

## Chapter 9.17 MIXED USE OVERLAY (MU) ZONE

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### **~~PURPOSE~~ PURPOSE**

The purpose of this chapter is to establish the Mixed Use Overlay Zone, also referred to as the "MU Overlay Zone." The purpose of the MU Overlay Zone is to define allowable land uses and property development standards, including intensity of development, for mixed-use areas in order to produce healthy, safe, and attractive neighborhoods within the City of Mission Viejo, consistent with the policy direction in the City of Mission Viejo General Plan. The Overlay Zone shall provide a choice in the type of environment available to the public by allowing development that would not be possible under the strict application of other sections of this Code.

The Overlay Zone shall allow a reasonable mixture of retail, service, office, housing, live-work units, and public activities to coexist in a manner that reflects human scale and emphasizes pedestrian orientation, taking advantage of the vitality that mixed uses can bring to the community of Mission Viejo. The Overlay Zone shall allow mixed-use projects that combine residential with non-residential uses in the same building or project area as a means to create an active street life and to enhance the vitality of businesses. The Overlay Zone is not intended to allow a net decrease in commercial square footage in the City, but instead is intended to allow additional uses in combination with commercial uses in the areas to which the Overlay Zone is applied. Furthermore, the Overlay Zone shall provide substantial buffers and transitions between areas of different land uses and development densities.

### **OPTION B**

## **APPLICABILITY**

### **Application to Area**

The Mixed Use Overlay is an overlay zone, which may be applied to existing zoning districts. The MU Overlay Zone may be combined with any multi-family residential, commercial/office, or business park/industrial zone ("underlying zone") within the City. The Mixed Use Overlay District shall be shown as an overlay to the underlying districts by the designation of MU (Mixed Use) on the zoning map. A MU may overlay several base districts; however, the uses permitted in each base district are limited to the boundaries of that base district, except as otherwise provided herein. The provisions of this chapter shall apply in addition to, and where inconsistent with, shall supersede the corresponding regulations of the underlying zones, except as provided in this chapter.

## **APPLICATION SUBMITTALS**

A Planned Development Permit (PDP) shall be required for any mixed use application in the Mixed Use Overlay Zone. It is the intent of this chapter that mixed use developments shall be reviewed by the Community Development Department for compliance with the provisions of this chapter, including affordability and design requirements. Applications shall be reviewed by other city departments where appropriate. The regulations and procedures set forth in this chapter shall be available at City Hall and shall apply throughout the City. Application forms for this chapter, and copies of the regulations and procedures set forth in this chapter, shall be made available to the public at City Hall. An application shall be filed on forms prescribed by the Community Development Director, and submittals shall include all required information and identified materials. All completed applications shall be filed with the Community Development Department, as stipulated in the application.

### **Applicant**

The application may be submitted by or with the authorization of the record owner or owners of each property comprising the proposed development site.

### **Fees**

Applications not initiated by the City shall be accompanied by a filing fee, as set forth in Chapter 9.55 (Applications and Fees).

### **Authority**

If applicable, any ministerial applications pursuant to this chapter shall be processed concurrently with any other discretionary application(s) by the highest authority required to permit the construction of the mixed use development.

### **Affordability Requirements**

In addition to the application, the applicant shall provide, at the time of application, an executed letter of understanding, in such form as is reasonably satisfactory to the City,

acknowledging the basic terms of the affordable housing agreement, including the number of affordable units required under this chapter, as well as the unit type and affordable rent schedule or price schedule for such units. Approval of such concept letter by the Community Development Department shall be a prerequisite to the Community Development Department undertaking final action on the application.

## **PERMITTED & PROHIBITED USES**

### **Primary Uses, Accessory Uses, and Temporary Uses**

The following Table sets forth the uses that are permitted in the Mixed Use Overlay Zone. The allowable uses in the Tables are established by letter designations as follows:

- "P" designates classes of uses permitted by right;
- "C" designates classes of uses permitted with a conditional use permit;
- "D" designates classes of uses permitted with a Planned Development Permit, and
- "X" designates classes of uses that are prohibited.

### **Residential Uses**

Permitted or prohibited, as set forth below, in any mixed-use project in the MU Overlay Zone regardless of underlying zone, subject to a Planned Development Permit.

