



Title 17 – Zoning

Article IV

Special Use Standards

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Revisions:

The following revisions have been made to Article IV of Title 17:

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Chapter 17.58 Adult Entertainment Businesses

Sections:

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Draft Zoning Code Changes:

This chapter has been revised with an updated purpose to ensure legal adequacy, to regulate adult oriented businesses in order to promote the health, safety, and general welfare of the residents of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult oriented businesses within the city.

17.58.010 Purpose

It is the purpose of this Chapter to regulate adult oriented businesses in order to promote the health, safety, and general welfare of the residents of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult oriented businesses within the city. The requirements of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials. Similarly, it is not the intent or effect of this ordinance to restrict or deny access by adults to adult oriented materials protected by the First Amendment, or to deny access by distributors and exhibitors of adult entertainment or adult oriented materials to their intended market. Nothing in these regulations is intended to authorize, legalize, or permit the establishment, operation, or maintenance of any business, building, or use which violates any City ordinance or any statute of the State of California regarding public nuisances, unlawful or indecent exposure, sexual conduct, lewdness, obscene or harmful matter or the exhibition or public display thereof.

17.58.020 Location Requirements

Adult entertainment businesses are permitted subject to compliance with the location requirements listed below.

- A. Adult entertainment businesses regulated by this Chapter shall only be permitted as established by Article II. (Zoning Districts, Allowed Uses, and Development Standards), subject to the regulations outlined in this Chapter, and subject to the issuance of a Conditional Use Permit pursuant to the requirements of Section 17.12.130 (Conditional Use Permit). This requirement is in addition to other permits or certificates required by law.
- B. Such use is more than 400 feet from any area zoned for residential use.
- C. Such use is more than 1,000 feet from any other adult entertainment business.
- D. Such use is more than 500 feet from any public or private school, day care, park, playground, public building, church, recreation area, nature trail, synagogue, mosque, temple, or other building for religious worship, youth-oriented establishments, or any noncommercial establishment operated by a religious organization.

- E. For the purposes of this Chapter, all distances shall be measured in a straight line, without regard to intervening structures or objects, from the nearest point of the building or structure used as an adult entertainment business is conducted to the nearest property line or nearest point of any building on the property at issue.
- F. The establishment of any adult entertainment business shall include the opening of such a business as a new business, the relocation of such a business, the conversion of an existing business location to any adult entertainment use or the addition of any of the adult entertainment businesses defined in the Title to any other existing adult entertainment businesses.

17.58.030 Design Requirements

Adult entertainment businesses are permitted subject to compliance with the requirements listed below.

- A. In any adult theater, the entire interior of the premises where the pictures are to be viewed shall be visible upon entrance to such premises; in addition, no viewing booths or areas shall be partially or fully enclosed or concealed.
- B. No person shall place, maintain, display, or exhibit any material in a manner which exposes to public view photographs or illustrations of specified sexual activities or of poses which emphasize or direct the viewer's attention to specified anatomical areas. As used herein, exposes to public view means exposes to the view of persons outside the building on which said material is placed, maintained, or displayed.
- C. The building entrance to the adult entertainment business shall be clearly and legibly posted with a notice indicating that minors are precluded from entering the premises.
- D. All building openings, entries, and windows for an adult entertainment business shall be located, covered or screened in such a manner as to prevent a view into the interior of an adult entertainment business from any area open to the general public.
- E. All off-street parking areas and buildings entries serving the adult entertainment business shall be illuminated during all hours of operation. All interior portions of the adult entertainment business, except those areas devoted to mini-motion or motion pictures, shall be illuminated during all hours of operation.
- F. All indoor areas of an adult entertainment business within which patrons are permitted, except restrooms, shall be open to view by the management at all times. Individual viewing booths for public use in adult oriented businesses may be enclosed on three sides only and the open side shall be 100 percent open. The visibility of the inside of the booths shall not be obstructed. Not more than one person shall occupy any individual booth at one time.
- G. Parking shall be provided pursuant to Chapter 17.48 (Parking).
- H. **Nudity at Adult Entertainment Businesses.** The United States Supreme Court decision in *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 (1991), which upheld the rights of cities to prohibit live public exposure of a person's private parts, specifically applies to adult entertainment businesses (regardless of whether or not a permit has been issued to said businesses under this ordinance), including said businesses where no alcoholic beverages

are sold, served, or consumed at the premises. Based on this ruling, the City prohibits public nudity within the city, including public nudity at any adult entertainment business. Any adult entertainment business which is found in violation of this section shall have its business license suspended pursuant to the requirements of Title V of this Municipal Code.

17.58.040 Violations

Any adult entertainment business that is operating in violation of these requirements regulating adult entertainment businesses is hereby declared to constitute a public nuisance and, as such, may be abated or enjoined from further operation.

17.58.050 Design Requirements

If any section, subsection, paragraph, subparagraph or requirement of this chapter or the application thereof to any person, property or circumstance is held invalid, the remainder of the chapter and the application of such to other persons, properties or circumstances shall not be affected thereby.

Chapter 17.60 Condominium New Projects and Conversions

Sections:

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Draft Zoning Code Changes:

The existing Chapter 17.29 has been maintained. No substantial changes have been made. Definitions have been moved to Chapter 17.98 (Glossary of Terms).

17.60.010 Purpose

Residential condominiums provide for individual ownership of separate dwelling units which are usually in close proximity to one another. The area surrounding the dwelling units is a common area that is managed and maintained by the individual owners of dwelling units in accordance with the rules of an association agreement. This mix of individual and common ownership is different from single-family residences and conventional apartment house use. In single-family homes, the dwelling is physically separate and the yard areas are under the more or less complete control of the owner. In conventional apartments, there is an implied guarantee of continuous and effective management of the project, and the occupant is not the owner of the unit and does not have the burden of financial commitment, maintenance, or resale associated with ownership. The unique nature of condominium projects tends to magnify the effects associated with higher urban densities to the point where they may have deleterious effects upon the occupant, seller and buyer who often do not fully appreciate the implications of condominium living and ownership and which may lead to conditions of mismanagement, neglect and blight that impact upon the public health, safety, welfare and economic prosperity of the larger community. To ensure that such problems are avoided in both the short and long term, it is the express intent of the City to treat such projects differently from other multiple-family dwelling developments or other structures which are not residential condominium projects. It is found that the special regulations contained in this chapter are required to achieve this intent, and are applicable to all new condominium developments and the conversion of existing community apartment projects to residential condominiums. No part of this chapter is intended to be applicable to commercial condominiums.

1. To establish requirements and procedures to be followed for the review and approval or disapproval of new condominium project developments and the conversion of existing multiple-family rental housing to residential condominiums.
2. To establish criteria for new condominium developments and condominium conversion projects.

3. To ensure that the developer of the project provides adequate private outdoor living space, storage and parking space, open space and other amenities for residents of condominium project developments.
4. To provide for planning and compliance with the City's General Plan, Housing Element and housing assistance plan.
5. To provide a desirable balance of rental and ownership housing within the City, and a variety of individual choice of tenure, type, price and location of housing.
6. To ensure that the project sponsor is attentive to the performance characteristics of the structure and mitigates such problems as vibration and noise transmission, which if not adequately attenuated, may nevertheless render the living environment within the project insufferable and the transfer of unit ownership difficult.

17.60.020 Permit Requirements

The developer of a new condominium project or a developer who desires to convert an existing multiple-family rental housing or a nonresidential structure to a residential condominium shall first submit an application for a use permit to the Community Development Department. The application shall include, but not be limited to, the following, in as many copies as the Community Development Department determines to be sufficient for its staff and the Planning Commission to evaluate the project:

- A. A complete legal description of the property and a boundary map showing the existing topography of the site and the location of all existing easements, structures and other improvements, and trees over six inches in diameter;
- B. Dimensioned schematic development plans consisting of at least a site plan, parking plan, typical floor plan, building elevations showing natural and proposed grades, transverse and longitudinal section showing natural and proposed grades, and a conceptual landscaping plan for the project as a whole. (In instances where the project involves the conversion of an existing structure to condominium usage, the developer shall submit plans showing existing conditions and proposed improvements, and other information and plans as determined by the City staff)
- C. A tabular analysis (submitted on forms provided by the City) showing how the project compares to the minimum standards for condominium projects in the District in which it would be located;
- D. Drawings of typical detailed sections indicating types of wall, floor and ceiling construction that would be used in both common and interior partition walls within the condominium project, including either published data from a recognized and approved testing laboratory or a statement from a licensed acoustical engineer, or the City building official as to the STC (Sound Transmission Class) and IIC (Impact Insulation Class) of the proposed type of construction;
- E. Such other information which the Planning Commission or Community Development Department determines is necessary to evaluate the proposed project;
- F. No application shall be considered unless all the information required by subsections A through E inclusive, is provided to the Community Development Department, or the

developer files with the Community Development Department an affidavit or declaration showing good cause for failure to provide such information. This affidavit or declaration shall set forth in detail all efforts undertaken to discover such information and all reasons why the information cannot be obtained;

- G. Upon formal approval of the use permit, the developer will then be required to submit a tentative subdivision map for City approval unless the condominium conversion is exempt from the Subdivision Map Act pursuant to the California Government Code.

17.60.030 Condominium Development Policy, Standards, and Criteria

To achieve the purpose of this chapter, the Planning Commission requires that all proposals for condominium usage made pursuant to the requirements of this section, including the conversion of existing multiple-residential structures to condominiums, conforms to the requirements of the Residential District in which the project is located. Additionally, the Planning Commission must review the project proposal in order to determine its degree of compliance with both the condominium development standards and development criteria delineated in subsections A and B of this section. A condominium proposal which does not comply with all of the precise development standards in subsection A of this section may be approved by the Planning Commission where the commission finds that there are unusual circumstances regarding the development's location, site or configuration, that the project is in substantial compliance with both the development standards and development criteria, and that there are mitigating features incorporated in the project which tend to further the expressed intent and purpose of this chapter.

Recognizing that the conversion of existing multiple residential structures to condominium usage presents unique problems with respect to the requirements of this chapter, the Planning Commission is empowered to vary any and all requirements contained in this chapter with regard to a particular conversion proposal upon a specific finding or findings that the creation of the proposed condominium will not contravene the intent and purpose of this chapter. Project characteristics of critical importance in determining whether or not a proposed conversion will contravene the intent and purpose include the age of the structure and the degree to which the proposal varies from the required standards for the following: Parking, private open space, storage space, sound transmission characteristics, fire protection and development criteria.

The Planning Commission is also empowered to impose conditions on any approval given which would require that specified modifications, designed to bring a structure into compliance with the condominium development standards contained in this section, are made to the structure proposed for conversion.

- A. Condominium Development Standards. To achieve the purpose of this section, the Planning Commission shall require, except as noted above, that all condominium projects conform to the requirements of the residential district in which the project is located and all of the following condominium development standards:
1. All new condominiums or community apartment projects shall be developed with at least one bedroom per unit and include garage/parking and storage.
 2. Parking Requirements. All condominium developments shall conform to the following parking requirements: Each unit in the development, irrespective of size, shall have at least two and two-tenths parking spaces consisting of two owned spaces (minimum one garage space), and two-tenths guest space (common).

All fractions to be rounded to next highest number with a minimum of one guest space per development. All garages to be used primarily for storage of vehicles.

