

**Case File Number DET190031-A01**

**March 3, 2021**

<b>Location:</b>	<b>584 14<sup>th</sup> Street</b>
<b>Accessor's Parcel Number(s):</b>	<b>003 06901700</b>
<b>Proposal:</b>	Appeal of Zoning Manager's Determination filed under DET190031, a status determination on the applicability of Oakland Planning Code Chapter 17.153 - Demolition, Conversion and Rehabilitation Regulations for Residential Hotels.
<b>Case File Numbers:</b>	<b>DET190031-A01</b>
<b>Appellants:</b>	Zacks, Freedman, & Patterson, PC
<b>Owner:</b>	584 14TH Street LLC
<b>Planning Determination Required:</b>	Initial Usage Report required if the Zoning Manager's Determination is Upheld
<b>General Plan:</b>	Central Business District
<b>Zoning:</b>	CBD-P
<b>Environmental Determination:</b>	The determination is not considered a project as defined by Section 15378 of the State CEQA guidelines, and therefore does not require CEQA review.
<b>Historic Status:</b>	Local Register, API: Downtown, OCHS Rating: B*1+
<b>City Council District:</b>	3
<b>Staff Recommendation:</b>	Deny the appeal, thereby upholding the Zoning Manager's Determination to deny the Residential Hotel Statement of Exemption Application, based on the findings included as Exhibit C to the March 3, 2021 Supplemental Staff Report and the evidence cited therein, and the findings and evidence in the Zoning Manager's Determination, the Staff Report, the Supplemental Staff Reports from October 21, 2020 and March 3, 2021, and the accompanying attachments.
<b>Finality of Decision:</b>	Final Decision, Not Administratively Appealable per Planning Code Section 17.132.030
<b>For Further Information:</b>	Contact Case Planner, Brittany Lenoir at (510) 238-4977 or <a href="mailto:blenoir@oaklandca.gov">blenoir@oaklandca.gov</a> .

**SUMMARY**

This is a supplemental staff report regarding an appeal of the Zoning Manager's Determination to deny the Residential Hotel Statement of Exemption for 584 14th St, commonly known as the Sutter Hotel, as described in the proposal above. This was initially brought to the August 5, 2020 Planning Commission meeting, where the appellants requested a continuance to allow time to analyze statements made in the staff report, and the request was unanimously approved. It was then heard at the October 21, 2020 Planning Commission meeting, where the Commission required another continuance to allow time for staff and the appellants to answer questions related to the Sutter Hotels operations, Residential Hotel Regulations, and Deemed Approved Hotel, Motel, and Rooming House Regulations.

Attached as **Exhibits A** and **B** are Planning staff and the appellants' responses to the Planning Commission questions that staff identified from the October 21, 2020 Planning Commission meeting. Staff reviewed the

appellants' responses and have concluded that the Sutter Hotel continues to meet the definition of a Residential Hotel. As further discussed below, there are key points on which the parties disagree related to the Sutter Hotel operations and how the Deemed Approved Hotel Regulations impact the Sutter Hotel.

A main difference between staff and the appellants' responses relates to the applicability of the Deemed Approved Ordinance to the Sutter Hotel, discussed in questions 7, 8, 9, and 11 in **Exhibits A and B**. The appellants are claiming that the Sutter was deemed approved as a tourist hotel under the City's Deemed Approved Ordinance and, therefore, is a commercial hotel (classified as Transient Habitation Commercial Activities in the Planning Code). However, it is unclear whether the Sutter was ever deemed approved because neither staff nor the appellants can provide direct evidence that a Deemed Approved letter was ever sent to the owners. Further, the Deemed Approved status could only be applied to any hotel, motel, or rooming house that was legal nonconforming and in existence immediately prior to the Deemed Approved Hotel regulations, which were adopted in 1999. However, hotels and rooming houses were a permitted and conforming activity in the C-51 Zone, where the Sutter Hotel was located, when the Deemed Approved Ordinance was adopted in 1999. Therefore, at the time the Deemed Approved Hotel, Motel, and Rooming House Regulations were established, neither a hotel nor a rooming house would have been considered Deemed Approved uses in the C-51 Zone since neither would have been considered legal nonconforming. An amendment to the Oakland Planning Code changing Transient Habitation Commercial Activities from permitted to conditionally permitted in the C-51 Zone was adopted by the City Council on July 25, 2000, after the City Council adopted the Deemed Approved Ordinance. **Exhibits D and E** are the ordinance (No. 12266 C.M.S.) adopted by the City Council and the council agenda report.

The Sutter Hotel did participate in annual hotel inspections, but these inspections enforced the performance standards of Oakland Municipal Code (OMC) Chapter 8.03, which are applicable to all Oakland motels, hotels, and rooming houses, regardless of a deemed approved status.

Finally, even if the Sutter Hotel had been deemed approved in 1999, it does not necessarily mean that it is a commercial hotel because both the Deemed Approved Ordinance and the performance standards of OMC Chapter 8.03 apply to all Oakland motels, hotels, and rooming units and a residential hotel unit falls into the category of a rooming unit. Planning staff have reviewed documentation of how the Sutter Hotel was operating in 1999 to determine whether it was operating as a tourist/commercial hotel or transient residential hotel/rooming house at that time, and found evidence supporting the conclusion that it was serving as a Residential Hotel during that time period.

The Sutter Hotel unquestionably meets the definition of a Residential Hotel. There is abundant and undeniable evidence proving that the Sutter Hotel had been actively operating as a Residential Hotel for use by tenants as their primary residence for years. While length of stay is not necessarily indicative of a Residential Hotel, it may be used as an indicator to determine if the hotel was being used as a primary residence by guests. The Sutter Hotel has multiple Transient Occupancy Tax (TOT) records ranging from 2010 to 2017 that show that, at times, residency by guests who stayed over thirty days had been a major component of the hotel operations. The TOT records do show that there was a sudden decline of non-transient guests by 2016, but there is no indication in the permit history that a change of use occurred legally from a residential hotel to a transient hotel (**Exhibit C, Finding 8.d.ix, October 21, 2020 Staff Report, pages 262-327**). This change would have required the granting of a Conditional Use Permit because Transient Habitation Commercial Activities are a conditionally permitted activity at the subject site. Because the Residential Hotel Regulations require staff to determine the legal status of the subject property as of December 13, 2016, and no Conditional Use Permit was obtained, staff concluded that the legal use of the property was to continue its historic operation as a Residential Hotel.

In addition, there is evidence of a 1992 Rehabilitation Loan Agreement and Regulatory Agreement between the previous owner and the State Housing and Community Development Department under the California Natural Disaster Assistance Program, which identified the property as a rental housing development, which indicates primary residency (**Exhibit C, Finding 8.d.iii, October 21, 2020 Staff Report, pages 625-641**). Furthermore, the Sutter Hotel has been in multiple housing reports from the City of Oakland Housing and Community Development that consistently identify the Sutter Hotel as a Residential Hotel in 1985 (**Exhibit C, Finding 8.d.ii, October 21, 2020 Staff Report, pages 616-623**), 2004 (**Exhibit C, Finding 8.d.v, October 21, 2020 Staff Report, page 643**), and 2015 (**Exhibit C, Finding 6.d.x, October 21, 2020 Staff Report, page 660**).

Based on the findings, evidence, Staff Report, and Supplemental Staff Reports, staff requests that the Planning Commission deny the appeal and uphold the Zoning Manager’s Determination to deny the Residential Hotel Statement of Exemption, thereby confirming that the Sutter Hotel is a Residential Hotel. As such, staff requests that the Planning Commission declare that Planning Code Chapter 17.153 related to demolition, conversion, and rehabilitation of Residential Hotels shall apply, and a resulting Initial Usage Report be required to be submitted to quantify and identify the protected units and amenities of the Sutter Hotel.

**RECOMMENDATION**

1. Deny the Appeal, thereby upholding the Zoning Manager’s Determination to deny the Residential Hotel Statement of Exemption, based on the findings and evidence in the Zoning Manager’s Determination, the August 5, 2020 Staff Report, the October 7, 2020 Supplemental Staff Report, the March 3, 2021 Supplemental Staff Report and all accompanying attachments.

Prepared by:



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BRITTANY LENOIR  
Planner II  
Bureau of Planning

Reviewed by:



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ROBERT MERKAMP  
Zoning Manager  
Bureau of Planning

Approved for forwarding to the  
City Planning Commission:



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EDWARD MANASSE  
Deputy Director  
Bureau of Planning

Exhibits:

- A. Planning Bureau Staff Response to October 21, 2020 Planning Commission Questions
- B. Appellant's Response to October 21, 2020 Planning Commission Questions
- C. Findings on Case File No. DET190031-A01
- D. Ordinance No. 12266 CMS, dated July 25, 2000
- E. Council Agenda Report, ZT00-128, dated June 27, 2000

**LEGAL NOTICE: THE DECISION OF THE CITY PLANNING COMMISSION IS FINAL AND NOT ADMINISTRATIVELY APPEALABLE. ANY PARTY SEEKING TO CHALLENGE SUCH DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE THE DECISION IS ANNOUNCED (CODE OF CIVIL PROCEDURE SECTION 1094.6).**

**ATTACHMENT**

**A**

## **Planning Staff Responses to Planning Commission Questions Regarding 584 14<sup>th</sup> Street Residential Hotel Statement of Exemption Appeal**

### **Question 1: How was the building located at 584 14<sup>th</sup> Street being operated as of December 13, 2016?**

#### **Staff Response:**

To establish the legal status of the building as of December 13, 2016, the Planning Bureau looked at several records leading up to December 2016. This documentation shows that in the early 2010s, the building was actively used as a residential hotel, but by 2016 the property owner was making efforts to remove long-term tenants. At that time, the property owner did not apply for a zoning clearance or other planning entitlement to convert from its semi-transient residential activity to a transient commercial activity. As a result, the property continued to meet the definition of a residential hotel as of December 13, 2016.

- City of Oakland Rent Arbitration Records indicate efforts to evict several residential tenants from the Property between 2008 and 2015. These records support the conclusion that the Property was continuing to operate as a Residential Hotel with residential tenants, many of whom stayed for a longer than monthly basis. (See Proposed Finding 8.d.viii.)
- Monthly Transient Occupancy Tax (TOT) Records from 2010 to 2017 show that the property owner regularly deducted rent for occupancy by non-transient residents. While the proportion of rents received from transient versus non-transient guests cannot identify exactly how many rooms were being used for lengths of stay exceeding thirty days, the TOT records are evidence that during this period the property owner received a significant portion of rent from individuals who resided at the property for more than 30 days. Planning considers these stays exceeding 30 days to be stays intended as the primary residence of the guest. From February 2010 through August 2010, more than 50% of gross monthly rent was paid by non-transient residents. After falling into the 40% range from September 2010 to May 2011, the percent of gross monthly rent paid by non-transient residents remained above 50%--and sometimes as high 65%, 70%, or 75%--from June 2011 through August 2013. The portion of gross monthly rent paid by non-transient residents remained substantial (between 20% and 72%) from September 2013 through April 2016. Records are incomplete from April 2016 to September 2016, but records show a precipitous decline in gross monthly rent paid by non-transient residents by October 2016. (See Proposed Finding 8.d.ix.)
- In 2015, a City of Oakland Housing and Community Development Department report entitled "Downtown Oakland's Residential Hotels" once again identified the Property as a Residential Hotel. A Residential Hotel Survey conducted on June 22, 2015 provided support for the 2015 Report and stated that the Sutter Hotel had 102 total rooms, 95 of which were occupied. Although no new monthly residents were accepted at that time, the report identifies 38 rooming units occupied for more than one year, and five rooming units occupied for more than five years. These statistics were based on an interview with Peter Allen, the desk clerk. (See Proposed Finding 8.d.x.)
- Building Record ID B1202507 indicates that a Certificate of Occupancy for a residential hotel was requested for the property on July 26, 2012. Staff Report Exhibit D, p. 79. (See Proposed Finding 8.d.xii.5)
- The property owner's submission of an application for an exemption from action restricted under the City of Oakland Residential Hotel Conversion and Alteration Moratorium documents that the property owner in 2018 did not dispute that the Property met the

definition of a Residential Hotel. In 2018, Applicant applied for interior and exterior alterations at the Property under DRX182227. In conjunction with that permit, Applicant submitted a request for exceptions/exemptions to the actions restricted in the Moratorium, thereby acknowledging that the property was a Residential Hotel subject to the restrictions of the Moratorium. In response, on November 29, 2018, the City issued a letter determining that the Sutter Hotel is considered a Residential Hotel, that the alterations were excepted from the Moratorium restrictions because they would not reduce the number of units or displace existing residents, and further found that the City considers the current land use activity at the property to be Semi-Transient Residential. The letter specified that if the applicant disagreed with the determination, the applicant had to timely file an appeal. The applicant did not file an appeal challenging the City's conclusion that the Sutter Hotel is a Residential Hotel operating a Semi-Transient Residential Activity. (See Proposed Finding 8.d.xi.)

**Question 2: When did the current property owner purchase the property? How was the building being operated at that time?**

Staff Response:

At the last Planning Commission Hearing, attorney for the appellant stated that the current property closed escrow on the building in June 2017. This is consistent with a declaration from manager Ross Walker, submitted by the applicant. (See Proposed Finding 2.c.ix.) Planning staff have not ascertained how the property was operated in June 2017 because the regulations require staff to determine the property's operation status as of December 13, 2016.

**Question 3: Did the City have in place regulations on residential hotels at the time the current owner purchased the property?**

Staff Response:

The current property owners purchased the building after the City had adopted the December 13, 2016 residential hotel moratorium and before the City adopted the current Residential Hotel Regulations in December 2018.

**Question 4: If a building was vacant as of December 13, 2016, can the building still meet the definition of a residential hotel?**

Staff Response: A building is considered a residential hotel if it meets the statutory definition. A vacant building remains a residential hotel so long as it continues to contain rooming units "intended or designed to be used" for sleeping purposes of guests which is also the primary residence of those guests. Evidence regarding operation as a semi-transient activity, along with no application for a zoning clearance or other planning entitlement to convert from that activity, serves as evidence that the property is intended or designed to be used for that purpose.

**Question 5: Does the City have a copy of the General Plan and Planning Code that were in place in 1999, and were they provided to the appellant?**

**Staff Response:**

Yes, the City has a copy of the General Plan and Planning Code that were in place in 1999.

- Upon receiving a request, the City provided to Appellant the City of Oakland 1997 Planning Code, which also contains supplements through February 5, 2002.
- The City's current Land Use and Transportation Element of the General Plan was adopted in 1998, and thus the current General Plan on the City's website is the same as the General Plan that was in effect when the Deemed Approved ordinance was adopted.
- Separately, attorney for Appellant requested a copy of the General Plan Land Use and Transportation Element (LUTE) in place before the "1998-1999/2000 General Plan update. On October 13, 2020, Planner Brittany Lenoir responded that she was not able to locate the General Plan LUTE in effect prior to the 1998 version. However, since the current General Plan LUTE was in place in 1998, prior to the Deemed Approved Ordinance adoption, the prior LUTE does not play any role in staff's analysis in this appeal.

**Question 6: In 1999, at the time the Deemed Approved Regulations were adopted, were the following activity and facility types permitted or conditionally permitted in the applicable C-51 zone: (1) permanent residential activity; (2) semi-transient residential activity; (3) transient commercial activity; (4) rooming house facility?**

**Staff Response:**

The four listed activities and facilities were all permitted in the C-51 zone in 1999. In 2000, as a result of adoption of Ordinance No. 12266, the City began requiring a conditional use permit for transient commercial activities (tourist hotels) in the C-51 zone. See the Staff Report for Ord. 12266, which states "The C-55 Central Core Commercial and C-51 Central Business Service Zones within the downtown area also classify hotels and motels as a permitted use. These zones would be amended to require a conditional use permit for such activities." (See Proposed Finding 9.b.)

**Question 7: What is the definition of "Deemed Approved" for purposes of the Deemed Approved Hotel Regulations, Chapter 17.157?**

**Staff Response:**

Section 17.157.050 defines a "Deemed Approved Hotel Activity" as any Hotel or Rooming House that is legal nonconforming and in existence immediately prior to the effective date of the Deemed Approved Hotel regulations.

**Question 8: Could a property have been "Deemed Approved" as a residential hotel?**

**Staff Response:**

Yes, the Deemed Approved Hotel regulations apply not only to commercial hotels, but also to rooming houses that partially or fully rent on a long-term basis. For purpose of these regulations, a rooming house is synonymous with a residential hotel. The April 13, 1999 Committee staff report prepared prior to adoption of these regulations recognized their wide application: "a rooming house is akin to a hotel or motel in that rooms that do not contain kitchens are rented to guests and residents. . . . Rooming houses generally rent to a more permanent population and fewer short term guests than hotels or motels." (See Proposed Finding 8.c.)

**Question 9: When is a hearing required to revoke a property's deemed approved status?**

**Staff Response:**

A Deemed Approved Activity retains its Deemed Approved Status as long as it complies with the Deemed Approved performance standards. (Planning Code, Section 17.157.080.) Those performance standards include Oakland Municipal Code Chapter 5.34 (Hotel Rate and Registration Requirements), Chapter 8.03 (Hotel, Motel, and Rooming House Operating Standards), and Chapter 15.08 (Oakland Building Maintenance Code). The general purpose of the hotel, motel, and rooming house operating standards in particular is “to promote the health, safety, comfort, convenience, prosperity, and general welfare by requiring that businesses that offer shelter to visitors, transient guests, and other residents provide a minimum level of cleanliness, quality, and security.” The Deemed Approved Regulations provide for specific hearing procedures to for consideration of violations to performance standards. (Planning Code, Section 17.157.110.) If a deemed approved activity is found to violate the performance standards, then its right to continue that deemed approved activity may be revoked.

**Question 10: Is a hearing required to establish that a property meets the definition of a Residential Hotel as of December 13, 2016?**

**Staff Response:**

A hearing is not required to preliminarily determine that a property meets the definition of a residential hotel; however, a property owner has a right to contest such a determination, including through a public hearing on appeal. This hearing serves that purpose. In particular, the purpose of the hearing is for the Planning Commission to conclude whether the Planning Bureau determination was supported by facts showing that the existing approved activity at the property as of December 13, 2016 met the definition of a residential hotel. This is not a hearing to revoke a deemed approved status based on violation of performance standards and cannot be utilized to revoke the appellants right to continually a lawful activity. Instead, it is a fact-focused inquiry as to what that lawful activity in fact was as of December 13, 2016, and whether that activity meets the definition of a residential hotel.

**Question 11: Did the Sutter Hotel receive a “Deemed Approved” letter in 1999?**

**Staff Response:**

Neither the City nor the appellant have documentation showing that the Sutter Hotel received a Deemed Approved letter in 1999. (See Proposed Finding 9.a.) The appellant relies on records showing annual hotel inspections at the property as evidence that the property was deemed approved as a tourist hotel. However, the annual hotel inspection of the property are indicative of the property's status of being subject to the performance standards of Chapter 8.03 applicable to all Oakland hotels, motels, and rooming houses, which does not shed light on whether the property was deemed approved, let alone what activity--tourist hotel or residential hotel-- was deemed approved. (See Proposed Finding 8.d.) Note in addition that on occasion these records describe the property as a Residential Hotel, such as Building Record ID 0606066 dated August 23, 2006, Annual Hotel/Motel Inspection. (See Proposed Finding 8.d.xii.4)

**Question 12: How was the Sutter Hotel being operated in 1999?**

**Staff Response:**

Because Planning does not have documentation of a deemed approved letter, Planning staff reviewed the totality of the factual record to conclude that the Sutter Hotel was operating as a semi-transient

activity rooming house in 1999. As previously noted, the City does not have record that any property owner has subsequently applied for a planning entitlement to convert the building from its semi-transient residential activity to a transient commercial activity.