			Mixed Use
(A)	Residential uses:		
	(1)	Single-family dwellings (Must meet the density requirements of the base residential zone; and pure single-family projects are not allowed in base zones other than the RPD 3.5 and 6.5 zones.)	X
	(2)	Second dwelling unit/"granny" housing/guest house	X
	(3)	Manufactured housing	D
	(4)	Multifamily dwellings	D
	(5)	Condominium	D
	(6)	Congregate care/senior housing	D

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	(7)	Convalescent homes	X
	(8)	Family day care home, large	X
	(9)	Family day care home, small	P
(B)	Recreational accessory uses:		
	(1)	Clubhouses	C
	(2)	Swimming pool, private	C
	(3)	Swimming pool, public	C
	(4)	Tennis court, private	C
	(5)	Tennis court, public	C
	(6)	Trails (nonvehicular)	C
(C)	Accessory uses:		
	(1)	Garage	C
	(2)	Outdoor play/athletic equipment	C
	(3)	Patio (with/without cover)/gazebo	P
(D)	Other/:		
	(1)	Churches	C
	(2)	Private schools	C
	(3)	Public utilities/facilities	C
(E)	Home occupations:		Subject to home occupation standards
(F)	Temporary uses:		Subject to temporary use permit

**Commercial / Office Park Uses**

Permitted or prohibited, as set forth below, in any mixed-use project in the MU Overlay Zone, and subject to a Planned Development Permit.

			Mixed Use
(A)	Administrative and professional uses:		
	(1)	counting/auditing services	P
	(2)	Administrative offices, clerical/legal services	P
	(3)	Counseling services	P
	(4)	Financial institutions	P
	(5)	Medical, dental and related services	P
	(6)	Offices (i.e., corporate, government, professional, etc.)	P
	(7)	Public utility company offices	P
(B)	General commercial uses:		
	(1)	Adult businesses (adult business overlay zone)	X
	(2)	Antique shops	P
	(3)	Apparel stores	P
	(4)	Appliance stores	C
	(5)	Arcades	X
	(6)	Art/photography shops, studios, and galleries	P
	(7)	Auction sales	C
	(8)	Automobile rental agencies	C
	(9)	Automobile repair specialty shops	X

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(10)	Automobile service centers	X
(11)	Automobile service stations	C
(12)	Automobile supply	P
(13)	Bakeries (retail only)	P
(14)	Bar (within restaurant only)	C
(15)	Barber/beauty shops	P
(16)	Bed and breakfast	C
(17)	Bicycle shops (nonmotorized)	P
(18)	Billiard centers	C
(19)	Blueprint shops	X
(20)	Book stores	P
(21)	Book stores, adult (adult business overlay zone)	X
(22)	Bowling alley	C
(23)	Camera film drop off/express developing	P
(24)	Camera shop	P
(25)	Candy, confectionery/ice cream stores	P
(26)	Car washes - full service	X
(27)	Car washes - automated self-service	X
(28)	Carpet/drapery stores	C
(29)	Cleaning/dyeing (retail only)	C
(30)	Clubs, lodges, bingo games, and meeting halls	C
(31)	Communication equipment buildings	C
(32)	Computer stores	P

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	(33)	Copy/fax centers	P
	(34)	Dancing and live entertainment	C
	(35)	Delicatessens	P
	(36)	Department stores	C
	(37)	Discount stores	C
	(38)	Drug stores	C
	(39)	Electronic stores	C
	(40)	Entertainment center/complex	C
	(41)	Escort bureau/introductory service	X
	(42)	Figure model studio (nude) (adult business overlay zone)	X
	(43)	Financial institutions	P
	(44)	Florist shops	P
	(45)	Food markets	P
	(46)	Furniture stores	C
	(47)	Gift shops	P
	(48)	Gun shops	X
	(49)	Hardware stores	C
	(50)	Health/athletic clubs (excluding massage parlors)	C
	(51)	Hobby shops	P
	(52)	Home improvement centers	C
	(53)	Hotels/motels	P
	(54)	Interior decorating shop	C
	(55)	Jewelry sales/repair store	P

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(56)	Laboratories (including film, medical & dental)	X
(57)	Laundromat (retail only)	C
(58)	Lighting fixture stores	P
(59)	Liquor stores	C
(60)	Locksmith shops	P
(61)	Massage establishments	X
(62)	Mini-malls	C
(63)	Mini-markets	C
(64)	Music stores	P
(65)	Newspaper/magazine stores	P
(66)	Night clubs	X
(67)	Notion/novelty stores	P
(68)	Nurseries/garden shop	C
(69)	Office supplies (retail only)	P
(70)	Paint/wallpaper stores (retail only)	P
(71)	Parking structures	C
(72)	Pawn shop/brokers	C
(73)	Peddler	X
(74)	Pet shops	C
(75)	Plumbing shops	X
(76)	Pool supply (retail only)	X
(77)	Printing shops	P
(78)	Psychic	X
(79)	Radio/television broadcasting studios (no	X