3. Requirement of Private Open Space for Each Unit. Each unit within the project shall have an appurtenant private patio, deck, balcony, atrium or solarium with a minimum area of one hundred fifty square feet, except that a one bedroom unit is required to have a minimum area of one hundred thirty square feet. Such space shall be designed for the sole enjoyment of the unit owner, shall have at least two weatherproofed electrical convenience outlets, and shall have a shape and size that would allow for optional usable space. Such space shall be at the same level as, and immediately accessible from a room within the unit. The Planning Commission may allow variations from the above dimensional standards where it can be shown that the required private open space meets the intent and purpose of this subsection.
4. Storage Space for Each Unit.
 - i. In addition to guest, linen, food pantry and clothes closets customarily provided, each unit within the project shall meet minimum FHA storage standards. All exterior storage spaces shall be weatherproof, lockable and meet fire department requirements. Such space shall be for the sole use of the unit owner. Walk-in exterior storage shall have a minimum clear access opening of two and one-half feet by six and two-thirds feet.
 - ii. Such space may be provided in any location approved by the Planning Commission, but shall not be divided into more than two locations within a reasonable distance of the unit.
 - iii. If such space is located within a common area within the project, the association shall be responsible for the care and maintenance of the exterior surface of the space in order to assure that that surface is maintained in a manner compatible with the architectural treatment of the project.
 - iv. Regardless of the location, the precise architectural treatment of such space shall be approved by the Planning Commission to ensure that such areas are safe, convenient and unobtrusive to the functional and aesthetic qualities of the project.
5. Sound Transmission Characteristics. Condominiums present a unique problem in relation to sound transmission. The following methods shall be utilized to regulate noise transmission:
 - i. Shock Mounting of Mechanical Equipment. All permanent mechanical equipment such as motors, compressors, pumps and compactors which is determined by the building official to be a source of significant structural vibration or structure-borne noise shall be shock-mounted in inertia blocks or bases and/or vibration isolators in a manner approved by the building official.
 - ii. Noise Resistance. As a minimum, all common walls and floors between units shall comply with Uniform Building Code Standard No. 35-1. All separating floor-ceiling assemblies between separate units shall provide

- impact sound insulation equal to that required to meet an Impact Insulation Class (IIC) of fifty (forty-five if field-tested) as defined in Uniform Building Code Standard No. 35-2. Developers of conversions shall submit to the Community Development Department prior to approval of the tentative map a written statement of compliance signed by a certified sound engineer. (The sound transmission requirements stated in this subdivision do not preclude requirements outlined in the California Environmental Quality Act, appropriate City ordinances and criteria).
- iii. Plumbing shall be located within walls interior to the unit whenever possible. Any plumbing in common walls shall be wrapped and caulked to effectively reduce noise transmission.
 - iv. Patios or balconies adjacent to bedroom areas shall be improved with solid walls constructed of masonry, wood, wood and stucco, wood on wood, or other acceptable materials at a rate of two pounds per square foot minimum and to a minimum of five feet in height.
6. Fire Prevention.
- i. Every dwelling unit shall be provided with a smoke detector conforming to Uniform Building Code Standard No. 43-6. The detector shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes. Where sleeping rooms are on an upper level, the detector shall be placed at the center of the ceiling directly above the stairway. All detectors shall be located within twelve inches of the ceiling. Care shall be exercised to insure that this installation will not interfere with the operating characteristics of the detector. When actuated, the detector shall provide an alarm in the dwelling unit.
 - ii. Draft stops shall be placed in all attics that are determined to be accessible by the building official.
 - iii. All condominiums shall meet minimum requirements of fire department.
7. Condition of Equipment and Appliances. On conversions, the developer shall provide a one-year warranty to the buyer of each unit at the close of escrow on any dishwashers, garbage disposals, washers and dryers, stoves, refrigerators, hot water tanks and air conditioners that are provided. At such time as the Homeowners' Association takes over management of the development, the developer shall provide a one-year warranty to the association that any pool and pool equipment (filter, pumps, chlorinator) and any appliances and mechanical equipment to be owned in common by the association is in operable working condition.
8. Condition of Paved Areas. Prior to close of escrow of conversion units, the developer shall make any repairs necessary to all paved surfaces to meet current City standards.
- B. Condominium Development Criteria. The overall quality of the project, including design, site layout, density, open space and recreational facilities of the condominium shall be evaluated by the Planning Commission using the following criteria:

1. Land Use Intensity. Land use intensity shall be consistent with general plan and Zoning Code.
2. Overall Design and Site Layout. The following criteria shall be considered in reviewing the overall design and site layout of the project:
 - i. The project should have a comprehensive and integrated design, providing its own open space, off-street parking and amenities for contemporary living. Insofar as the scale of the project allows, open space, walkways and other areas for people should be separated from parking areas, driveways and areas for automobiles.
 - ii. Architectural unity and harmony should be achieved both within the project and between the project and the surrounding community so that it does not constitute an adverse disruption to the established fabric of the community.
 - iii. The layout of structures and other facilities should effect a conservation in street, driveway, curb cut, utility and other public or quasi-public improvements. Additionally, structures should be designed to minimize, within the context of accepted architectural practice, the consumption of natural resources either directly or indirectly, i.e., gas, water and electricity.
 - iv. A landscape and lighting plan shall be submitted to and approved by the Planning Commission for all outdoor areas, and shall be submitted with or as part of the project site plan. The plan shall be subject to approval of the Planning Commission prior to the issuance of any building permits. Landscaping shall be installed prior to occupancy or, as the case with conversions, prior to close of escrow of the first unit. Landscaping shall be maintained in accord with the approved landscape plan.
 - v. Mailboxes shall be located in central locations in a manner approved by the Planning Commission and the postal service.
 - vi. Access to all common areas (open space, facilities, parking) located on the ground floor areas shall be provided with a barrier-free design (including curb cuts, ramps, wide gates, etc.) for the handicapped.
 - vii. All common areas shall be maintained by a homeowner's association.
3. Other Facilities. Consideration shall be given by the Planning Commission to the inclusion of the following facilities in the project:
 - i. A laundry area shall be provided in each unit, or if common laundry facilities are provided, then such facilities shall be subject to the review of the Planning Commission as to their adequacy.
 - ii. Requirement shall be placed in the codes, covenants and restrictions precluding the parking of recreational vehicles and boats on required owned or guest spaces.

4. Utilities.
 - i. All units to be subdivided shall be provided with separate gas and electric meters and requirement made for individual shut-off valves.
 - ii. All units shall be provided with separate water meters and shut-off valves. If a master water meter is used, private, individual meters will nonetheless be required for water service.
 - iii. Sewer Lines. Condominium (air space) units: Each unit shall be provided a separate sewer lateral wherever possible. Where not possible, each floor shall have its own lateral and the Homeowner's Association shall be responsible for all maintenance of the common laterals from the individual unit to the connection with the main sewer line. Planned unit developments: Each unit shall be provided a separate sewer lateral. No cross-connections or common connections shall be allowed of any plumbing.
 - iv. Individual utility meters, phone panels and address directories shall be clustered for efficient access for residents and service.
 - v. Group plumbing vents and ducts together wherever possible in condominium (air space) units to minimize roof penetration. Where mechanical equipment must be located on the roof, it shall be integrated into design of the roof and/or recessed or screened from view from adjoining properties.
- C. Approval of Tentative/Final Subdivision Map. Approval of the tentative and final subdivision maps for new condominiums and conversions shall be pursuant to Section 66427 of the California Government Code and local subdivision ordinance as amended.

17.60.040 Declaration of Covenants, Conditions, and Restrictions and Projects Elements

To achieve the purpose of this section, the Planning Commission requires that the declaration of covenants, conditions and restrictions and project elements relating to the management of the common area and facilities be approved by the Community Development Department prior to the approval of the final map. In addition to such covenants, conditions and restrictions that may be required by the Department of Real Estate of the state pursuant to Title 6 (Condominiums) of the Civil Code, or other state laws or policies, such declaration shall be subject to recording and shall provide for the following, none of which, when approved by the Planning Commission or Community Development Department shall be amended, modified or changed without first obtaining the written consent of the City and all of which shall contain a statement to that effect. The minimum criteria and conditions which are described in this section and any other conditions to be placed in the codes, covenants and restrictions shall be distributed to the developer at the time of the preliminary conference on the tentative map:

- A. Conveyance of Private Open Space. The surface area and appurtenant air space of private open space areas, including but not limited to the private patio, deck, balcony, solarium or atrium required by Subsection 17.60.030.A.3 and any integral portion of that space may exceed the minimum area requirements, shall be described and conveyed in the grant deed as an integral part of the unit.

- B. Conveyance of Private Storage Areas. The surface and appurtenant air space of private storage spaces required by Subsection 17.60.030.A4 shall be described and conveyed in the declaration as an integral part of the unit.
- C. Assignment and Use of Required Off-street Parking Spaces. Required off-street parking spaces shall be permanently and irrevocably specifically assigned to particular units within the project on the basis of the parking spaces required per unit pursuant to Subsection 17.60.030.A2. To the maximum practicable extent the spaces assigned to each unit shall be contiguous. In no case shall the private storage area of one unit overhang or take its access from the required off-street parking space of another unit. All parking spaces shall be for the use of unit owners. One bedroom units shall be assigned two parking spaces and may rent additional spaces from the association as available. An occupant of a unit with two or more bedrooms may rent one parking space back to the association. All parking spaces, except those specifically designated for recreational vehicles, shall be used solely for the purpose of parking motor vehicles as defined by the Vehicle Code of the state, and shall not be used for trailers, unmounted campers, boats or similar recreational vehicles.
- D. Right of Public Entry to Common Area. The developer shall file a petition by a majority of the owners, requesting that the requirements of the California Vehicle Code be enforced on privately owned and maintained roads as provided in Section 21107.07 of the California Vehicle Code.
- E. Maintenance of Common Areas and Facilities--General. In order to protect the public health, safety and welfare, requirement shall be made both for annual assessments of the owners for maintenance and special assessments for capital improvements. The amount of the regular annual assessment and the procedure for its change shall be specified. The manner in which special assessments may be levied for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the common area shall be specified. The remedies which the association may bring for the nonpayment on assessments shall be specified and may include penalties for late payment.
- F. Utility Easements Over Private Streets and Other Areas. If the condominium project contains private streets, paths or roadways, requirement shall be made for public utility easement over the entire private street, path or roadway network. The Planning Commission may also require public utility easements adjacent to public streets or over other portions of the project to accommodate fire hydrants, water meters, street furniture, storm drainage, sanitary sewers, water and gas mains, electrical lines and similar public improvements and utilities. The Planning Commission may also require access routes necessary to assure that firefighting equipment can reach and operate efficiently in all areas of the project.
- G. Access for Construction, Maintenance or Repairs. The association shall have an easement for entry upon any privately owned unit, where necessary, in connection with construction, maintenance or repair for the benefit of the common area or the owners of the units in common. Codes, covenants and restrictions shall include a requirement for prior notice of entry to occupants when at all possible.
- H. Termination of Contract. Unless otherwise prohibited by law, or any local, state or federal regulation, the association has the right to terminate the contract of any person or organization engaged by the developer to perform management or maintenance

duties three months after the association assumes control of the project, or at that time renegotiate any such contracts.

- I. Preparation of By-laws. A complete set of by-laws for operation of the Homeowner's Association shall be prepared and submitted to the City subject to approval as to form to accomplish the purposes contained in this subsection. Additionally, the by-laws and the codes, covenants and restrictions shall provide for, and the developer/owner shall establish, a continuously active guarantee of an amount equal to or greater than the estimated costs of normal operation of the association for a period of not less than six months.

