

City of Brisbane

Planning Commission Agenda Report

TO: Planning Commission For the Meeting of 7/28/11

FROM: Tim Tune, Senior Planner, and Ken Johnson, Associate Planner, via John Swiecki, Community Development Director

SUBJECT: **STUDY SESSION:** Implementation of Housing Element Programs H.B.1.c, H.B.1.f, H.B.1.g, H.B.3.e, H.B.3.i, H.D.1.c & H.E.1.a, Regarding Definitions, Design Permits, Emergency Shelters, Supportive Housing and Development Standards in the Southwest Bayshore Subarea

Background: At the Planning Commission meeting of July 14, 2011, concerns were expressed by the Commission about whether the preliminary draft emergency shelter ordinance would be adequate to ensure the establishment of high quality facilities. Specifically the Commission indicated a desire to place additional requirements on the establishment of emergency shelters to ensure that the needs of the occupants were met. The Commission also expressed a desire to provide more specificity in the performance standards for lighting. In addition, although proposed amendments to the Southwest Bayshore SCRO-1 District setbacks and the Zoning Administrator provisions were mentioned in the July 14th agenda report and the draft ordinance, they were not fully explained in the text of the agenda report. So explanation of these proposed amendments is provided herein.

Emergency Shelters & Senate Bill (SB) 2: SB 2 specifies the standards that cities may include in local zoning ordinances for the provision of emergency shelters. Cities are not required to codify all of these standards, but rather these standards are to establish the limits for what may be included in the local ordinance. Although the Commission indicated a desire to include additional standards in the proposed emergency shelter ordinance, adding to the standards allowed by SB 2 would place further limitations on the potential development of emergency shelters. The standards allowed by SB 2 are as follows:

“Emergency shelters may only be subject to those development and management standards that apply to residential or commercial development within the same zone except that a local government may apply written, objective standards that include all of the following:

(i) The maximum number of beds or persons permitted to be served nightly by the facility.

- (ii) Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.*
- (iii) The size and location of exterior and interior onsite waiting and client intake areas.*
- (iv) The provision of onsite management.*
- (v) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.*
- (vi) The length of stay.*
- (vii) Lighting.*
- (viii) Security during hours that the emergency shelter is in operation.”*

Note also that the length of stay is limited to a maximum of 6 months by the California Health and Safety Code Section 50801 definition of Emergency Shelter.

SB 2 served as the foundation for development of Brisbane’s draft emergency shelter ordinance. Staff also reviewed other city ordinances, including the City of Santa Monica, which is featured on the State’s website as an example ordinance (see attached). Santa Monica’s ordinance also requires laundry facilities or services adequate for the number of residents, enclosure of refuse areas, staff and services to assist residents to obtain permanent shelter and income, and that the provider shall have a written management plan. Brisbane’s preliminary draft ordinance includes these same provisions (screening of refuse is already provided for under BMC Section 17.16.040.I), but staff had added a provision for bathrooms and bathing facilities. It was staff’s opinion that allowing for the basic necessities of hygiene (both laundry and bathing facilities) were critical requirements for an emergency shelter; however, the line was drawn at including other requirements such as on-site kitchen facilities, since these needs could be met by other means, such as delivery of meals, meal vouchers and other off-site facilities. Based on the Commission’s comments, staff has added that provisions for meals and medical care are to be addressed within the management plan, without specifying that shelters must include on-site kitchen facilities or medical staff.

Lighting Performance Standard: The Planning Commission indicated a concern about light glare and requested more detail for the proposed lighting performance standard. The proposed performance standard has been revised in the attached draft ordinance to reflect this concern, with the underline indicating the text that’s been added since the last meeting, “Lighting shall be designed to avoid excessive glare as viewed from offsite locations and in compliance with the California Green Building Standards Code. Lighting shall also be stationary, shielded or otherwise directed away from direct view of the light source as viewed from adjacent properties

and public rights of way, and of intensity compatible with the neighborhood.” The applicable sections of the CalGreen Code are attached.

Single-Room-Occupancy (SRO) Units: Government Code Section 65583 requires that the City provide zoning to accommodate a variety of housing types, including single-room-occupancy units. According to the California Department of Housing and Community Development’s website, “SROs can provide a valuable form of affordable private housing for lower-income individuals, seniors and persons with disabilities.” Such units need not provide supportive services. So as not to be too restrictive, staff recommends that the definition of single-room-occupancy dwelling units proposed to be included in Section 17.02.235.C be simplified as follows:

C. "Multiple-family dwelling" means a building or site containing three (3) or more dwelling units (*also see "Duplex"*). *The term includes single-room-occupancy dwelling units, typically comprised of one or two rooms (which may include a kitchen and/or a bathroom, in addition to a bed), that are restricted to occupancy by no more than two persons.*

The question was raised as to whether SRO units could be occupied by couples with children (more than 2 persons). Occupancy limits are set by Section 503(b) of the Uniform Housing Code (as adopted by the City per BMC Section 15.04.050.K) based upon the square footage of the unit, but because such units may share a bathroom down the hall with a number of other units, they are typically not considered suitable for families.

SCRO-District Setback Regulations: Housing Element Program H.D.1.c calls for revision of the SCRO-1 District setback standards, which currently require 5 ft. front setbacks; 0 ft. side setbacks, except when located adjacent to any residential use, where 10 ft. would be required; and 10 ft. rear setbacks. These were last updated in 2000 in an attempt to accommodate mixed uses, but the side setback exception resulted in unintended consequences for residential uses next to residential uses. Instead, Program H.D.1.c calls for a new approach that regulates side setback standards by the use on site, not the adjoining use.

For residential and mixed uses, 5 ft. side setbacks would be required, the same as in the R-3 District. For all other commercial uses, 10 ft. side setbacks would apply, as is the case in the TC-1 District. Per Program H.D.1.c, it is suggested that exceptions to the side setback standards be granted through Use Permit approval, rather than the more onerous Variance process, in order to accommodate unforeseen combinations of uses that might result in a mixed use district. The findings for Use Permit approval (BMC Section 17.40.060) will allow the Planning Commission to consider whether the proposed exception will be “detrimental to the health, safety, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or the general welfare of the city.”

As for front setbacks, 10 ft. is suggested for residential and mixed uses, which is the requirement in the R-3 District for properties with at least 15% slope. For all other commercial uses, the 25 ft. front setback, the same as required in the TC-1 District, is suggested. In cases where a portion of the front of the property will be dedicated to public right-of-way for a frontage access road (per General Plan Program 239a), it is suggested that an exception be provided to allow the front setback from the new resulting property line be reduced to 0 ft. This is similar to the front setback exception allowed for garages and carports on sites with at least 15% slope per BMC Section 17.32.070.A.3.a.

No change to the current 10 ft. rear setback is necessary. This is the same as the required minimum rear setback in both the R-3 and TC-1 Districts.

Zoning Administrator: Amendments to BMC Section 17.56.030, Zoning administrator—Action on Applications, are proposed. These include a follow-up to the adoption of Ordinance 558 to allow for processing permits as a Zoning Administrator action for solar energy improvements (BMC Section 17.32.060.C) and accessibility improvements (BMC Sections 17.32.060.D, 17.32.070.A.1.f and 17.32.080) that exceed the district height standards. These amendments are also to include processing permits for large family day care homes as a Zoning Administrator action, per State Health and Welfare Code Sections 1597.46(a)(3) and 1597.465.

Recommendation: Provide direction to staff to prepare a draft ordinance for recommendation to the City Council, and adopt the attached draft Resolution No. RZ-4-11-a to formally initiate the zoning text amendment process.