- A 1985 report entitled “Residential Hotels in Downtown Oakland” and prepared by the City of Oakland Office of Community Development identifies the Sutter Hotel as being a Residential Hotel. At the time this report was created, the Sutter Hotel was combined with another Residential Hotel, the Dragon Hotel. This report found that the Sutter/Dragon Hotel had 167 total rooms and 162 available rooms for rent. The Residential Hotel Survey, included in the 1985 report, documents that 85.9% of individuals staying at the Sutter Hotel were for purposes other than for business or tourist purposes; that 0 of the 167 rooms included a kitchen; that 13 tenants (9.6%) had stayed for longer than 1 year; and that the number of non-transient residents had increased since 1980. (See Proposed Finding 8.d.ii.)
- In 1992, property owner Govinder Singh entered into a legally binding Rehabilitation Loan Agreement and Regulatory Agreement with the State Housing and Community Development Department under the California Natural Disaster Assistance Program (“CALDAP”). This Regulatory Agreement serves as substantial evidence that the prior owner of the Sutter Hotel received financial assistance contingent upon the property being classified as a Residential Hotel that served as the primary residence for its tenants from 1992 through 2012. CALDAP funds were limited to be used to fund the repair of “rental housing developments” that were damaged or destroyed as a result of a natural disaster. Health and Safety Code Section 50671.5 defines “rental housing development” to include “multifamily rental dwellings, apartments, residential hotels . . . that are made available for permanent residency of tenants.” Under the Regulatory Agreement, in exchange for receiving monetary assistance to conduct rehabilitation, the borrower agreed to impose rental restrictions on the “Assisted Units.” Exhibit B to the Regulatory Agreement identifies 102 SROs as “Assisted Units” subject to rent restrictions. (See Proposed Finding 8.d.iii.)
- During the mid-point of the term of the Regulatory Agreement, the Property was again identified in a City of Oakland survey of Residential Hotels located within the Downtown area. The 2004 Report by Community and Economic Development documents that the Property had 86 available rooms and 106 total rooms. (See Proposed Finding 8.d.v.)
- A Declaration from Prior Owner Raj Singh submitted by the applicant supports the conclusion that the Property was used as the primary occupancy of its guests through various leases with Oakland Housing Authority and other non-profit organizations in the years between 1997 and 2017. In the Declaration, Mr. Singh states that he assisted with operation of the Property from around August 1987 through June 2017, which covers the entire twenty-year period during which the Property was subject to the CALDAP Regulatory Agreement, and that he took over ownership around November 1995. Mr. Singh states that the Property was operated as a transient (tourist) hotel with daily, weekly, and monthly rental periods. He further states that during the period of 1997 to 2017, he entered into approximately 15 annual/monthly leases for hotel rooms with the Oakland Housing Authority and a few nonprofit organizations. Under the leases, nonprofits would pay the Sutter Hotel to provide rooms for clients in their programs. The applicant did not provide the City with copies of any of these leases. The Oakland Housing Authority is a government agency that provides subsidized housing to low income families in Oakland, and therefore any lease with Oakland Housing Authority would be for purposes of providing a primary residency to guests under such a lease. (See Proposed Finding 8.d.vi)
- City Records show a number of Residential Rent Adjustment Program (RRAP) Hearing Decisions that support the conclusion that the Property continued to operate as a

Residential Hotel in the early 2000s, including two 2002 hearing decisions that describe the property as a Residential Hotel with 102 units. (See Proposed Finding 8.d.vii.)

**ATTACHMENT**

**B**

January 29, 2021

**VIA EMAIL**

Oakland Planning Commission  
c/o Brittany Lenoir, Planner  
1 Frank H Ogawa Plaza  
Council Chambers, 3rd Floor  
Oakland, CA 94612

Re: 584 14<sup>th</sup> Street, DET190031-A01: Appeal of Zoning Manager's Determination  
Response to Commission Questions

Dear Members of the Planning Commission:

As requested at the conclusion of the October 21, 2020 appeal hearing, this letter responds to Commissioners' questions.<sup>1</sup> We are happy to provide any additional information.

**Question 1: How was the building located at 584 14th Street being operated as of December 13, 2016?**

Response:

The property was operated as a Transient (tourist) Hotel as of December 13, 2016. Transient Occupancy Tax filings for December 2016 show revenue of \$52,501 from transient stays and \$360 from non-transient occupancy, clearly showing that the property was being operated as a tourist hotel. As the property was a "Deemed Approved" tourist hotel, no zoning clearance or other planning entitlement would have been necessary to operate it as a tourist hotel.

The property's use as of December 13, 2016, as a tourist hotel is consistent with Proposed Finding 8.d.ix, whereby the City found that "records show a precipitous decline in nontransient residents per month by October 2016."

As a Deemed Approved hotel, the property was not required to obtain any approval from the City for changes to its type of occupancy. Evidence provided indicates that over time some rooms in the property were used for transient and semi-transient purposes, but that use does not reclassify the property as a residential hotel. As evidenced by the sworn declaration, under penalty of perjury, the property's owner from approximately 1995 to 2017 has stated that "For the entire time I owned the Sutter Hotel, it was operated as a transient (tourist) hotel with daily

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<sup>1</sup> Please refer to our prior submissions for additional detail and documentation.

and weekly rental periods. The Sutter Hotel held a transient hotel license issued by the City of Oakland, and transient occupancy taxes were collected and remitted to the City every month.” (Declaration of Raj Singh.) The occupancy of rooms for non-transient purposes and the identification of the property in City reports does not change the use of the property.

The property did not qualify as a Residential Hotel under the rules in effect in December 2016 or thereafter.

**Question 2: When did the current property owner purchase the property? How was the building being operated at that time?**

Response:

The current owner, 584 14th Street, LLC, has owned and operated the Sutter Hotel since June 2017. During its entire period of ownership, the building has been operated as a transient (tourist) hotel with daily and weekly rental periods. The only leases entered into with occupants of the Sutter Hotel were for commercial tenants located along the ground floor. The owner has not entered into any residential lease agreements or accepted any payments of rent on a monthly or yearly basis for any hotel rooms. All hotel rooms have been rented on a daily or weekly basis. The owner purchased and operated this property in reliance on the City’s representations as to its Deemed Approved tourist hotel status.

**Question 3: Did the City have in place regulations on residential hotels at the time the current owner purchased the property?**

Response:

The City enacted interim Ordinance No. 13415 C.M.S. on January 17, 2017, extending interim Ordinance No. 13410 C.M.S. for a period of 22 months. These interim ordinances included a different definition of Residential Hotel than previously existed (inter alia, relying on OPC §§ 17.10.110 and 17.10.120). Residential Hotels in Oakland had always been allowed by law to rent rooms to occupants who have another, “primary residence.” The new ordinances changed the rules, redefining a Residential Hotel as a building containing guest rooms that are, inter alia, “intended or designed to be used, or which are used, rented, or hired out, to be occupied, or

which are occupied, for sleeping purposes by guests, which is also the primary residence of those guests . . . .” (OPC § 17.153.020.)<sup>2</sup>

However, the interim ordinances were notable in several respects. First, they were a *temporary* moratorium. When the Sutter Hotel was purchased in 2017, the owner could rely on the interim ordinances terminating.

Second, the interim ordinances did not contain the same onerous restrictions as the 2018 Residential Hotel Ordinance. The interim ordinances temporarily prohibited Residential Hotel demolitions, conversions, and construction work “which results in displacement of existing residents for more than two (2) weeks.” By contrast, the 2018 ordinance imposed onerous restrictions on construction work – effectively prohibiting many repairs and upgrades – as well as a substantial impairment of the freedom of contract: 90 days’ notice is required before selling a Residential Hotel, plus mandatory negotiations with the City or its designated nonprofit to purchase the property instead the intended purchaser.

Third, the interim ordinances contained a petition process. The owner filed a petition for exemption, and the City confirmed that its proposed construction work was not subject to the interim ordinances’ restrictions. Having received that confirmation, there was no reason to appeal the desired exemption to argue the definitions in an expiring temporary moratorium – especially since a staff determination that the property was operated as a Residential Hotel would not override its controlling status as a Deemed Approved tourist hotel.

**Question 4: If a building was vacant as of December 13, 2016, can the building still meet the definition of a residential hotel?**

**Response:**

Yes, if it meets the definition of a Residential Hotel in place at that time and if it does not have other protections granted to it under the law, such as being a Deemed Approved hotel. Here, the property cannot meet the definition of a Residential Hotel, and it is also a Deemed Approved tourist hotel.

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<sup>2</sup> We incorporate by reference the arguments in our objection letter to City Council dated November 27, 2018, transmitted concurrently on that date to the Bureau of Planning.

Under interim Ordinance Nos. 13410 and 13415, whether a property was a “Residential Hotel” depends on whether it “contain[s] six (6) or more residential hotel units, **intended or designed to be used, or which are used** . . . for sleeping purposes by guests, which is also the primary residence of those guests . . . .” The property does not meet these requirements.

- a) Were the property’s rooms being “used” as the primary residence of guests? No, certainly not if the property was vacant.
- b) Were the property’s rooms “intended” to be used as the primary residence of guests? No, the owner clearly intended *not* to use the property for residential use. As the City notes in Proposed Findings 8.d.viii and 8.d.ix.5, there was a “precipitous decline in nontransient residents per month by October 2016,” and the prior owner was actively evicting several remaining longer-term occupants. This clearly evidences an intended nonresidential use.
- c) Were the property’s rooms “designed to be used” as the primary residence of guests? No, the property was constructed as a tourist hotel.

None of the Ordinances’ three criteria for a “Residential Hotel” can be met.

**Question 5: Does the City have a copy of the General Plan and Planning Code that were in place in 1999, and were they provided to the appellant?**

Response:

The City has represented that the copies of the General Plan and Planning Code provided to the appellant were the versions in effect in 1999. To our knowledge, the City has not been able to locate a copy of the prior General Plan Land Use and Transportation Element.

**Question 6: In 1999, at the time the Deemed Approved Regulations were adopted, were the following activity and facility types permitted or conditionally permitted in the applicable C-51 zone: (1) permanent residential activity; (2) semi-transient residential activity; (3) transient commercial activity; (4) rooming house facility?**

Response:

(1) Permanent Residential and (2) Semi-Transient Activity were permitted activities under the Code in 1999. As discussed below, this means Rooming Houses (residential hotels) could not receive Deemed Approved status.

However, the status for (3) Transient Habitation (tourist hotels) was ambiguous and contradictory. For the C-51 zone, the Code lists “Transient Habitation” as *both* a “permitted activity” *and* a “conditionally permitted activity . . . subject to the provisions of § 17.102.370.” A use cannot be both permitted and conditionally permitted.

The rules for Transient Habitation were further complicated by legislation enacted in 1998. In March 1998, a new General Plan Land Use and Transportation Element (LUTE) was enacted. The LUTE expressed an intent for a higher level of regulation for transient hotels in the C-51 zone: “The Central Business District, the Mixed Use Waterfront District, and the Housing Business Mix Classifications all reflect the intent of the Policy Framework and anticipate the adoption of further studies and regulations.” (LUTE at p. 155.)

Shortly thereafter, emergency Ordinance No. 12054 C.M.S. established that the new LUTE shall control in any conflict between the LUTE and the existing Code. And soon after that, in 2000, Ordinance No. 12266 imposed an explicit conditional use requirement for Transient Habitation. This conditional use requirement is consistent with the LUTE’s anticipated “adoption of further studies and regulations.”

This evidences an intent under the 1998 LUTE that Transient Habitation no longer be principally permitted in the C-51 zoning district – an intent given primacy over the Code by Ordinance No. 12054 and expressly written into the Code by Ordinance No. 12266. This means preexisting tourist hotels became Legal Nonconforming Uses. (“‘Nonconforming activity’ means an activity which, under the zoning regulations, **is not itself a permitted activity** where it is located or does not conform to . . . other requirements applying to activities.” (OPC § 17.114.020, *emph. added*.)

Moreover, substantial evidence demonstrates that the City conferred Deemed Approved tourist hotel status on the Sutter Hotel and continued to treat it as a Deemed Approved tourist hotel from 1999 onward. A prerequisite for Deemed Approved status was that the Sutter Hotel be a Legal Nonconforming Use in 1999 – further evidence that a conditional use requirement was imposed at that time.

**Question 7: What is the definition of “Deemed Approved” for purposes of the Deemed Approved Hotel Regulations, Chapter 17.157?**

Response:

“‘Deemed Approved Hotel Activity’ means any Hotel or Rooming House that is legal nonconforming and in existence immediately prior to the effective date of the Deemed Approved Hotel regulations. . . . Deemed Approved Status replaces legal nonconforming status.” (OPC § 17.157.050.)

**Question 8: Could a property have been “Deemed Approved” as a residential hotel?**

Response:

No. Deemed Approved status was only applicable to Legal Nonconforming Uses (uses that were principally permitted when created, but whose zoning later changed to require conditional use).

Under Oakland Planning Code Chapter 17.157, there are only two types of “Deemed Approved” uses: a Hotel, which is a transient commercial use, and a Rooming House, which is a semi-transient residential use. There is no such thing as a “Deemed Approved” residential hotel. Thus, the only question is whether the Sutter Hotel is a “Deemed Approved” Hotel or a “Deemed Approved” Rooming House.

Under OPC § 17.157.050, “‘Hotel’ shall mean any activity as described in OMC Section 4.24.020.” Under that section:

“Hotel” means any public or private space or structure for living therein, including but not limited to any: inn, hostelry, tourist home or house, motel rooming house, mobile home or other living place within the city, offering the right to use such space for sleeping or overnight accommodations wherein the owner or operator thereof as defined in subsection (C) of this Section, for compensation, furnishes such right of occupancy to any **transient** as defined in subsection (D) of this Section.

(OMC § 4.24.020, *emph. added.*)

The Sutter Hotel clearly meets the definition of “Hotel,” and the fact that there was also some nontransient use does not change that fact.

A property in the C-51 zoning district (including the Sutter Hotel) could not have been Deemed Approved as a “Rooming House” because this was not a Legal Nonconforming Use in the zoning district. Under the Deemed Approved Ordinance, a use becomes “Deemed Approved” if – and only if – it was a Legal Nonconforming Use at the time the Deemed Approved Ordinance was enacted. (OPC § 17.157.030.) By definition, a use that was permitted at that time could not be a Legal Nonconforming Use and therefore could not be “Deemed Approved.” Rooming Houses have always been *principally permitted* in the district where the property is located. As a result, the Sutter Hotel can only be a Deemed Approved tourist hotel.

**Question 9: When is a hearing required to revoke a property's deemed approved status?**

Response:

Under OPC section 17.157.080, a Hotel that is “Deemed Approved” acquires a legal status which allows the use to continue indefinitely. Deemed Approved Status can only be lost if a public hearing is held and a hearing officer formally revokes the status due to violation of the “Deemed Approved Hotel performance standards.” (CPC §§ 17.157.100-120.) There is no evidence of such a hearing being held for the property.

**Question 10: Is a hearing required to establish that a property meets the definition of a Residential Hotel as of December 13, 2016?**

Response:

No. An initial determination is made by staff and is subject to an appeal hearing process. It should be noted that the Residential Hotel controls were significantly different between the interim ordinances and the permanent 2018 Residential Hotel Ordinance. And, in any event, a determination that the property was operated as a Residential Hotel would not override the property’s controlling status as a Deemed Approved tourist hotel.

**Question 11: Did the Sutter Hotel receive a “Deemed Approved” letter in 1999?**

Response:

The City does not keep a list of properties receiving Deemed Approved status. However, substantial evidence demonstrates that the Sutter Hotel received a Deemed Approved letter in 1999. Mr. Raj Singh, who owned the Sutter Hotel from approximately 1995 to 2017, stated in a sworn declaration under penalty of perjury: “In or around 1999, I recall receiving a letter from

the City of Oakland confirming that the Sutter Hotel is a ‘Deemed Approved’ transient/tourist hotel.”

Additionally, the City has confirmed on multiple occasions that the Sutter Hotel is a “Deemed Approved” facility, including in the Denial Decision that is presently under appeal. *See, e.g.*, Letter of Determination (DET190031-A01) at p. 4, noting the Sutter Hotel may “continue its previously recognized activity . . . consistent with the definition existing at the time **the building was deemed approved.**” (Emph. Added.) This is also confirmed in a number of transient/tourist hotel inspections.

The owner purchased and operated this property in reliance on its Deemed Approved tourist hotel status.

#### **Question 12: How was the Sutter Hotel being operated in 1999?**

##### Response:

In the aforementioned declaration, the former owner (from 1995-2017) stated, “For the entire time I owned the Sutter Hotel, it was operated as a transient (tourist) hotel with daily and weekly rental periods. The Sutter Hotel held a transient hotel license issued by the City of Oakland, and transient occupancy taxes were collected and remitted to the City every month.” While there may have been some period of time where the property rented rooms on a longer basis and agreements may have been entered into, the total number of the rooms fell below the threshold for a non-transient use.<sup>3</sup> Specifically, evidence provided, including evidence related to the Residential Rent Adjustment Program indicates that far less than 30% of the units were occupied as non-transient.

The property was not operated as a Semi-Transient Residential Activity in 1999. “Semi-Transient Residential Activities” are defined as “the occupancy of living accommodations partly on a thirty (30) days or longer basis and partly for a shorter time period, but **with less than thirty percent (30%) of the living units under the same ownership or management on the same lot being occupied on a less-than-thirty-days basis.**” As discussed above, the property’s 2014-2016 transient tax records show that more than 30% of its income was consistently based

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<sup>3</sup> It should be noted that the previous owner’s statements in loan documents do not override the property’s Deemed Approved status or outweigh the evidence of actual transient use. If the previous owner put the property to a different use, the documents allowed for remedies to be exercised.

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on *transient* use (under 30 days), and thus its use did not qualify as Semi-Transient Residential in 1999.

Respectfully submitted,

ZACKS, FREEDMAN & PATTERSON, PC

A handwritten signature in blue ink, appearing to read "Ryan Patterson", is written over a horizontal line.

Ryan J. Patterson

**ATTACHMENT**

**C**

**ADOPTION OF FINDINGS**  
**City of Oakland Planning Commission**  
**Case File No. DET190031-A01**

The Planning Commission of the City of Oakland hereby adopts the findings herein in support of its motion to **deny the appeal** of Zacks, Freedman & Patterson PC (on behalf of 584 14<sup>th</sup> Street LLC) (“**Appellant**”) from the Zoning Manager’s Determination DET190031 rejecting appellant’s Residential Hotel Statement of Exemption as to the building located at 584 14<sup>th</sup> Street (the “**Property**”).

By upholding the Zoning Manager’s Determination on the applicability of Oakland Municipal Code Chapter 17.153, the Planning Commission hereby confirms that the demolition, conversion and rehabilitation regulations for residential hotels apply to the Property.

**FINDINGS**

**1. Statement of Exemption Filed**

- a. Pursuant to the provisions of Chapter 17.153 of the Oakland Planning Code, on April 2, 2019, 584 14<sup>th</sup> Street LLC (“**Applicant**”) filed an application (File No. DET190031) with the City of Oakland for a Statement of Exemption to exempt the Property from the requirements of Chapter 17.153 based on the Property not meeting the definition of a Residential Hotel as defined therein. *See October 21, 2020 Staff Report pp. 541-601, Exhibit E, Attachment E.1, Statement of Exemption Application for 584 14th Street dated April 2, 2019.*
- b. In its Statement of Exemption application, Applicant argued that the Property was not a Residential Hotel because the Property is a “Deemed Approved tourist hotel” that has the right to continue operating as a tourist hotel indefinitely unless a public hearing is held for the purpose of revoking the “Deemed Approved” status. *See id. at pp. 545-556.*
- c. In addition to presenting the above argument, Applicant argued that business licenses show the Property was licensed as a tourist hotel and that transient occupancy tax records for the Property from January 2014 to April 2016 and October 2016 – December 2016 show the Property was operated as a tourist hotel. *See id. at pp. 547-549.*

**2. Supplemental Information Received**

- a. After Planning Bureau staff sent an incomplete letter to Applicant on May 1, 2019, the Applicant submitted supplemental information on May 30, 2019 and the Planning Bureau determined the application complete on June 26, 2019.
- b. The incomplete letter requested the following information from the Applicant (*see October 21, 2020 Staff Report pp. 230-232, Exhibit E, Attachment A, Incomplete Letter dated May 1, 2019*):
  - i. A certified copy of the property’s tax returns;
  - ii. Additional transient occupancy tax records;
  - iii. Residential landlord tax records;
  - iv. All planning and building permit records;
  - v. Alameda County Assessor records;
  - vi. Current floor plans;
  - vii. All available current and historic zoning clearances for all businesses at the property, matched to business tax certificates issued and all lease agreements and/or lease payment receipts;
  - viii. The years of operation of each business;

- ix. Interior photographs;
  - x. Any other relevant historic information.
- c. The Applicant’s supplemental information letter included several hundred pages of documents responsive to Planning Bureau staff’s May 1, 2019 incomplete letter. *See October 21, 2020 Staff Report pp. 232-424, Exhibit E, Attachment B, Supplemental Information Letter from Alexis Pelosi, representing 584 14th Street LLC, dated May 30, 2019.*
- i. Property tax returns: Applicant provided documents relating to a Public Records Act request to the Alameda County Assessor’s Office requesting all documents relating to the Property, which would include property tax returns. The Assessor’s Office responded that only documents pertaining to the current property owner could be viewed. The Applicant requested that, to the extent these property tax records were required by the Planning Bureau, that the Planning Bureau assist the Applicant in retrieving them from the Assessor’s Office. *See October 21, 2020 Staff Report, pp. 240-245, Exhibit E, Attachment B.1, Alameda County Assessor’s Office Public Records Act Request.*
  - ii. Additional transient occupancy tax records: Applicant provided additional TOT records from 2010, 2011, 2012, 2013, and 2017. *See October 21, 2020 Staff Report, pp. 262-326, Exhibit E, Attachment B.2, Supplemental Transient Occupancy Tax Records.* These TOT records supplement the 2014-2016 TOT records provided as part of applicant’s Statement of Exemption application. *See October 21, 2020 Staff Report, pp. 561-592, Exhibit E, Attachment E.1.iii, Statement of Exemption Transient Occupancy Tax Records.* Viewed together, these records documented TOT payments related to the Property from 2010 through 2017, with the exception of May to September of 2016, for which no records were provided. Applicant also provided evidence of a Public Records Act request filed with the City of Oakland to obtain additional responsive records, to which only business certification verification records from 2017, 2018, and 2019 were provided. Applicant additionally provided what Applicant described as “correspondence between City of Oakland and property owner regarding City audit of financial records, pursuant to which the City confirmed the information for the years 1998, 1999, 2000, and 2001 to be substantially correct.” *See October 21, 2020 Staff Report, pp. 246-331, Exhibit E, Attachment B.2, Supplemental Transient Occupancy Tax Records.*
  - iii. Residential landlord tax records: No residential landlord tax records were provided. Applicant submitted a Public Records Request to the City seeking such records but did not receive responsive documents. *See October 21, 2020 Staff Report pp. 235, Exhibit E, Attachment B, Supplemental Information Letter from Alexis Pelosi, representing 584 14th Street LLC, dated May 30, 2019.*
  - iv. Planning and building permit records: Applicant provided all Planning and Building Permits that were provided in response to Public Records Act Requests to the Planning Department made by Applicant. *See October 21, 2020 Staff Report, pp. 426-528, Exhibit E, Attachment D, Documents received from Public Records Requests.* Applicant separately provided what it alleged were the most relevant records separated as a separate attachment. *See October 21, 2020 Staff Report, pp. 332-349, Exhibit E, Attachment B.3, Historic Planning and Building Permit Records for 584 14<sup>th</sup> Street.*
  - v. Alameda County Assessor records: Applicant provided Alameda County Commercial Building Record for Sutter, “Hotel” – SRO/Apts with dates going

