streetscape improvements, density limits, and parking objectives. Second, while these plans do include objective standards, such as sidewalk dimensions, they also include guidance for streetscape design, such as lighting, landscaping, and street furnishings that cannot be applied to housing development projects that only need to meet objective standards in conjunction with review under the HAA, SB 35, etc. Currently, frontage improvements, publicly-accessible park requirements, and public right-of-way improvements are not objectively regulated or applied. Rather, they are assessed on a case-by-case basis. For ministerial projects, City staff will not be able to require amenities and off-site improvements to the public right-of-way if they are not identified as objective standards.

District-level plans could be addressed in several ways, with different approaches depending on the relevance, subjectivity, and consistency of each plan:

- **Keep plans**, or portions of the plans, as guidance for discretionary projects (e.g., commercial projects, public projects, housing projects undergoing discretionary review). This would require that City staff, decision-makers, and applicants continue to refer to multiple documents, but may help the City recommend design changes and on- and off-site improvements for discretionary projects.
- **Revise plans** to bring up-to-date with the latest standards in the General Plan and Planning Regulations. The City could amend the plans to acknowledge what has been completed, and update them based on more recent changes in the General Plan and Planning Regulations. Plan amendments represent an effort beyond the scope of the objective standards assignment.
- **Retire plans** that have been implemented or no longer required, to streamline the application review process and ensure internal consistency across the City's planning documents.

Regardless of the method, staff and consultants could migrate relevant standards or plan sections into the Citywide Design Guidelines and/or Planning Regulations to remove redundancies and reduce the number of documents needed to be referenced. The City could consolidate similar guidelines (e.g., general principles for breaking down building massing) to make the document as usable as possible. The City could expand district/location specific guidelines/standards by teasing out the most important standards from each district-level plan. Striking this balance will be important to preserving and enhancing specific neighborhood character; allowing for unique, architecturally beautiful, and efficient building designs; while streamlining regulations for the City and applicants, consistent with State law.

Additional recommended direction for each plan/guideline document is explored below:

- Shellmound Streetscape Design Guidelines: These Design Guidelines were written relatively recently and are still useful. The City should maintain the Shellmound guidelines until all of the private development sites have redeveloped and/or the streetscape plan has been completed. The Citywide Design Guidelines could cross-reference these guidelines.

- Powell Street Urban Design Plan: The Plan was written recently and is still useful. The City should maintain the Powell Street plan until the streetscape and street projects have been completed, at which point the guidelines could be retired. The Citywide Design Guidelines could cross-reference this plan.
- Park Avenue District Plan. This plan is an important reference for this particular district which has a unique architectural identity. The City could retire portions of the plan that are obsolete (e.g., FAR standards), transform desired subjective guidelines into objective standards, and migrate guidelines and standards to the Citywide Design Guidelines or Park Avenue District Overlay.
- North Hollis Urban Design Program. Many portions of this program have been implemented (e.g., sidewalks, Doyle Hollis Park), others are out of date (e.g., FAR, street trees), but the Program still has many relevant elements, including guidelines for design adjacent to the Greenway. Salient portions could migrate to the Citywide Design Guidelines and then the Program considered for retirement.
- San Pablo Avenue Urban Design Plan. Out-of-date standards from this 1990 plan should be eliminated. The City could retain relevant sections of the plan that address the unique considerations for sites on major corridors (both San Pablo and potentially other arterials), migrate these to the Citywide Design Guidelines, and then consider this plan for retirement.
- South Bayfront Design Guidelines. The development schemes and streetscape plans that compose these Guidelines have been completed by the Bay Street redevelopment. This 1997 plan should be considered for retirement.

**Recommendation #2: For each relevant District-Level plan, pull out the salient and district-specific guidelines and translate them into objective standards for inclusion in the Citywide Design Guidelines. Retain streetscape designs for individual districts and create objective standards for off-site improvements (e.g., curb, gutter, and sidewalk along the building frontage).**

Question #2A: What specific features of each plan should be made citywide (see Table 2)?

Question #2B: What are the key features in the district level plans that you think are important to retain?

Question #2C: What, if any, concerns do you have about retaining and/or retiring any of the district-level plans?

## **Thresholds of Review**

**Issue #3: The City’s existing review and approval processes do not specifically account for Housing Accountability Act, SB 35, or SB 330 projects. As a result, the City evaluates those projects using both the applicable objective standards as well as subjective standards—even though State law generally does not allow the City to deny or condition those projects using the subjective standards. This practice is burdensome and unnecessary.**

Based on the City’s current project review process, described in Section II, the Planning Commission takes action on Housing Accountability Act projects, including making the City’s required findings, and reviewing for compliance with objective standards and subjective design guidelines. However, recent State law promotes the use of objective rather than subjective standards, as described in Section II. Housing Accountability Act projects only need to meet objective standards and may not be denied, reduced in density, or made infeasible unless the City can identify, based on a preponderance of evidence, that specific adverse health or safety impact exist and there is no feasible method to mitigate or avoid impact (Government Code Section 65589.5).

As a result, preparing the subjective standard findings under the City’s Planning Regulations and design guidelines is potentially moot for HAA and/or SB 35 and/or SB 330 projects, yet requires a substantial amount of City staff, decision-makers, and community members’ time and resources. State law does not require that the City identify specific processes or standards applicable to each type of housing project. However, as part of this objective standards project, the Planning Regulations could clarify the review and approval processes for these types of

housing development projects and modify how the City reviews such projects consistent with State law.

At the same time, the process of review by City staff is essential and the conversation that takes place between decision-makers, City staff, community members, and the applicant is valuable and improves the quality of the project. The City could consider rethinking how the Planning Commission reviews Housing Accountability Act projects and other housing development projects to focus on *advisory* design comments and the required objective findings cited above. In particular, the City could eliminate the making of design review findings when they are not applicable and hold a study session with the Planning Commission to receive advisory design comments only. City staff would confirm compliance with objective standards, just as they do today. This would reduce City staff and decision-maker time and resources, while still providing an opportunity for public review.

**Recommendation #3: Incorporate review requirements under State law into the City’s process to clarify which standards and review processes apply to different types of projects. Consider opportunities for streamlined review for projects that meet objective standards in accordance with State law. City staff would continue to review projects for compliance with objective standards, but recommend that applicants proposing SB35 projects attend a study session with the Planning Commission (within the statutory timeframe) to provide advisory comments on project design. The City could also consider Zoning Compliance review (i.e., ministerial) for specific types of projects instead of Major Use Permit review (i.e., discretionary).**