Attachments:

- Draft Resolution RZ-4-11-a
- Preliminary Draft Zoning Text Amendments
- City of Santa Monica Ordinance – Example
- CalGreen Code Excerpts

draft
RESOLUTION NO. RZ-4-11-a

RESOLUTION OF INTENTION TO CONSIDER AMENDMENTS TO
THE CITY OF BRISBANE MUNICIPAL CODE TITLE 17, ZONING,
REGARDING DEFINITIONS, DESIGN PERMITS AND
THE SCRO-1 SOUTHWEST BAYSHORE COMMERCIAL DISTRICT

WHEREAS, on January 18, 2011, the City Council adopted the 2007-2014 Housing Element; and

WHEREAS, the Planning Commission has determined that amending the Zoning Ordinance's definitions would be consistent with Housing Element Program H.B.1.f; and

WHEREAS, the Planning Commission has determined that amending the SCRO-1 District regulations would be consistent with Housing Element Programs H.B.1.g and H.D.1.c; and

WHEREAS, the Planning Commission has also determined that amending the SCRO-1 District regulations to permit emergency shelters and convalescent homes on an interim basis would be consistent with the intent of the Government Code as cited in Housing Element Program H.B.3.i, as well as Program H.B.3.e; and

WHEREAS, amending the Zoning Ordinance's Design Permits chapter to comply with the California Government Code would be consistent with Housing Element Program H.B.1.c; and

NOW, THEREFORE, BE IT RESOLVED, that the City of Brisbane Planning Commission intends to consider amendments to the Title 17, Zoning, of the Brisbane Municipal Code.

JAMEEL MUNIR
Chairman

I hereby certify that the foregoing Resolution No. RZ-4-11-a was duly and regularly passed and adopted by the Brisbane Planning Commission at a regular meeting thereof held on _____, by the following roll call vote:

AYES:
NOES:
ABSENT:

JOHN SWIECKI
Community Development Director

A.1.5

PRELIMINARY DRAFT TEXT AMENDMENTS

(New text is shown in *italics*, deleted text is shown in ~~strikethrough~~, comments shown in **bold**)

Chapter 17.02

DEFINITIONS

Sections:

- 17.02.005 - Application of definitions.
- 17.02.010 - Abandon.
- 17.02.015 - Abutting.
- 17.02.017 - Active records management services.
- 17.02.020 - Addition.
- 17.02.025 - Adjacent.
- 17.02.030 - Adult entertainment facility.
- 17.02.040 - Alley.
- 17.02.045 - Approving authority.
- 17.02.050 - Articulation.
- 17.02.060 - Attached.
- 17.02.065 - Outside wall.
- 17.02.070 - Automotive repair shop.
- 17.02.080 - Bar.
- 17.02.085 - Bay.
- 17.02.090 - Block.
- 17.02.100 - Building.
- 17.02.105 - Reserved.
- 17.02.110 - Canopy.
- 17.02.115 - Cantilever.
- 17.02.120 - Carport.
- 17.02.130 - CEQA.
- 17.02.140 - Chimney-Chimney box.
- 17.02.142 - Commercial parking lot.
- 17.02.145 - Commercial recreation-Commercial gym and health facilities.
- 17.02.150 - Condominium.
- 17.02.155 - Contiguous.
- 17.02.160 - Contractor's yard.

17.02.165 - Convalescent home.
17.02.170 - Cornice.
17.02.175 - Covered parking.
17.02.180 - Cultural facility.
17.02.185 - Cupola.
17.02.190 - Day care center.
17.02.195 - Day care home.
17.02.200 - Deck-Parking deck.
17.02.205 - Detached.
17.02.210 - District.
17.02.220 - Driveway.
17.02.230 - Duplex.
17.02.235 - Dwelling.
~~17.02.240 - Dwelling group.~~
17.02.250 - Eave.
17.02.255 - Educational facility.
17.02.260 - Emergency access.
17.02.265 - Emergency shelter.
17.02.270 - Establishment.
17.02.285 - Family.
17.02.290 - Family day care home.
17.02.300 - Fence.
17.02.310 - Financial institution.
17.02.315 - Floor area-Floor area ratio.
17.02.320 - Food production.
17.02.330 - Freight forwarder.
17.02.340 - Garage.
17.02.345 - Gasoline service station.
17.02.350 - General plan.
17.02.360 - Grade.
17.02.370 - Group care home.
17.02.380 - Habitat Conservation Plan (HCP).
17.02.385 - Heavy equipment repair.
17.02.390 - Hedge.

17.02.400 - Height.
17.02.410 - Home occupation.
17.02.420 - Hotel.
17.02.430 - Infrastructure.
17.02.440 - Invasive.
17.02.450 - Kennel.
17.02.460 - Kitchen.
17.02.470 - Landing.
17.02.475 - Landscaping.
17.02.480 - Light fabrication.
17.02.485 - Live/work development.
17.02.490 - Lot.
17.02.495 - Lot coverage.
17.02.500 - Lot dimensions.
17.02.505 - Lot line.
17.02.510 - Map Act.
17.02.515 - Marina.
17.02.520 - Means of access.
17.02.525 - Media studio.
17.02.530 - Medical facility.
17.02.535 - Meeting hall.
17.02.540 - Mixed use.
17.02.545 - Mobilehome-Mobilehome park.
17.02.550 - Motel.
17.02.560 - Nonconforming.
17.02.570 - Occupant.
17.02.575 - Office.
17.02.580 - Off-street parking facility.
17.02.590 - Open area.
17.02.595 - Open space.
17.02.598 - Organics reload operations.
17.02.600 - Outdoor sales and rental.
17.02.610 - Personal services.
17.02.620 - Place of worship.

17.02.625 - Planning commission.
17.02.627 - Plastic pipe sales.
17.02.630 - Principal place of residence.
17.02.635 - Printing.
17.02.640 - Product showroom.
17.02.645 - Property line.
17.02.650 - Protected tree.
17.02.655 - Public utility facilities.
17.02.660 - Rare plants.
17.02.665 - Record owner.
17.02.670 - Recycling facility.
17.02.675 - Research and development.
17.02.680 - Restaurant.
17.02.685 - Retail sales and rental.
17.02.690 - Retaining wall.
17.02.695 - Ridgeline.
17.02.700 - Right-of-way.
17.02.710 - Scale.
17.02.715 - Setback-Setback area.
17.02.720 - Sign.
17.02.725 - Site.
17.02.730 - Slope.
17.02.740 - Stock-in-trade.
17.02.745 - Storage.
17.02.746 - Storefront.
17.02.750 - Street.
17.02.755 - Structure.
17.02.760 - Subdivision ordinance.
17.02.770 - Use.
17.02.780 - Veterinary clinic.
17.02.790 - Warehousing.
17.02.800 - Wholesale.
17.02.810 - Wildland interface.

§17.02.165 – Convalescent home. “Convalescent home” means an establishment licensed by the state providing residential and health care services, for compensation, for persons recovering from illness, or injury, or *for persons with chronic illness or disability, such as the elderly who require assistance with basic daily activities* ~~suffering from the infirmities of old age.~~

§17.02.235 – Dwelling. “Dwelling” means a place that is used as the personal residence of the occupants thereof, *including transitional housing as defined in California Health and Safety Code Section 50675.2(h) and supportive housing as defined in California Health and Safety Code Sections 50675.14(b)(2) & (3).* *The term includes factory-built or manufactured housing, such as mobilehomes, but excludes* ~~excluding~~ **trailers, campers, tents, recreational vehicles, hotels, motels, boarding houses and temporary structures.**

A. *"Dwelling group" means a group of two or more detached buildings located upon the same site, each of which contains one or more dwelling units.*

B. *"Dwelling unit" means a room or group of rooms including living, sleeping, eating, cooking and sanitation facilities, constituting a separate and independent housekeeping unit, designed, occupied, or intended for occupancy by one family on a permanent basis.*

C. *"Multiple-family dwelling" means a building or site containing three (3) or more dwelling units (also see "Duplex"). The term includes single-room-occupancy dwelling units, typically comprised of one or two rooms (which may include a kitchen and/or a bathroom, in addition to a bed), that are restricted to occupancy by no more than two persons.*