- back to 1912. *See October 21, 2020 Staff Report, pp. 350-353, Exhibit E, Attachment B.4, Alameda County Commercial Building Record.*
- vi. Current floor plans: Applicant provided copies of current non-demolition floor plans of the Property. *See October 21, 2020 Staff Report, pp. 350-353, Exhibit E, Attachment B.5, Floor Plans and Elevation Plans for Sutter Hotel.*
  - vii. Zoning Clearances: No Zoning Clearances were provided. Applicant submitted a Public Records Request to the City seeking such records but did not receive responsive documents. *See October 21, 2020 Staff Report p. 236, Exhibit E, Attachment B, Supplemental Information Letter from Alexis Pelosi, representing 584 14th Street LLC, dated May 30, 2019.*
  - viii. Business Tax Certificates: Applicant provided additional business tax certificates from 2011-2015 and 2017-2019, in addition to those from 2008, 2016 and 2017 previously provided. *See October 21, 2020 Staff Report, pp. 380-391, Exhibit E, Attachment B.6, Floor Plans and Elevation Plans for Sutter Hotel.*
  - ix. Lease agreements: Applicant did not provide any lease agreements, stating that there are currently no residential leases at the property. *See October 21, 2020 Staff Report pp. 237-238, Exhibit E, Attachment B, Supplemental Information Letter from Alexis Pelosi, representing 584 14th Street LLC, dated May 30, 2019.* Instead, Applicant provided a declaration from the prior owner. In the declaration, the prior owner states that while the Sutter Hotel was operated as a transient (tourist) hotel, that the prior owner did enter into approximately 15 leases with the Oakland Housing Authority or non-profits where the non-profits paid the Sutter Hotel to provide rooms for clients in the non-profits' programs. Applicant additionally provided a declaration from the current owner stating that no residential leases have been entered into since he took ownership of the Property in 2017. *See October 21, 2020 Staff Report, pp. 392-395, Exhibit E, Attachment B.7, Declarations of Ross Walker and Raj Singh.*
  - x. Match Information: Applicant did not attempt to match historic zoning clearances for all businesses at the property with business tax certificates issued and all lease agreements and/or lease payment receipts. Applicant states this was not provided as it did not have copy of relevant lease agreements and no zoning clearances were located. *See October 21, 2020 Staff Report p. 238, Exhibit E, Attachment B, Supplemental Information Letter from Alexis Pelosi, representing 584 14th Street LLC, dated May 30, 2019.*
  - xi. Years of Operation of Each Business: Applicant did not provide years of operation, claiming that the request was confusing. *See October 21, 2020 Staff Report p. 238, Exhibit E, Attachment B, Supplemental Information Letter from Alexis Pelosi, representing 584 14th Street LLC, dated May 30, 2019.*
  - xii. Interior Photographs: Applicant provided various interior photographs. *See October 21, 2020 Staff Report, pp. 396-407, Exhibit E, Attachment B.8, Sutter Hotel Photos.*
  - xiii. Historic Information: Applicant provided documentation from the City of Oakland Cultural Heritage Survey as well as the following historic documents: Tribune ad from January 1914; UCR personal mention from September 1913 that references Hotel Sutter; UCR personal mention from 1917; UCR personal mention from June 1921 that references Hotel Sutter; Tribune article from March 23, 1943; and Article from Christmas 1990 regarding a fire at the Hotel Sutter. *See October 21, 2020 Staff Report, pp.*

408-424, Exhibit E, Attachments B.9 and B.10, Historic Documents on the Sutter Hotel.

- d. In response to the supplemental information provided by Applicant as well as the additional information collected independently by Planning Bureau staff, staff issued a completeness letter finding that the information provided and available was sufficient for staff to make a determination on the Statement of Exemption application. *See October 21, 2020 Staff Report, p. 425, Exhibit E, Attachment C, Completeness Letter dated June 26, 2019.*

### **3. Determination Issued**

- a. On October 21, 2019, the Zoning Manager issued Determination DET190031 denying the Statement of Exemption request. *See October 21, 2020 Staff Report, pp. 602-693, Exhibit E, Attachment E.2, DET190031, Residential Hotel Status Determination dated October 21, 2019.*
- b. The Zoning Manager concluded that, based on the documentation provided by Applicant in its Statement of Exemption Application as well as the Supplemental Information submitted and additional documentation independently located by Planning Bureau staff, the Property fell within the definition of a Residential Hotel.

### **4. Appeal Filed**

- a. Appellant timely appealed the Zoning Manager Determination on October 31, 2019. *See October 21, 2020 Staff Report, pp. 529-692, Exhibit E, Attachment E, Appeal of DET190031-A01 dated October 31, 2019.*
- b. In its Appeal, Appellant raised three main issues as a basis for the appeal:
  - i. The Property does not meet the definition of a Residential Hotel because of prior transient use of the Property.
  - ii. The Property was previously “Deemed Approved” as a Hotel and therefore has a right to operate as a commercial hotel.
  - iii. The Planning Bureau’s determination that Property is a Residential Hotel violates the property owner’s due process rights, equal protection rights, federal civil rights, and constitutes an unlawful taking.
- c. Appellant did not submit additional documentary evidence with its Appeal. In addition to a written brief explaining Appellant’s position, Appellant attached as exhibits to its appeal the previously submitted Statement of Exemption Application and the Zoning Manager’s Determination DET190031, along with the attachments accompanying each of those documents.

### **5. August 5, 2020 Public Hearing Continued**

- a. Pursuant to and in accordance with Chapter 17.153 and Chapter 17.132 of the Oakland Planning Code, this Planning Commission opened a Public Hearing on Appeal DET190031-A01 on August 5, 2020, with notice duly given of said hearing, gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter.
- b. At said hearing, this Planning Commission received and considered the report and recommendation of the City’s Bureau of Planning, which included as attachments the Bureau of Planning Incomplete Letter, all supplemental information provided by the Applicant in response to the Planning Bureau staff’s incomplete letter, the Bureau of Planning Completeness Letter, the Documents Received from Public Records Request of 584 14<sup>th</sup> Street, the Appeal of DET190031 (DET190031-A01) which itself included the Applicant’s Statement of Exemption application and all documentation submitted therewith, the Zoning Manager’s determination DET190031 and all evidence relied therein, the City of Oakland April 13, 1999 Public Safety Committee Staff Report Regarding Adoption of the Deemed Approved Regulations, the Supplemental Brief submitted by the Appellant on August 5, 2020, and these

findings. *See October 21, 2020 Staff Report, pp. 215-692, Exhibit E, August 5, 2020 Staff Report.*

- c. At said hearing, and upon receiving a request from the Appellant to continue the matter, this Planning Commission voted to continue the matter to a date uncertain. No members of the public chose to speak during the public hearing.
- d. *See Minutes to the August 5, 2020 Planning Commission Meeting.*
- e. *See October 21, 2020 Staff Report, pp. 5-11, Exhibit A, Supplemental Brief from 584 14th Street dated August 5, 2020.*

## **6. October 21, 2020 Public Hearing**

- a. Pursuant to and in accordance with Chapter 17.153 and Chapter 17.132 of the Oakland Planning Code, this Planning Commission reopened the Public Hearing on said appeal on October 21, 2020.
- b. At said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter.
- c. At said hearing, this Planning Commission additionally received a supplemental report and recommendation of the City's Bureau of Planning, which included as attachments Appellant's supplemental brief dated August 5, 2020, a letter from Appellant dated August 17, 2020 requesting documentation supporting statements made in footnote one of the August 5, 2020 staff report, records provided to Appellant in response to the August 17, 2020 letter, proposed findings, and the previously provided August 5, 2020 staff report. *See October 21, 2020 Staff Report.*
- d. Said public hearing before the Planning Commission was conducted in all respects as required by the Oakland Planning Code and the rules of this Planning Commission.
- e. At said hearing, this Planning Commission received and considered the oral staff report and presentation from the Bureau of Planning staff, and subsequently voted to continue the matter to a date uncertain to allow for Planning staff and appellant to research and prepare response to the following questions posed by the Planning Commission:
  - i. How was the building located at 584 14<sup>th</sup> Street being operated as of December 13, 2016?
  - ii. When did the current property owner purchase the property? How was the building being operated at that time?
  - iii. Did the City have in place regulations on residential hotels at the time the current owner purchased the property?
  - iv. If a building was vacant as of December 13, 2016, can the building still meet the definition of a residential hotel?
  - v. Does the City have a copy of the General Plan and Planning Code that were in place in 1999, and were they provided to the appellant?
  - vi. In 1999, at the time the Deemed Approved Regulations were adopted, were the following activity and facility types permitted or conditionally permitted in the applicable C-51 zone: (1) permanent residential activity; (2) semi-transient residential activity; (3) transient commercial activity; (4) rooming house facility?
  - vii. What is the definition of "Deemed Approved" for purposes of the Deemed Approved Hotel Regulations, Chapter 17.157?
  - viii. Could a property have been "Deemed Approved" as a residential hotel?
  - ix. When is a hearing required to revoke a property's deemed approved status?
  - x. Is a hearing required to establish that a property meets the definition of a Residential Hotel as of December 13, 2016?
  - xi. Did the Sutter Hotel receive a "Deemed Approved" letter in 1999?
  - xii. How was the Sutter Hotel being operated in 1999?

f. *See Minutes to the October 21, 2020 Planning Commission Meeting.*

**7. March 3, 2021 Public Hearing**

- a. Pursuant to and in accordance with Chapter 17.153 and Chapter 17.132 of the Oakland Planning Code, this Planning Commission reopened the Public Hearing on said appeal on March 3, 2021.
- b. At said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter.
- c. At said hearing, this Planning Commission additionally received a supplemental report and recommendation of the City's Bureau of Planning, which included responses to the Planning Commission questions listed above and included as attachments correspondence from Appellant, a 2000 Staff Report for Ordinance No. 12266, and revised proposed findings. *See March 3, 2021 Staff Report.*
- d. At said hearing, this Planning Commission received and considered the oral staff report and presentation from the Bureau of Planning staff.
- e. Said public hearing before the Planning Commission was conducted in all respects as required by the Oakland Planning Code and the rules of this Planning Commission.

**8. The Property meets the Definition of a Residential Hotel**

- a. This Planning Commission has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted by Appellant, City staff, and other interested parties.
- b. The Zoning Manager determination DET190031 to deny the Statement of Exemption application was supported by compelling and substantial evidence documenting that the property at 584 14th Street meets the definition of a Residential Hotel under Planning Code Section 17.153.020.
- c. Substantial Evidence supports finding that the Property meets the physical characteristics of a Residential Hotel because the Property was constructed prior to 1960 and contains substantially more than 6 rooming units, with entrances to individual units generally accessible from a shared lobby area.
  - i. The 1985 City of Oakland Cultural Heritage Survey documents shows that the Property was constructed in 1913. *See October 21, 2020 Staff Report, pp. 408-412, Exhibit E, Attachment B.9, Historic Documents on the Sutter Hotel.*
  - ii. The Alameda County Commercial Building Record shows an estimated construction date of 1912. *See October 21, 2020 Staff Report, pp. 350-353, Exhibit E, Attachment B.4, Alameda County Commercial Building Record, and pp. 612-613, Exhibit E, Attachment E.2.ii, Alameda County Commercial Building Record.*
  - iii. Current floor plans on the Property show that the rooms within the Property meet the definition of Rooming Units because the units are designed as separate living quarters without kitchens. The floor plans show that there are 102 Rooming Units in the Property, well over the six required by the definition of a Residential Hotel. *See October 21, 2020 Staff Report, pp. 354-379, Exhibit E, Attachment B.5, Floor Plans and Elevation Plans for Sutter Hotel.*
- d. Substantial evidence supports finding that the Property meets the functional characteristics of a Residential Hotel because the Property has, over several decades, served as the primary residency for those who resided at the Property.
  - i. Based on Alameda County Assessor records, the Property began functioning as a Residential Hotel as early as 1954. Commercial Building Record from the Alameda County Assessor shows that the Property has been classified as an SRO, or single-room occupancy, building as early as 1954. The Record has input dates ranging from 1954 through 2006. The County shows the building

description as “Sutter ‘Hotel’ = SRO/APTS,” placing the word hotel in quotation marks and defining “hotel” as a mix of SRO units and apartments. Further review shows that the County determined that SRO units were located on floors two through seven of the building, and apartment units were located on the eighth floor of the building. Remarks on the second page of the building record include comments dated from 1955, which state that while the penthouse on top is used as apartments, the hotel rooms did not contain bathrooms, and 96 rooms were available for rent while 6 were kept open to provide for fire escape. *See October 21, 2020 Staff Report, pp. 350-353, Exhibit E, Attachment B.4, Alameda County Commercial Building Record, and pp. 612-613, Exhibit E, Attachment E.2.ii, Alameda County Commercial Building Record.*

- ii. A City of Oakland survey of Residential Hotel’s within the City’s Downtown area document that the Property was continuing to operate as a Residential Hotel in the 1980s. A 1985 report entitled “Residential Hotels in Downtown Oakland” and prepared by the City of Oakland Office of Community Development identifies the Sutter Hotel as being a Residential Hotel. At the time this report was created, the Sutter Hotel was combined with another Residential Hotel, the Dragon Hotel. This report found that the Sutter/Dragon Hotel had 167 total rooms and 162 available rooms for rent. The Residential Hotel Survey, included in the 1985 report, documents that 85.9% of individuals staying at the Sutter Hotel were for purposes other than for business or tourist purposes; that 0 of the 167 rooms included a kitchen; that 13 tenants (9.6%) had stayed for longer than 1 year; and that the number of non-transient residents had increased since 1980. The report further states that the owner at that time gave notice of an intent to convert the building to a tourist hotel in mid-1985, which is a strong indication that the Property was not currently operating as a tourist hotel. *See October 21, 2020 Staff Report, pp. 615-623, Exhibit E, Attachment E.2.iii, Excerpt from 1985 Survey of Residential Hotels in Downtown Oakland.*
- iii. Despite the then-property owner’s stated intent to convert the Property to a tourist hotel, documentation shows that in 1992 the property owner Govinder Singh instead entered into a legally binding Rehabilitation Loan Agreement and Regulatory Agreement with the State Housing and Community Development Department under the California Natural Disaster Assistance Program (“CALDAP”). CALDAP funds were limited to be used to make loans for repair or refinancing in conjunction with repair of “rental housing developments” that were damaged or destroyed as a result of a natural disaster. (See Health and Safety Code, § 50671.5(b)(1).) Govinder Singh further entered into a Regulatory Agreement “as an inducement to the Department to provide the financial assistance specified in the Rehabilitation Loan Agreement, and has agreed to be regulated and restricted as provided therein.” The term of the Agreement was set to commence on September 30, 1992 and remain valid for the following twenty years, unless terminated earlier by the Department of Housing and Community Development. The Regulatory Agreement identifies the Property as a “rental housing development.” Health and Safety Code Section 50671.5 defines “rental housing development” to include “multifamily rental dwellings, apartments, residential hotels . . . that are made available for permanent residency of tenants.” (See Health and Safety Code, § 50671.5(b)(1).) Under the terms of the Regulatory Agreement, in exchange for receiving monetary assistance to

conduct rehabilitation, the borrower agreed to impose rental restrictions on the “Assisted Units,” which were to be made available to eligible households under the terms of written rental agreements provided by California Department of Housing and Community Development. According to the agreement, these restrictions appeared to be in place for a twenty-year period. Exhibit B to the Regulatory Agreement identifies 102 SROs as “Assisted Units” subject to restrictions on rent such that initial rents in 17 units were set at \$300 per month and initial rents in 85 units were set at \$389 per month. The Regulatory Agreement serves as substantial evidence that the prior owner of the Sutter Hotel received financial assistance contingent upon the Property being classified as a Residential Hotel that served as the primary residence for its tenants from 1992 through 2012. The City has not been able to identify any information that would indicate that the Property was not subject to this Regulatory Agreement for the full length of its term. *See October 21, 2020 Staff Report, pp. 624-641, Exhibit E, Attachment E.2.iv, Regulatory Agreement – Number CO-R-150, California Natural Disaster Assistance Program.*

- iv. A 1990 article in the Oakland Tribune regarding a fire at the Sutter Hotel states that the Property at the time was "now home to lower-income, long-term residents" and that more than 100 residents of the building were evacuated during the fire. This once again documents that the Property was not converted to a Commercial Hotel after the 1985 SRO Survey. *See October 21, 2020 Staff Report, p. 419, Exhibit E, Attachment B.10, Historic documents on the Sutter Hotel.*
- v. During the mid-point of the term of the Regulatory Agreement, the Property was again identified in a City of Oakland survey of Residential Hotels located within the Downtown area. The 2004 Report by Community and Economic Development documents that the Property had 86 available rooms and 106 total rooms. *See October 21, 2020 Staff Report, pp. 642-643, Exhibit E, Attachment E.2.v, Excerpt from 2004 Residential Hotels in Central Oakland Report.*
- vi. A Declaration from Prior Owner Raj Singh submitted by the Applicant supports the conclusion that the Property was used as the primary occupancy of its guests through various leases with Oakland Housing Authority and other non-profit organizations in the years between 1997 and 2017. In the Declaration, Mr. Raj Singh states that he assisted with operation of the Property from around August 1987 through June 2017, which covers the entire twenty-year period during which the Property was subject to the CALDAP Regulatory Agreement, and that he took over ownership around November 1995. Mr. Singh states that the Property was operated as a transient (tourist) hotel with daily, weekly, and monthly rental periods. He further states that during the period of 1997 to 2017, he entered into approximately 15 annual/monthly leases for hotel rooms with the Oakland Housing Authority and a few nonprofit organizations. Under the leases, nonprofits would pay the Sutter Hotel to provide rooms for clients in their programs. The applicant did not provide the City with copies of any of these leases. The Oakland Housing Authority is a government agency that provides subsidized housing to low income families in Oakland, and therefore any lease with Oakland Housing Authority would be for purposes of providing a primary residency to guests under such a lease. *See October 21, 2020 Staff Report, pp. 394-395, Exhibit E, Attachment B.7, Declaration of Raj Singh.*