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		transmitting)	
	(80)	Recording studios	C
	(81)	Restaurants (less than 4,000 sq. ft., excluding drive-thrus)	P
	(82)	Restaurants (greater than 4,000 sq. ft., excluding drive-thrus)	C
	(83)	Second hand stores	C
	(84)	Shoe stores (sales and repair)	P
	(85)	Sign/lettering shops	C
	(86)	Skating rinks	X
	(87)	Sporting good stores	C
	(88)	Stamp/coin shops	P
	(89)	Stationery stores	P
	(90)	Supermarkets	P
	(91)	Tailor shops	P
	(92)	Tattooing establishments	X
	(93)	Tennis court, commercial	C
	(94)	Theaters, movie (excluding drive-ins)	C
	(95)	Tile stores	X
	(96)	Tobacco/pipe stores	P
	(97)	Toy stores	C
	(98)	Travel agencies	P
	(99)	Vehicle sales/dealerships	X
	(100)	Veterinary offices/animal hospitals	P
	(101)	Video stores	P

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	(102)	Video stores, adult (adult business overlay zone)	X
(C)	Other:		
	(1)	Churches	C
	(2)	Congregate care/senior housing (senior housing overlay zone)	P
	(3)	Convalescent homes	X
	(4)	Cultural/community facilities	P
	(5)	Day care centers	P
	(6)	Drive-thru establishments	C
	(7)	Hospitals	X
	(8)	Mortuaries	X
	(9)	Museums	C
	(10)	Outdoor storage	X
	(11)	Private schools	C
	(12)	Wedding chapels	C

**Business Park/Industrial Uses**

Permitted or prohibited, as set forth below, only in mixed-use projects in the MU Overlay Zone on property with underlying zone of Business Park / Industrial.

(A)	Business Park/Industrial Uses		BP Uses, if proposed as part of a Mixed Use Project; Approval Process
	(1)	Automobile dismantling	X
	(2)	Automobile service stations, service centers and repair specialty shops	X

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	(3)	Church	C
	(4)	Commercial, convenience (uses [i.e., restaurant, mini-market, day care] that are intended to meet the needs of the immediate employment population)	C
	(5)	Commercial, heavy (wholesale and retail sale of building materials, construction equipment, recreational vehicles, automobiles, motorcycles, boats, trucks, and trailers)	X
	(6)	Commercial, retail sales (retail sales of goods, provided that the floor space devoted to the activity does not exceed 25% of the gross floor area of the principally permitted use)	C
	(7)	Commercial, service	P
	(8)	Commercial, warehouse and sales outlet	C
	(9)	Commercial, wholesale use	C
	(10)	Communication (transmitting, reception, or relay facilities)	C
	(11)	Junk and salvage facility	X
	(12)	Kennels	X
	(13)	Light industrial, nonpolluting activities (enterprises involving assembly, development, processing, recycling, research, testing, and treatment of products)	X
	(14)	Light industrial, potentially polluting activities (enterprises involving assembly, development, processing, recycling, research, testing, and treatment of products)	X
	(15)	Public utility (structures and facilities)	C

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	(16)	Office (administrative/business/professional)	P
	(17)	Storage, indoor (mini-storage)	X
	(18)	Storage, outdoor (rental yard, maintenance yard, storage for recreational vehicles, and construction and agricultural equipment)	X
	(19)	Warehousing and distribution facilities	C
(B)	Accessory Uses		
(C)	Temporary Uses		
(D)	OTHER		

**Prohibited Uses**

Any class of use that is not listed in Tables set forth in this Section is prohibited unless the Director and the Planning and Transportation Commission finds that such other use is similar to a permitted or conditionally permitted use and that unlisted use is consistent with the intent and purpose of the Mixed Use Overlay Zone. Uses that are permitted, permitted with planned development review, and conditionally permitted shall be approved through the Planned Development Permit process. Uses that are prohibited in the underlying zone shall not be permitted unless expressly allowed through the provisions of this chapter.

**Ground Floor Uses**

In order to encourage an active street life while accommodating market demand, the ground floor facing the street shall be used for commercial uses except that business park/ industrial uses shall also be permitted if the underlying zone is Business Park/Industrial. Ground floor uses may include the non-residential portion of live/work units, or may be designed so that the space may be used for either residential or non-residential uses where the residential portion does not face the street.

**Live/Work Units**

A commercial or business park/industrial land use, depending on the underlying zone, may be combined with a residential land use within one unit to create a space that contains both a residence and commercial or business park/industrial area such as an office. Live/work units shall not resemble a residence. The number of permitted live/work units shall be specified and determined through the Planned Development Permit process.