D. *"Secondary dwelling unit" means a separate dwelling unit created upon a site within the R-1 or R-BA district that contains a single-family dwelling and for which a use permit has been granted pursuant to Chapter 17.43 of this title. Subject to the restrictions of this title, the secondary dwelling unit may be attached to or detached from the single-family dwelling.*

E. *"Single-family dwelling" means a dwelling unit constituting the only principal structure upon a single site (excluding any lawfully established secondary dwelling unit that may be located within the same structure on upon the same site). The term includes residential care facilities, licensed by the state to provide twenty-four (24) hour nonmedical care, serving six (6) or fewer persons (not including the operator, the operator's family or persons employed as staff) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. Also see "Group care home" for seven (7) or more persons.*

~~**§17.02.240 – Dwelling group.** "Dwelling group" means a group of two or more detached buildings located upon the same site, each of which contains one or more dwelling units.~~

§17.02.265 – Emergency shelter. *"Emergency shelter" means housing with minimal supportive services that is limited to occupancy of up to six months by persons who are homeless, victims of domestic violence, individuals and households made temporarily homeless due to natural disasters (e.g., fires, earthquakes, etc.), or other persons requiring temporary housing.*

§17.02.285 – Family. “Family” means one or more persons, *related or unrelated*, occupying a dwelling unit and living together as a single housekeeping unit. The term shall not include a group of persons occupying a fraternity or sorority house, club, hotel, motel, *convalescent nursing* home, group care home or institution of any kind.

§17.02.285 – Family day care home. “Family day care home” means an establishment operated by the provider in the provider’s own home as a accessory use incidental to the residential occupancy and licensed by the state to provide care, protection and supervision to children for periods of less than twenty-four (24) hours per day while the parents or guardians are away, and includes the following:

A. “Small family day care home” means a family day care home for *eight (8) six (6)* or fewer children, including children under the age of ten (10) years who reside at the home;

B. “Large family day care home” means a family day care home for *nine (9) seven (7) to fourteen (14) twelve (12)* children, including children under the age of ten (10) years who reside at the home.

§17.02.370 – Group care home. “Group care home” means an establishment licensed by the state to provide twenty-four (24) hour nonmedical care for seven (7) or more persons (*not including the operator, the operator's family or persons employed as staff*) in need of supervision, personal services, or assistance essential for sustaining the activities of daily living or for the protection of the individual. *Also see “dwelling, single-family” for six (6) or fewer persons.*

§17.02.420 – Hotel. “Hotel” means a building or group of buildings containing guest rooms or suites offered, for compensation, to the general public as transient lodging accommodations. The term includes motel, inn, motor court, bed and breakfast establishment or similar use, *but excludes single-room-occupancy dwelling units operated as supportive housing.*

Chapter 17.16

SCRO-1 SOUTHWEST BAYSHORE COMMERCIAL DISTRICT

Sections:

- 17.16.010 - Purposes of chapter.
- 17.16.020 - ~~No-p~~ Permitted uses.
- 17.16.030 - Conditional uses.
- 17.16.040 - Development regulations.
- 17.16.050 - Performance standards.
- 17.16.060 - Special findings.
- 17.16.070 - Night operations.
- 17.16.080 - Parking.

- 17.16.090 - Signs.
- 17.16.100 – Design Review.
- 17.16.110 - Visual impact analysis.

§17.16.010 - Purposes of chapter. The general plan designates several areas of the city for subregional commercial/retail/office use (SCRO). The SCRO-1 Southwest Bayshore commercial district (hereinafter referred to as the Southwest Bayshore district) is one of such planning areas and is included in the zoning ordinance codified in this title to achieve the following purposes:

- A. To create a zoning district for the Southwest Bayshore area that provides for orderly development consistent with the land use policies for that area as set forth in the city's general plan;
- B. To encourage a mix of subregional uses and the opportunity to include mixed-uses and residential uses when appropriate;
- C. To ensure that future development will be conducted in a manner that will adequately address the environmental constraints in the Southwest Bayshore district, as identified in the general plan;
- D. To address historical issues of incompatible land uses; and
- E. To protect the community health and safety by establishing permit requirements, performance standards, and special findings for the establishment of uses in the Southwest Bayshore district.

~~**§17.16.020 – No permitted uses.** There are no permitted uses in the Southwest Bayshore district. Only those uses designated as conditional uses in Section 17.16.030 may be established, subject to the issuance of a use permit in accordance with the requirements of this chapter.~~

- ~~A. The following are permitted uses in the SCRO-1 district:
 - 1. Emergency shelters in compliance with Section 17.16.040.~~

§17.16.030 - Conditional uses.

A. Allowable Conditional Uses. The following conditional uses, *not otherwise permitted per Section 17.16.020.A*, may be allowed in the Southwest Bayshore district, upon the granting of a use permit pursuant to Chapter 17.40 of this title and if conducted in accordance with the performance standards set forth in Section 17.16.050 of this chapter:

- 1. Commercial recreation/commercial gym and health facilities;
- 2. Contractor's yards;
- 3. *Convalescent homes;*
- 4. Cultural facilities;
- 5. Duplex dwelling units;
- 6. Educational facilities;
- 7. *Emergency Shelters with more than 12 beds*

8. Financial institutions;
9. Food production;
10. Group care homes;
11. Hotels;
12. *Large family day care homes;*
13. Light fabrication;
14. Live/work developments;
15. Media studios;
16. Medical facilities;
17. Meeting halls;
18. Mobilehome parks *in compliance with Section 17.32.110;*
19. Motels;
20. Multiple-family dwellings *and dwelling groups;*
21. Offices;
22. Outdoor sales and rental;
23. Personal services;
24. Places of worship;
25. Printing;
26. Product showrooms;
27. Research and development, where the planning director determines, as a result of a risk analysis performed in accordance with Policy No. 166.1 of the general plan, that the use of hazardous materials will not constitute a major component of the research and development activities to be conducted on the site;
28. Restaurants;
29. Retail sales and rental;
30. Single-family dwellings;
31. Storage;
32. Veterinary clinics;
33. Warehousing;
- ~~31. Wholesale sale and distribution.~~ **[Note: included in definition of warehousing].**

B. Mixed Uses. A combination of any residential and nonresidential uses listed in subsection A of this section, or in Section 17.16.020, may be allowed as a mixed use within the same structure or upon the same site when specifically authorized by the use permit granted for each individual conditional use and upon such additional conditions as the approving authority may deem necessary or appropriate to insure the compatibility of such mixed uses.

C. Night Operations. Night operations associated with the conduct of any uses listed in subsection A of this section (except residential uses) shall require a use permit when subject to the provisions of Section 17.16.070 of this chapter.

§17.16.040 - Development regulations. Development regulations in the Southwest Bayshore district are as follows:

A. Lot Area. The minimum area of any lot shall be seven thousand five hundred (7,500) feet.

B. Density of Development. The minimum lot area for each dwelling unit on a site shall be as follows:

1. Single-family dwellings: seven thousand five hundred (7,500) square feet;
2. Duplex dwellings: three thousand seven hundred fifty (3,750) square feet;
3. Multiple-family dwellings *and dwelling groups*: one thousand five hundred (1,500) square feet;
4. Mixed use or live/work development: dwelling unit density shall be determined by the use permit.