- vii. City Records show a number of Residential Rent Adjustment Program (RRAP) Hearing Decisions that support the conclusion that the Property continued to operate as a Residential Hotel in the early 2000s. *See October 21, 2020 Staff Report, pp. 644-658, Exhibit E, Attachment E.2.vi, RRAP Hearing Decisions and Three-Day Notices to Quit.*
  - 1) The hearing decision for T01-0266 (October 3, 2002) describes the Property as a Residential Hotel with 102 units. It does not indicate that only a portion of the rooms are used for Residential Hotel purposes. The decision relates to a tenant who resided in Room #404 of the Sutter Hotel for at least three months at a rate of \$245.60 per week.
  - 2) The hearing decision for T02-0170 (November 14, 2002) describes the Property as a Residential Hotel with 102 units. It does not indicate that only a portion of the rooms are used for Residential Hotel purposes. The decision relates to a tenant residing in Room #501 who complains that their rent was not decreased from \$183.44 per week after staying in the unit for longer than 30 days to adjust for the fact that hotel taxes would no longer be collected.
- viii. City of Oakland Rent Arbitration Records indicate efforts to evict several residential tenants from the Property between 2008 and 2015. These records support the conclusion that the Property continued to operate as a Residential Hotel with residential tenants, many of whom stayed for a longer than monthly basis. *See October 21, 2020 Staff Report, pp. 644-658, Exhibit E, Attachment E.2.vi, RRAP Hearing Decisions and Three-Day Notices to Quit.*
  - 1) A three-day notice to quit dated December 8, 2008 indicates that the tenant in unit #703 owed rent for a two-week period. The full length of stay is not documented.
  - 2) A three-day notice to quit dated August 19, 2011 indicates that the tenant in unit #605 owed rent for a three-week period. The full length of stay is not documented.
  - 3) A three-day notice to quit dated June 7, 2012 indicates that the tenant in unit #606 owed rent for a 14-week period. The full length of stay is not documented.
  - 4) A three-day notice to quit dated September 12, 2013 indicates that the tenant in unit #303 owed rent for a 14-month period. The full length of stay is not documented.
  - 5) A three-day notice to quit dated June 30, 2014 indicates that the tenant in unit #314 owed rent for a 10-week period. The full length of stay is not documented.
  - 6) The hearing decision for RRAP T14-0375 (January 5, 2015) indicates that the property owner initiated an unlawful detainer action against a tenant residing in unit #607 who owed \$10,421 in back rent.
- ix. Monthly Transient Occupancy Tax (TOT) Records from 2010 to 2017 similarly show that the property owner, in calculating the amount of rent subject to the City of Oakland Transient Occupancy Tax, regularly deducted from gross rents rent for occupancy by non-transient residents and/or other TOT exemptions. While the proportion of rents received from transient versus non-transient guests cannot identify exactly how many rooms were being used at any time for lengths of stay exceeding thirty days, the TOT records are evidence that for nearly the entirety of the period for which TOT records were provided, the property owner received a significant portion of its rent from individuals who resided at the hotel for lengths exceeding 30 days, all of

which the City considers to be stays intended as the primary residence of the guest. *See October 21, 2020 Staff Report, pp. 262-326, Exhibit E, Attachment B.2, Supplemental Transient Occupancy Tax Records, and pp. 561-592, Exhibit E, Attachment E.1.iii, Statement of Exemption Transient Occupancy Tax Records.*

- 1) An individual who occupies a hotel room for more than 30 consecutive days is considered a permanent resident for purposes of paying the Transient Occupancy Tax and is exempt from the tax beginning on Day 31. Per Oakland Municipal Code Section 5.34.010, related to “Hotel Rates and Registration Requirements”: “Transient” means “any person who, for any period of not more than thirty consecutive days, either at his own expense or at the expense of another, obtains the right to use space for sleeping or overnight accommodations in any hotel as defined in subsection A of this section for which a charge is made therefor.”
  - 2) From February 2010 through August 2010, more than 50% of gross rent was paid by non-transient residents every month.
  - 3) After falling into the 40% range from September 2010 to May 2011, the percent of gross rent paid by non-transient residents per month remained above 50%--and sometimes as high 65%, 70%, or 75%--from June 2011 through August 2013.
  - 4) The portion of gross rent paid by non-transient residents per month remained substantial (between 20% and 72%) from September 2013 through April 2016.
  - 5) Records are incomplete from April 2016 to September 2016, but records show a precipitous decline in nontransient residents per month by October 2016.
  - 6) Applicant was not able to provide records prior to February 2010.
- x. In 2015, a City of Oakland Housing and Community Development Department report entitled "Downtown Oakland's Residential Hotels" once again identified the Property as a Residential Hotel. A Residential Hotel Survey conducted on June 22, 2015 provided support for the 2015 Report and stated that the Sutter Hotel had 102 total rooms, 95 of which were occupied. Although no new monthly residents were accepted at that time, the report identifies 38 rooming units occupied for more than one year, and five rooming units occupied for more than five years. These statistics were based on an interview with Peter Allen, the desk clerk. *See October 21, 2020 Staff Report, pp. 659-660, Exhibit E, Attachment E.2.vii, Excerpt from 2015 HCD Report "Downtown Oakland's Residential Hotels."*
- xi. The property owner's submission of an application for an exemption from action restricted under the City of Oakland Residential Hotel Conversion and Alteration Moratorium documents that the property owner in 2018 did not dispute that the Property met the definition of a Residential Hotel. On December 13, 2016, two years prior to the adoption of the current Residential Hotel Regulations, the City of Oakland adopted a Moratorium under Ordinance No. 13415 C.M.S. prohibiting any alterations at Residential Hotels that would result in the displacement of existing residents or the loss of Residential Hotel Units. In 2018, Applicant applied for interior and exterior alterations at the Property under DRX182227. In conjunction with that permit, Applicant submitted a request for exceptions/exemptions to the actions restricted in the Moratorium, thereby acknowledging that the property was a

Residential Hotel subject to the restrictions of the Moratorium. In response, on November 29, 2018, the City issued a letter determining that the Sutter Hotel is considered a Residential Hotel, that the alterations were excepted from the Moratorium restrictions because they would not reduce the number of units or displace existing residents, and further found that the City considers the current land use activity at the property to be Semi-Transient Residential. The letter specified that if the applicant disagreed with the determination, the applicant had to timely file an appeal. The applicant did not file an appeal challenging the City's conclusion that the Sutter Hotel is a Residential Hotel operating a Semi-Transient Residential Activity. *See October 21, 2020 Staff Report, pp. 662-688, Exhibit E, Attachment E.2.viii, application, plans, and responses from the Housing and Community Development Department and Bureau of Planning recognizing the Sutter Hotel as a Residential Hotel.*

- xii. Historic building records provided by Applicant and dated throughout the period described in the above findings support the conclusion that the Property has been used as a Residential Hotel. *See October 21, 2020 Staff Report, pp. 426-528, Exhibit E, Attachment D, building records received in response to Public Records Request.*
- 1) An application for an alteration permit dated June 13, 1969 describes the proposed use of the building as "Hotel" with an occupancy group designation of "H." Under the 1961 Uniform Building Code, a Type H occupancy includes hotels, apartment houses, dormitories, and lodging houses, and thus does not distinguish between stays by transient and non-transient residents. *See id. at p. 436.*
  - 2) The City Department of Building and Housing issued a Report of Residential Building Record for the property in March 1974. This report, issued to residential buildings, describes the building as containing 102 dwelling units or apartments and/or 102 hotel or sleeping rooms. *See id. at p. 440.*
  - 3) An Engineering Analysis Report dated May 18, 1995 for the Sutter Hotel describes the building as a Residential Hotel consisting of 103 units. *See id. at p. 482.*
  - 4) Building Record ID 0606066 dated August 23, 2006, Annual Hotel/Motel Inspection, describes the Sutter Hotel as a Residential Hotel. *See id. at p. 495.* Additional records from the Inspection Log for 584 14th Street show several complaints filed by tenants regarding the condition of the building. The Sutter Hotel continued to receive Hotel/Motel Inspections prior and after this date, including Enforcement Record IDs: 0503005 dated June 27, 2005, 1205712 dated October 25, 2012, 1402634 dated July 10, 2014, and 1603742 dated September 29, 2016. *See id. at pp. 494-499.*
  - 5) Building Record ID B1202507 indicates that a Certificate of Occupancy for a residential hotel was requested for the property on or about July 26, 2012. *See id. at p. 504.*
  - 6) Zoning Clearance Records ZC011662, ZC062656, and ZC141558, requests for residents of the Sutter Hotel to set up a home office within their rooming units at the property, indicate that several tenants were using their units as their primary residence. *See id. at p. 512.*

**9. Additional evidence and arguments submitted by Applicant in support of its Statement of Exemption application were not compelling and did not outweigh the evidence supporting the Zoning Manager's determination.**

- a. The City does not have any documentation confirming that the Property was “Deemed Approved” under the 1999 Deemed Approved Ordinance.
  - i. Section 17.157.090 of the Deemed Approved Ordinance required the City to notify all property owners of their Deemed Approved Status by certified return receipt mail.
  - ii. Neither the City nor the Applicant have been able to locate a notification letter sent to the Property Owner.
  - iii. Neither the City nor the Applicant have produced direct contemporaneous documentation of the approved activity at the Property in 1999. Instead, the City has evidence that the Property was subject to and operating consistent with a “CALDAP” Regulatory Agreement as a “rental housing development,” which is defined in Health and Safety Code Section 50671.5 to include “multifamily rental dwellings, apartments, residential hotels . . . that are made available for permanent residency of tenants.” (See Health and Safety Code, § 50671.5(b)(1).) Under the terms of the Regulatory Agreement, the Property was subject to rental restrictions for a twenty-year period applicable to all 102 Rooming Units/SROs at the property. *See October 21, 2020 Staff Report, pp. 624-641, Exhibit E, Attachment E.2.iv, Regulatory Agreement – Number CO-R-150, California Natural Disaster Assistance Program.*
- b. The zoning designation applicable to the 584 14th Street in 1999 leads to the conclusion that the Sutter Hotel was a permitted activity and therefore would not have been subject to the Deemed Approved Ordinance, which only conferred deemed approved status to legal nonconforming activities. *See October 21, 2020 Staff Report, pp. 13-200, Exhibit C, Documents provided in response to Appellant’s August 17, 2020 request for documents.*
  - i. As early as 1974, the Sutter Hotel was located in the C-51 Zoning District. *See id at pp. 13-14.*
  - ii. The Planning Code applicable in 1999 specified that Permanent Residential Activities, Transient Habitation Commercial Activities, and Semi-Transient Residential Activities were all permitted activities in the C-51 Zoning District. *See id. at pp. 31-34.*
  - iii. In 2000, as a result of adoption of Ordinance No. 12266, the City began requiring a conditional use permit for transient commercial activities (tourist hotels) in the C-51 zone. The Staff Report for Ordinance No. 12266 states “The C-55 Central Core Commercial and C-51 Central Business Service Zones within the downtown area also classify hotels and motels as a permitted use. These zones would be amended to require a conditional use permit for such activities.” *See March 3, 2021 Staff Report, Exhibit E.*
  - iv. In 2009, the property was rezoned to CBD-P, which requires a conditional use permit for Semi-Transient Residential and Transient Habitation Commercial Activities. *See October 21, 2020 Staff Report, pp. 106-200, Exhibit C, Documents provided in response to Appellant’s August 17, 2020 request for documents.*
- c. Evidence that the City conferred deemed approved status on the property, if any such evidence does exist, would not assist in determining whether the building is a Residential Hotel.
  - i. The status of a building as “Deemed Approved” is reflective of the City’s historic regulation of hotels, motels, and rooming houses, including Residential Hotels, and is not determinative of whether a property is a Commercial or Residential Hotel, and is not a separate land use Activity designation. *See City of Oakland Ordinance No. 12136 C.M.S., adding*

*Chapter 8.03 “Operating Standards for Hotels, Motels, and Rooming Houses” to the Oakland Municipal Code, and City of Oakland Ordinance No. 12137 C.M.S., adding Chapter 17.157 “Deemed Approved Hotel Regulations” to the Oakland Municipal Code.*

- ii. As stated in the Zoning Manager determination, evidence that the City conferred deemed approved status on the property does not assist in determining whether a building is a Residential Hotel because buildings conferred with deemed approved status included buildings serving permanent populations as well as short-term guests. The designation of a non-conforming property as deemed approved makes no substantive changes with respect to the uses to which the property may lawfully be put, and therefore does not influence the analysis of what that historic underlying use was. *See October 21, 2020 Staff Report, pp. 606, Exhibit E, Attachment E.2, DET190031, Residential Hotel Status Determination dated October 21, 2019.*
- d. Annual Hotel Inspection at the Property are indicative of the property’s status of being subject to the performance standards of Chapter 8.03 applicable to all Oakland motels, hotels, and rooming houses, and not of the Property’s status as a “Deemed Approved” hotel.
  - i. The Deemed Approved Ordinance in Chapter 17.157 of the Oakland Planning Code does not call for annual inspections.
  - ii. Inspections of all hotels, motels, and rooming houses throughout the City were subject to inspections under Chapter 8.03 of the Oakland Municipal Code, adopted by Ordinance No. 12136.
  - iii. Chapter 8.03 does not authorize city staff to make deemed approved determinations as part of annual inspections or to maintain a deemed approved list.
  - iv. The Sutter Hotel has been subjected to annual inspections to ensure compliance with the performance standards adopted by Ordinance No. 12136 since those standards applied to all hotels, motels, and rooming houses throughout the city.
  - v. Subsequent inspections of the property were described in City records as “Annual Hotel/Motel Inspections,” “Annual Deemed Approved Hotel/Motel Inspections,” and “Deemed Approved Inspections,” but the entry titles of these records do not document that the Sutter Hotel received any deemed approved letter in 1999, and are of little evidentiary value in determining whether the Property previously received a deemed approved notice under Chapter 17.157 of the Oakland Planning Code.

**10. The evidence and arguments submitted by the Appellant in support of reversing the Zoning Manager’s determination were not compelling and did not outweigh the evidence supporting the Zoning Manager’s determination.**

- a. The fact that there are additional rooms at the property that at times may not have served as the primary residence of its occupants does not alter the conclusion that the building as a whole meets the definition of a Residential Hotel.
  - i. A property operating as a Semi-Transient Residential Activity, such as this Property, by definition allows for occupancy of living accommodations partly on a short-term basis and partly on a long-term basis, but requires that less than 30% of living be occupied a short-term residence. The majority of the units under this definition must be provided as living accommodations on a long-term basis.
  - ii. The State definition of a Residential Hotel, Health and Safety Code Section 50519, states that a Residential Hotel “does not mean any building containing

- six or more guestrooms or efficiency units . . . which is *primarily* used by transient guests who do not occupy that building as their primary residence.”
- iii. Inversely, so long as the primary use of the building is for non-transient guests for their primary residence, then the building is classified as a Residential Hotel.
  - b. The issuance of Hotel/Motel Business Certificate #00029506 in 1995 does not serve as evidence in support of concluding the Property was operating as a commercial hotel at that time.
    - i. The City of Oakland classifications for business certificates are not required to and do not match the definitions of activity classifications under a different City code, the Planning Code.
    - ii. At the time of the issuance of this business certificate, the Property was subject to the terms of a Rehabilitation Loan Agreement and Regulatory Agreement with the State Housing and Community Development Department under the California Natural Disaster Assistance Program (“CALDAP”). The Regulatory Agreement identifies the Property as a “rental housing development,” which is defined in Health and Safety Code Section 50671.5 to include “multifamily rental dwellings, apartments, residential hotels . . . that are made available for permanent residency of tenants.” (See Health and Safety Code, § 50671.5(b)(1).) Under the terms of the Regulatory Agreement, the Property was subject to rental restrictions for a twenty-year period applicable to all 102 Rooming Units/SROs at the property. *See October 21, 2020 Staff Report, pp. 624-641, Exhibit E, Attachment E.2.iv, Regulatory Agreement – Number CO-R-150, California Natural Disaster Assistance Program.*

**11. The Planning Commission fully adopts as its own findings the analysis provided by Bureau of Planning Staff in the August 5, 2020, October 21, 2020, and March 3, 2021 Staff Report for DET190031-A01 and the Zoning Manger’s Determination DET190031 and the accompanying evidence and documentation.**

**NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF OAKLAND** hereby denies Appeal No. DET190031-A01 filed by Appellant and upholds the Zoning Manager’s Determination Denying the Statement of Exemption application and thereby affirms that the Property, as of the date of December 13, 2016, meets the definition of a “Residential Hotel” as defined in Chapter 17.153 of the Oakland Planning Code.

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
TOM LIMON, Chair

ATTEST: \_\_\_\_\_  
CATHERINE PAYNE, Acting Development Planning Manager

NOTICE TO PARTIES The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.

**ATTACHMENT**

**D**


  
CITY ATTORNEY

INTRODUCED BY COUNCIL MEMBER \_\_\_\_\_

**ORDINANCE No. 12266 C. M. S.**

**ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO ADD TRANSIENT HABITATION (HOTEL) AS A CONDITIONALLY PERMITTED ACTIVITY IN THE C-36 (GATEWAY BOULEVARD) C-55 (CENTRAL CORE COMMERCIAL) AND C-51 (CENTRAL BUSINESS SERVICE) ZONES AND TO ESTABLISH SPECIAL USE PERMIT CRITERIA FOR TRANSIENT HABITATION IN THE C-36 (GATEWAY BOULEVARD), C-40 (COMMUNITY THOROUGHFARE COMMERCIAL), C-45 (COMMUNITY SHOPPING), C-51 (CENTRAL BUSINESS SERVICE), C-52 OLD OAKLAND, C-55 (CENTRAL CORE COMMERCIAL), S-2 (CIVIC CENTER), AND S-8 (URBAN STREET COMBINING) ZONES**

**WHEREAS**, on July 20, 1999, The Community and Economic Development Council Committee considered an informational report on establishing formal policies regarding hotel development within the Airport Gateway Area. The Council CEDA Committee accepted the report and instructed staff to establish special design guidelines for hotel and commercial office development that would be incorporated into the existing Zoning Regulations; and

**WHEREAS**, in December 1999 a follow up report was prepared that provided a hotel market analysis that provided definitions of different hotel types and concluded that there is limited potential to increase the demand and market feasibility for new luxury or first class hotel rooms; and

**WHEREAS**, the hotel/motel market analysis also indicated that the San Francisco Planning Code requires their Planning Commission to consider the impact of employees of new hotels and motels, and also requires that measures be taken by a project sponsor to employ residents of San Francisco; and;

**WHEREAS**, the follow up report presented guidelines and standards for development within the Airport Gateway area. The key elements of the guidelines being site planning to insure appropriate access and circulation, landscaping to reinforce the streetscape program, signage to provide consistency with the desired area character and building design to enhance each buildings quality; and;

**WHEREAS**, the City Council directed staff to prepare zoning text revisions that would require a major conditional use permit for all transient habitation activities (hotels and motels) throughout the city; and;

**WHEREAS**, the proposed zoning text amendments include specific use permit criteria related to location and design standards for all new hotel development as well as design guidelines; and;

**WHEREAS**, the proposed amendments support the goals of the General Plan. The Airport Gateway area is designated as a Showcase District in the General Plan and the policy regarding the Comprehensive Economic Development Strategy for Showcase Areas is "to develop and implement plans to enhance showcase districts"; and;

**WHEREAS**, a related General Plan policy calls for a detailed planning effort for the Hegenberger 98th Avenue Gateway area; and

**WHEREAS**, in November 1998 in response to the above General Plan policies the Hegenberger 98<sup>th</sup> Avenue Gateway Development Plan was prepared and adopted; and

**WHEREAS**, the C-36 Gateway Boulevard Service Commercial, the C-55 Central Core Commercial and C-51 Central Business Service Zones would be amended to require a conditional use permit for the development of hotels and motels; and;

**WHEREAS**, Section 17.102.370 would add specific criteria for Hotels and Motel land uses; and

**WHEREAS**, the C-52 Old Oakland, C-45 Community Shopping, C-40 Community Thoroughfare, S-8 Urban Street Combining and S-2 Civic Center Zones all currently require a conditional use permit for hotels and motels; and

**WHEREAS**, the C-52 Old Oakland, C-45 Community Shopping, C-40 Community Thoroughfare, S-8 Urban Street Combining and S-2 Civic Center would be amended to also require compliance with Section 17.102.370; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA) of 1970 are satisfied, and according to (Section 15061(b) (3) of the State CEQA Guidelines, the project is exempt based on the "general rule" which states that "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

**WHEREAS**, on May 10, 2000, the Planning Commission held a duly noticed public hearing and took public testimony on this matter; and

**WHEREAS**, on May 10, the Planning Commission recommended approval of the proposed zoning text amendments; and

**WHEREAS**, the City Council finds and determines that the public safety, health, convenience, comfort, property, and general welfare will be furthered by the proposed interim controls; now therefore,

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** The City Council finds and determines the foregoing recitals to be true and correct and hereby make them a part of this Ordinance.

**Section 2.** The City Council affirms the environmental determination and findings of the Planning Commission that the ordinance is exempt from CEQA according to Section 15061(b) (3) of the State CEQA Guidelines, based on the "general rule, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment".

**Section 3.** If any provisions of this ordinance or application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application of provision to other persons or circumstances shall not be affected thereby.

**Section 4.** This Ordinance is necessary to preserve the public health, safety and general welfare because of the potential harm to the areas resulting from the unregulated development of transient habitation (hotels and motels).