17.60.050 Additional Requirements

In addition to the requirements for a subdivision, the application for the subdivision of existing multiple-family rental housing as a condominium conversion is subject to the following additional requirements:

- A. **Code Inspection, Compliance and Disclosure.** All units to be under separate ownership or lease after conversion shall be inspected by the City prior to City approval of final map. Separate ownership means a condominium unit where the entire fee is in one entity whether individually, in joint tenancy, or as tenants-in-common. The cost of such inspection shall be borne by the applicant. All units shall be brought into compliance with applicable Uniform Building Codes heretofore adopted by the City pursuant to ordinance, prior to final map approval by the City.
- B. **Public Report Application.** A copy of the proposed application submitted by the applicant to the Department of Real Estate of the state for a subdivision public report on the current forms required by the Department of Real Estate shall be submitted to the Community Development Department together with the submittal of the tentative map. Such application need not contain exhibits regarding the availability of utility services or the organizational documents of the project. However, the application for the final subdivision map shall include a full and complete copy of all information submitted to the Department of Real Estate by applicant.
- C. **Notification to Tenants.** Developers of apartment conversions shall, with the use permit application, submit to the City the following:
 1. A list of names and addresses of the residents of each unit in the conversion project certified as to accuracy by the developer as of the date of the application; and
 2. Certification that the residents of the project have been notified of the proposed conversion in a manner approved by the Community Development Department; or
 3. A separate stamped, preaddressed envelope to the resident of each unit shall be furnished to the City by the developer at the time the developer submits an application for a use permit. The City shall use such envelopes to notify the residents by mailing a copy of the Planning Commission agenda and notice to tenants no less than seven days prior to the proposed meeting date on the use permit.

4. All new tenants who occupy the property after an application for a use permit for conversion has been filed with the City shall be notified of the application by the developer prior to occupancy by the tenant.
 5. Please note that additional notice requirements are set forth in Section 66427.1 of the Government Code for approval of any final map for the conversion of residential real property into a condominium project, a community apartment project or a stock cooperative project.
- D. **Pest Infestation and Dry Rot Report.** The developer shall, prior to approval of the final map, submit to the Community Development Department a copy of a structural pest infestation and dry rot report for all buildings within the proposed project. This report shall be made available to all prospective buyers by the developer.
- E. **Building Security.** The developer shall comply with all conditions of the City's Police Department in respect to building security. In addition, prior to the approval of the final map, all locks in the project shall be changed so that no master key or other keys previously used will allow entry into any unit of the project after conversion.

17.60.060 Effect of Proposed Apartment Conversion on the City's Housing Stock

In reviewing requests for conversion of existing apartment buildings to condominiums, the City shall consider the following:

- A. Whether or not the amount and impact of the displacement of tenants if the conversion were approved would be detrimental to the health, safety or general welfare of the community;
- B. The role that the apartment structure plays in the existing housing rental market. Particular emphasis will be placed on the evaluation of rental structures to determine if the existing apartment complex is serving low income and moderate income households. Standard definitions of low income and moderate income rents used by the federal and state governments will be used in the evaluation. Along with other factors, the City will consider the following:
- C. The number of families on current waiting lists for assisted rental housing programs that operate in Pinole, such as Section 23, and Section 236 programs;
- D. The probable income range of tenants living in existing apartments based on the assumption that households pay between one-quarter and one-third of their income for housing. That income range will be compared with existing income limits for the Section 8 program to determine whether potential displaced tenants can be categorized as low income and moderate income;
- E. The need and demand for lower cost homeownership opportunities which are increased by the conversion of apartments to condominiums;
- F. Normally, conversion projects shall not be approved by the Planning Commission if, on the basis of a representative sampling of the number of rental dwelling units in percentage to total available dwelling units in the City (supplied by developer and verified by City) the percentage is less than fifteen percent rental stock;

- G. If the Planning Commission or City Council determines that vacancies in the project have been increased for the purpose of preparing the project for conversion, the tentative map and use permit application may be disapproved. In evaluation of the current vacancy level under this subsection, the increase in rental rates for each unit over the preceding five years and the average monthly vacancy rate for the project over the preceding two years shall be considered;
- H. The applicant shall provide relocation information consisting of data indicating the current and continually available, competitively priced, decent, safe and sanitary dwelling units within the immediate area (Pinole, Hercules, Rodeo, El Sobrante). The number of available dwelling units shall be sufficient to assure accommodation of such displaced tenants. This requirement is not applicable if the City determines, on the basis of a representative sampling of apartment buildings conducted by the City, that the City-wide apartment vacancy rate exceeds five percent. Any such representative sampling used shall not be more than ninety days old. In addition, the developer shall pay each household displaced by the project an amount determined by the Planning Commission as being representative of commercial relocation costs within the market area.

17.60.070 Advertising

The developer shall make no advertising use of any City approval of use, subdivision or occupancy for the project.

17.60.080 Findings

Approval of the final map for a condominium or the conversion of residential real property into a condominium project is subject to findings as required by Section 66427.1 of the Government Code, as amended. The findings shall not diminish, limit or expand, other than as provided in this chapter, the authority of the City to approve or disapprove any condominium projects.

Chapter 17.62 Emergency Shelters and Transitional Housing Facilities

Sections:

17.62.010	Purpose.....	17.62-1
17.62.020	Permit Requirements and Exceptions.....	17.62-1
17.62.030	Development Requirements.....	17.62-1
17.62.040	Operational Requirements.....	17.62-2

Draft Zoning Code Changes:

This new chapter provides regulations targeted for the erection, operation, and occupancy of transitional housing to allow for the adequate requirement of emergency and transitional housing services for vulnerable members of the community, consistent with requirements of the State of California.

17.62.010 Purpose

The purpose of this chapter is to establish regulations governing the erection, operation, and occupancy of transitional housing to allow for the adequate requirement of emergency and transitional housing services for vulnerable members of the community while protecting and upholding the general public health, safety, and welfare.

17.62.020 Permit Requirements and Exceptions

- A. **Permit Requirements.** Emergency shelters and transitional housing facilities are conditionally allowed or allowed by right as established in Article II. (Zoning Districts, Allowed Uses, and Development Standards). In addition to satisfying the requirements listed below, emergency shelters and transitional housing facilities shall comply with all federal and California licensing requirements and all applicable Uniform Building and Fire Codes, including maximum occupancy restrictions.
- B. **Exceptions to Permit Requirements**
 - 1. Emergency Shelters may exceed the maximum 30-bed limitation through a Conditional Use Permit subject to approval by the designated Approving Authority, in accordance with Government Code Section 65589.5(d).
 - 2. A transitional housing facility for ten or fewer persons may be located in any portion of the city zoned for residential development.

17.62.030 Development Requirements

- A. **Location and Separation.** Emergency shelters and transitional housing facilities of more than ten persons shall be situated within one-half mile of a transit corridor or existing bus route. All shelter programs shall be situated more than 300 feet from any other similar program; a public park; a public or private K-12 school; an indoor or outdoor recreational facility primarily designed to serve persons under 18 years old; (300 feet measured from property line to property line). Programs may have multiple buildings.

B. Physical Characteristics.

1. The maximum number of beds for emergency shelters and transitional housing facilities shall be 30 unless a Conditional Use Permit is applied for and approved. The maximum number of beds does not apply in situations of city- or statewide designated disasters or catastrophic conditions.
2. Smoke detectors, approved by the Fire Department, must be provided in all sleeping and food preparation areas for emergency shelters and transitional housing facilities.
3. The size of an emergency shelter or transitional housing facility shall be in character with the surrounding neighborhood.
4. The emergency shelter shall have an interior, onsite waiting and client intake area that is a minimum of 200 square feet. The emergency shelter shall include a landscaped exterior waiting area that is a minimum of 100 square feet, so that clients waiting for services are not required to use the public sidewalk for queuing.
5. The emergency shelter or transitional housing facility shall have on-site parking provided at the rate of:
 - i. 1 space per 3 beds plus
 - ii. 1 space per employeeOff-street parking may only be required based on demonstrated need, provided that the same requirements applied are those for residential or commercial uses within the same zone.
6. The emergency shelter or transitional housing facility shall have exterior lighting consistent with Chapter 17.46 (Lighting).

17.62.040 Operational Requirements

1. If a transitional facility for 10 or less is proposed for location in an area either zoned or developed as a residential area, all intake and screening shall be conducted off-site.
2. If a program includes a drug or alcohol abuse counseling component, appropriate state and/or federal licensing shall be required.
3. The program shall provide accommodations appropriate for a minimum stay of 28 days and a maximum of 180 days per client/family.
4. The program shall identify a transportation system that will provide its clients with a reasonable level of mobility including, but not limited to, access to social services, housing, and employment opportunities.
5. Emergency shelters and transitional housing facilities shall provide on-site management and support staff at all times during shelter use.
6. Emergency shelters must have on-site security during the hours that the emergency shelter is in operation.

Chapter 17.64 Home Occupations

Sections:

17.64.010	Purpose.....	17.64-1
17.64.020	Applicability.....	17.64-1
17.64.030	Permit Requirements and Procedures.....	17.64-1
17.64.040	Allowed Uses.....	17.64-2
17.64.050	Performance Standards.....	17.64-2
17.64.060	Revocation	17.64-4

Draft Zoning Code Changes:

This chapter has been updated to clarify, revise, and update allowed uses, exclusions, and performance standards for home occupations.

Home occupation requirements have been updated to allow for a maximum of three visits per day in effort to expand the variety of home occupation options.

17.64.010 Purpose

The purpose of this chapter is to establish regulations to allow limited business activity to occur at residences where the business activity is clearly incidental to the primary residential use and will not change the neighborhood’s residential character or integrity.

17.64.020 Applicability

The regulations and standards contained in this chapter shall apply to all home occupations as defined by Chapter 17.98 (Glossary of Terms) in the City and shall be in addition to any other development standards and regulations contained elsewhere within the Zoning Code (e.g., lighting). Pursuant to the requirements of Article II (Zoning Districts, Allowed Uses, and Development Standards), home occupations are permitted in all residential zoning districts, subject to compliance with the standards of this chapter and other relevant requirements of this Title.

17.64.030 Permit Requirements and Procedures

Prior to the establishment of any home occupation, the following requirements must be met.

- A. **Business License.** A business license from the City is required for any home occupation consistent with the requirements of this Municipal Code.
- B. **Plan Check.** Plan Check is required as part of business license review. Plan Check will be conducted pursuant to Section 17.12.030 (Plan Check).
- C. **Conditions.** The Approving Authority may limit the length of time in order to effect periodic review of the home occupation operations or establish reasonable conditions on the operation of any home occupation to meet the intent of this chapter. No more than two Administrative Use Permits for a home occupation shall be granted per dwelling unit.
- D. **Time Limit.** Home Occupation Permits shall be valid for one year from date of permit issuance. Home Occupation Permits require annual renewal in conjunction with the

required business license for same home occupation. All current requirements and findings for home occupations shall apply at the time of permit review and issuance.

17.64.040 Allowed Uses

The following list provides examples of types of uses allowed as home occupations. Other uses that are similar to those listed and incidental to the primary use may be approved by the designated Approving Authority.

- A. Art and craft work (i.e., ceramics, flower arranging, jewelry making, painting, sculpting, photography, etc.).
- B. Office, including internet business.
- C. Private lessons such as academic instruction, music, athletics, swimming, arts and crafts.
- D. Small furniture repair and restoration.
- E. Tailoring, sewing, and/or alterations.
- F. Other similar uses that demonstrate a low-profile operation with fewer than three customers visiting the business per day.

17.64.050 Performance Standards

The following performance standards are intended to reduce the impacts of home occupations such that home occupations are not detectable from normal and usual residential activity. All home occupations shall continuously meet the performance requirements listed below, which shall be incorporated as conditions of approval, and any conditions imposed through a City business license.

- A. **Advertising and Display.** No displays or signs naming or advertising home occupations shall be permitted on or off the lot containing the home occupation and no advertising shall inform the public of the location of the home occupation (business cards and stationery letterhead are excluded). There shall be no display of products produced by occupants of the dwelling visible from the outside of the dwelling unit.
- B. **Employees.** Employment shall be restricted to a maximum of two full-time dwelling unit residents except where the Approving Authority allows one non-resident employee, upon the findings listed below.
 - 1. The employee works under the direction of the dwelling resident and is not an independent or separate business enterprise.
 - 2. The employee is necessary to the performance of the home occupation.
 - 3. The employee would not require the use of the required parking for the residence or create on-street parking problems in the neighborhood.
 - 4. The average residential neighbor would not be aware of the existence of the home occupation, under normal circumstances.