C. Lot Dimensions. The minimum dimensions of any lot shall be as follows:

1. Width: *fifty (50) feet*;
2. Depth: no requirement

D. Setbacks. The minimum required setbacks for any lot shall be as follows:

1. Front setback: ~~five (5) feet~~.
 - a. *Residential/ Mixed Use: ten (10) feet*
 - b. *Commercial Uses: twenty-five (25) feet for commercial uses;*
 - c. *Exception: The setbacks may be reduced to zero (0) where development includes dedication to public right-of-way for a frontage access road and sidewalk, to the satisfaction of the City Engineer and Fire Department.*
2. Side setback: ~~None, except a ten (10) foot setback shall be required when the site is adjacent to any residential use.~~
 - a. *Residential/ Mixed Use: five (5) feet*
 - b. *Commercial Uses: fifteen 15 feet*
 - c. *Exception: The Planning Commission may approve exceptions to the side setback regulations through the granting of a Use Permit.*

3. Rear setback: ten (10) feet.

E. Lot Coverage. The maximum coverage by all structures on any lot shall be seventy percent (70%).

F. Height of Structures. The maximum height of any structure shall be thirty-five (35) feet.

G. Landscaping Requirements.

1. Not less than ten percent (10%) of the lot area shall be improved with landscaping.

2. Plant materials shall be drought resistant and non-invasive as required by the planning director. Where landscaping is located adjacent to unimproved hillside

3. Landscaping required under this section, including replacement landscaping, shall be installed according to detailed plans approved by the planning director. The landscape plans shall be consistent with the following objectives:

- a. Use of plants that are not invasive;
- b. Use of water conserving plants; and
- c. Use of plants and other landscape features that are appropriate to the context.

4. New and replacement, irrigated landscapes of 1,000 square feet, or more, shall be subject to the Water Conservation in Landscaping Ordinance. Refer to Chapter 15.70.

H. Screening Requirements.

1. Outside storage of pallets or containers used for transportation and delivery of items related to the uses conducted on the site shall not be located in any required setback from a street and shall be screened from off-site view to the extent it is reasonable to do so.

2. The off-site visibility of exterior equipment such as heating and ventilation units, above-ground storage tanks, compactors and compressors, shall be mitigated through such measures as may be reasonable under the circumstances, including, but not limited to, the installation of screening, fencing, painting, or landscaping, or any combination of the foregoing.

3. The screening requirements set forth in subsections 1 and 2 of this section are not intended to be exclusive and the approving authority may require, as a condition of the use permit, such other and additional screening measures as it deems necessary or appropriate to mitigate any potential adverse visual and audible impacts created by the intended use.

I. Recycling Area Requirements.

1. Adequate, accessible and convenient areas for depositing, collecting and loading recyclable materials in receptacles shall be provided. The area shall be located and fully enclosed so as to adequately protect neighboring uses from adverse impacts such as noise, odor, vectors, wind-blown litter or glare. The area shall be designed to prevent storm water run-on to the area and runoff from the area, and roofs shall be designed to drain away from neighboring properties. A sign clearly identifying all recycling and solid waste collection and loading areas and the materials accepted therein shall be posted adjacent to all points of direct access to the area.

2. This requirement shall apply to all new commercial or institutional buildings, residential buildings having five or more living units, and City facilities (including buildings, structures, and outdoor recreation areas owned by the City) where solid waste is collected and loaded. This requirement shall also apply to any existing development for which building permit applications are submitted within a 12-month period collectively adding 30 percent or more to the existing floor area of the development project. For existing developments occupied by

multiple tenants, this requirement shall apply to building permit applications submitted by any tenant within a 12-month period collectively adding 30 percent or more to the existing floor area of that portion of the development which said tenant leases. Such recycling areas shall, at a minimum, be sufficient in capacity, number, and distribution to serve that portion of the development project which said tenant leases.

J. Emergency shelters:

Development standards for emergency shelters shall be the same as for residential development in the district, except density of development regulations, and emergency shelters that meet the following requirements are exempt from the requirement of a design permit and use permit:

- 1. No emergency shelter shall be allowed to be located within 300 feet of another emergency shelter.*
- 2. The required setbacks for new development shall be:*
 - a. Front setback: ten (10) feet; except that the front setback may be reduced to zero (0) where development includes dedication to public right-of-way for a frontage access road and sidewalk, to the satisfaction of the City Engineer and Fire Department.*
 - c. Side setback: five (5) feet; except that the Planning Commission may approve exceptions to the side setback regulations through the granting of a Use Permit.*
 - e. Rear setback: ten (10) feet.*
- 3. A maximum of 12 persons (12 beds) to be served nightly.*
- 4. Each resident shall be provided personal living space.*
- 5. Bathrooms and bathing facilities shall be provided, adequate for the number of residents.*
- 6. Laundry facilities or services shall be provided on site, adequate for the number of residents.*
- 7. The length of stay for individual clients shall not exceed 6 months, or as allowed by state law.*
- 8. Staff and services shall be provided to assist residents to obtain permanent shelter and income.*
- 9. For security, the facility shall provide outdoor lighting of common areas, entries, parking areas, pathways, in compliance with BMC Section 17.16.050.E.*
- 10. For security, the shelter shall be adequately staffed 24 hours a day, 7 days a week.*
- 11. Parking shall be as specified in BMC Chapter 17.34.*
- 12. Outdoor activities, such as recreation, eating, and staging for drop-off, intake, and pick-up, may be conducted at the facility, between the hours of 5 am and 10 pm. A night operations use permit is required for outdoor activities between the hours of 10 pm and 5 am, as provided for in BMC Section 17.16.070.*
- 13. The facility may provide the following:*

- a. *Kitchen facilities;*
- b. *Dining area;*
- c. *Recreation room;*
- d. *Training and counseling support services;*
- e. *Child care facilities*
- f. *Other facilities or services that are accessory to an emergency shelter.*

14. Prior to commencing operation, the emergency shelter provider must have a written management plan, which shall be provided to the Planning Director. The management plan must include provisions for staff training, resident identification process, neighborhood outreach, policies regarding pets, the timing and placement of outdoor activities, provisions for residents' meals and medical care, temporary storage of residents' personal belongings, safety and security, screening of residents to insure compatibility with services provided at the facility, and training, counseling and social service programs for residents, as applicable.

§17.16.050 – Performance Standards. All uses in the Southwest Bayshore district shall be conducted in accordance with the following performance standards:

A. All routine aspects of the day-to-day operations of a business, including the storage of materials and products, shall be conducted entirely within an enclosed structure, with the exception of the following:

1. Outdoor activities specifically authorized by the use permit;
2. Parking of operable vehicles related to the authorized uses conducted on the site;
3. Shipments and deliveries incidental to the conduct of the primary use on the site.

4. Emergency shelter outdoor activities as set forth in Section 17.16.040.J.12.

B. The site shall be kept free of trash and debris and all receptacles for collection and recycling shall be completely screened from view at street level.

C. Sound insulation housing or baffles, or other reasonable measures, shall be installed in conjunction with heating and ventilating equipment or other machinery when necessary to effectively mitigate sound emissions distinctly detectable from any off-site location.

D. Odors from any use shall not be generally or distinctly detectable from any off-site location.

E. Lighting shall be designed to avoid excessive glare as viewed from offsite locations *and in compliance with the California Green Building Standards Code. Lighting shall also be stationary, shielded or otherwise directed away from direct view of the light source as viewed from adjacent properties and public rights of way, and of intensity compatible with the neighborhood.*

F. Site development shall minimize disturbance of existing natural slopes to the extent feasible, maintain public view corridors of the San Francisco Bay and San Bruno Mountain, minimize rooftop glare, and screen exterior mechanical equipment.

§17.16.060 – Special findings. In addition to the findings required for approval of a use permit as set forth in Section 17.40.060, no use permit shall be granted for any conditional use in the Southwest Bayshore district unless the approving authority also makes such of the following findings as may be applicable to the application:

- A. Adequate measures have been taken to protect workers and residents from the twenty-four (24) hour noise generated by traffic on Bayshore Boulevard.
- B. The design for projects with residential uses has incorporated measures to buffer the units from potential adverse impacts from nearby and adjacent non-residential uses.
- C. The design for projects with residential uses includes outdoor areas, such as courts, yards or decks, securely separated from the street.
- D. The improvements have been designed in a manner that will make adequate provision for on-site parking and traffic circulation and safe ingress to and egress from the site.
- E. The improvements have been designed to be compatible with the topography and soils of the hillside.