**Section 5.** The Oakland Planning Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**, additions are indicated by underlining and deletions are indicated by ~~strike-out type~~; portions of the code not cited, or not shown in underlining or strike-out type, are not changed:

**17.62.050** Permitted Activities allowing Transient Habitation would be deleted as follows:

Permitted Activities

Commercial Activities

~~Transient Habitation~~

Sections **17.52.060**, **17.58.060** and **17.62.060** would be amended to require a Conditional Use Permit for Transient Habitation to read as follows:

Conditionally Permitted Activities

Commercial Activities

Transient Habitation, subject to the provisions of Chapter 17.102.370

**Chapter 17.102.370** : Conditional Use Permit Criteria for hotels and motels would be added as follows;

A. Use Permit Criteria for Hotel and Motel uses. A Conditional Use Permit for hotel and motel uses may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134, to any and all applicable use permit criteria set forth in the particular individual zone regulations, and to all of the following use permit criteria:

1. That the proposal is located in downtown, along the waterfront, near the airport, or along the I-880 freeway, and/or in an area with a concentration of amenities for hotel patrons, including restaurant, retail, recreation, open space and exercise facilities, and is well-served by public transit.
2. That the proposal considers the impact of the employees of the hotel or motel on the demand in the City for housing, public transit, and social services.
3. That the proposal is consistent with the goal of attracting first-class, luxury hotels in downtown, along the waterfront, near the airport, or along the I-880 freeway which provide: (a) a minimum of 100 sleeping rooms; (b) a full service restaurant providing three meals per day; and (c) on-site recreational amenities, which may include an exercise room, swimming pool, and/or tennis courts.
4. That the proposed development will be of an architectural and visual quality and character which harmonizes and enhances the surrounding area, and that such design includes: (a) site planning that insures appropriate access and circulation, locates building entries which face the primary street, provides a consistent development pattern along the primary street, and insures a design that promotes safety for its users; (b) landscaping that creates a pleasant visual corridor along the primary streets with a variety of local species and high quality landscape materials; (c) signage that is integrated and consistent with the building design and promotes the building entry, is consistent with the desired character of the area, and does not detract from the overall streetscape; (d) the majority of the parking to the rear of the site and where appropriate is provided within a structured parking facility that is consistent, compatible and integrated into the overall development; (e) appropriate design treatment for ventilation of room units as well as structured parking areas; and prominent entry features that may include attractive porte-cocheres; (f) building design that enhances the building's quality with strong architectural statements, high quality materials particularly at the pedestrian level and appropriate attention to detail; (g) lighting standards for hotel buildings, grounds and parking lots shall not be overly bright and shall direct the downward placement of light..
5. That the proposed development provides adequately buffered loading areas and to the extent possible, are located on secondary streets.
6. The proposed operator of the facility shall be identified as part of the project description at the time of application.

**Section 6.** This Ordinance shall be effective immediately upon its adoption by this City Council,

**Section 7.** This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City Of Oakland, and Article XI of the California Constitution.

**Section 8.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance and the application shall not be affected thereby.

*Introduced - 7/11/00*  
IN COUNCIL, OAKLAND, CALIFORNIA, JUL 25 2000, 19    

**PASSED BY THE FOLLOWING VOTE:**

AYES- BRUNNER, CHANG, MILEY, NADEL, REID, RUSSO, SPEES AND  
PRESIDENT DE LA FUENTE - 8

NOES- *None*

ABSENT- *None*

ABSTENTION- *None*

5

ATTEST:

*Ceda Floyd*  
CEDA FLOYD

City Clerk and Clerk of the Council  
of the City of Oakland, California

**ATTACHMENT**

**E**

**CITY OF OAKLAND  
COUNCIL AGENDA REPORT**

**TO:** Office of the City Manager  
**ATTN:** Robert C. Bobb  
**FROM:** Community and Economic Development Agency  
**DATE:** June 27, 2000

**CASE FILE NO:** Case File Number ZT00-128

**SUBJECT:** Consideration of amending the Oakland Planning Code to add transient habitation (hotel) as a conditionally permitted activity in the C-36 Gateway Boulevard, C-55 Central Core Commercial and C-51 Central Business Service zones, and to establish special use permit criteria for transient habitation in the C-36 Gateway Boulevard, C-40 Community Thoroughfare Commercial, C-45 Community Shopping, C-51 Central Business Service, C-52 Old Oakland, C-55 Central Core Commercial, S-2 Civic Center, and S-8 Urban Street Combining zones. Exempt; Section 15301(b)(3), State CEQA Guidelines, "general rule", no possibility of significant effect on the environment.

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**SUMMARY:**

City Council directed staff to prepare zoning text revisions that would require a major conditional use permit (C.U.P) for all transient habitation activities (hotels and motels) throughout the City, and to include specific use permit criteria related to location and design standards for all new hotel development, as well as design guidelines. The use permit process provides for staff review of all hotel and motel development proposals, and insures that such development is designed with the quality desired. Development specifically within the Hegenberger Gateway area would also require conformity to the hotel and commercial design guidelines. The proposed amendments support the goals of the General Plan. On May 10, 2000, the Planning Commission reviewed the proposed zoning text amendments and design guidelines for hotel and motel uses and unanimously recommended approval

**FISCAL IMPACTS:**

Hotels and motels already require a conditional use permit in most zoning districts, and there are typically few applications for hotels and motels in any given year. The City is aware of development interest in new hotels in the Hegenberger corridor, along the estuary and in the Jack London District. The Port of Oakland is funding (already available) a planner to process development applications in these areas should they be forthcoming. Therefore, no fiscal impacts are anticipated.

**BACKGROUND**

On July 20, 1999, the Community and Economic Development Council Committee considered an informational report on establishing formal policies regarding hotel development within the Airport Gateway area. Council had previously expressed the desire to attract higher quality hotels with a range of services and amenities along Hegenberger Road, the gateway to the Metropolitan Oakland International Airport and the City of Oakland. At that time, Council directed staff to work closely with the Port of

1 *Item C* **COMMUNITY & ECONOMIC  
DEVELOPMENT CMTE.**  
*6-27-2000*

Oakland to provide a more detailed analysis of hotel development economics, an assessment of the current hotel employment policy established in the City of San Francisco, and to establish special design guidelines for hotel and commercial office development that would be incorporated into the City's existing Zoning Regulations.

A follow-up report prepared in December 1999, provided a hotel market analysis prepared by PKF Consultants. The PKF report provided the following definitions of hotel types:

***Luxury Hotels*** provide extensive and personalized services along with high-quality furnishings, superior food and beverage facilities, and extensive, varied guest amenities. The emphasis on personalized guest services results in a high employee-to-guest ratio, an intimate atmosphere, and high room rates. (Ritz Carlton, San Francisco)

***First-Class/Convention/Full Service*** hotels have guest services, amenities, and a product quality designed to appeal to middle and high-income convention and individual travelers. They are medium to large hotels that offer high quality, but less personalized service than luxury hotels. (Waterfront, Marriott City Center)

***Boutique Hotels*** are typically older hotels, ranging in size from approximately 30 to 180 rooms, which have been renovated within the last ten to 15 years.

***Middle-Market Hotels*** appeal to the middle-income individual and family traveler. Tour operators primarily book these hotels because they offer a good compromise among service, product quality, and room rate. (Hampton Inn, Park Plaza)

***Limited-Service Hotels*** generally range in size from 30 to 150 rooms. These properties offer room rates at the lower end of the scale and, commonly, do not offer on-premises food and beverage facilities or recreational components. (Days Inn, Holiday Inn)

***Extended-Stay Hotels*** cater to long-term guests who generally visit the area for more than four nights and pricing is set by weekly rates. An extended-stay product appeals to travelers looking for a more livable room rather than a traditional hotel room. The design concept for most extended-stay products is set to appeal to the affluent, seasoned traveler. (Holiday Inn Express)

Based on the analysis, including consideration of the number and type of hotels currently programmed or proposed in the surrounding area, the follow-up report concluded that there is limited potential to increase the demand and market feasibility for new luxury or first-class hotel rooms. However, since the report's preparation, the Port has received offers from several hotel developers for properties along Hegenberger Road. The report also indicated that the San Francisco Planning Code requires their Planning Commission to consider the impact of employees of new hotels or motels, and also requires that measures be taken by a project sponsor to employ residents of San Francisco.

The follow-up report presented design guidelines and standards for development within the Airport Gateway area. The guidelines were developed with technical assistance from Van Meter Williams and Polack, and recommended the following key elements to create a high quality commercial / hospitality zone: (1) site planning to insure appropriate access and circulation, and a consistent development pattern along the primary streets; (2) landscape to reinforce the streetscape program creating a pleasant visual corridor along the boulevards; (3) signage to provide consistency with the desired area character and prevent sign competition or signs detracting from the streetscape; and (4) building design to enhance each building's quality with strong architectural statements, high quality materials and appropriate attention to detail.

City Council directed staff to prepare zoning text revisions that would require a major conditional use permit (C.U.P) for all transient habitation activities (hotels and motels) throughout the City, and to

include specific use permit criteria related to location and design standards for all new hotel development, as well as design guidelines. Although the initial premise for establishing a hotel policy was based on the need to improve the quality of development and image within the Gateway, it was determined that given the limited market potential for additional hotel rooms throughout the City, the desire to maintain and improve the occupancy levels for existing hotels, and the overall desire for new hotels and motels throughout the City to be of quality design, a conditional use permit with specific criteria would be required in all zones that permit or conditionally permit hotels and motels. The use permit process provides for staff review of all hotel and motel development proposals, and insures that such development is designed with the quality desired. Development specifically within the Hegenberger Gateway area would also require conformity to the hotel and commercial design guidelines developed by Van Meter Williams and Polack. These design guidelines provide clear direction to the development community as to the desires of the City and Port of Oakland regarding the quality of development and image of the Gateway.

### General Plan Analysis

The proposed amendments support the goals of the General Plan. The Airport Gateway area is designated as a Showcase District in the General Plan and the policy regarding the Comprehensive Economic Development Strategy for Showcase Areas is "to develop and implement plans to enhance the showcase districts". A related policy specifically calls for a detailed planning effort for the Hegenberger Gateway area. In response, the Hegenberger 98<sup>th</sup> Avenue Gateway Development Plan was prepared and adopted in November 1998. The Plan encourages high quality development within the Airport Gateway, including luxury and full-service hotels that provide a variety of amenities for patrons to ensure the success of the area.

In addition, Policy N1.7 Locating Hotels and Motels states: "Hotels and Motels should be encouraged to locate downtown, along the waterfront, near the airport, or along the I-880 freeway. No new hotels or motels should be located elsewhere in the City, however, the development of "bed-and-breakfast" type lodgings should be allowed in the neighborhoods, provided that the use and activities of the establishment do not adversely impact nearby areas, and parking areas area screened."

### Zoning Analysis

The C-36 Gateway Boulevard Service Commercial Zone, mapped exclusively within the Gateway area along Hegenberger Road and 98<sup>th</sup> Avenue, was amended to permit hotels and motels outright. The C-55 Central Core Commercial and C-51 Central Business Service Zones within the downtown area also classify hotels and motels as a permitted use. These zones would be amended to require a conditional use permit for such activities. Other zoning districts that currently conditionally permit hotels and motels include C-52 Old Oakland mapped in the downtown area, C-45 Community Shopping mapped in areas of North and West Oakland, downtown and Jack London Square, C-40 Community Thoroughfare mapped along International Boulevard, and the S-8 Urban Street Combining and S-2 Civic Center also mapped within the downtown area. The addition of specific use permit criteria for hotels and motels in the above zones is consistent with the policy directive to achieve quality design for new development throughout the City, and to direct hotels to appropriate locations with amenities for hotel patrons as well as near public transit for employees.

### Environmental Determination

Staff has considered the potential environmental impacts from the proposed text amendments. Based upon these findings, staff has determined that the project is exempt from the provisions of the California Environmental Quality Act pursuant to Section 15061 (b) (3) of the State CEQA Guidelines, the "general rule", which states that "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA". The requirement of a conditional use permit with specific use permit criteria for hotel and

motel development is more restrictive than what currently exist; therefore, this exemption is appropriate.

#### Planning Commission Determination

On May 10, 2000 the Planning Commission reviewed the hotel and motel zoning text amendments and design guidelines. The Commission considered the implications of a conditional use permit for hotels and motels as well as the proposed design guidelines impact on the development process. After due consideration the Commission unanimously recommended approval of the staff proposals.

#### **Proposed Zoning Text Amendments and Design Review Guidelines for Hotels and Motels**

##### Conditional Use Permit for Hotels and Motels

To revise the zoning regulations to require a conditional use permit for hotels and motels in all zones would result in amending the C-36 Gateway Boulevard Service Commercial, C-51 Central Business Service and C-55 Central Core Commercial Zones. Specifically Sections 17.52.050, 17.58.050 and 17.62.050 Permitted Activities allowing *Transient Habitation* would be deleted as follows:

##### *Permitted Activities*

###### *Commercial Activities*

###### ~~*Transient Habitation*~~

Sections 17.52.060, 17.58.060 and 17.62.060 would be amended to require a Conditional Use Permit for *Transient Habitation* to read as follows:

##### *Conditionally Permitted Activities*

###### *Commercial Activities*

###### *Transient Habitation, subject to the provisions of Chapter 17.102*

Chapter 17.102 would define Conditional Use Permit Criteria for hotels and motels (see Key Issues and Impacts). These criteria would be used in evaluating any proposals for hotel and motel development.

##### Design Guidelines

The guidelines prepared for the Airport Gateway area provide more detailed standards for development along the Hegenberger Road and 98<sup>th</sup> Avenue corridors. The design guidelines have been forwarded to several potential hotel developers currently exploring hotel development. These design guidelines were adopted at the May 10, 2000 meeting of the Planning Commission for incorporation into the 100 series design guidelines. Recognizing that this area has been designated as a Showcase district by the Oakland General Plan, as well as a regional commercial area, development should be of high quality to capture the potential of the corridors and to create a more attractive gateway to the City.

#### **KEY ISSUES AND IMPACTS**

##### Conditional Use Permit Criteria

In response to City Council direction to establish a citywide hotel policy, it is recommended that the C-36, C-51 and C-55 Zones in the Planning Code be amended to require a conditional use permit for transient habitation. In addition, the C-40, C-45, C-50, S-8, and S-2 districts would also be amended to refer to a new section in the Code under General Provisions [Chapter 17.102] that would

incorporate new use permit criteria, as defined below:

1. *That the proposal is located in downtown, along the waterfront, near the airport, or along the I-880 freeway, and/or in an area with a concentration of amenities for hotel patrons, including restaurant, retail, recreation, open space and exercise facilities, and is well-served by public transit.*

This criteria is consistent with the policy established by the General Plan to appropriately locate hotels in areas of the City in which access and amenities are provided. It further insures the availability of public transit for hotel patrons and employees.

2. *That the proposal considers the impact of the employees of the hotel or motel on the demand in the City for housing, public transit, and social services.*

New hotel development will provide employment opportunities that may increase the demand for housing, transit and social services for its employees. This criterion requires that consideration be given to the availability and accessibility of those factors. This criteria is worded similarly to the language in the San Francisco zoning code requirements for hotels.

3. *That the proposal is consistent with the goal of attracting first-class, luxury hotels in downtown, along the waterfront, near the airport, or along the I-880 freeway which provide: (a) a minimum of 100 sleeping rooms; (b) a full service restaurant providing three meals per day; and (c) on-site recreational amenities, which may include an exercise room, swimming pool, and/or tennis courts. In the event items (b) and/or (c) are not provided on-site, such facilities should be located within close proximity of the proposed project site.*

Based on the market analysis conducted by PKF Consultants, first-class and luxury hotels have the above characteristics. The criterion established directly responds to the Council goal to attract first-class, luxury hotels in key areas of the City.

4. *That the proposed development will be of an architectural and visual quality and character which harmonizes and enhances the surrounding area, and that such design includes: (a) site planning that insures appropriate access and circulation, locates building entries which face the primary street, provides a consistent development pattern along the primary street, and insures a design that provides adequate lighting and promotes safety for its users; (b) landscaping that creates a pleasant visual corridor along the primary streets with a variety of local species and high quality landscape materials; (c) signage that is integrated and consistent with the building design and promotes the building entry, is consistent with the desired character of the area, and does not detract from the overall streetscape; (d) the majority of the parking to the rear of the site and where appropriate is provided within a structured parking facility that is consistent, compatible and integrated into the overall development; (e) appropriate design treatment for ventilation of room units as well as structured parking areas; and prominent entry features that may include attractive porte-cocheres; (f) building design that enhances the building's quality with strong architectural statements, high quality materials particularly at the pedestrian level and appropriate attention to detail.*

This criterion maintains the goal to enhance the visual quality of all hotel development, to insure that the development harmonizes with the surrounding environment, and contributes to the attractiveness of the area.

5. *That the proposed development provides adequately buffered loading areas and to the extent possible, are located on secondary streets.*

Loading areas typically generate truck traffic and can in many cases detract from the overall building's visual quality. This criterion requires screening the activity through landscaping or building design, and encourages placement away from the primary street and building entrance.

**CONCLUSION**

Staff believes that the proposed text amendments provide clear direction to the development community regarding the location, type, and development quality of hotels desired for the City of Oakland. The amendments further require specific details regarding the building design for development within the Airport Gateway area that will enhance the visual quality of the Hegenberger Road and 98<sup>th</sup> Avenue corridors.

**RECOMMENDATIONS:**

1. Affirm staff's environmental determination.
2. Approve the Draft Ordinance.

Respectfully Submitted,



*for* **WILLIAM E. CLAGGETT**

**Executive Director**

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**Leslie Gould**

**Director of Planning and Zoning**

Prepared by:

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Thomas Casey

Planner III

**APPROVED AND FORWARDED TO THE COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE**



Office of the City Manager

**ATTACHMENTS:**

- A. Draft Ordinance
- B. Draft Airport Gateway Design Guidelines

# Airport Gateway Area Design Guidelines

Public Review Draft 11/19/99



FOR THE  
CITY OF OAKLAND and the PORT OF OAKLAND

BY

VAN METER WILLIAMS POLLACK  
Architecture • Urban Design

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## 1. BACKGROUND, ISSUES AND PURPOSE

### Background

The area's existing commercial and hotel developments and general streetscape appearance lacks the quality and continuity to provide a distinct character for the area. The Gateway Development Plan provides direction for the development of hotels and office complexes on key catalyst sites. The Airport Gateway Urban Design Concept provides direction for streetscape enhancements for lighting, landscape, signage features. These policy directives as well as the Gateway Design Guidelines will establish a framework for development and design quality within the Gateway area. The City and the Port of Oakland share the jurisdiction in this area and have agreed to a coordinated approach to design and development policies and standards.

### Issues

An evaluation of recent hotel and office developments in the region has provided a window into the area's development future. key issues includes a wide range in office development design quality, predicated on the anticipated user, whether a custom or speculative development. Hotel developments are predicated on the market niche and closely follows the corporate prototypes which control the design and material selection closely. The critical issues and elements which may be influenced by design guidelines include: Site Planning, Landscape, Signage and to a lesser extent Building Design including Facade Elements and Articulation, Entry Design and Material Selection.

### Purpose

The purpose of the design guidelines is to provide assistance and direction to the development community as to the desires of the City and Port of Oakland regarding the quality of development and the image the City and Port of Oakland wish to improve the:

- Site Planning to insure appropriate access, circulation and to develop a consistent development pattern along the primary streets;
- Landscape to reinforce the streetscape program creating a pleasant visual corridor along the boulevards;
- Signage to be consistent with the desired area character and prevent competition with one another or detracting from the streetscape;
- Building Design to enhance each buildings' quality with strong architectural statements, high quality materials and appropriate attention to detail.

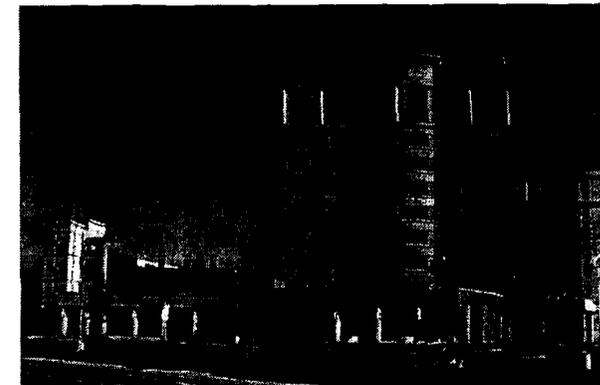
These key elements are the primary features required for a high quality commercial / hospitality zone.



*Existing Development lacks Character and Identity*



*Purpose is to Create an Identity to the Gateway Area*



*High Quality Landscape and Building Design*

**A. SITE PLANNING**

**Issues**

Building siting is an important element to create an image to the Gateway Area. Appropriate building siting will reinforce the City/Port streetscape program and can promote the creation of spaces which reinforce individual and multiple developments by coordinating or clustering buildings.

Important issues include: the location of entries, whether they face the street, location of parking and the relationship of one building or development to another.

**Policy**

Encourage building siting which reinforces the primary streetscape features of the Gateway Area by:

- Creating a consistent street wall or edge,
- Locating entrances facing the street,
- Encourage building siting which creates courtyards for individual buildings,
- Encourage the clustering of multiple developments' buildings to allow walking and for interaction between developments.
- Encourage building siting which takes advantage of amenities such as creeks and open space.
- Encourage building siting which enhances the opportunity for key landscape and building features at important locations along the area's primary boulevards.