5. Additional off-site employees may be employed by the business, but they may not report for work at the lot that contains the home occupation.
- C. **Hours of Operation.** The hours of operation during which customers may visit the home occupation shall be between the hours of 7:00 AM and 7:00 PM.
- D. **Number of Home Occupations.** One home occupation is allowed at a home where customers may visit the business. Otherwise, there is a limit of one additional home occupation for the residence where no customers may visit the business.
- E. **On-Site Sales.** The home occupation shall not involve sale of merchandise other than that produced on the premises (e.g., artist's originals or products individually made to order), or directly related to and incidental to the services offered. Products which are not produced on the premises may be constructed on-site, using equipment normally found in a residence; however, these products may only be sold off-site at a permitted commercial location.
- F. **Primary Residential Use.** The use of the residential dwelling for the home occupation shall be clearly incidental and subordinate to its use for residential purposes.
- G. **Operation and Off-Site Effects.** No process shall be used which is hazardous to public health, safety, or welfare. The home occupation shall produce no evidence of its existence upon or beyond the premises such as external alterations creating non-residential or unsightly appearance of a structure, noise, smoke, fumes, odors, light, electrical interference, dust, glare, liquid or solid waste, or vibrations. Noise levels shall comply with the City's Noise Ordinance. There shall be no use of utilities or community facilities beyond that normal to the use of the property for residential purposes.
- H. **Services and Visits.** Customer calling on the premises is limited to three visits from customers, patients, clients, students or other person served by the home occupation per day. Further, home occupation services are restricted to those conducted by mail, telephone, or activities wherein the operator picks up and delivers.
- I. **Storage and Waste Materials.** There shall be no outside storage of material, equipment, products, or supplies. Hazardous materials may only be stored in amounts below the thresholds as established by the local Fire Department which does not require any special permits or licenses. The home occupation shall dispose of all waste materials or by-products on a regular, timely basis in conformance with applicable garbage collection, fire protection, and public health regulations.
- J. **Structure.** The home occupation shall be confined completely within a legal structure and shall not occupy more than one room, or the equivalent of 25 percent of the floor area of a dwelling, whichever is greater, or two hundred square feet of a permitted accessory building. No internal or external alterations for the home occupation shall be made to the dwelling unit that are not customarily found in or to serve residents. Conversion or alteration of a portion of the interior of the residence, garage, or accessory structure that does not result in a loss of off-street parking or adversely alter the exterior appearance of the structure may be allowed through approval of appropriate entitlements and issuance of a Building Permit.
- K. **Traffic, Vehicles, and Deliveries.** Home occupations shall not generate deliveries, pedestrian, or vehicular traffic beyond that which is normal in a residential district. Up to two business related deliveries may be made per week. No more than one truck with a one-ton load capacity or other motor vehicle shall be permitted in conjunction with any

home occupation and shall be parked in an adequate off-street parking area. Taxicab, limousine, or pedicab service shall not be on-call and available for service. No vehicle shall be dispatched from the residence.

17.64.060 Revocation

Failure to comply with the home occupation regulations of this chapter, the Approving Authority may after notice revoke the home occupation approval and/or business license. Such revocation may be appealed to the Planning Commission pursuant to the appeal procedure provided in Section 17.10.070 (Appeals) of this Code.

Upon receipt of a complaint regarding the operation of the home occupation or upon observation of a violation of City Ordinances, including any conditions imposed upon the home occupation, the Community Development Director shall determine whether the subject home occupation is in compliance with the requirements of this section. If the use is found not to be in full compliance with the Zoning Code or conditions of approval, the Community Development Director shall have cause to suspend or revoke the home occupation or amend operational conditions.

Once a home occupation has been revoked, continued practice of the home occupation at that location is no longer permitted and subsequent applications shall not be filed within one year from the date of revocation.

Chapter 17.66 Massage Therapy

Sections:

17.66.010	Purpose and Intent	17.66-1
17.66.020	Applicability	17.66-1
17.66.030	Permit Requirements	17.66-1
17.66.040	Special Standards.....	17.66-1

Draft Zoning Code Changes:

This new chapter has been completely updated to reflect the requirements of the State of California. As certification of massage therapists is now completed by a third party, the Pinole ordinance has become much more streamlined.

17.66.010 Purpose and Intent

The purpose of this chapter is to establish regulations to allow massage therapy business activity to occur. Regulations in this chapter are intended to reduce impacts to the degree that its effects so as to minimize any potential adverse effect such uses have on surrounding commercial or industrial uses.

17.66.020 Applicability

The regulations and standards contained in this chapter shall apply to the establishment of any massage therapy businesses as defined in Article II. (Allowed Use Definitions) and shall be in addition to any other development standards and regulations contained elsewhere within the Zoning Code. The establishment of any massage therapy business shall include the opening of such a business as a new business, the relocation of such a business, or the conversion of an existing business location to any massage therapy use.

17.66.030 Permit Requirements

Massage therapy businesses regulated by this chapter shall only be permitted in accordance with Article II. (Zoning Districts, Allowed Uses, and Development Standards) and subject to the special regulations outlined in Section 17.66.040 (Special Standards) of this chapter as determined through administrative Zoning Conformance. These requirements are in addition to other permits of certificates required by law.

17.66.040 Special Standards

Prior to the establishment of a massage therapy business, the following requirements shall be met.

- A. **Certification required.** All employees must be certified by the appropriate professional organization. The operator of such establishment must maintain a register of all persons so employed and their certification number, which register shall be available for inspection at all times during regular business hours.
- B. **Permit posted.** A permit approving the massage therapy business, or a copy thereof, shall be posted in plain view within the establishment for which the permit has been issued.
- C. No person who is granted a permit issued pursuant to this chapter shall operate under any name or conduct his or her business under any designation not specified in his or her permit.

Chapter 17.67 Medical Marijuana Dispensaries

Sections:

17.67.010	Medical Marijuana	17.67-1
17.67.020	Medical Marijuana Dispensary	17.67-1
17.67.030	Medical Marijuana Cooperative	17.67-1
17.67.040	Zoning Requirements.....	17.67-1

17.67.010 Medical Marijuana

Defined as set forth in California Health and Safety Code § 1362.5 et seq.

17.67.020 Medical Marijuana Dispensary

Any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following:

1. A qualified patient,
2. A person with an identification card, or
3. A primary caregiver.
4. All three of these terms are defined in strict accordance with California Health and Safety Code section 11362.5 et seq. Unless otherwise regulated by this Code or applicable law, a "medical marijuana dispensary" shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

17.67.30 Medical Marijuana Cooperative

- A. "Medical Marijuana Cooperative" is where two or more persons who associate to collectively or cooperatively cultivate, use, transport, possess, administer, deliver, or give away medical marijuana.

17.67.040 Zoning Requirements

- A. A medical marijuana dispensary and/or medical marijuana cooperative shall be allowed in any zoning district only if consistent with state and federal law.

Chapter 17.68 Outdoor Sales, Display, Storage, and Outdoor Seating

Sections:

17.68.010	Purpose.....	17.68-1
17.68.020	Permit Requirements, Exemptions and Liabilities.....	17.68-1
17.68.030	Development, Operation and Maintenance Requirements.....	17.68-2

Draft Zoning Code Changes:

This chapter consolidates outdoor storage references from throughout the existing ordinance and adds outdoor seating regulations to the City purview.

17.68.010 Purpose

The purpose of this chapter is to regulate permanent and temporary outdoor display, seating, and storage uses. The intent of these regulations is to encourage outdoor displays and activities that are compatible with associated and nearby uses and do not obstruct pedestrian or vehicle circulation or create an unsightly appearance of unrestricted clutter.

17.68.020 Permit Requirements, Exemptions and Liabilities

The following outdoor activities shall be subject to the permit requirements as listed below.

- A. **Permanent Outdoor Display and Sales.** Permanent outdoor displays and sales shall require approval of Plan Check in accordance with Section 17.12.030 (Plan Check) consistent with the standards of this chapter.
- B. **Temporary Outdoor Display and Sales.** Temporary outdoor display and sales shall require the issuance of a Temporary Use Permit in accordance with Section 17.12.070 (Temporary Use Permit). Garage sales are exempt from this requirement, provided that each garage sale complies with the requirements of the Zoning Code and other relevant Titles and Chapters of the Municipal Code.
- C. **Permanent Outdoor Storage.** Permanent outdoor storage is allowed in conjunction with the primary use if approved as part of the original planning entitlement request. New permanent outdoor storage requested in conjunction with an existing use or development shall require issuance of a Conditional Use Permit in accordance with Section 17.12.130 (Conditional Use Permit) consistent with the requirements of this chapter.
- D. **Temporary Outdoor Storage.** Temporary outdoor storage shall require the issuance of a Temporary Use Permit pursuant to and consistent with the requirements of Section 17.12.070 (Temporary Use Permit). The uses and activities listed below shall be exempt from the requirement for a Temporary Use Permit.
 - 1. Storage of construction materials and equipment as part of an active construction site, provided a valid Building Permit or improvement permit is in effect and the materials and equipment are stored on the construction site pursuant to approved permit(s).

2. Emergency facilities to accommodate emergency public health and safety needs and activities, compliant with the requirements of Chapter 17.62 (Emergency Shelters and Transitional Housing Facilities).
- E. **Outdoor Dining Areas.** If not part of the original development permit for the principal use, outdoor seating may be permitted in all Zoning Districts except for residential Zoning Districts, subject to approval of an Administrative Use Permit as established in Section 17.12.060 (Administrative Use Permit) and any other applicable entitlements (e.g., Administrative Design Review, Comprehensive Design Review). In all cases, permanent outdoor seating shall be consistent with the development standards of this chapter.
1. Required findings for approval of outdoor seating. The designated Approving Authority may issue an Administrative Use Permit in conjunction with the requirements of Section 17.12.060 (Administrative Use Permit) if he/she finds that the proposed outdoor seating would not:
 - i. Encroach into a continuous pedestrian path of travel of at least six feet in width, and would not obstruct pedestrian and wheelchair access;
 - ii. Unduly interfere with pedestrian traffic on the sidewalk;
 - iii. Unduly interfere with access of public employees and utility workers to meters, fire hydrants, or other objects (street hardware) in the right-of-way; or
 - iv. Block or obstruct the view of necessary authorized traffic devices.
 2. Permit posted. A permit for outdoor seating, or a copy thereof, shall be posted in plain view within the establishment for which the permit has been issued.
 3. Any authorized outdoor seating shall be subject to additional taxes, permits, or fees as required by law.
- F. **Permittee's Liability.** By accepting a permit under this chapter, the permittee explicitly agrees to hold the City, its officers, employees, agents and volunteers harmless from any liability, claims, suits, or actions for any and all damages alleged to have been suffered by any person or property by reason of the permittee's installation, operation, maintenance, or removal of outdoor seating.

17.68.030 Development, Operation and Maintenance Requirements

- A. **General Development Standards for All Activities.** The development standards listed below apply to all outdoor display, sales, and storage activities.
1. Location. Outdoor activities may be located within the public right-of-way, in required parking spaces or within designed vehicle drive aisles, or within required landscape planter areas only where permitted with the issuance of an Encroachment Permit in accordance with the requirements of an Administrative Use Permit, pursuant to the requirements of Section 17.12.060 (Administrative Use Permit), or a Temporary Use Permit, pursuant to the requirements of Section 17.12.070 (Temporary Use Permit). Outdoor activities shall occupy a fixed, specifically approved location that does not disrupt the normal function of the site or its circulation, and does not encroach upon required setbacks, public

rights-of-way, driveways, landscaped areas, parking spaces, pedestrian walkways or pathways, bicycle lanes, seating, enhanced pedestrian amenities, such as trash receptacles and drinking fountains, or any other requirement listed in the Building Code.