§17.16.070 – Night operations.

A. Definitions. For the purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them as set forth below:

- 1. "Existing business" means a business or other use that is legally operating within the Southwest Bayshore district as of February 9, 2000, in accordance with all zoning regulations applicable thereto, and pursuant to a business license duly issued by the city.
- 2. "Night operations" means any activity conducted between the hours of ten (10:00) p.m. and five (5:00) a.m. of the following day.

B. Requirement for Use Permit to Conduct Night Operations. Except as otherwise provided in subsection C of this section, no business or other use, with the exception of residential uses, shall engage in the conduct of night operations at any location within the Southwest Bayshore district unless a use permit for such night operations has been granted pursuant to this chapter.

C. Continuation of Night Operations by Existing Businesses. An existing business which has lawfully been conducting night operations prior to February 9, 2000, may continue to conduct such night operations on the same site and shall be exempted from the requirement to obtain a use permit pursuant to this section. This exemption shall not apply to any relocation of the night operations to a different site, nor may the exemption be assigned or transferred by the existing business to a different business establishment or use, whether conducted on the same site or elsewhere.

D. Approving Authority. Applications for a use permit to conduct night operations shall be acted upon by the planning commission and shall be governed by the provisions of Chapter 17.40 of this title, as supplemented by this section.

E. Findings for Use Permit Approval. In addition to the findings required for approval of a use permit, as set forth in Section 17.40.060 and elsewhere in this section, no use permit shall be granted for the conduct of night operations in the Southwest Bayshore district unless the planning commission also finds and determines that the night operations conducted by the applicant will not create noise, glare or other effects that are likely to create a sleep disturbance for the occupants of neighboring residential properties.

F. Use Permit Conditions. Without limiting the authority of the Planning Commission to impose conditions on the granting of a use permit pursuant to Section 17.40.070, a use permit authorizing the conduct of night operations in the Southwest Bayshore district may contain limitations on the days and hours of operation, restrictions on the nightly volume of vehicle trips, restrictions on the type of vehicles or equipment that may be operated at night, requirements for special devices and measures for abatement of noise and glare, and requirements for mitigation monitoring and periodic mandatory review. The planning commission shall have continuing jurisdiction over every use permit issued pursuant to this section and may at any time, if the original findings required for issuance of the use permit can no longer be made, modify or amend any of the use permit conditions, or impose new and additional conditions, or revoke the use permit.

§17.16.080 - Parking.

Off-street parking facilities shall be provided for each use on the site in accordance with the requirements set forth in Chapter 17.34 of this title.

§17.16.090 - Signs. Signs allowed in the Southwest Bayshore district are as specified in Chapter 17.36 of this title.

§17.16.100 - Design review. The construction of any principal structure in the Southwest Bayshore district, except a single-family or duplex dwelling *or emergency shelter as set forth in Section 17.16.040.J*, shall be subject to the granting of a design permit in accordance with the provisions of Chapter 17.42 of this title and any applicable design guidelines adopted by the city.

§17.16.110- Visual impact analysis. All projects, including single-family and duplex dwellings, *but excluding emergency shelters as set forth in Section 17.16.040.J*, shall submit a visual impact analysis, in accordance with guidelines approved by the planning commission, to address the following design issues: relationship to steep slopes; public view corridors; view of San Francisco Bay and San Bruno Mountain; material and lighting, especially as pertains to light and glare; treatment of roofs and the screening of mechanical equipment.

Chapter 17.42

DESIGN PERMITS

Sections:

- 17.42.010 – Requirement for design permit.
- 17.42.020 – Application for design permit.
- 17.42.030 – Public hearing by planning commission--Notice.
- 17.42.040 – Findings required for issuance of design permit.
- 17.42.045 – Special findings.*
- 17.42.050 – Action by planning commission.
- 17.42.060 – Expiration of design permit--Extensions.
- 17.42.070 – Amendment of design permit—Minor modifications.
- 17.42.080 – Appeals to city council.

§17.42.010 – Requirement for design permit. A. Except as otherwise provided in subsection B of this section, a design permit shall be required for the construction of any new principal structure or the substantial modification of an existing principal structure for which no design permit has previously been issued. As used herein, the term "substantial modification" means an alteration or expansion of the exterior and/or interior of the structure to the extent of significantly modifying its basic design, elevations, size, appearance, or relationship to adjacent properties or structures, as determined by the planning director.

B. No design permit shall be required for the construction or substantial modification of any single-family dwelling, secondary dwelling unit, duplex, or accessory structure, unless *part of a dwelling group totaling three (3) or more units or part of a mixed use development, or* a design permit for such structure has been required as a condition of a development approval granted by the city. *No design permit shall be required for the construction or substantial modification of an emergency shelter of twelve (12) beds or less, as set forth in Section 17.16.040.J.*

§17.42.020 – Application for design permit. A. Contents of Application. Application for a design permit shall be filed with the planning director on such form as the planning director shall prescribe. The application shall be accompanied by legible and reproducible sets of completely dimensioned, scaled site development and architectural plans, with bar scales, showing such of the following items as the planning director deems appropriate in order to evaluate and process the application:

1. Existing and/or proposed structures with floor plans (with the use of each room/space labeled), roof plans, and elevations of all sides of the existing and/or proposed structures, identifying colors and materials as appropriate, indicating the

height from natural grade on each elevation of the tallest points of the structure (cross-sections may also be required based upon the complexity of the design), and including UBC type of construction;

2. For covered projects as defined by Section 15.80.030, green building documentation per Section 15.80.060(A) sufficient to be approved per Section 15.80.060(C).
3. Accurately dimensioned property lines, setbacks, structures on adjacent properties (and their uses), streets, easements, existing and proposed utilities, and building coverage and lot area calculations;
4. Location of existing trees by size (circumference measured twenty-four (24) inches above grade) and type, indicating those proposed for removal;
5. Conceptual landscaping plans showing species, common name, size and number of plantings, with description of proposed plantings (height at maturity, time to maturity, color, drought/wind/salt tolerance, and deciduousness), calculation of the total square footage of proposed irrigated landscaped area and explanation of proposed method of irrigation;
6. Existing and proposed parking facilities, including the dimensions of parking spaces, number and location of spaces designated as compact or handicapped spaces, and a calculation of the number of parking spaces required by this title or any other applicable regulations;
7. Paving details, improved street width (curb-to-curb), sidewalks, and driveway cuts;
8. Existing and proposed topography of the property (at five (5) foot intervals), clearly indicating any proposed grading and filling and the amounts in cubic yards of proposed excavation, fill and removal from the site. If requested by the planning director, a soils report and/or geotechnical study shall also be furnished;
9. Drainage details, exterior lighting, trash enclosures, signs, fences and method of screening exterior mechanical equipment (including rooftop air-conditioning units, transformers and public utilities);
10. Material and color samples and colored rendering of the project;
11. Photographs of the Site. Photomontages of the proposal may also be required dependent upon the visual significance of the proposal.

B. Application Fee. The application shall be accompanied by the payment of a processing fee in such amount as established from time to time by resolution of the city council. In addition to the processing fee, the applicant shall also deposit such amounts as the planning director may require from time to time to cover the cost of any environmental investigations or reports, geotechnic and engineering reports, review of green building documentation, and such other investigations and reports that may be required by the city in connection with the processing of the application.