**1.0 Setbacks / Location of Building**

**A.1.1 Building Setbacks:**

**A.1.1A. Setbacks: Primary Streets**

- Front: 65' Front yard setback
- Sides: 15' Side yard #1 setback  
45' Side yard #2 setback
- Rear: 65' Side yard setback
- Corner: 65' Primary Street setback
- Lots 20' Side yard setback

**A.1.1B. Setbacks Secondary Streets and Small Lots:**

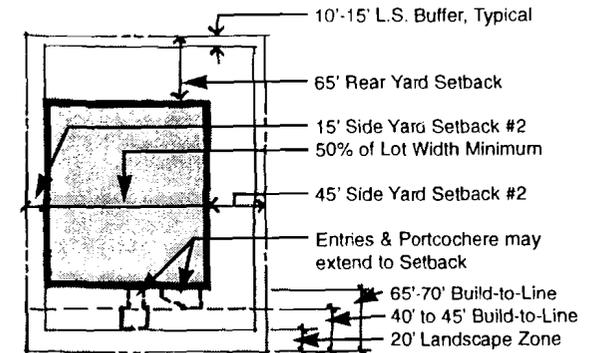
- Front: 45' Front yard setback
- Sides: 10' Side yard #1 setback  
25' Side yard #2 setback
- Rear: 45' Side yard setback
- Corner: 45' Primary Street setback
- Lots 20' Side yard setback

**A.1.2 Build to Line**

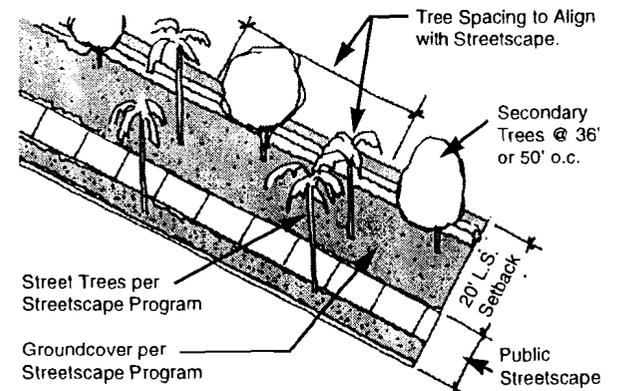
Along Hegenberger Road, and 98th Avenue the building's front facade is to be located between 65' and 70' from the front property line and extend a minimum of 50% of the lot width along the street frontage.

**Exceptions:**

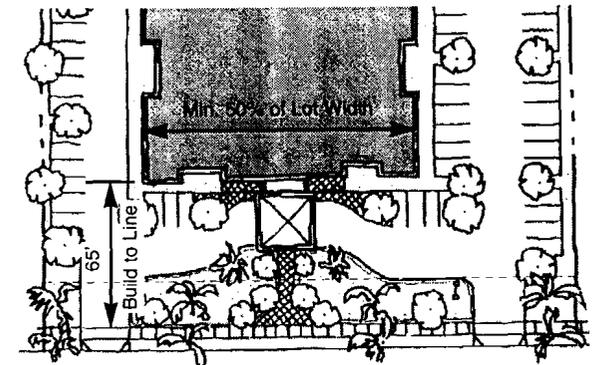
On other streets and on small lots of less than 500 feet deep the build to line is 40'-45'.



Setback Diagram



Setback Treatments



Build To Lines: Buildings must extend a minimum of 50% of the width of the lot.

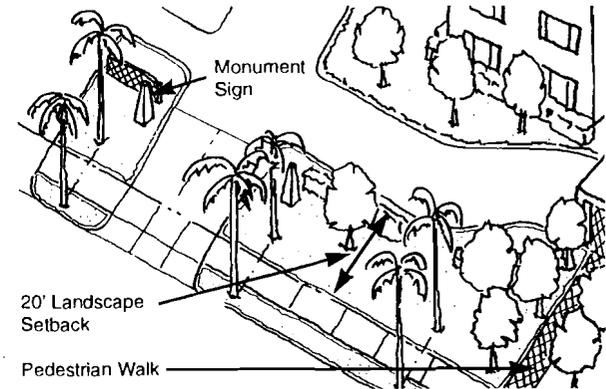
A. SITE PLANNING

**A.2.0 Setback Treatments**

A.2.1 Setback Treatments

Setback treatments include:

- consistent landscape palette to be coordinated with City/Port.
- consistent tree species and spacing / location to be coordinated with City/Port.
- limited signage located in setbacks.
- screen utilities and parking with shrubs and walls coordinated with the building design.



*Landscape Zone: Only Entry Drives & Ped. Walks*

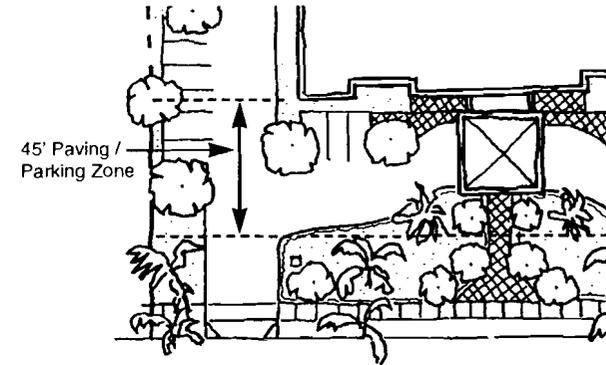
A.2.2 Landscape Zone

The front twenty feet of the streetside setback is to be fully landscaped except for access drives.

A.2.3 Paving / Parking Zone

The zone between the landscape setback and the building requires a minimum of 50% landscape area. Access drives and Port-cochere structures are allowed.

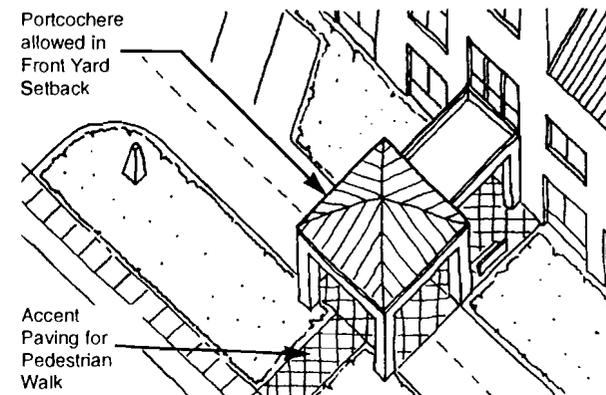
Accent paving (pervious pavers) is encouraged.



*Paving / Parking Zone requires 50% Landscape Area*

A.2.4 Portecochere Accessory Structures

Main Entry Canopies, Portecocheres and security structures are allowed to be located within the 65' setback zone, behind the 20' landscape zone.



*Portecochere and Accessory Structures*

A. SITE PLANNING Continued

**A.3.0 Other Site Planning Issues**

A.3.1 Clustering of Multiple Buildings

Building siting of multiple building developments is encouraged to provide the required build to line along primary streets and to create building clusters with courtyards and pathways between buildings. The purpose is to interconnect multiple building developments for potential joint use or sharing of facilities.

**Hotel Example:** The Ramada site may attract multiple hotel/conference facilities which could be marketed as a single larger facility if interconnected by courtyard space and walking paths.

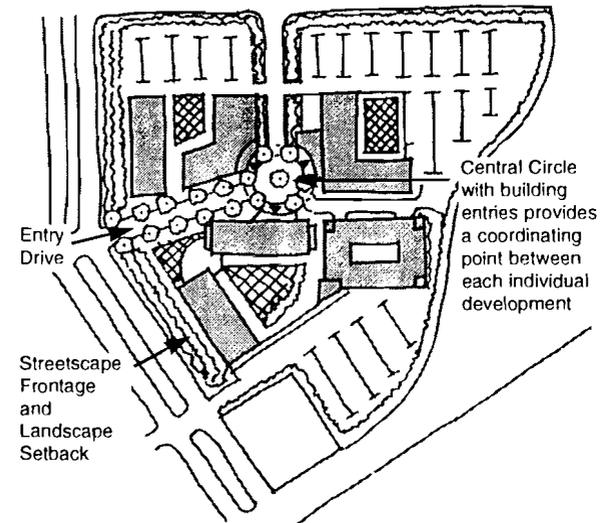
**Office Example:** By creating buildings linked by courtyard spaces and pedestrian paths the Ratto commercial / office development site could be a single user or separate interrelated users.

**A.3.2 Curbcut Locations and Design**

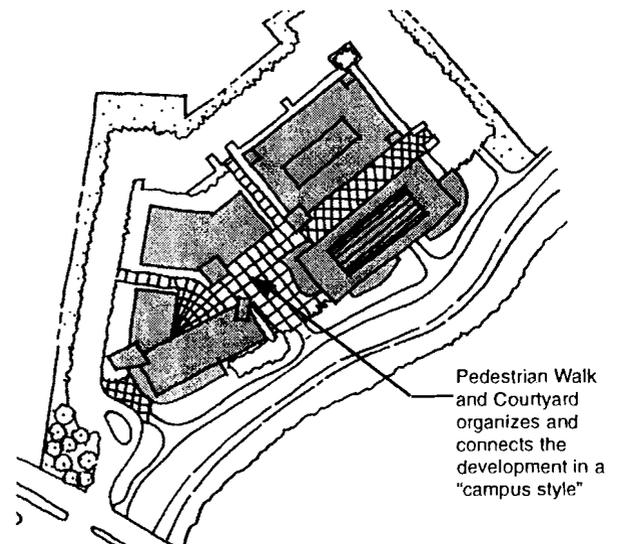
**Small Sites:** with less than 200' frontage are limited to one curb cut. Small sites are encouraged to share a curb cut with appropriate easements.

**Major Development Sites:** access should be aligned with median openings or opposing streets to allow for necessary ingress and egress.

Separation between access points, particularly along small sites is strongly encouraged for safety.



*Clustering of Multiple Buildings - Multiple Users share main access drive and provide strong pedestrian connection to each main entry.*



*Clustering of Multiple Buildings - Single Users Provide a strong connection between buildings with courtyards and pedestrian paths.*

**A SITE PLANNING**

**Location of Building Entries and Portecocheres and Entry Elements**

**Issues**

Building Entries are critical to the building design and the streetscape. Entries typically have the greatest amount of activity and the highest level of design quality and material selection. Therefore, having entries orient to and visible from the street enhances the districts identity. Visible entries also provide signage opportunities and gives direction to the infrequent visitor or business traveler.

**Policy**

Promote site planing and the location of building entries which face the major streets.

Promote building designs which emphasize building entries with signage, special design elements and high quality design and material selection.

**A.4.0 Location of Building Entries and Portecocheres**

**A.4.1 Location of Building Entries**

Building entries are to be located on the primary street facade so as to be visible from the street. A pedestrian walkway from the street to the entry is required.

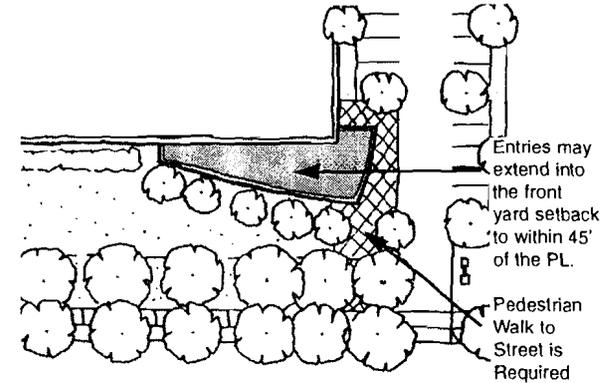
**A.4.2 Location / Design of Portcocheres**

Portcocheres and building entry canopies are required to be facing the primary street.

**A.4.3 Design of Special Entry Elements**

Portcocheres and/or entry canopies provide an opportunity to highlight the building design. Accent lighting, higher quality materials and greater attention to detail are strongly encouraged.

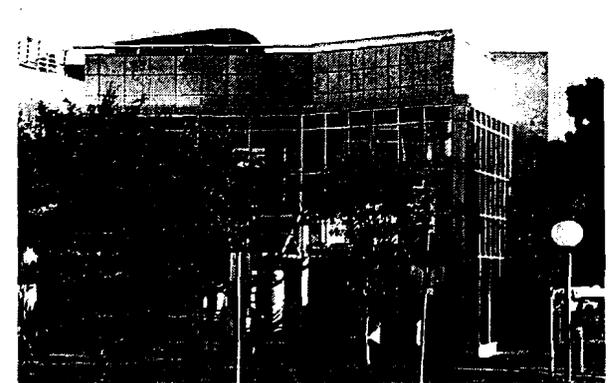
A small plaza at a building's entry with accent paving, seating and special landscape features is strongly encouraged.



*Building Entries*



*Portcocheres provide opportunity for detail*



*Special Entry Features create visual interest*

**A. SITE PLANNING**

**Parking: Location and Design**

**Surface Parking**

**Issues**

Surface parking has a significant impact on the image of an area. Parking must also be convenient for the facility's users as well as safe. Poorly located parking can create a barrier. Locating parking behind the buildings allows the buildings to define the streetscape and enhance the area's image. Quality landscaping of parking areas lessens the visual impact of larger surface parking areas.

**Policy**

Promote surface parking areas which minimize the visual impact of the Gateway Area through its proper location, circulation, design and landscape treatment and inclusion of pedestrian walks.

**Structured Parking**

**Issues**

Structured parking allows more intense development, and lessens the visual impact of large surface parking lots. Parking structures have often been incompactable or poorly integrated into the overall complexes design and style.

**Policy**

Structured parking is strongly encouraged, particularly within larger developments. The design of structured parking should be consistent, compatible and integrated into the overall development. The architectural design, materials and color palette should be consistent between buildings and parking structures.

**A.3.0 Parking and Design**

**3.1 Location of Surface Parking**

Surface parking and service / loading areas should be primarily located in the rear half (50%) of the property. Minimal front parking and some side yard parking is allowed.

**3.2 Design of Surface Parking**

Surface parking which is visible from any street is required to have one landscape finger (5' min.) and tree every 6-7 spaces forming a strong pattern.

Pedestrian walks through the parking to the building are required. These should have accent lighting and landscaping.

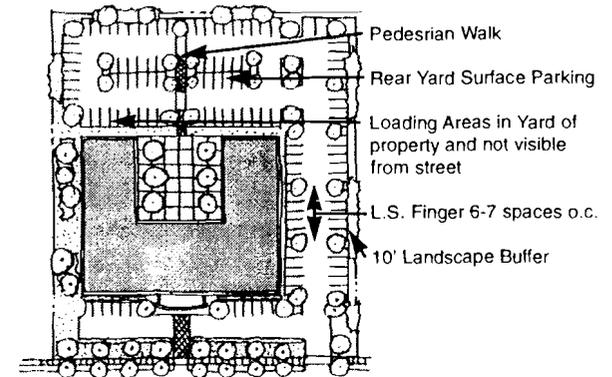
Landscape buffers along property lines of a minimum 10' with 15' required on larger developments are strongly desired .

**3.3 Location of Structured Parking**

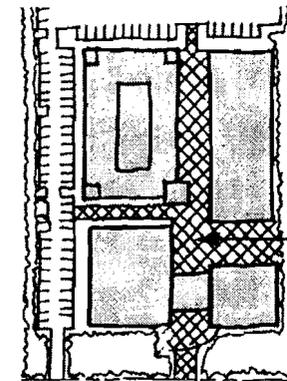
Structured parking is to be located so as to de-emphasize its presence and visibility from the street. A heavy landscape buffer with major tree planting is to be provided along primary streets. Parking structures may not be located on corners of lots.

**3.4 Design of Structured Parking**

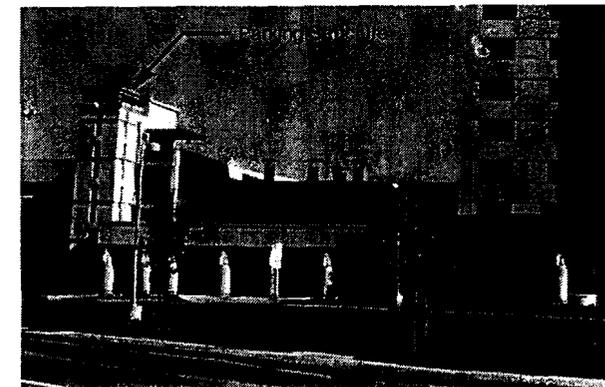
The parking structure design should be compatible with the building design. Ramplng elemnets should be internal to the garage and facades should be horizontal and vertical elements similar to a building. Vertical elements should be emphasized. The parking structure facades should be compatible with the building architecture in material and style.



*Location of Surface Parking*



*Location of Structured Parking*



*Design of Structures to be compatable with building.*

**A. SITE PLANNING**

**A.6.0 Site Planning along Creeks and Parks**

**Issues**

Site planning along creeks, parks or open space must take into account:

- Sensitive Habitat
- Public Access and Walks
- Recreational Opportunities
- Safety and Security (Surveillance)
- Landscaping and natural / native planting

**Policy**

Promote development along the San Leandro Creek and MLK Park which provides public access via walks and bike paths for recreation and general enjoyment. Insure that development protects or promotes sensitive habitat along waterways and open space.

Promote a high quality lush landscape with a variety of local species and high quality landscape materials.

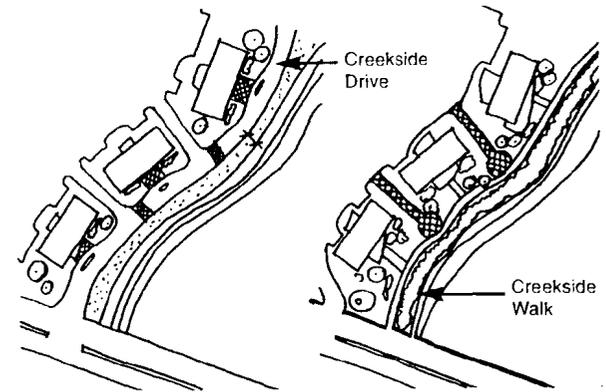
Insure that the design provides lighting and informal surveillance opportunities and promotes safety for casual and recreational users.

Promote building locations which enhance the development and the open space and connect directly to it, minimizing barriers to visual and physical access.

**A.6.1 Streets and Entry Drives**

Public Streets which parallel open space create continuous access and views of open space corridors providing surveillance, security and general lighting.

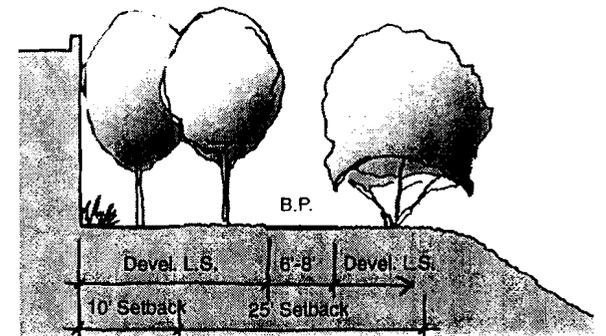
An alternative layout, where street frontage does not occur is shown with a series of drives or culdesacs between buildings providing access and surveillance opportunities while allowing a better connection between the buildings and creek or linear open space.



*Location of Streets or Drives*

**A.6.2 Landscape Promenade**

Parcels along creeks or open space are to provide a minimum 25' landscape area between creek edge and streets and 35' minimum between creek edge and buildings. Provide a 6' to 8' walk/bike path per Parks and Recreation requirements. Where required for maintenance this path is to be designed for vehicular access.



*Illustrative Creekside Design Section*

**A.6.3 Landscaping**

The creekside landscape treatment should reflect a more natural drought tolerant planting which requires minimal maintenance and reflects a more natural environment. Landscape adjacent to the buildings or development should be consistent with the development planting palette. Natural plants and trees are encouraged along the waterways, incorporating them into the development's landscape palette.

**A.6.4 Public Access**

Public access is required along creeks and parks including the walking/bike path and provisions for parking.



*Development along Open Space and Creeks*

**B. LANDSCAPING**

**B.1.0 Landscaping**

**Issues**

Landscaping will play an important role in defining the character of the Airport Gateway Area. The development of lush landscape will significantly change the existing industrial character of much of the area. Lush landscaping may also buffer new development from less compatible uses which may still exist. Landscaping within a development adjacent to the major roads can augment and reinforce the City/Port streetscape improvements.

**Policy**

Promote the development of landscape which reinforces and accentuates the major roads and avenues within the Gateway area with consistent (specific) trees and planting.

Promote the development of significant, lush landscape and the use of unique landscape features to accentuate the character of the area.

**B.1.1 Lot Coverage (% Landscaping)**

25% to 30% of the site must be covered in landscape or pedestrian paths or pervious surfaces.

**B.1.2 Consistent Landscape Palette**

Landscaping within the 20' Streetfront landscape setback is to be consistent with the streetscape program fronting it with specifically located tree species to match the streetscape and ground cover and hedge shrubs as appropriate to integrate into the overall streetscape pattern.

**B.1.3 Specific Tree Specimens**

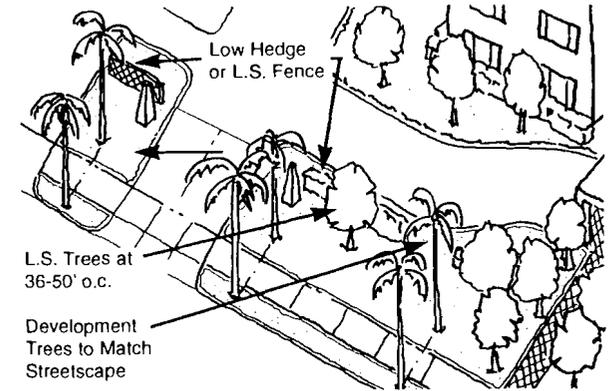
Trees Specied and spacing are to be coordinated with the streetscape program:

- Hegenberger Road: Canary Island Date Palm Trees @ 100 a.c.
- 98th Ave: Plane Trees (Platanus acerifolia "Yarwood") A 50' o.c. w/ Accent Palms at entries.
- Doolittle Drive:
  - East Frontage: Plane Trees (Platanus acerifolia "Yarwood") A 36' o.c. w/ Accent Palms at entries.
  - West Frontage: Mexican Fan Palm (Washingtonia robusta) @ 110 o.c.