2. Hours of operation. Except as otherwise provided, hours of operation for outdoor activities shall be consistent with those for the corresponding primary use.
3. Noise. Any noise generated by the outdoor activity shall be consistent with the City's Noise Ordinance.
4. Signs. No additional business identification or advertising signs for the outdoor activity may be permitted above the maximum allowable sign area for the corresponding primary use as established in Chapter 17.52 (Signs), except when the outdoor activity is the primary use (e.g., Christmas tree lot).
5. Maintenance. Outdoor activity areas shall be kept free of garbage and other debris, and shall not encroach into required sidewalk clearance areas as follows: all outdoor activity areas shall leave a minimum horizontal clear space of six feet, or such greater amount of clear space as the Public Works Director finds necessary to protect and enhance pedestrian and vehicle traffic in the sidewalk area.

B. Standards for Outdoor Display and Sales. The following development standards shall apply to all permanent and temporary outdoor display and sales activities.

1. Associated with the primary use. All outdoor display and sales activities shall be associated with the primary use of the property. Only those goods and services associated with the primary use may be stored, sold, or displayed. All outdoor display and sales activities that are independent of the primary use shall be considered their own primary use and regulated as such (e.g., seasonal sales as a temporary use requiring a Temporary Use Permit).
2. Maximum area. Unless otherwise authorized by a use permit, the area used for permanent outdoor display and sales of materials shall not exceed ten percent of the gross floor area of the corresponding commercial building. Vehicle and equipment sales and rentals (e.g., automobile, boat, RV, construction equipment) are exempt from this requirement, provided storage and display is limited to vehicles offered for sale or rental only and all other development requirements are satisfied.
3. Time limit for temporary activities. See the requirements of Chapter 17.74 (Temporary Uses) for duration and permit requirements for temporary promotional sales.
4. Height Limit. Displayed outdoor sales, other than plant materials for sale (e.g., Christmas trees, nursery trees, etc.) shall not exceed a height of six feet above finished grade, unless a greater heights is allowed through Use Permit approval.

C. Standards for Outdoor Storage. The following development standards shall apply to all permanent and temporary outdoor storage activities.

1. Location. Outdoor storage may not be located within any required front or street side yard for the applicable Zoning District within which the activity is located.

2. Height limitation. The height of stacked materials and goods shall be no greater than that of any building, wall, fence, or gate enclosing the storage area, unless specifically stated as a development standard associated with a use.
 3. Screening. Screening of outdoor storage shall be consistent with Section 17.42.050 (Special Fence, Wall and Screening Requirements).
 4. Parking. Parking for permanent outdoor storage shall be provided as required in Chapter 17.48 (Parking).
- D. **Requirements for Outdoor Seating.** The following development standards shall apply to all permanent outdoor seating.
1. Permittee to ensure maintenance. The permittee shall be responsible for, and exercise reasonable care in, the inspection, maintenance, and cleanliness of the area affected by the outdoor seating, including any design requirements hereafter enacted, from the building frontage to the curb.
 2. Permittee to ensure compliance. The permittee shall restrict the outdoor seating to the approved location and ensure compliance with all applicable laws including laws against blocking the public right-of-way, health and safety laws, public cleanliness laws, and laws regulating sale and public consumption of alcohol.
 3. If conflict exists or is created between City and outdoor seating. When any outdoor seating authorized hereunder is found to be in conflict with existing or proposed facilities or improvements owned, maintained, or operated by the City, or any existing or proposed City design plans, such placement shall, upon written demand of the City Manager, be removed or relocated in such a way as to eliminate the conflict, and said removal or relocation shall be at the sole expense of the permittee. Should the permittee fail to comply with said written demand within a reasonable period of time, the City may cause such relocation of the placement at the expense of the permittee. Any such non-compliance shall also be a violation of this Ordinance.
 4. Parking. When the Community Development Director finds that the proposed additional seating would lead to new parking demand that exceeds available supply because of the amount of outdoor seating, he/she may require off-street parking for the outdoor area devoted for the outdoor seating at the rate required for interior floor area for food service establishments in the Zoning District.

Chapter 17.70 Second Dwelling Units

Sections:

17.70.010	Purpose.....	17.70-1
17.70.020	Applicability.....	17.70-1
17.70.030	Permit Requirements	17.70-1
17.70.040	Performance Standards.....	17.70-2
17.70.050	Owner Occupancy Compliance.....	17.70-3

Draft Zoning Code Changes:

The second dwelling unit requirements have been updated for consistency with state law.

Permit requirements were clarified, revised, and updated.

Performance standards were clarified, revised, and updated.

17.70.010 Purpose

The purpose of this chapter is to establish procedures for reviewing the placement of second dwelling units in residential zoning districts, address the state’s second dwelling unit requirements, as set forth in California Government Code § 65852.2 and implement the General Plan policies which encourage more affordable rental housing, while maintaining the quality of existing residential neighborhoods.

17.70.020 Applicability

The regulations and standards contained in this chapter shall apply to all new second dwelling units in the city and shall be in addition to any other development standards and regulations contained elsewhere within the Zoning Code (e.g., lighting). Second dwelling units are permitted in single-family residential zoning districts as listed in Article II. (Zoning Districts, Allowed Uses, and Development Standards), subject to compliance with the standards of this chapter and other relevant requirements of this Title or as otherwise provided by State law. For the purposes of this Title, second dwelling units are not considered accessory structures.

17.70.030 Permit Requirements

All second dwelling units are required to secure Plan Check approval, pursuant to the requirements of Section 17.12.030 (Plan Check). All Plan Check applications for second dwelling units shall include, but are not limited to, the following:

- A. A completed building permit application that shall not be approved until plan check approval for the second dwelling unit;
- B. Proof of ownership of the property;
- C. A plot plan showing the location of any and all easements, structures, parking for both the primary and secondary dwelling units, other improvements, and trees over six inches in diameter;

- D. Floor plan of the second dwelling unit showing the square footage of the structure, the floor area, the lot, and the percentage of the lot area covered by the foundations of the second and primary dwelling units;
- E. Elevations showing all sides of the second dwelling unit or changes being made to the single-family home in order to add a second dwelling unit;
- F. Colors and materials board;
- G. Such other information which the Community Development Director determines is necessary to evaluate the proposed project.
- H. Completed owner occupancy agreement, as required in Section 17.70.050, signed and ready for recordation.

17.70.040 Performance Standards

A second dwelling unit which conforms to the requirements of this chapter shall not be considered to exceed the allowable density for the lot upon which such unit is proposed to be established and shall be deemed a residential use which is consistent with the existing General Plan and zoning designations for the lot. Second dwelling units may be permitted, pursuant to the requirements of this chapter, on any lot zoned residential on which there is a single-family house, subject to the following regulations:

- A. A maximum of one second dwelling unit may be allowed on a lot containing one larger single-family dwelling.
- B. The second dwelling unit is not intended for separate sale and may be rented. Owner occupancy of one unit is required; no more than one dwelling unit on a residential property with a second residential dwelling unit parcel may be rented at one time. The second dwelling unit may not be sold separately from the residential dwelling on the lot.
- C. The second dwelling unit meets all of the applicable zoning regulations for the specific Zoning District in which it is located. The second dwelling unit shall be located on a lot which was legally created and conforms to the applicable standards and requirements of the Zoning District. Requirements for building height, setbacks, yards, and similar design standards that apply to the single-family dwelling unit shall apply to the second dwelling unit, except as provided for within this chapter.
- D. Second dwelling units are permitted on lots with a minimum area of 5,000 square feet.
- E. The second dwelling unit may either be within the living area of the existing dwelling, attached to the existing dwelling, or detached from the existing dwelling.
- F. The addition of the second dwelling unit is compatible with the existing house as to height, style, materials, and colors.
- G. Allowed Area. Attached second dwelling units shall be a minimum of 500 square feet, shall not exceed 30 percent of the existing living area of the floor space of the primary dwelling unit, as defined in Chapter 17.98 (Glossary of Terms), and shall not exceed 1,200 square feet in floor space, excluding any attached garage area. A second dwelling unit larger than 1,200 square feet in floor space may be approved in the R-Rural Zoning District through a Conditional Use Permit pursuant to Section 17.12.140.

- H. Detached second dwelling units shall:
1. Receive a 20 percent setback reduction for the otherwise required rear, side, and street side setbacks for the residential district;
 2. Not be less than eight feet from the main structure;
 3. Not exceed one story or 15 feet in height;
 4. Not exceed a total rear lot coverage of 50 percent when considered with all other accessory buildings; and
 5. Be constructed at the rear or side of an existing single-family residence, and otherwise appear secondary in nature, and not be constructed in front of the primary structure.
- I. A second dwelling unit shall consist of complete independent living facilities including permanent requirements for sleeping, living, eating, cooking, and sanitation. The second dwelling unit shall include independent heating and cooling controls, its own kitchen and sink and standard built-in or freestanding appliances, its own bathroom with bath or shower, and a separate exterior entrance.
- J. The second dwelling unit shall utilize the same vehicular access which serves the existing dwelling unit. If the parcel is a through lot, access for both the single-family home and the second dwelling unit shall be limited to one point or side of the lot for both dwelling units.
- K. The second dwelling unit shall be provided with one additional parking space per bedroom. Additional parking may be required if the additional parking is directly related to the use of the second unit and is consistent with existing neighborhood standards in accordance with the requirements of Chapter 17.48 (Parking). The parking spaces required for the second dwelling unit can be in tandem to the required parking of the main residential structure, may be uncovered, and can be located within the front setback if it can be demonstrated that no other option exists.
- L. The primary unit meets all current codes as adopted by the City.
- M. The second dwelling unit shall meet all applicable building and construction requirements as adopted by the City that apply to the construction of single-family detached dwellings, as appropriate, including but not limited to sewer and utility services.
- N. Second dwelling units shall be served by public water and sewer and shall have access to an improved public street.

17.70.050 Owner Occupancy Compliance

Prior to issuance of a certificate of occupancy permit, the property owner shall record an owner occupancy agreement stating, under penalty of perjury, that the owner of the property shall live in one of the two units as their principal residence. The second dwelling unit approval shall be revoked if the agreement is found to have been breached.

Chapter 17.72 Solar Energy Systems

Sections:

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Draft Zoning Code Changes:
This new chapter provides guidelines to assist property owners in the development of solar facilities.

17.72.010 Purpose

Consistent with state policy to promote the use of solar energy systems and to limit obstacles to their use, the purpose of this chapter is to encourage the development and use of active and passive solar energy strategies, including the use of sunlight for heating water and air in homes and for providing a renewable source of energy for all properties.

17.72.020 Applicability

The requirements contained in this chapter are guidelines that apply to all solar energy systems in addition to any other development requirements contained elsewhere within the Zoning Code (e.g., building height). Solar energy systems are permitted by right in all Zoning Districts subject to approval of a Building Permit, Plumbing Permit, and/or Electrical Permit issued by the Building Official.

17.72.030 Development Guidelines

The guidelines below assist property owners and residents in the optimum development of solar energy systems. Refer to state law for mandatory state requirements.

A. Building-Mounted Solar Energy Systems – Construction Guidelines.

1. Consider designing at least one section of roof with at least 300 square feet of uninterrupted space for the installation of solar energy systems. This space should be free of any skylights, equipment, parapets, or other structural obstruction. This area of roof should be south-facing and free of shading.
2. Consider using an architectural style with flat roofs that would be conducive to the use of solar energy systems. Styles such as Italianate and some neo-classical architectural styles commonly include flat roofs. Parapet roofs can also be easily designed to support solar facilities.