§17.42.030 – Public hearing by planning commission. The planning commission shall conduct a public hearing on the application for a design permit. Notice of the public hearing

shall be given not less than ten (10) days nor more than thirty (30) days prior to the date of the hearing by mailing, postage prepaid, a notice of the time and place of the hearing to the applicant and to all persons whose names appear on the latest available assessment roll of the county as owning property within three hundred (300) feet of the boundaries of the site which is the subject of the permit application. Notice of the public hearing shall also be posted at each location within the city where agendas for planning commission meetings are routinely posted.

§17.42.040 – Findings required for issuance of design permit. The planning commission may grant a design permit as applied for or in modified form if, on the basis of the application and the evidence submitted, the commission finds and determines that the proposed development is consistent with the general plan and any applicable specific plan and the commission also makes such of the following findings as may be applicable to the proposed development:

- A. The proposal's ~~maintains a balance of~~ scale, form and proportion, ~~and uses design components~~ are harmonious, and the materials and colors *used* complement the project. ~~The proposal integrates well with elements of the site plan and of surrounding areas.~~
- B. The orientation and location of buildings, structures, open spaces and other features *integrate well with each other and* maintain a compatible relationship to adjacent development.
- C. *Proposed buildings and structures are designed and located to mitigate potential impacts to adjacent land uses. Where a proposal abuts or is in close proximity to uses other than that proposed, the plan takes into account its effect on and maintains the quality of the other land uses.*
- D. *The project design takes advantage of natural heating and cooling opportunities through building placement, landscaping and building design to the extent practicable, given site constraints, to promote sustainable development and to address long term affordability.*
- E. For hillside development, the proposal respects the topography of the site and is designed to minimize its visual impact. Significant public views of San Francisco Bay, the Brisbane Lagoon and San Bruno Mountain State and County Park are preserved.
- F. The site plan minimizes the effects of traffic on abutting streets through careful layout of the site with respect to location, dimensions of vehicular and pedestrian entrances and exit drives, and through the provision of adequate off-street parking. There is an adequate circulation pattern within the boundaries of the development. Parking facilities are adequately surfaced, landscaped and lit.
- G. The proposal encourages alternatives to travel by automobile where appropriate, through the provision of facilities for pedestrians and bicycles, public transit stops and access to other means of transportation.
- H. The site provides open areas and landscaping to complement the buildings and structures. Landscaping is also used to separate and screen service and storage areas, break up expanses of paved area and define areas for usability and privacy. Landscaping is generally water conserving and is appropriate to the location. Attention is given to habitat protection and wildland fire hazard as appropriate.

- I. The proposal takes reasonable measures to protect against external and internal noise.
- J. Consideration has been given to avoiding off-site glare from lighting and reflective building materials.
- K. Attention is given to the screening of utility structures, mechanical equipment, trash containers and rooftop equipment.
- L. Signage is appropriate in location, scale, type and color, and is effective in enhancing the design concept of the site.
- M. Provisions have been made to meet the needs of employees for outdoor space.

§17.42.045 – Special findings. A. The planning commission may deny a design permit for a proposed housing development project, or approve it upon the condition that the project be developed at a lower density, even though the project complies with applicable general plan and zoning standards and design review criteria in effect at the time the application is determined to be complete, subject to both of the following findings, supported by substantial evidence in the record:

- 1. The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density.*
- 2. There is no feasible method to satisfactorily mitigate or avoid the adverse impact, other than through disapproval or approval upon the condition that the project be developed at a lower density.*

B. In addition to the findings above, the planning commission may deny a design permit for a proposed housing development project for very low, low-, or moderate-income households or condition approval in a manner that renders development of such a project infeasible, subject to at least one of the following findings, supported by substantial evidence in the record:

- 1. The city has met or exceeded its share of the regional housing need allocation for the planning period for each of the income categories proposed for the housing development project as identified in the housing element.*
- 2. The development project as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.*
- 3. The denial of the project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.*
- 4. The development project is proposed on land which does not have adequate water or wastewater facilities to serve the project.*
- 5. The development project is inconsistent with both the zoning ordinance and general plan land use designation as of the date the application was deemed complete, and the project is not proposed for a site that is identified as suitable for very low, low-, or moderate-income households in the housing element and is inconsistent with the density specified in the housing element.*

C. As used in this section, a "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as of the date the application was deemed complete. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.

D. Any disapproval or conditional approval of a design permit for a proposed housing development project for very low, low-, or moderate-income households shall not discriminate on the basis of any of the reasons prohibited by California Government Code Section 65008.

§17.42.050 – Action by planning commission. A. The planning commission may either grant or deny the application for design permit and may grant the permit subject to such conditions as the planning commission deems necessary or appropriate in order to make the findings prescribed by Section 17.42.040.

B. The design permit shall become effective upon the expiration of fifteen (15) days following the date on which the design permit was granted by the planning commission, unless an appeal has been taken to the city council pursuant to Chapter 17.52 of this title.

§17.42.060 – Expiration of design permit--Extensions. A. A design permit granted pursuant to this chapter shall expire twenty-four (24) months from the date on which such permit became effective, unless prior to such expiration date a building permit for the structure which is the subject of the permit is issued and construction is commenced.

B. A design permit may be extended by the planning commission for a period or periods of time not exceeding thirty-six (36) months. The application for extension shall be filed prior to the expiration date of the permit and shall be accompanied by payment of a processing fee in such amount as established from time to time by resolution of the city council. A public hearing shall be conducted on the application for extension and notice thereof shall be given in the same manner as prescribed in Section 17.42.030 of this chapter. Extension of a design permit is not a matter of right and the approving authority may deny the application or grant the same subject to conditions.

§17.42.070 – Amendment of design permit—Minor modifications. A. Amendments or modifications to a design permit shall require approval by the planning commission, except that the zoning administrator shall have authority to approve the following matters:

1. Any items which, under the terms of the design permit, have been delegated to the zoning administrator for approval, either as a condition for issuance of the permit or at any time thereafter;
2. Minor changes during the course of construction which do not materially affect the use, nature, appearance, quality or character of the project.

B. The application requirements, public hearing procedures and findings required for amendments or modifications to a design permit shall be as prescribed in Sections 17.42.020, 17.42.030 and 17.42.040 of this chapter.

§17.42.080 – Appeals to city council. Any determination or decision by the planning commission under this chapter may be appealed to the city council in accordance with the procedure set forth in Chapter 17.52 of this title.

Chapter 17.56

ADMINISTRATION

...

§17.56.030 – Zoning administrator—Action on applications. A. Except as otherwise provided in this chapter, the zoning administrator shall hear and decide the following:

1. Applications for zoning conformance;
2. Applications for variances;
3. Applications for minor modifications;
4. Applications for certain sign permits, in accordance with the provisions of Chapter 17.36 of this title; ~~and~~
5. Applications for administrative permits for wireless telecommunication facilities, in accordance with the provisions of Section 17.32.032 of this title:
6. *Applications for administrative permits for solar energy systems, in accordance with the provisions of Section 17.32.060.C; and*
7. *Applications for accessibility improvement permits, in accordance with the provisions of Sections 17.32.060.D, 17.32.070.A.1.f and 17.32.080; and*
8. *Applications for large family day care homes, per State Health and Welfare Code Sections 1597.46(a)(3) and 1597.465.*

B. In connection with the applications provided for in this section, the zoning administrator shall have all the duties and responsibilities set forth in this title for the planning commission.

Santa Monica Municipal Code[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[Article 9 PLANNING AND ZONING](#)[Chapter 9.04 ZONING REGULATIONS](#)[Subchapter 9.04.10 Project Design and Development Standards](#)[Part 9.04.10.02 General Requirements](#)**9.04.10.02.061 Homeless shelters.**

Homeless shelters located in any district shall comply with the following development standards:

(a) **Lighting.** Adequate external lighting shall be provided for security purposes. The lighting shall be stationary, directed away from adjacent properties and public rights-of-way, and of an intensity compatible with the neighborhood.

(b) **Laundry Facilities.** The development shall provide laundry facilities or services adequate for the number of residents.