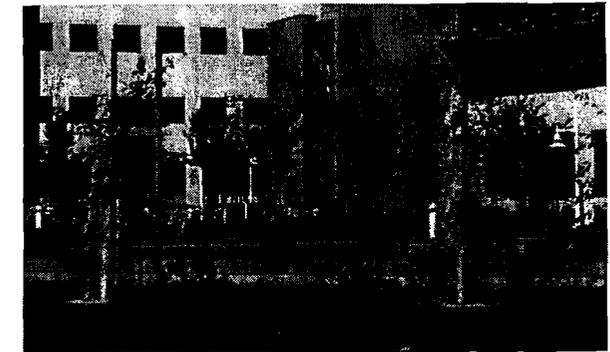
**B.1.4 Special Landscape Features**

Developments are strongly encouraged to incorporate special landscape features to accent major entries, intersections, creeks, visual corridors and important development sites. Examples include:

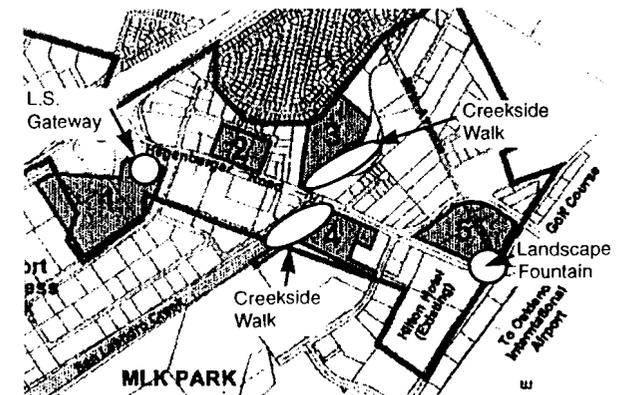
- Plaza/Fountain at Doolittle Gateway Site.
- Hegenberger / 880 Ramada Corner.
- Accents at San Leandro Creek crossing and Hegenberger Road.
- Hegenberger / Edgewater Drive.



*Landscape Palette*



*Special Landscape Feature*



*Location of Specific Landscape Features*

**C. SIGNAGE**

**C.1.0 Building Signage**

**Issues**

Signage can play an important role in defining the character of the Gateway area. Signage often competes with streetscape elements and one development's sign competes with others negatively impacting the view corridor and detracting from the cohesive quality desired for the area.

A coordinated signage standard or program will reinforce the streetscape elements and emphasize a cohesive district character.

**Policy**

- Create an area wide signage standard for site and building signs.
- Promote building signage which is integrated and consistent with the building design and promotes the building entry as the dominant element or feature.

C.1.1 Location of Building Signage

Building signage should be incorporated into the building design and material palette and be associated with the building entry. Only one major sign per building is allowed.

C.1.2 Size of Building Signage

Building signage should be in scale with the size of the facade on which its placed. The height of the lettering may be 1/2" for each 1' of building height up to a maximum of 24" high letters.

Example: a 24' high building is allowed to have 12" high letters. Major developments may have 36" letters at the discretion of the City/Port review.

C.1.3 Design of Building Signage

Major Sign:

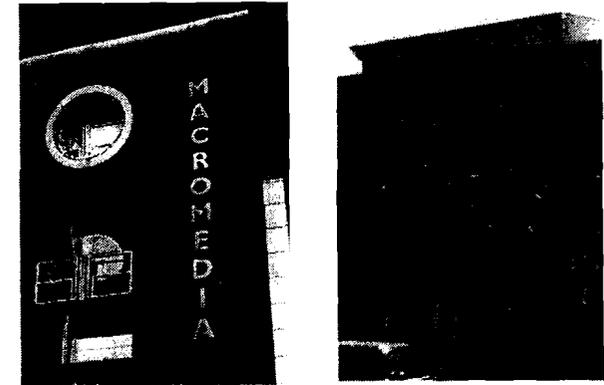
- Signs shall be individual letters / symbols.
- Lighting may not be integral with the sign.
- Accent building lighting on the sign is allowed.
- Neon Signage is allowed.
- Signage should be simple rather than ornate and detailed in a contemporary style.

C.1.4 Minor Signs

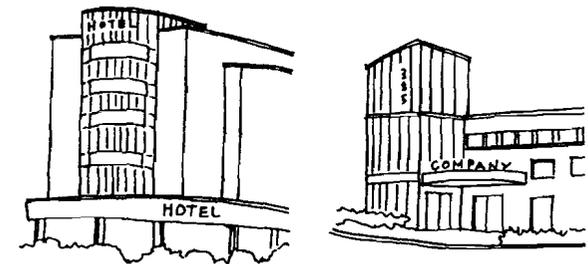
Signage throughout a building complex shall be consistent with an approved sign program. The sign program shall include: size, color, material, type face and mounting methods for each application.

C.1.5 Temporary Signage:

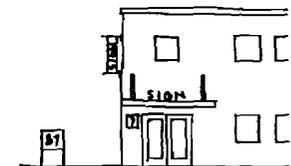
Temporary signage is strongly discouraged. It is limited to 30 days and must be consistent in design and style as the develop-



Location of Building Signage



Location of Major Building Signage



Signage Program to provide consistency

C. SIGNAGE Continued

C.2 .0 Site Signage

Issues

Site signage is primarily used in the area as directional signage, advertising or as address markers.

Large, tall pedestal or monument signs frequently compete with streetscape elements and each other cluttering the street landscape.

A consistent monument signage program along the major streets would provide consistency with the streetscape elements, reinforcing each other.

Policy

Promote Site Signage which reinforces the Streetscape program with a consistent framework.

Control sign location and size relative to the size of the development.

C.2.1 Location of Site Signage

One monument sign is allowed per each property / development. In special circumstances on very large projects a secondary monument sign may be considered at the City/Port discretion.

C.2.2 Location of Site Signage

Monument Signs may be located in the back half of the 20' foot landscape setback and should be within 20' of the site access drive. All other site signage is to be outside of the landscape setbacks and not generally visible from the street.

C.2.3 Size of Monument Signs

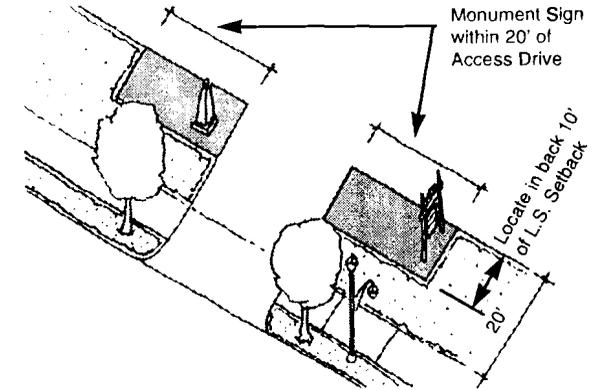
monument signs are to be in scale with the development site street frontage.

Street Frontage	Sign Type	Size
Small (0-250' lf.)	Pylon	3'x6'
Medium (250-500'lf.)	2-Pylon	8'x6'
Large (500-750 lf.)	Monument/Pylon	8x12'
Gateway Sites	Monument/Pylon	8x16'

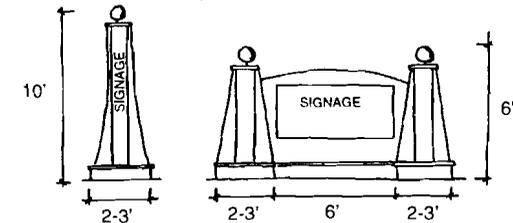
(See illustration for sign type examples)

C.2.4 Design of Site Signage

- The design of monument signs is to be generally consistent with the approved streetscape signage at a smaller scale.
- The monuments are to be a combination of concrete and steel with individual letters
- Pedestal Signs are limited in height. (See sign diagrams)
- Other site signage, interior to the development is to be part of the overall signage program.

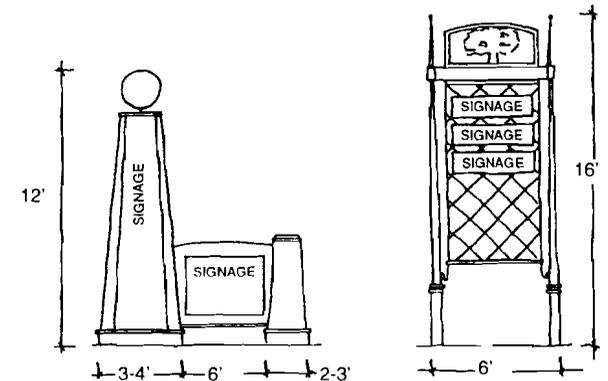


Monument Signage within Setbacks



Small (0-250 lf)

Medium (250-500 lf')



Large (500-750 lf)  
Monument Signs

Gateway Sites (over 750 lf)

## D. HOTEL / CONFERENCE BUILDING DESIGN

### Hotel Building Design

#### Issues

The design quality of hotels is directly related to the market niche and corporate prototype desired by the hotelier. The prototypes set standards for site plan, building plans, materials and architectural style or character. Some of these may be inconsistent with the City/Port desires for quality site planning and building design.

#### Policy

Promote hotel development and building design which improves the overall quality of development in the Gateway Area and integrates well into the contemporary building design of a commercial area.

Strongly encourage the modification of hotelier prototypes where required to emphasize the building elements which are appropriate a particular site.

Promote building design which reinforces the area's streetscape through appropriate orientation, location of entries, portcocheres, massing and articulation, rhythmic facade patterns and use of quality materials and integrated signage.

Encourage special elements and features such as balconies and roof decks, towers or campaniles.

Promote quality design of those elements and features which have been designated as special or unique design opportunities to create identity within the Gateway Area.

### D.1.0 Building Form

#### D.1.1 Massing / Articulation

Building towers which are sensitively proportioned and sited are encouraged. Primary tower facades act as gateways and landmarks and are to be detailed and articulated.

#### D.1.2 Variety in Building Heights

Encourage a variety in the building height by varying the number of stories, roof forms and by incorporating tower elements into the design. Orient the various building heights based on solar access to courtyards and seating areas.

#### D.1.3 Tower Elements

Tower elements are encouraged to accent gateways and building entries. Campanilles, not associated with building signage are also strongly encouraged.

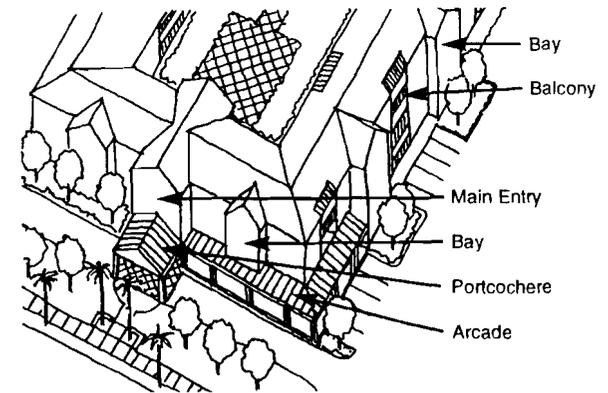
### D.2.0 Building Facade

#### D.2.1 Organize / Articulate Building Facade

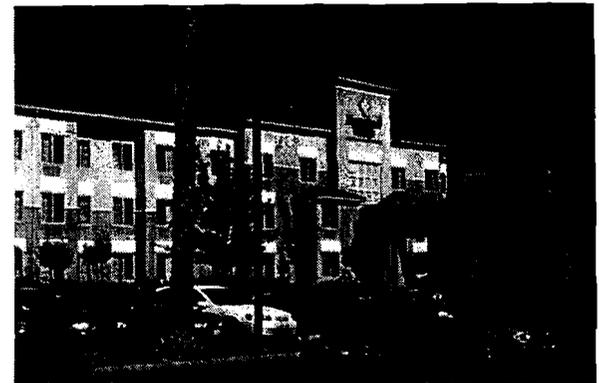
Use the primary building elements of base, field (body) and roof as an additional facade articulation to add visual interest. A change in pattern, materials and color on these three main building facade elements and is encouraged.

#### D.2.2 Create Rhythm in Facade Articulation

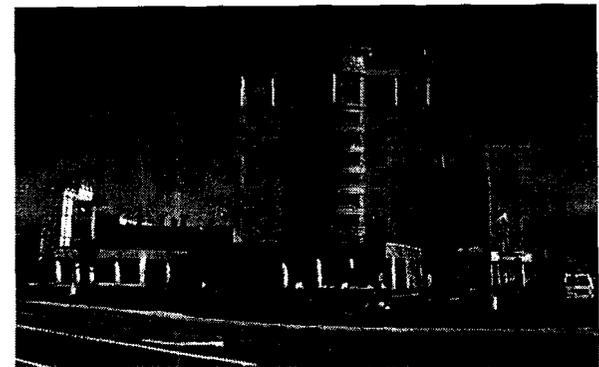
Create variety and rhythm in the facade by articulations relating to facade recesses and bays. Four to five foot (4'-5') bays and recesses provide shadowed relief from the long building facades. Recesses and bays which emphasize verticality are strongly



*Variety in Massing and Articulation*



*Primary Building Elements*



*Encourage Tower Features; Emphasize Vertical Articulating Elements and strong articulated facades*

## D. HOTEL / CONFERENCE BUILDING DESIGN

### D.2.3 Articulation with Balconies or Decks

Balconies, roof decks and railings provide opportunities for color and detail adding visual interest. Roof decks add activity and interest and provides private space when a courtyard development is not possible.

### **D3.0 Windows**

#### D.3.1 Create Rythm in Window Pattern

Vary the sizes and locations of windows creates patterns to reinforce the building articulation and adds variety and interest to the building facade.

#### D.3.2 Punched Windows

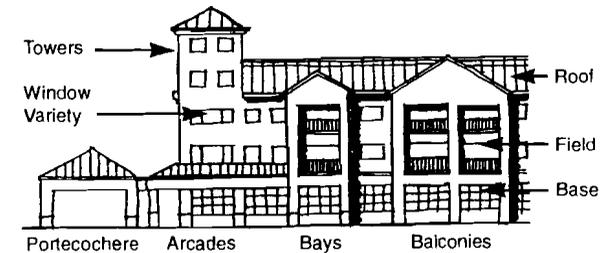
Recessed windows are strongly encouraged to accent important elements or features of the building facade design. Examples include first floor building bases, atriums or lobbies, or upper level suites. The shadow patterns formed add substantial relief and articulation to a building.

#### D.3.3 Ground Level Windows

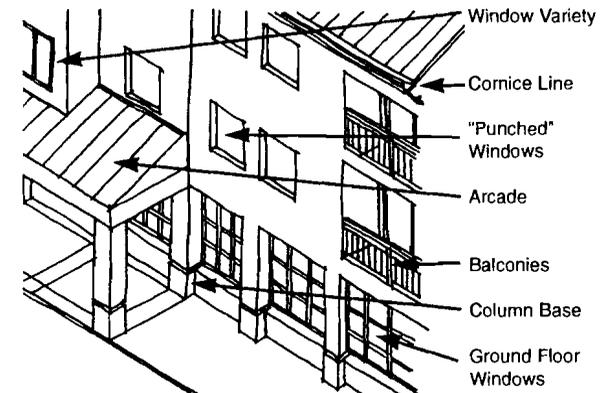
Ground level windows should have added design features such as variation in window system, window pane / pattern and size.

#### D.3.4 No Reflective Glass

Reflective glass is strongly discouraged.



*Create Rythm Patterns in Windows and Balconies*



*Detailed Facade Elements*

## D. HOTEL / CONFERENCE BUILDING DESIGN

**D.4.0 Roofs****D4.1 Roof Elements**

Roof forms are strongly encouraged to articulate the building skyline and add visual interest. The roof forms should relate to and reinforce the building massing, articulation, bays and other elements or features.

**D.4.2 Parapet Treatment**

Parapets are encouraged to be significantly detailed to articulate the top of the building. On modern structures this is often accomplished with sunshades or trellises. On more traditional structures substantial detailing is used.

**D.4.3 Screening of Equipment**

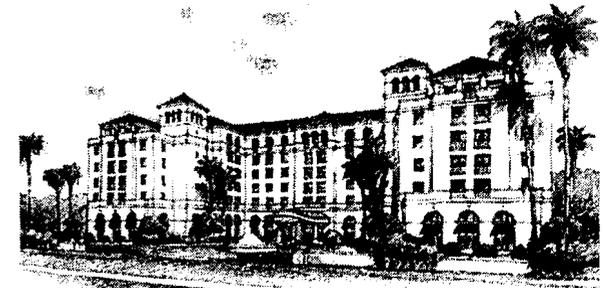
Any and all roof top equipment must be screened from view, including views from adjacent tall structures. Roof top equipment rooms are strongly encouraged. Exposed duct work is strongly discouraged.

**D.5.0 Material****D.5.1 Base / First Floor Level Materials**

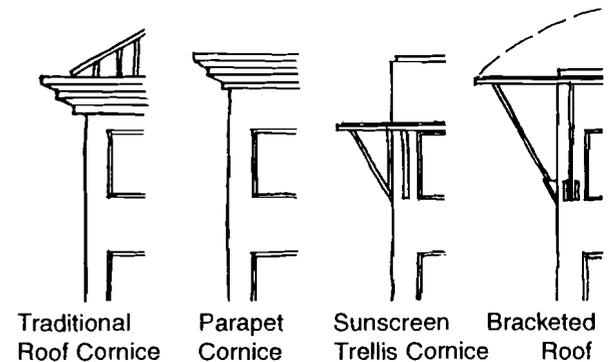
The first floor level (building base) should be emphasized with high quality materials, color changes and a greater attention to detail as this is most visible portion of the building, providing a substantive foundation.

**D.5.2 Building Field Materials / Color**

The field or body of the building may generally rely on patterns, articulation and varied color, rather than more costly facade materials to provide visual interest.



*Roof Elements are typically on Traditional Buildings*



*Parapet & Cornice Treatments are Contemporary*



*Ground Level Material Treatment*

## D. HOTEL / CONFERENCE BUILDING DESIGN

### D.5.3 Roof Materials

Roofs are strongly encouraged to provide a high level of detail and material quality. Metal roofs and tiles, slates and concrete shakes are desired. Asphalt shingles are discouraged on commercial developments.

### D.5.4 Plaza / Courtyard Materials

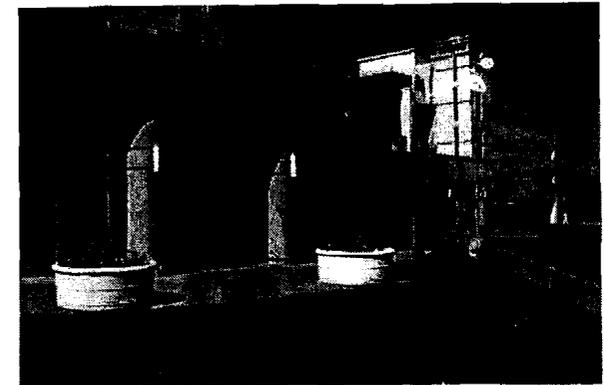
"People Places" such as seating areas, courtyards and entrances should have higher quality materials than general site work for paving, screen walls, furniture, and other landscape elements.

### D.5.5 Special Features

Special Features such as Portcocheres, Colonades and small accessory buildings should be of consistent in material and design with greater emphasis placed on the design and material palette of these elements.

### D.5.6 Material Changes

Material changes should be at inside corners to reflect solid materials rather than a thin applied finish.



*High Quality Materials should be Emphasized on the Ground Level*



*Special Features provide an opportunity for quality materials and attention to detail.*

D. HOTEL / CONFERENCE CATALYST SITE DEVELOPMENT ILLUSTRATIONS

The following development illustrations are conceptual development scenarios for key sites within the Airport Gateway area. They represent one of many layouts generally consistent with the principles within the design guidelines.

From: Airport Gateway Development Plan, MWA 1998.

Reinforce the continuous building edges of the west side of Edgewater Drive by matching the existing pattern, push the buildings up to the 45' build to line.

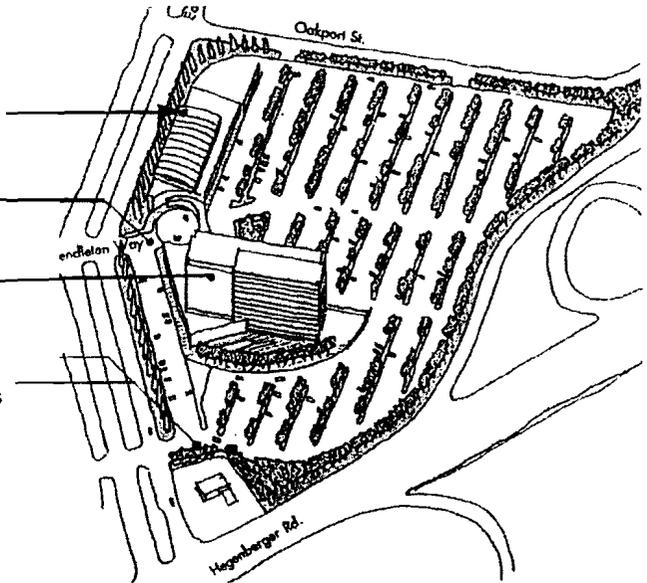
Locate Entry Drives at Intersections

Locate tallest mass near Hegenburger and perpendicular to I-880 in order to maximize visibility and views of Oakland and the Bay.