B. Building Mounted Solar Energy Systems - Building Orientation. Buildings should be located to maximize energy efficiency through the creation of optimal conditions for the use of both passive and active solar strategies. Such strategies include, but are not limited to, the following:

1. Buildings should be oriented such that one axis of each building is at least 1.5 times longer than the other and such that the longer axis is within 15 degrees of the geographical east/west axis. Projects or sites with more than one building

should be oriented such that at least 75 percent or more of all buildings satisfy these standards.

2. Projects or sites with more than one building should be designed such that for 75 percent or more of the project's blocks, one axis of each block is within 15 degrees of geographical east/west and the east/west length of each block is at least as long as, or longer than, the north/south length of the block.
 3. The south-facing walls of buildings should not be more than 25 percent shaded, as measured at noon on December 21.
- C. Shading. Buildings, landscaping, vegetation, fences, and other solar screens should be located and sited to the minimum extent possible so that they do not preclude or discourage the use of solar energy on-site and for adjacent properties and buildings. Consideration should be given to the mature height of trees and other landscaping. Where necessary, the Community Development Director may require submission of a map showing shadows cast by solar screens, including landscaping and vegetation at maturity, for 12 noon on December 21. Vegetation shading solar energy systems shall be removed in accordance with Public Resources Code Section 25980 et. seq., which governs solar shading.

Chapter 17.74 Temporary Uses

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Draft Zoning Code Changes:

This chapter introduces a temporary use permit process for the City of Pinole. Whereas the existing code provides assorted standards pertaining to temporary uses throughout the Code without establishing a permit or review process, this draft consolidates and expands temporary use requirements and descriptions.

The chapter provides flexibility to accommodate other temporary uses that may not be identified in the Code but may be similar in nature to permitted uses. In such cases, the Community Development Director may use the procedures established in Chapter 17.06 (Interpretations) to determine if a proposed temporary use is similar in nature to those permitted by the Code.

17.74.010 Purpose

The purpose of this chapter is to establish regulations for uses of private property that are temporary in nature. These requirements place restrictions on location and duration, and create standards to minimize potential impacts of the temporary use on surrounding property and ensure the general health, safety, and welfare of persons residing within the community.

17.74.020 Permit Requirements and Exemptions

- A. Temporary Use Permit Required. Except as otherwise provided in the Zoning Code, the temporary uses listed in this chapter shall require the issuance of a Temporary Use Permit from the designated Approving Authority prior to establishment of the use. The process for accepting, reviewing, and approving or denying a Temporary Use Permit shall be as described in Section 17.12.070 (Temporary Use Permit). Additionally, the designated Approving Authority may impose conditions on the approval of a temporary use consistent with the standards of Section 17.12.070 (Temporary Use Permit). This permit shall be subject to internal review by any/all departments necessary, as determined by the Community Development Director.
- B. Option for Conditional Use Permit. Applicants seeking a Temporary Use Permit for a time period longer than otherwise allowed by this chapter may submit for a Conditional Use Permit for said activity, provided that it complies with all other relevant development and operational standards (other than time duration) for the use as provided in this chapter. Approval of the Conditional Use Permit shall be in accordance with the standards of Section 17.12.130 (Conditional Use Permits).
- C. Exempt Temporary Uses. The following temporary uses are exempt from the entitlement requirements of this chapter, provided that they comply with the development standards listed herein.

1. Garage sales are permitted on any parcel where the garage sale operator resides. Garage sales may not exceed three sales per calendar year and two consecutive days for each garage sale.

17.74.030 Temporary Use Regulations

The following temporary uses may only be established after first obtaining a valid Temporary Use Permit as described in Section 17.76.030 (Permit Requirements).

- A. Construction yards and storage sheds, which are to be used for a period of more than three months, for the storage of materials and equipment used as part of a construction project provided a valid Building Permit has been issued and the materials and equipment are stored on the same site as the construction activity. Such activity shall be visually screened from the public right-of-way through fencing or other visual screening. The applicant shall provide and implement a security plan to the satisfaction of the City Police Chief. The site shall be kept reasonably free of clutter and shall not constitute a public nuisance.
- B. Special One Day Events such as grand openings, holiday flower sales, fruit and vegetable sales, and other special retail sales, as well as ground breaking ceremonies. The applicant shall provide and implement a site plan to the satisfaction of the City. The site shall be kept reasonably free of clutter and shall not constitute a public nuisance.
- C. Expositions, concerts, , clinics, amusement rides, and flea markets may be conducted for a period not to exceed ten days within a calendar year (either consecutive or intermittent). The use must be located in a district other than residential or shall be under the direction/supervision of a public agency or an organization, church, or school use in any district. Also, temporary uses of a similar nature when located within an entirely enclosed building are exempt from the permit requirement.
- D. Carnivals, circuses, and fairs are governed by the regulations in Chapter 5.36 of the Municipal Code.
- E. Outdoor sales and display of goods, including promotional sales, may be conducted as part of an otherwise lawfully permitted or allowed permanent commercial use, provided that all activities are conducted within the buildable portion of the lot. For new business with a valid business license, such outdoor sales and displays of goods shall be limited to a maximum 30-day period within the first 180 days after that business is established. Existing businesses shall be limited to a maximum of three periods totaling a maximum of 30 days within a given year. Sales and displays may not occupy more than ten percent of the parking area for that business and shall not substantially alter the existing circulation pattern of the site. Temporary sales and displays shall not obstruct any existing disabled accessible parking space.
- F. Seasonal sales (e.g., Christmas tree sales, pumpkin sales) may be permitted in any non-residential Zoning District upon issuance of a Temporary Use Permit. The term of the Temporary Use Permit shall not exceed 60 days per seasonal sales location per calendar year. The seasonal merchandise shall not utilize required parking spaces dedicated to other uses.
- G. Temporary sales and construction offices used for the sale of lots and/or homes as part of a new residential subdivision may be permitted. In addition, conditions of approval

regulating the hours of operation, landscaping, or other aspects of operation may be imposed as part of the Temporary Use Permit as deemed necessary.

17.74.040 Similar Uses

When a temporary use is not specifically listed in this chapter, the Community Development Director shall determine whether the proposed temporary use is similar in nature to permitted uses(s) in Article II (Zoning Districts, Allowed Uses, and Development Standards), and, if approved, shall establish the term and make necessary findings and conditions for the particular proposed temporary use, consistent with the requirements for Interpretation in Chapter 17.06 (Interpretation).

Chapter 17.76 Wireless Communication Facilities

Sections:

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Draft Zoning Code Changes:

This chapter reorganizes and consolidates existing wireless communication facility requirements and entitlement requirements for improved usability and reflects current state and federal laws.

New operation and maintenance standards are established.

17.76.010 Purpose

It is the purpose and intent of this Chapter to establish development standards for regulating the placement and design of commercial wireless telecommunication facilities in order to preserve and to protect the visual character of Pinole from any adverse environmental effects of wireless telecommunication facilities; to ensure against the creation of visual blight on the city’s major or minor ridgelines, protected areas, and view corridors as identified on the Visual Resources Map (GP-12) of the General Plan; to protect the environmental resources of the city; and to protect the citizens of Pinole from any possible adverse health effects associated with exposure to high levels of NIER (non-ionizing electromagnetic radiation) to the extent permitted by the Federal Communication Commission (FCC). The City acknowledges the community benefit associated with the requirement of commercial wireless telecommunication services within the city and encourages the lease of publicly owned properties for the development of commercial wireless telecommunication facilities to the extent compatible with existing facilities. The regulations as set forth are consistent with federal and state law related to the development of commercial wireless telecommunication transmission facilities.

17.76.020 Applicability

The regulations and standards contained in this Chapter shall apply to all wireless telecommunication facilities on private and public property in the City, including public streets and alleys and property owned by any local, state, or federal government agency or political subdivision of such government entity, and shall be in addition to any other development standards and regulations contained elsewhere within the Zoning Code (e.g., lighting). Wireless telecommunication facilities are permitted as listed in Article II. (Zoning Districts, Allowed Uses, and Development Standards), subject to compliance with the standards of this chapter and other relevant requirements of this Title. Permitted wireless telecommunication facilities are also identified for each Zoning District in Table 17.20.030-1 (Allowed Uses and Permit Requirements for City of Pinole Base Zoning Districts).

17.76.030 Permit Requirements

- A. **Conditional Use Permit Requirements and Exceptions.** Except as otherwise outlined below, a Conditional Use Permit as established by Section 17.12.130 (Conditional Use Permit) is required for all wireless communication facilities. Also see Section 17.76.040 (Exemptions) for specific exemptions.
1. In order to ensure compliance with the requirements of 47 U.S.C. section 332(c)(7)(B), an applicant that believes that the City's prohibition of wireless telecommunications facilities in particular zoning districts or any of the standards in this chapter either (a) unreasonably discriminate among providers or functionally equivalent services, or (b) prohibit or have the effect of prohibiting the requirement of personal wireless services, may apply for a conditional use permit. In order for such permit to be granted, the decision maker must find, in addition to all other required findings for the granting of a conditional use permit, that substantial evidence in the written record establishes that either of the above stated criteria is met.
 2. Collocation. Administrative review and approval may be available, so long as a collocation facility satisfies all requirements set forth in Section 65850.6 of the California Government Code.
- B. **Public Hearing and Public Notice.** A public hearing shall be held and public noticing conducted as established in Section 17.10.050 (Public Hearing and Public Notice), except that public notice shall be given to all property owners within 500 feet of the property of the proposed wireless telecommunication facility, instead of only providing notice to property owners within 300 feet, as normally required by Section 17.10.050 (Public Hearing and Public Notice).
- C. **Financial Guarantee.** Prior to constructing a new wireless telecommunication facility, or prior to renewing a Conditional Use Permit for an existing wireless telecommunication facility, the applicant or permittee shall provide a financial guarantee that shall be indexed annually for inflation in an amount, satisfactory to the designated Approving Authority, for the removal of the facility, based on the estimated cost to remove the facility in the event the use is abandoned or the Conditional Use Permit expires, or is revoked, or otherwise terminated. The amount of the guarantee per freestanding tower may be reduced or eliminated if the applicant has more than one wireless telecommunication facility in the city. If the owner or lessee does not remove any obsolete or unused facilities, as described above, the financial guarantee shall be used by the City to remove any obsolete or unused facilities and to return the site to its predevelopment conditions. Any unused financial guarantee shall be returned to the applicant upon removal of the wireless telecommunication facility or transfer of the lease accompanied by a financial guarantee from the new lessee or owner.
- D. **Conditions of Approval.** The designated Approving Authority may impose conditions of approval as described in Section 17.12.130 (Conditional Use Permit), including but not limited to, requiring modifications to the site.
- E. **Requirements and Allowances Upon Approval**
1. Written proof of the availability of the necessary water supply to sustain any landscaping required for visual screening prior to permit issuance. This may be in

the form of a letter from the landowner of the land allowing the applicant the use of required water facilities for landscaping installed improvements in the area.

2. Minor modifications to the approved equipment design, location, elevations, and other elements of the approved wireless telecommunication facilities may be allowed by the Community Development Director if such modifications are in keeping with the architectural statement and layout design of the original approval.
- F. **Ongoing Public Hearings Required.** All permit approvals for commercial wireless telecommunication facilities are subject to a public hearing every five years to demonstrate continuing compliance with the conditions of approval. When reviewing existing facilities for renewal, the designated Approving Authority of the original entitlement shall determine whether substantial progress has been made in decreasing the visibility of these facilities. At the time of each five-year review, modifications and new and/or revised conditions of approval may be made to the original Conditional Use Permit if technology has advanced to the point where the wireless telecommunication facilities can be made safer or less visually obtrusive or to conform to other similar wireless telecommunication facilities that are currently being installed or are located in California at the time of entitlement review. These reviews shall include photo documentation of existing conditions and equipment for comparison with past conditions, to facilitate policy goals related to minimizing site disturbance and visibility, and justify the need for the range of equipment. Additional equipment shall only be allowed where the cumulative visual impacts are decreased through replacement with smaller equipment or additional mitigation to decrease visibility.