(c) **Common Facilities.** The development may provide one or more of the following specific common facilities for the exclusive use of the residents and staff:

- (1) Central cooking and dining room(s).
- (2) Recreation room.
- (3) Counseling center.
- (4) Child care facilities.
- (5) Other support services.

(d) **Security.** Parking and outdoor facilities shall be designed to provide security for residents, visitors and employees.

(e) **Outdoor Activity.** For the purposes of noise abatement in residential districts, organized outdoor activities may only be conducted between the hours of eight a.m. and ten p.m.

(f) **Refuse.** Homeless shelters shall provide a refuse storage area that is completely enclosed with masonry walls not less than five feet high with a solid-gated opening and that is large enough to accommodate a standard-sized trash bin adequate for use on the parcel, or other enclosures as approved by the Director of General Services and the Architectural Review Board. The refuse enclosure shall be accessible to refuse collection vehicles.

(g) **Homeless Shelter Provider.** The agency or organization operating the shelter shall comply with the following requirements:

- (1) Temporary shelter shall be available to residents for no more than six months.
- (2) Staff and services shall be provided to assist residents to obtain permanent shelter and income.
- (3) The provider shall have a written management plan including, as applicable, provisions for staff training, neighborhood outreach, security, screening of residents to insure compatibility with services provided at the facility, and for training, counseling, and treatment programs for residents.

(h) **Maximum Unit Density.** Homeless shelters located in residential districts, when not developed in an individual dwelling unit format, shall not be subject to the underlying zoning district's maximum unit density standard, but the number of beds shall be limited to three times the maximum number of dwelling units which would otherwise be permitted. (Ord. No. 1687CCS § 10, adopted 6/22/93; amended by Ord. No. 1750CCS § 28, adopted 6/28/94)

H.1.26

Santa Monica Municipal Code[Up](#)[Previous](#)[Next](#)[Main](#)[Search](#)[Print](#)[No Frames](#)[Article 9 PLANNING AND ZONING](#)[Chapter 9.04 ZONING REGULATIONS](#)[Subchapter 9.04.02 General Provisions](#)**9.04.02.030.400 Homeless shelter.**

A residential facility, other than a community care facility, operated by a provider which provides temporary accommodations to persons or families with low income. The term "temporary accommodations" means that a person or family will be allowed to reside at the shelter for a time period not to exceed six months. For purpose of this definition, a "provider" shall mean a government agency or private non-profit organization which provides or contracts with recognized community organizations to provide emergency or temporary shelter, and which may also provide meals, counseling and other services, as well as common areas for residents of the facility. Such a facility may have individual rooms, but is not developed with individual dwelling units, with the exception of a manager's unit. (Added by Ord. No. 1826CCS § 1 (part), adopted 11/7/95)

H-1.27

**FINDING OF EMERGENCY
OF THE
DIVISION OF THE STATE ARCHITECT – STRUCTURAL SAFETY (DSA-SS)**

**REGARDING THE CALIFORNIA GREEN BUILDING STANDARDS CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 11**

The adoption of these regulations or is necessary for the immediate preservation of the public peace, health and safety, or general welfare, as follows:

FINDING OF EMERGENCY:

California Building Standards Commission (CBSC) has received and accepted a petition concerning modifications to mandatory Section 5.106.8, Light Pollution Reduction, in the 2010 California Green Building Standards (CAL Green) Code. The petitioner alleges that compliance with the section would reduce nighttime illumination of building sites to a level that does not meet minimum safety requirements. The petitioner contends that the regulations are unreasonable, arbitrary and capricious and likely to result in muggings and rapes, with victims seeking legal redress from CBSC and individual commissioners. Despite the exceptions for emergency and security lighting in the section, DSA and CBSC staff are in agreement that modifications are needed, and that they should be considered on an emergency basis to avert any danger to public safety that the petitioner has claimed.

BACKGROUND:

The section in question contains mandatory provisions for reducing light pollution from nighttime nonresidential building and site lighting. It makes reference to outdoor lighting regulations of the California Energy Commission, requires additional measures including prohibition of light trespass beyond site boundaries, and provides exceptions for security and emergency lighting. It underwent review by the CBSC Green Building Focus Group, the Green Building Code Advisory Committee, and the public during its development and rulemaking in the 2009 code adoption cycle.

Despite the exposure, the regulations were contested initially by the petitioner to CBSC staff informally and only late in 2010, and staff made changes to language in errata it believed were editorial in nature and would offer temporary mitigation of problems the petitioner identified. CBSC staff has also proposed the regulations for further improvement in this proposed emergency, including making them voluntary now and mandatory for the 2010 code adoption cycle. The Green Building Code Advisory Committee recommended that DSA and CBSC work with the petitioner on the proposal, and subsequent drafts were reviewed by California Energy Commission staff.

At the January 19, 2011 CBSC hearing and in the petition, the petitioner also alleged that the errata published for the code provision were regulatory in nature and thus should be considered "underground regulations." Issued only this month by the publisher, the errata will be rendered moot by the emergency adoption and publication of the modifications proposed in this rulemaking.

AUTHORITY AND REFERENCE

The California Building Standards Commission proposes to adopt these building standards on behalf of DSA-SS under the authority granted by Health and Safety Code Section 18928. The purpose of these building standards is to implement, interpret, and make specific the provisions of Education Code Sections 17280-17317 and 81130-81147.

The Division of the State Architect is proposing this regulatory action based on Education Code Sections 17310 and 81142.

INFORMATIVE DIGEST

Summary of Existing Laws

Education Code, Section 17310 and 81142 authorize the State Architect to establish building standards for the design, construction and inspection of public elementary and secondary schools, and community colleges.

Government Code 14617 authorizes CBSC and the Division of State Architect to establish a standard of lighting for parking lots at the University of California, California State University, and California Community Colleges.

Summary of Existing Regulations

California Code of Regulations (CCR), Title 24, also referred to as the 2010 California Building Standards Code incorporates the following:

- Part 1, the California Administrative Code, with administrative regulations for CBSC and the California Energy Commission (CEC)
- Part 2, the California Building Code, includes standards for lighting for campus parking lots pursuant to Government Code 14617
- Part 6, the California Energy Code, which contains minimum energy efficiency standards for buildings in California promulgated by the CEC

- Part 11, the California Green Building Standards Code (CGBSC), also known as the CAL Green Code, which contains mandatory and voluntary green building standards for residential, nonresidential, and medical facilities

Summary of Effect

This proposed action will make effective, upon adoption and approval by the commissioners, emergency modifications to mandatory Section 5.106.8 in Title 24, Part 11 for buildings within DSA-SS authority, with necessary amendments in the interest of public safety as claimed in a recent petition to CBSC.

Comparable Federal Statute or Regulations

There currently are no federal laws or regulations for light pollution reduction, but the EPA has been petitioned to consider "atmospheric discoloration" caused by nighttime lighting in regulations related to the Clean Air Act.

Small Business Effect

DSA has made an initial determination of no adverse impact on small business, because the modifications to the code are proposed for facilitation of understanding and compliance by the code user.

Plain English Policy Statement:

In 2009, DSA, among other things, adopted mandatory standards for light pollution reduction, incorporating public comments received in the last code cycle as well as during the 2009 code development process. The standards, published in the 2010 California Green Building Standards (CAL Green) Code, apparently did not come to the attention of the petitioner during public participation in code development. The petitioner only now is raising potential public safety issues that DSA cautions should be addressed immediately.

MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

DSA has determined that there are no other matters prescribed by statute applicable to the agency or to any specific regulation or class of regulations.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DSA has determined that projects following this regulation would not impose any new mandate on school districts. Additionally, the mandate does not require reimbursement pursuant to Part 7 (commencing with section 17500) of Division 4, Government Code.