Create dense landscaping buffer around existing gas station.

**General**

The site has good visibility from I-880, but has no access directly from Hegenburger Road.



**Ramada Development Site**

**General**

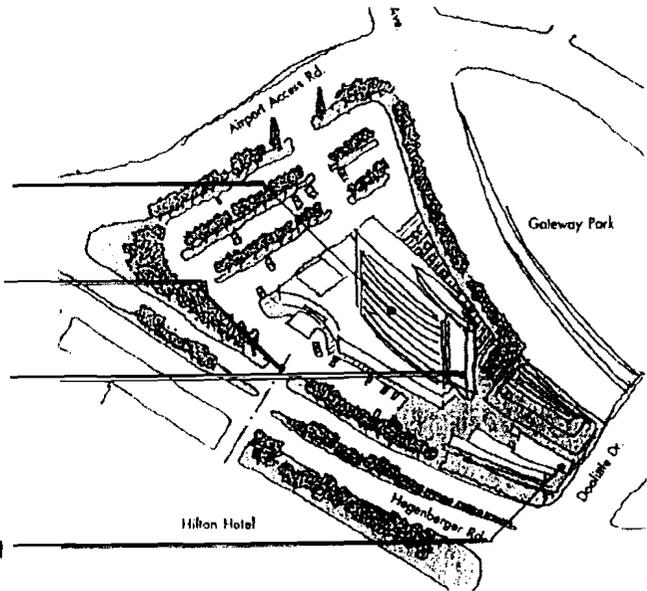
This triangular site is the keystone to creating a strong sense of entering or leaving the airport.

Locate a tall thin mass towards Doolittle Drive. This will create a dramatic vertical element punctuating this important intersection.

Face the main entrance toward Hegenberger Road and coordinate it with the existing Hilton entrance.

Consider the entire tall mass an important element. Design it with great attention to the view of the tall thin element.

At the apex of the triangle, use special signage and landscaping, such as a fountain, dramatically colored foliage or sculpture.



**Doolittle Gateway Development Site**

**E. OFFICE / COMMERCIAL BUILDING DESIGN**

**Office Building Design**

**Issues**

Many past office buildings in the area have been more residential in material and design quality. Recent commercial / office buildings have taken on a contemporary character with modern stylistic elements.

The development of individual buildings within the Port office park has led to isolated building design with no relationship of buildings to each other in site planning or building design.

Gateway Area office buildings have lacked a street presence, with little positive impact on the areas image. The buildings have typically lacked articulation with ribbons of windows providing little facade rhythm or interest. The building entries have been weakly developed and the quality of design and material selection has been lacking.

**Policy**

Promote office development which reflects the contemporary high tech users desired and anticipated.

Promote design of office buildings which reinforce the streetscape through entries, massing, facade articulation and detail and maintain a high quality of materials.

Promote building designs which reinforce the connection between buildings, creating courtyard spaces and emphasizes the connection to the adjacent open spaces.

**E.1.0 Building Form**

**E.1.1 Massing / Articulation**

Commercial / Office buildings should maintain their commercial scale and character with simple primary forms. A single box form with little are no massing articulation is strongly discouraged.

**E.1.2 Roof Forms**

Most commercial buildings have primarily flat roofs. Roof forms are strongly encouraged to emphasize special program areas or unique building elements.

**E.1.3 Articulated Elements**

Articulated forms should accent / highlight important program areas or features such as entries, lobbies and circulation, dining rooms or conference facilities.

**E.1.4 Articulate Entry Features**

Building entries in particular should be emphasized with articulation of massing, material/color change and detailing.

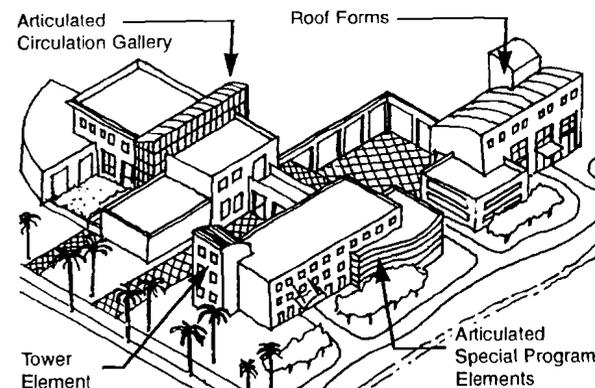
**E.2.0 Windows**

**E.2.1 Window Pattern / Treatment**

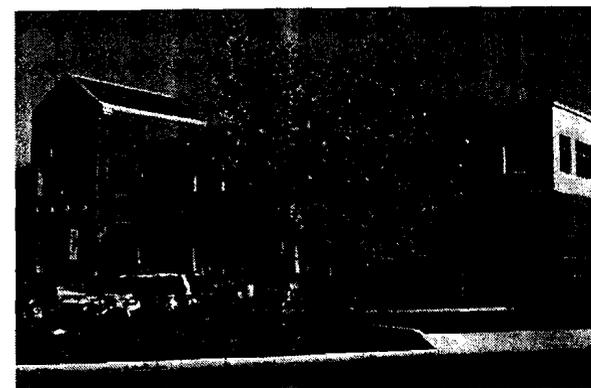
Window patterns should vary within a facade to reflect the program uses within. Single window patterns such as typical on speculative / generic office buildings are not desired and are strongly discouraged.

**E.2.2 Windows: "Punched" & "Ribbons"**

Individual windows, recessed or "punched" are strongly encouraged. Bands of "ribbon" windows may be used to emphasize or accent smaller interior program areas and massing elements. Extensive use of window bands "ribbons" is strongly discour-



*Articulated Elements*



*Example of Articulated Entries*



*Appropriate use of "Punched" and "Ribbon" windows as well as articulated massing elements*

E. OFFICE / COMMERCIAL BUILDING DESIGN

**E.3.0 Materials**

E.3.1 Roof Materials

Flat roofs should not use highly reflective materials to minimize glare of views from taller buildings. Roof forms are strongly encouraged to provide a high level of detail and material quality. Metal roofs and glass are desired. Asphalt shingles and other residential-oriented roofing materials are discouraged on commercial developments.

E.3.2 Facade Materials

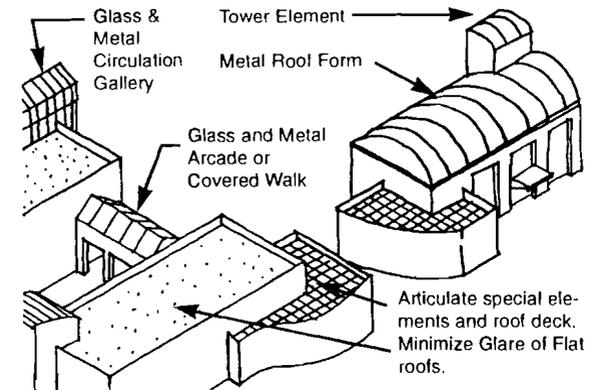
Facade materials should be used to reflect the massing articulation and change with the various building elements. A modern or contemporary commercial material palette such as concrete, metal panels finished stone is encouraged. A residential palette such as board siding, wood trims etc. are not allowed. Industrial style metal buildings are strongly discouraged. Portions of a building may incorporate industrial siding as an accent material on specific form elements.

E.3.3 Detail Elements

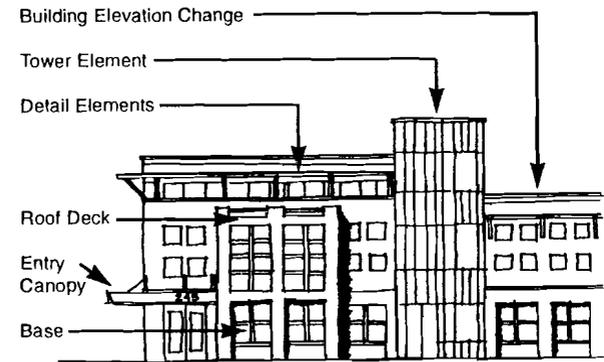
Detail elements such as trellises canopies and other accent elements should be metal, glass and other materials consistent with the building material palette.,

E.3.4 Special Features

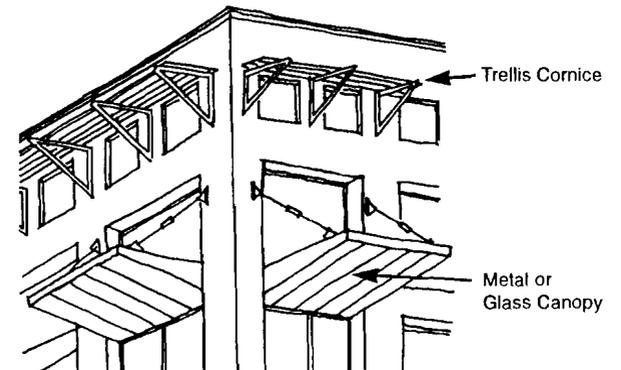
Special features such as building entries, lobbies, circulation spines, conference rooms or auditoriums provide the opportunity for articulation of building form and should be highlighted with changes in materials and color.



*Roof Materials*



*Facade Materials*



*Detail Elements*

**E. OFFICE / COMMERCIAL CATALYST DEVELOPMENT SITE ILLUSTRATIONS**

The following development illustrations are conceptual development scenarios for key sites within the Airport Gateway Area. They represent one of many layouts generally consistent with the principles within the design guidelines.

From: Airport Gateway Development Plan, MWA 1998.

**General**

This large irregularly shaped site has only 100' of Hegenberger frontage, but has an extended frontage along San Leandro Creek.

Create a 15' dense landscape buffer between the development & the Columbian Gardens housing.

Locate parking lots or structures behind buildings away from creek.

Create lush office park with buildings that relate to the curvature of the creek.

Direct main facades towards creek and extend Leet Drive into the site along creek or behind buildings. (Align Leet Drive across Hegenberger Road)

Provide Public Access pedestrian walk along the creek. from Hegenberger or from the site.

**Ratto Farm Office Site**

Locate parking lots or structured parking behind new buildings.

Reinforce the Hegenberger edge through a strong building or landscaping edge, and the building up to the 65' setback.

Capitalize on creek frontage views by aligning buildings and important program elements along creek.

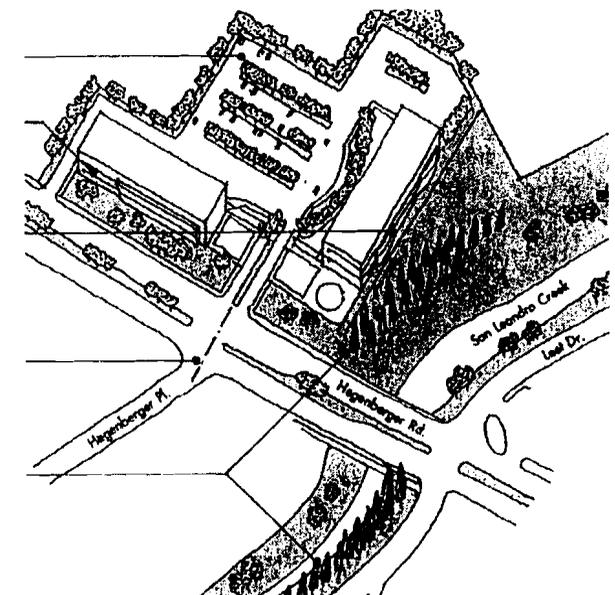
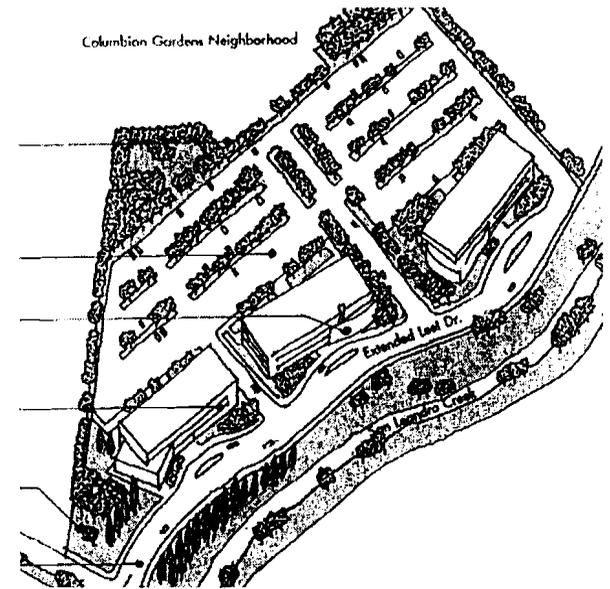
Locate main entry opposite existing street (Hegenberger Pl.)

Plant columnar trees at diagonally opposing corners of the intersection of the creek with Hegenberger Rd.

**General**

This "L" shaped site has 500' of frontage along both Hegenberger Road and San Leandro Creek.

**San Leandro Creek Office Site**



  
 CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

**ORDINANCE No. \_\_\_\_\_ C. M. S.**
**DRAFT**

**ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO ADD TRANSIENT HABITATION (HOTEL) AS A CONDITIONALLY PERMITTED ACTIVITY IN THE C-36 (GATEWAY BOULEVARD) C-55 (CENTRAL CORE COMMERCIAL) AND C-51 (CENTRAL BUSINESS SERVICE) ZONES AND TO ESTABLISH SPECIAL USE PERMIT CRITERIA FOR TRANSIENT HABITATION IN THE C-36 (GATEWAY BOULEVARD), C-40 (COMMUNITY THOROUGHFARE COMMERCIAL), C-45 (COMMUNITY SHOPPING), C-51 (CENTRAL BUSINESS SERVICE), C-52 OLD OAKLAND, C-55 (CENTRAL CORE COMMERCIAL), S-2 (CIVIC CENTER), AND S-8 (URBAN STREET COMBINING) ZONES**

**WHEREAS**, on July 20, 1999, The Community and Economic Development Council Committee considered an informational report on establishing formal policies regarding hotel development within the Airport Gateway Area. The Council CEDC accepted the report and instructed staff to establish special design guidelines for hotel and commercial office development that would be incorporated into the existing Zoning Regulations; and;

**WHEREAS**, in December 1999 a follow up report was prepared that provided a hotel market analysis that provided definitions of different hotel types and concluded that there is limited potential to increase the demand and market feasibility for new luxury or first class hotel rooms; and;

**WHEREAS**, the hotel/motel market analysis also indicated that the San Francisco Planning Code requires their Planning Commission to consider the impact of employees of new hotels and motels, and also requires that measures be taken by a project sponsor to employ residents of San Francisco; and;

**WHEREAS**, the follow up report presented guidelines and standards for development within the Airport Gateway area. The key elements of the guidelines being site planning to insure appropriate access and circulation, landscaping to reinforce the streetscape program, signage to provide consistency with the desired area character and building design to enhance each buildings quality; and;

**WHEREAS**, the City Council directed staff to prepare zoning text revisions that would require a major conditional use permit for all transient habitation activities (hotels and motels) throughout the city; and;

**DRAFT**

**WHEREAS**, the proposed zoning text amendments include specific use permit criteria related to location and design standards for all new hotel development as well as design guidelines; and;

**WHEREAS**, the proposed amendments support the goals of the General Plan. The Airport Gateway area is designated as a Showcase District in the General Plan and the policy regarding the Comprehensive Economic Development Strategy for Showcase Areas is "to develop and implement plans to enhance showcase districts"; and;

**WHEREAS**, a related General Plan policy calls for a detailed planning effort for the Hegenberger Gateway area; and

**WHEREAS**, in November 1998 in response to the above General Plan policies the Hegenberger 98<sup>th</sup> Avenue Gateway Development Plan was prepared and adopted; and

**WHEREAS**, the C-36 Gateway Boulevard Service Commercial, the C-55 Central Core Commercial and C-51 Central Business Service Zones would be amended to require a conditional use permit for the development of hotels and motels; and;

**WHEREAS**, Section 17.102.370 would add specific criteria for Hotels and Motel land uses; and

**WHEREAS**, the C-52 Old Oakland, C-45 Community Shopping, C-40 Community Thoroughfare, S-8 Urban Street Combining and S-2 Civic Center Zones all currently require a conditional use permit for hotels and motels; and

**WHEREAS**, the C-52 Old Oakland, C-45 Community Shopping, C-40 Community Thoroughfare, S-8 Urban Street Combining and S-2 Civic Center would be amended to also require compliance with Section 17.102.370; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA) of 1970 are satisfied, and according to (Section 15061(b) (3) of the State CEQA Guidelines, the project is exempt based on the "general rule" which states that "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA; and

**WHEREAS**, on May 10, 2000, the Planning Commission held a duly noticed public hearing and took public testimony on this matter; and

**WHEREAS**, on May 10, the Planning Commission recommended approval of the proposed zoning text amendments; and

**DRAFT**

WHEREAS, the City Council finds and determines that the public safety, health, convenience, comfort, property, and general welfare will be furthered by the proposed interim controls; now therefore,

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** The City Council finds and determines the foregoing recitals to be true and correct and hereby make them a part of this Ordinance.

**Section 2.** The City Council affirms the environmental determination and findings of the Planning Commission that the ordinance is exempt from CEQA according to Section 15061(b) (3) of the State CEQA Guidelines, based on the "general rule, where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment".

**Section 3.** If any provisions of this ordinance or application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application of provision to other persons or circumstances shall not be affected thereby.

**Section 4.** This Ordinance is necessary to preserve the public health, safety and general welfare because of the potential harm to the areas resulting from the unregulated development of transient habitation (hotels and motels).

**Section 5.** The Oakland Planning Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in **bold type**, additions are indicated by underlining and deletions are indicated by ~~strike-out type~~; portions of the code not cited, or not shown in underlining or strike-out type, are not changed:

**17.62.050** Permitted Activities allowing Transient Habitation would be deleted as follows:

Permitted Activities

Commercial Activities

~~Transient Habitation~~

Sections **17.52.060**, **17.58.060** and **17.62.060** would be amended to require a Conditional Use Permit for Transient Habitation to read as follows:

Conditionally Permitted Activities

Commercial Activities

Transient Habitation, subject to the provisions of Chapter 17.102.370

**DRAFT**

Chapter 17.102.370 : Conditional Use Permit Criteria for hotels and motels would be added as follows:

A. Use Permit Criteria for Hotel and Motel uses. A Conditional Use Permit for hotel and motel uses may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134, to any and all applicable use permit criteria set forth in the particular individual zone regulations, and to all of the following use permit criteria:

1. That the proposal is located in downtown, along the waterfront, near the airport, or along the I-880 freeway, and/or in an area with a concentration of amenities for hotel patrons, including restaurant, retail, recreation, open space and exercise facilities, and is well-served by public transit.
2. That the proposal considers the impact of the employees of the hotel or motel on the demand in the City for housing, public transit, and social services.
3. That the proposal is consistent with the goal of attracting first-class, luxury hotels in downtown, along the waterfront, near the airport, or along the I-880 freeway which provide: (a) a minimum of 100 sleeping rooms; (b) a full service restaurant providing three meals per day; and (c) on-site recreational amenities, which may include an exercise room, swimming pool, and/or tennis courts. In the event items (b) and/or (c) are not provided on-site, such facilities should be located within close proximity of the proposed project site.
4. That the proposed development will be of an architectural and visual quality and character which harmonizes and enhances the surrounding area, and that such design includes: (a) site planning that insures appropriate access and circulation, locates building entries which face the primary street, provides a consistent development pattern along the primary street, and insures a design that provides adequate lighting and promotes safety for its users; (b) landscaping that creates a pleasant visual corridor along the primary streets with a variety of local species and high quality landscape materials; (c) signage that is integrated and consistent with the building design and promotes the building entry, is consistent with the desired character of the area, and does not detract from the overall streetscape; (d) the majority of the parking to the rear of the site and where appropriate is provided within a structured parking facility that is consistent, compatible and integrated into the overall development; (e) appropriate design treatment for ventilation of room units as well as structured parking areas; and prominent entry features that may include attractive porte-cocheres; (f) building design that enhances the building's quality with strong architectural statements, high quality materials particularly at the pedestrian level and appropriate attention to detail.
5. That the proposed development provides adequately buffered loading areas and to the extent possible, are located on secondary streets.

Section 6. This Ordinance shall be effective immediately upon its adoption by this City Council,

**DRAFT**

**Section 7.** This Ordinance is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City Of Oakland, and Article XI of the California Constitution.

**Section 8.** If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this Ordinance and the application shall not be affected thereby.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 19\_\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BRUNNER, CHANG, MILEY, NADEL, REID, RUSSO, SPEES AND  
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

*Item C*  
**COMMUNITY & ECONOMIC  
DEVELOPMENT CMTE.**

*6-27-2000*

ATTEST: \_\_\_\_\_

CEDA FLOYD

City Clerk and Clerk of the Council  
of the City of Oakland, California