17.76.040 Exemptions

The following wireless communication facilities are exempt from the requirements of this chapter as specified below, except that wireless communication facilities are subject to compliance with other requirements of this Title.

- A. A wireless communication facility shall be exempt from the requirements of this chapter if and to the extent that a permit issued by the California Public Utilities Commission (CPUC) or the rules and regulations of the Federal Communication Commission (FCC) specifically provide that the antenna is exempt from local regulation. Such facilities include, but are not limited to, television antennas on residential buildings.
- B. Satellite earth station (SES) antennas, which are two meters (6.5616 feet) or less in diameter or in diagonal measurement, located in any non-residential Zoning District. To avoid the creation of a nuisance and to reduce accidental tripping hazards and maximize stability of the SES antenna, such antennas shall be placed whenever possible on top of buildings and as far away as possible from the edges of rooftops.
- C. Parabolic antennas, direct broadcast satellite (DBS) antennas, which are one meter (3.2808 feet) or less in diameter or diagonal measurement and television broadcast service (TBS) antennas, so long as said antennas are located entirely on private property and are not located within the required front yard setback area.
- D. Amateur radio antenna structures provide a valuable and essential telecommunication service during periods of natural disasters and other emergency conditions and are

therefore exempt from permit requirements of this chapter in compliance with the following standards:

1. Height limits. Amateur radio antennas in any district may extend to a maximum height of 75 feet, provided that the tower is equipped with a lowering device (motorized and/or mechanical) capable of lowering the antenna to the maximum permitted building height of the applicable zoning district when not in operation.
 2. Location parameters. All antenna structures shall be located outside of required front and street side yard areas. Antenna structures shall also be set back a minimum distance of five feet from interior property lines.
 3. Tower safety. All antennas shall be located within in an enclosed fenced area or have a minimum five-foot-high tower shield at the tower base to prevent climbing. All active elements of antennas shall have a minimum vertical clearance of eight feet.
- E. Satellite antennas used or designed for receiving or transmitting electronic signals to or from orbiting earth satellites that comply with the following standards. Exceptions to these requirements may be granted by the designated Approving Authority upon the issuance of a Conditional Use Permit as provided by Section 17.12.130 (Conditional Use Permit).
1. Dimensions of the satellite antenna shall be no greater than 18 inches in dimensions.
 2. Satellite antennas greater than 18 inches dimension in compliance with the following.
 - i. A setback equal to the height of the antenna or the setback that applies to the principal structure, whichever is greater, shall be maintained between any property lines and any part of the antenna. In addition, installation shall be prohibited between any street and principal building on the site, except as provided below.
 - ii. In any case where a lot backs up to a public right-of-way or private street, a setback of 15 feet shall be maintained between the rear property line and any portion of the antenna.
 - iii. Maximum height of the antenna shall be 15 feet measured from the finish grade immediately under the antenna to the highest point of the antenna or any appurtenance attached thereto.
 - iv. All wires and/or cable necessary for the operation of the antenna or reception of the signal shall be placed underground excepting those wires or cables attached flush with the surface of a building.
 - v. Antennas installed with the use of guy wires are prohibited.
 - vi. Highly reflective surface or colors shall not be used on any such antenna.
 - vii. Additional attention and evaluation may be needed to assure that antennas proposed for property locations in hillside areas are installed in locations which are least visible from areas off-site.

- viii. No more than one antenna shall be installed on any parcel.
 - ix. Installation shall be prohibited on the roof of any structure on the parcel except in non-residential zoning districts where the antenna is screened from view from adjacent parcels and rights-of-way.
 - x. No antenna which exceeds six feet in height from the finish grade immediately below the antenna to the highest point of the antenna or any appurtenance attached thereto shall be erected on any parcel of land until a building permit for such antenna has been secured from the building department.
3. Emergency communication backup facilities.
 4. Co-location on an existing wireless telecommunication facility. This co-location is allowed if the structure obtained a Conditional Use Permit after January 1, 2007, and was subject to environmental review and a public hearing.
 5. Any personal wireless telecommunication facility operated on land owned by the West Contra Costa County Unified School District (or any other special district), Contra Costa County, the State of California, or the federal government which are operated for public and not commercial purpose.

17.76.050 Application Requirements

An application for the approval of a wireless telecommunication facility shall include the following information, in addition to all other information required by the City for a Conditional Use Permit application as established in Section 17.12.130 (Conditional Use Permit):

- A. Site plan containing all information required by the City.
- B. All exterior elevations, scaled as appropriate for presentation.
- C. Samples of materials used for the wireless telecommunication facilities as required by the City, including but not limited to, roofing, siding, trim, windows, doors, and fences, as follows:
 1. At least one elevation should be in color.
 2. Color samples and materials mounted on a board or rigid surface should be submitted.
- D. Plans showing the screening of all mechanical equipment, including but not limited to, gas meters, electric meters, and electric transformers.
- E. Landscaping plans as required by Chapter 17.44 (Landscaping), including proposals to establish and maintain maximum visual screening of unsightly public views of the wireless telecommunication facilities.
- F. A master plan for all related facilities, either existing or proposed, within the city limits of Pinole and within one-quarter mile of the proposed wireless telecommunication facility.

- G. Visual simulations showing what the proposed facility would look like from the surrounding area as viewed from residential properties and public rights-of-way at varying distances to assist the Approving Authority and the public in assessing the visual impacts of the proposed facility and its compliance with the requirements of this chapter.
- H. For areas where antennas will be located on or mounted to a building, a mock-up of the proposed antenna must be installed at least ten days before the hearing at which the application will be reviewed.
- I. A preliminary report quantifying the project's radio frequency emissions and potential human exposure, the cumulative emissions of other facilities located on the same site and comparisons to current standards recommended by the Institute of Electrical and Electronic Engineers. Analysis must be based on the current FCC rules, regulations, and standards.
- J. Alternative site analysis prepared by or on behalf of the applicant, subject to the approval of the approval of the Planning Commission which identifies all reasonable, technically feasible, alternative locations and/or facilities which could provide the proposed wireless telecommunication facility service. The intention of the alternative analysis is to present alternative strategies which could minimize the number, size, and adverse environmental impacts of the facilities necessary to provide the needed service to the City. The analysis shall address the potential for co-location and the potential to locate a facility as close the intended service area. It shall also explain the rationale for the selection of the proposed site in view of the relative merits of any feasible alternative. The City may require independent verification of this analysis at the applicant's expense.
- K. A USGS topographic map or survey with existing topographic contours showing the proposed wireless telecommunication facilities, accessory structures, new roads, and the surrounding area extending at least 150 feet beyond any proposed towers and at least 50 feet beyond other proposed wireless telecommunication facilities.
- L. The number, type, and dimensions of antennas and equipment cabinets and structures proposed for use by the applicant and a map identifying all existing wireless telecommunication facilities within a 3,000-foot radius of the proposed wireless telecommunication facility.
- M. A map showing how the proposed wireless telecommunication facilities fit within the network of the applicant's existing and proposed antenna sites within 3,000 feet of the project vicinity.
- N. A statement including the following:
1. The intent to design the facility to allow for co-location;
 2. The power rating for all wireless telecommunication facilities and all backup equipment proposed with the first application;
 3. A description of the system, including the number of antennas, and associated related equipment that conform to the radio-frequency exposure standards adopted by the FCC and VAll that will operate within the frequency assigned by the FCC;

4. Assurance that the operation of the facility, in addition to ambient radio-frequency exposure levels, will not exceed adopted FCC standards with regard to human exposure in “uncontrolled areas” (i.e., areas subject to general public exposure, as defined by the National Council on Radiation Exposure Prevention) or the then applicable FCC standards;
 5. A statement that demonstrates why a wireless telecommunication facility type with a lesser adverse visual impact is not feasible.
- O. Evidence in the form of a license or construction permit from the FCC and/or FAA that the FCC and/or FAA has accepted the applicant’s certification that the facility meets the FCC and/or FAA standard or provide evidence that the FCC and/or FAA has categorically exempted the applicant from demonstrating compliance with the FCC and/or FAA standard. If a license or construction permit has not yet been obtained by the applicant, the furnishing of such FCC and/or FAA license or construction permit shall become a condition of approval for the Conditional Use Permit.
- P. A technical review by a licensed electrical engineer with experience in telecommunications, or qualified expert as approved by the Community Development Director, to determine if the proposed installation will create any electromagnetic interference with other facilities or uses in the area will be required. The Community Development Department may retain the services of a private-sector consultant for peer review and to provide professional recommendations to the Community Development Department. The applicant may be asked to describe the electromagnetic frequency needs of the wireless provider and to identify alternative sites which meet the applicant’s telecommunications needs and can be readily or reasonably leased. The wireless provider will present its data and offer any additional information to Community Development Department staff regarding its electromagnetic frequency needs. The City shall take reasonable steps within the requirements of state law to assure strict confidentiality of any alternative site leasing information submitted by an applicant. When deemed necessary by Community Development Department staff, the wireless provider will also host information sessions for City staff and the City Council and Planning Commission. The cost of such reviews shall be paid by the applicant and deposited with the City as part of the application fee.
- Q. When two or more wireless telecommunication facilities operate in the same location, the carriers operating those facilities shall provide documentation of testing done by an electromagnetic field (EMF) expert to verify that the cumulative ELF levels conform to standards adopted by the FCC.
- R. A list of the names, addresses, and types of users who will occupy the site.
- S. In conjunction with application submittal once an application is schedule for a public hearing, applicants shall be required to construct a full-scale mock-up of a proposed facility less than 25 feet in height, using materials and colors that resemble the actual facility for proposed ground-mounted facilities and roof-mounted facilities. The mock-up shall be installed ten days prior to the scheduled public hearing date and left in place for a period of ten days after the date of any final action taken on the project application. The notice of public hearing shall contain information about the location and placement of the mock-up structure. Additionally, all mock-up structures shall be removed by the applicant within one month from the date of final action taken on the project application.

- T. All applications and subsequent reviews shall include a list and photo documentation of transmission, reception, and other equipment initially proposed, justifying the need for the range of equipment.