FISCAL IMPACT STATEMENT

- A. Cost or Savings to any state agency: **None**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **Not Applicable**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **None**
- D. Other nondiscretionary cost or savings imposed on local agencies: **None**
- E. Cost or savings in federal funding to the state: **None**

**CALIFORNIA GREEN BUILDING STANDARDS CODE – MATRIX ADOPTION TABLE
CHAPTER 5 – NONRESIDENTIAL MANDATORY MEASURES
DIVISION 1 – PLANNING AND DESIGN**

| Adopting agency | BSC | SFM | HCD | | | DSA | | OSHPD | | | | CSA | DPH | AGR | DWR | CEC | CA | SL | SLC |
|--|-----|-----|-----|---|------|-----|----|-------|---|---|---|-----|-----|-----|-----|-----|----|----|-----|
| | | | 1 | 2 | 1-AC | AC | SS | 1 | 2 | 3 | 4 | | | | | | | | |
| Adopt entire CA chapter | X | | | | | | | | | | | | | | | | | | |
| Adopt entire chapter as amended (amended sections listed below) | | | | | | | | | | | | | | | | | | | |
| Adopt only those sections that are listed below | | | | | | | X | | | | | | | | | | | | |
| Chapter/Section | | | | | | | | | | | | | | | | | | | |
| 5.101 | | | | | | | X | | | | | | | | | | | | |
| 5.102 Definitions | | | | | | | X | | | | | | | | | | | | |
| 5.106.8 | | | | | | | X | | | | | | | | | | | | |
| 5.106.10 | | | | | | | X | | | | | | | | | | | | |

**CHAPTER 5
NONRESIDENTIAL MANDATORY MEASURES**

Division 5.1 – PLANNING AND DESIGN

**SECTION 5.101
GENERAL**

5.101 Purpose. The provisions of this chapter outline planning, design and development methods that include environmentally responsible site selection, building design, building siting and development to protect, restore and enhance the environmental quality of the site and respect the integrity of adjacent properties.

**SECTION 5.102
DEFINITIONS**

5.102 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

CUTOFF LUMINAIRES. Luminaires whose light distribution is such that the candela per 1000 lamp lumens does not numerically exceed 25 (2.5 percent) at an angle of 90° above nadir, and 100 (10 percent) at a vertical angle of 80° above nadir. This applies to all lateral angles around the luminaire.

LOW-EMITTING AND FUEL EFFICIENT VEHICLES. Eligible vehicles are limited to the following:

1. Zero emission vehicle (ZEV), including neighborhood electric vehicles (NEV), partial zero emission vehicle (PZEV), advanced technology PZEV (AT ZEV) or CNG fueled (Original equipment manufacturer only) regulated under Health and Safety Code section 43800 and CCR, Title 13, Sections 1961 and 1962.

2. High-efficiency vehicles, regulated by U.S. EPA, bearing High-Occupancy Vehicle (HOV) car pool lane stickers issued by the Department of Motor Vehicles.

NEIGHBORHOOD ELECTRIC VEHICLE (NEV). A motor vehicle that meets the definition of "low-speed vehicle" either in Section 385.5 of the Vehicle Code or in 49 CFR571.500 (as it existed on July 1, 2000), and is certified to zero-emission vehicle standards.

PZEV. Any vehicle certified by the California Air Resources Board as a Partial Credit Zero Emission Vehicle.

TENANT-OCCUPANTS. Building occupants who inhabit a building during its normal hours of operation as permanent occupants, such as employees, as distinguished from customers and other transient visitors.

VANPOOL VEHICLE. Eligible vehicles are limited to any motor vehicle, other than a motortruck or truck tractor, designed for carrying more than 10 but not more than 15 persons including the driver, which is maintained and used primarily for the nonprofit work-related transportation of adults for the purposes of ridesharing.

Note: Source: Vehicle Code, Division 1, Section 668

ZEV. Any vehicle certified to zero-emission standards.

**SECTION 5.103
SITE SELECTION
(Reserved)**

**SECTION 5.104
SITE PRESERVATION
(Reserved)**

H.1.30

**EMERGENCY EXPRESS TERMS
FOR
PROPOSED BUILDING STANDARDS
OF THE
CALIFORNIA BUILDING STANDARDS COMMISSION (CBSC)
IN THE
2010 CALIFORNIA GREEN BUILDING STANDARDS CODE
CALIFORNIA CODE OF REGULATIONS, TITLE 24, PART 11**

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|---|
| <p>LEGEND FOR EXPRESS TERMS</p> <ol style="list-style-type: none"> Existing California amendments or code language being modified appears in <i>italics</i>, with modified language <u>underlined</u>. Repealed text appears in strikeout. |
|---|

EXPRESS TERMS

**SECTION A5.106
SITE DEVELOPMENT**

A5.106.8 Light pollution reduction. Outdoor lighting systems shall be designed and installed to comply with the following:

- The minimum requirements in the California Energy Code for Lighting Zones 1-4 as defined in Chapter 10 of the California Administrative Code; and
- Backlight, Uplight and Glare (BUG) ratings as defined in IESNA TM-15-07; and
- Allowable BUG ratings not exceeding those shown in Table A5.106.8, or

Comply with a local ordinance lawfully enacted pursuant to Section 101.7, whichever is more stringent.

Exceptions:

- Luminaires that qualify as exceptions in the California Energy Code
- Emergency lighting

Note: See also California Building Code, Chapter 12, Section 1205.6 for college campus lighting requirements for parking facilities and walkways.

TABLE A5.106.8
Maximum Allowable Backlight, Uplight and Glare (BUG) Ratings¹

| Allowable Rating | Lighting Zone 1 | Lighting Zone 2 | Lighting Zone 3 | Lighting Zone 4 |
|--|-----------------|-----------------|-----------------|-----------------|
| <u>Allowed Backlight Rating</u> | | | | |
| Greater than 2 mounting heights from property line | B3 | B4 | B5 | B5 |
| 1 – 2 mounting heights from property line and oriented with B towards the property line | B2 | B3 | B4 | B4 |
| 0.5 – 1 mounting height from property line and oriented with B towards the property line | B1 | B2 | B3 | B3 |
| Less than 0.5 mounting height from property line adjacent to a street and oriented with B towards the property line ² | B0 | B1 | B2 | B3 |
| Less than 0.5 mounting height from property line and oriented with B towards the property line | B0 | B0 | B1 | B2 |
| <u>Allowed Uplight Rating</u> | U0 | U1 | U2 | U3 |
| <u>Allowed Glare Rating²</u> | G1 | G2 | G3 | G4 |
| <u>Allowed Glare Rating, Building Mounted Luminaires³</u> | | | | |
| Greater than 2 mounting heights to any property line | G1 | G2 | G3 | G4 |
| 1 – 2 mounting heights to any property line | G0 | G1 | G1 | G2 |
| 0.5 – 1 mounting heights to any property line | G0 | G0 | G1 | G1 |

H.1.31

| | | | | |
|--|----|----|----|----|
| Less than 0.5 mounting height to any property line | G0 | G0 | G0 | G1 |
|--|----|----|----|----|

¹ IESNA Lighting Zones 0 and 5 are not applicable; refer to Lighting Zones as defined in the California Energy Code and Chapter 10 of the California Administrative Code.

² For purposes of compliance with this section, the property line may be considered to be the centerline of a public roadway or transit line. For properties adjacent to public walkways, bikeways, plazas and parking lots, the property line may be considered to be five feet beyond the site boundary.

³ Building-mounted luminaires that cannot be mounted with their backlight to the property line shall meet the Allowed Glare rating for all luminaires. Light from a building-mounted luminaire shall not exceed the Backlight rating in the direction of the property line.

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Notation

Authority: Health and Safety Code Sections 18930.5, 18934.5, 18938(b) and Government Code 14617.

Reference: Health and Safety Code Sections 18930.5, 18934.5, 18937 and 18938.