### **Accessory Structures**

Accessory structures, other than parking lots and garages and signs, shall not be located in or be a part of a detached structure.

### **PHASING OF MIXED USE DEVELOPMENT**

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For any mixed use development that is proposed to be constructed in phases, the applicant shall submit a development phasing plan that specifies the chronology of development including required land use components, structures, public facilities, and infrastructure.

### **DENSITY**

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The minimum lot size for a mixed-use project shall be one (1) acre and the maximum density is twenty (20) dwelling units per acre or as determined by the Planned Development permit. Additionally, the density may be increased with the Density Bonus incentive in compliance with State law. The minimum percentage of floor area that shall be dedicated to non-residential uses other than recreational amenities for use by the residential component of the mixed use project shall be no less than ten percent (10%) of the proposed floor area of the project. The applicable floor area ratio (FAR) calculation shall be the gross floor area of all buildings on a lot divided by the lot area. The FAR shall be consistent with the underlying zone for each lot.

### **BUILDING HEIGHTS**

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The building height shall not exceed 3 stories or 45 feet or as determined by the Planned Development Permit. The City encourages applicants to propose innovative performance-based height limitations in order to maximize affordability in projects while also ensuring compatibility with adjacent uses. This provision may be modified by the Commission as part of the PDP process in accordance with Section 9.10.020 (2) (Additional Height Allowances), subject to the following:

1. A visual analysis relating structural proportions, massing, height and setback shall be conducted to preserve and enhance the scenic viewshed.
2. The need and appropriateness of an additional story shall be demonstrated.
3. Compatibility and harmony with surrounding development.

### **BUILDING SETBACKS**

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### **Parking Structures**

If a parking structure has retail, office or similar uses on the street-level floor on the side of the structure facing the street, the minimum front setback may be modified as provided in this section. If a parking structure does not contain those uses; the minimum street setback shall be twenty (20) feet.

### **Commercial Type of Structure**

When the residential units are located above the commercial uses, and the site abuts commercially-zoned property, the structure shall be treated as a commercial type of structure and no rear or interior side setbacks shall be required.

### **Modifications**

The setbacks prescribed in this section and in the underlying zone may be modified in connection with a Planned Development Permit in order to promote increased pedestrian activity, provide for unified street frontage, ensure privacy and light for residential uses, provide for public spaces, and promote compatibility with existing development. In no event shall front or street-side setbacks be less than ten (10) feet.

### **Encroachments**

In addition to the allowable setback encroachments in the underlying zone, the following encroachment provisions apply:

1. A patio cover or canopy may encroach into the required setback between buildings.
2. Cornices, eaves, belt courses, sills, buttresses and fireplaces may encroach into a required interior setback not more than four (4) inches for each one (1) foot of the width of the interior setback and may encroach into a required street setback not more than thirty (30) inches.
3. Fixed awnings may encroach into a required interior setback no more than three (3) feet.
4. Open, unenclosed balconies may encroach into a required street setback not more than three (3) feet.
5. Private patios for ground-floor residential units may encroach not more than eight (8) feet into a required setback along an interior property line or a setback between buildings, but not into required landscape setbacks.
6. Covered or uncovered porches or landings that do not extend above the level of the first floor of the building and that include an open railing not more than thirty-six (36) inches in height may encroach into any required setback not more than five (5) feet.
7. Decorative guard railings for safety protection around hazardous areas may encroach into any required setback.
8. The placement of outdoor recreational facilities may encroach into required setbacks between buildings on the same building site. Trees, shrubs, flowers or plants shall be permitted in any required setback

### **Minimum Distances**

The minimum distances between parallel walls of two (2) main buildings or between two (2) parallel facing walls of the same building shall be five (5) feet, whether such spaces are covered or open to the sky. The provisions of this subsection may be modified in connection with a Planned Development Permit. The minimum distances between any buildings containing only non-residential uses shall be governed by the Uniform Building Code as adopted by the City.

### **Pedestrian Accessways**

All pedestrian accessways extending between buildings shall have a minimum width of eight (8) feet whether such accessways are covered or open to the sky; provided, however, if the length of the accessway exceeds thirty-five (35) feet, the minimum width shall be twelve (12) feet.