17.76.060 Development Standards

- A. **General Development Standards.** Unless otherwise exempt pursuant to Section 17.76.040 (Exemptions), the following general development standards shall apply to all wireless telecommunication facilities.
1. All wireless telecommunication facilities shall comply with all applicable requirements of the current Uniform Codes as adopted by the City and shall be consistent with the General Plan and this Code, as well as other standards and guidelines adopted by the City, and all applicable state and federal law.
 2. All wireless telecommunication facilities shall comply at all times with the FCC rules, regulations, and standards, and any other applicable federal, state, or local laws or regulations.
 3. Sufficient anti-climbing deterrents, including warning signs (ANSI Standards C95.2-1982 Warning Symbol), shall be incorporated into the facility, as needed, to reduce the potential for trespass and injury.
 4. To minimize overall visual impact, all new wireless telecommunication facilities shall be co-located with existing facilities and with other planned facilities, whenever feasible. In addition, whenever feasible, service providers are encouraged to co-locate antennas with other facilities such as water tanks, light standards, utility poles, and other utility structures, where the co-location is found to minimize the overall visual impact. To facilitate co-location in appropriate cases, conditions of approval shall require all applicants to cooperate in the siting of equipment and antennas to accommodate the maximum number of operators at a given site. The applicant shall agree, in writing, to allow future co-location of additional antennas and not to enter into a lease for the exclusive use of the site.
 5. All wireless telecommunication facilities shall be located so as to minimize their visibility and utilize the latest technology available to minimize visual impacts.
 6. Wireless telecommunication facilities shall be located, designed, and screened to blend with existing natural or built surroundings so as to reduce visual impacts of the technological requirements of the proposed wireless telecommunication facility and, in so far as possible, appear compatible with neighboring residences and the character of the community.
 7. All related equipment shall have a non-reflective finish and shall be painted or otherwise treated to minimize visual impacts and placed in underground vaults whenever possible. All utilities (i.e., gas, electric, cable, phone, and water) shall be placed underground.
 8. Building-mounted wireless telecommunication facilities are preferred to ground-mounted wireless telecommunication facilities. Development of wireless telecommunication facilities on vacant sites shall be temporary. When the site is

- developed, such facilities shall be removed and replaced with building-mounted wireless telecommunication facilities.
9. All wireless telecommunication facilities that are not mounted on existing structures shall comply with at least one of the following:
 - i. Facilities shall be screened from the view of surrounding properties as much as possible and co-located with existing facilities or structures so as not to create substantial visual, noise, or thermal impacts;
 - ii. Facilities shall be sited within areas with substantial screening by existing vegetation;
 - iii. Facilities shall be designed to appear as natural features found in the immediate area, such as trees or rocks, so as to be effectively unnoticeable;
 - iv. Facilities shall be screened with additional trees and other native or adapted vegetation that shall be planted and maintained around the facility, in the vicinity of the project site, and along access roads in appropriate situations, where such vegetation is required to screen telecommunication facilities. Such landscaping, including irrigation, shall be installed and maintained by the applicant, as long as the entitlement is in effect; or
 - v. Existing on-site vegetation shall be preserved or improved and disturbance of the existing topography shall be minimized. Landscaping shall be required in informal natural-looking clusters in the vicinity of any wireless telecommunication facility, in addition to screening of the facility.
 10. All proposed equipment cabinets/structures, accessory structures, and other related equipment shall be continuously maintained in good condition. This shall include keeping equipment cabinets and structures graffiti-free and maintaining all security fences and warning signs in good condition.
 11. The display of signs or advertising on wireless telecommunication facilities is prohibited.
 12. Exterior lighting shall not be allowed on commercial wireless telecommunication facilities except for that required for use of authorized persons on-site during hours of darkness or where the antenna structure owner or registrant is required to light the antenna structure by the terms of the FAA antenna structure registration applicable to the facility.
 13. Freestanding wireless telecommunication facilities shall not be located within the required setback of any property and shall be located a minimum of 150 feet from any residential use.
 14. All freestanding wireless telecommunication facilities shall be designed at the minimum functional height required for the coverage area unless it is determined that additional height, up to the maximum allowable for the Zoning District, is needed for architectural reasons or is part of a City-approved plan to reduce the impact(s) of future installations.

15. In appropriate cases, the proposed wireless telecommunication facilities may be located on a City-owned or controlled property or within City rights-of-way, provided the appropriate applications are submitted, easements procured, and any other relevant procedures complied with.
- B. **Building-Mounted Antennas.** In addition to all other applicable development standards listed above, wireless telecommunication facilities proposed to be mounted or attached to an existing building shall be reviewed by the designated Approving Authority for compliance with the following.
1. Building-mounted antennas and any related equipment shall be in scale and architecturally integrated with building design in such a manner as to minimize the visual impact of the wireless telecommunication facilities. Screening designs may include locating the facility within attics, steeples, or towers, behind and below parapets, or concealed with an architecturally compatible addition to a building.
 2. Colors and materials of the antennas should match the existing building when attached directly to the façade of a building.
 3. Wireless telecommunication facilities and all related equipment shall be located to minimize visibility from public places. Any visible portion of equipment shall be painted or treated to be architecturally compatible with the surrounding buildings and/or shall be screened, using appropriate techniques to camouflage, disguise, and/or blend into the surrounding environment, as determined by the designated Approving Authority.
 4. Antennas shall be flush-mounted and located below the roof line of the building. Antennas and related equipment shall not project beyond a maximum of 18 inches from the face of the building.
- C. **Roof-Mounted Antennas.** In addition to all other applicable development standards listed above, wireless telecommunication facilities proposed to be mounted or attached to the roof of an existing building shall be reviewed by the designated Approving Authority for compliance with the following.
1. All roof-mounted antennas and related equipment, other than antennas proposed to be located directly on the façade of a structure, shall be aesthetically compatible with and located as far away from the edge of the building as technically feasible as determined by the designated Approving Authority. Antennas attached to the building shall be painted or otherwise treated to match the exterior of the building or the antenna's background color.
 2. Roof-mounted antennas shall not be allowed when they are to be placed in direct line of sight of scenic corridors or where they will significantly affect scenic vistas, unless the wireless telecommunication facilities incorporate appropriate techniques to camouflage, disguise, and/or blend them into the surrounding environment, as approved by the designated Approving Authority.
 3. The height of roof-mounted antennas, including the support structure, shall not exceed 15 feet above the roof plate of the building to which they are attached.

4. Wireless telecommunication facilities and related equipment, if located on the rooftop of buildings, shall be located so as to be minimally visible from public places. If any portion of the equipment is visible, it shall be camouflaged or screened from view, to the fullest extent possible.

D. **Ground-Mounted Antennas and Wireless Telecommunication Facilities on Major or Minor Ridgelines or Open Space Areas.** In addition to all other applicable development standards listed above, wireless telecommunication facilities proposed to be ground-mounted antennas, proposed for location on a major or minor ridgeline, or proposed for location in an Open Space Area, shall be reviewed by the designated Approving Authority for compliance with the following.

1. Wireless telecommunication facilities visible on or above a ridgeline or knoll, as shown on the General Plan Visual Resources Map (Figure 10.4), shall be prohibited unless, prior to approving the application, the designated Approving Authority determines that the applicant has demonstrated that there is no feasible alternative.
2. Wireless telecommunication facilities operated by different carriers shall not be allowed within 1,000 feet of another facility, unless the designated Approving Authority determines that the cumulative visual or other physical environmental impacts can be reduced by allowing such facilities to locate within 1,000 feet of one another.
3. All proposed wireless telecommunication facilities should be located within easy reach of existing access roads, whenever possible. Unless visual impacts can be adequately mitigated, no new access roads on a ridgeline or knoll shall be allowed with any proposed ground-mounted antenna.
4. All proposed wireless telecommunication facilities shall incorporate techniques and be designed as a stealth facility. Such techniques include camouflaging facilities to disguise and/or blend into the surrounding environment, or to disguise facilities as pieces of art or sculptures, flag poles, telephone poles, light standards, or other visual forms to avoid an adverse visual impact.
5. All related equipment shall be designed and located so as to minimize visual impacts and/or to be screened from public view. Screening techniques may include landscaping and/or architectural treatment to make them compatible with existing buildings and/or a partial or complete burial of the equipment.

E. **Freestanding Antennas and Wireless Telecommunication Facilities on Major or Minor Ridgelines or Open Space Areas.** In addition to all other applicable development standards listed above, wireless telecommunication facilities proposed to be freestanding antennas, proposed for location on a major or minor ridgeline, or proposed for location in an Open Space Area shall be reviewed by the designated Approving Authority for compliance with the following.

1. All proposed wireless telecommunication facilities shall be located and designed to minimize visual impacts. When appropriate, monopoles or other wireless telecommunication facilities proposed in areas where adverse visual impacts cannot be avoided (as in some commercial areas) shall be camouflaged, disguised, and/or blended into the surrounding environment, or disguised as

pieces of art/sculpture, flag poles, telephone poles, light standards, or other visual forms to avoid an adverse visual impact.

2. Wireless telecommunication facilities operated by different carriers shall not be allowed within 1,000 feet of one another unless the designated Approving Authority determines that the cumulative visual or other physical environmental impacts can be reduced by allowing such facilities to locate within 1,000 of one another.
3. The City may require applicants to construct a tower which is tall enough to accommodate two additional wireless telecommunication facility applicants. This section shall not be interpreted to prevent the applicant from requiring future applicants to pay fair and reasonable rental for the use of the applicant's tower and/or other facilities.
4. All proposed wireless telecommunication facilities shall utilize the smallest and least visible antennas that meet the coverage objective.
5. Lightning arrestor rods and beacon lights shall not be included as part of the tower design, unless the applicant can demonstrate that such are necessary for safety reasons or that such are required by applicable FAA/FCC standards.

F. Wireless Telecommunication Facilities on Major or Minor Ridgelines or Open Space Areas.

In addition to all other applicable development standards listed above, wireless telecommunication facilities proposed for location on a major or minor ridgeline, or proposed for location in an Open Space Area, shall be reviewed by the designated Approving Authority for compliance with the following.

1. No wireless telecommunication facility shall be located within 400 horizontal feet of a major ridgeline (as shown on Map GP-12 of the General Plan) and 100 horizontal feet of a minor ridgeline (as shown on Figure 10.4 of the General Plan) and within 100 vertical feet for both. The distance shall be measured from the peak of the ridge. An exception may be granted by the designated Approving Authority only if any of the following findings can be made:
 - i. Due to the specific location and design of the proposed facility, it will not be visible from surrounding properties or public view;
 - ii. Due to existing development or existing vegetation at the site, the proposed facility will be substantially screened from the view of surrounding properties and public view and will not result in an adverse visual impact; or
 - iii. The applicant can demonstrate that there is no feasible alternative.
2. Special design considerations, including designs which simulate natural features found in the immediate area, i.e., trees or rocks, may be taken into account by the designated Approving Authority when facilities are proposed within areas identified as major and minor ridgeline areas.
3. Development of a wireless telecommunication facility shall conform generally with the natural contours to avoid excessive grading.

17.76.070 Operation and Maintenance Standards

All wireless telecommunication facilities shall comply at all times with the following operation and maintenance standards. Failure to comply with the standards constitutes a violation of the Zoning Ordinance and may result in permit revocation.

- A. **Noise.** All wireless telecommunication facilities shall comply with the City's Noise Ordinance.
- B. **Non-ionizing Electromagnetic Radiation (NIER) Exposure.** No wireless telecommunication facility shall be sited or operated in such a manner that it poses, either by itself or in combination with other such wireless telecommunication facilities, a potential threat to public health. To this end, no wireless telecommunication facility or combination thereof shall produce, at any time, power densities in any inhabited area that exceed the Federal Communication Commission's Maximum Permissible Exposure (MPE) limits for electric and magnetic field strength and power density for transmitters or any more restrictive standard adopted or promulgated by the City or by the county, state, or federal government.
- C. Wireless telecommunication facilities shall be maintained in good repair, free from trash, debris, litter, graffiti, and other forms of vandalism. Any damages from any cause shall be repaired as soon as reasonably possible so as to minimize the occurrence of dangerous conditions or visual blight.
- D. Each owner or operator of a wireless telecommunications facility shall routinely inspect each site to ensure compliance with the standards set forth in this chapter.

17.76.080 Removal Requirements and Discontinuance of Use

In the event that one or more wireless telecommunication facility or any component thereof, including, but not limited to, antennas, towers, or related equipment, are not operated for the requirement of wireless telecommunication services for a continuous period of 180 days or more, such wireless telecommunication facility or component thereof shall be deemed abandoned and the entitlement shall expire. The owner, operator, or other person or entity responsible for the wireless telecommunication facility or component thereof shall remove such items within 30 days following the mailing of written notice from the City that removal is required. Such entity shall restore the site to its original predevelopment condition on or before this time as much as possible to the condition required by the Community Development Department. If two or more providers of wireless telecommunication services use the wireless telecommunication facility or any component thereof, the period of nonuse under this section shall be measured from the cessation of operation at the location by all such providers. Failure to remove shall constitute a public nuisance and shall be enforced as such. For facilities located on City-owned or leased property, this removal requirement shall be included within the applicable lease. In addition, the permittee shall provide the Community Development Department with a notice of intent to vacate the site a minimum of 30 days prior to vacation. The Community Development Department shall provide the permittee with a notice that removal is required, and removal of all wireless communication facilities shall be removed as established by this section.