### **FLOOR AREA FOR RESIDENTIAL UNITS**

The minimum floor area for residential units, other than live/work units, and limitations on the mix of residential unit types is shown in the following Table:

	Minimum Unit Size (square feet)	Maximum Percentage that Unit Type can be of the Project's Overall Unit Count
Studio Units	550 square Feet	10%
One Bedroom Units	700 square feet	50%
Two Bedroom Units	800 square feet	50%
Three Bedroom Units	1000 square feet	No limitation
More than three bedrooms per unit	1000 square feet plus 200 square feet for each bedroom in excess of three	No limitation

### **WORK/LIVE UNITS**

#### **Applicability**

This section provides standards for work/live and lofts/studios, including the reuse of existing non-residential structures to accommodate work/live opportunities. Work/live quarters are especially intended for the use and occupation of artisans, artists, and individuals practicing similar professions, as well as their families.

#### **Floor Area Requirement**

The Minimum Floor Area for live/work units and limitations on the mix of live/work unit sizes is shown in the following Table:

	Minimum Unit Size (Square Feet)	Maximum Percentage that Unit can be of the Project's Overall Unit Count	Minimum SF Dedicated to Work Space
Studio Units	1150	10%	600 S.F.
One Bedroom Units	1300	50%	600 S.F.
Two Bedroom Units	1400	50%	600 S.F.
Three Bedroom Units	1600	No limitation	600 S.F.
More than Three Bedrooms Per Unit	1000 S.F. plus 200 S.F. for each Bedroom in excess of three		

Note: A ground-level work/live unit with street frontage shall devote the initial 25 feet of floor area depth to commercial activity. For purposes of this section, a "bedroom" is a private habitable room planned or used for sleeping, separated from other rooms by a door or a similar partition. Further, all rooms (other than a living room, family room, dining room, bathroom, hall, lobby, closet or pantry) having seventy (70) square feet or more of floor area, or less than fifty percent (50%) of the total length of any wall open to an adjacent room or hallway, shall be considered a "bedroom."

#### **Unit Access**

Where there are multiple work/live units within a single structure, each unit shall be physically separated from other units and uses within the structure, and access to individual units shall be from a common open space, corridor, hallway, or other common access area.

#### **Internal Integration of the Work/Live Unit**

1. There shall be direct access between the working and living spaces within the work/live unit.
2. There shall no separate entrance to the living space by a separate door. All access to the living space shall be from the working space.
3. The working space shall not be leased separately from the living space; conversely the living space shall not be leased separately from the working space.

#### **Occupancy and Employees**

1. At least one full-time employee of business activity occupying the work/live unit shall also reside in the unit; conversely at least one of the persons living in the live portion shall work in the work portion.
2. The business activity occupying the work/live unit may utilize non-resident employees, as necessary.



### **Refuse and Recycling Areas**

Areas for the collection and storage of refuse and recyclable materials shall be located on the site in locations that are convenient for both the residential and nonresidential uses.

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## **MIXED USED DEVELOPMENT STANDARDS**

The following development standards are intended to ensure the compatibility of uses in a mixed-use project. The development standards, including, but not limited to, the yard and setback requirements, the height limitations, parking requirements, community space areas, and signage shall be established as a function of the application to establish a Mixed Use Overlay and the approval of the application. Prior to Certificate of Occupancy, the applicant shall submit for final approval by the Community Development Director a Declaration of Covenant and Conditions and Restrictions (CC&R)'s document containing, but not limited to, the following:

### **Security**

The residential units shall be designed to ensure the security of residents through the provision of secured entrances and exits that are separate from the non-residential uses and are directly accessible to parking areas. Non-residential and residential uses shall not have common entrance hallways or common balconies. These separations shall be shown on the development plan and the separations shall be permanently maintained.

### **Restriction on Activities**

Non-residential uses shall be designed and operated, and hours of operation limited, where appropriate, so that neighboring residents are not exposed to offensive noise, especially from traffic, trash collection, routine deliveries or late night activity. No use shall produce loading or unloading of heavy trucks at the site between the hours of 8 pm and 6 am. Further, non-residential uses shall close for business between the hours of 10:00 pm and 6:00 am daily. These hours may be modified with a conditional use permit, granted in compliance with Chapter 9.48.

### **Noise Standards**

Residential portions of the project shall be designed to limit the interior noise caused by the commercial and parking portions of the project to a maximum of forty-five (45) db CNEL on an annual basis in any habitable room with windows closed. Proper design may include, but shall not be limited to, building orientation, double or extra-strength windows, wall and ceiling insulation, and orientation and insulation of vents. Where it is necessary that windows be closed in order to achieve the required level, means shall be provided for ventilation/cooling to provide a habitable environment. Residents of an

urban housing development project shall be notified that they are living in an urban area and that the noise levels may be higher than a typical residential area. The signature of the residents shall confirm receipt and understanding of this information.

### **Vibrations and Odors**

No use, activity or process shall produce continual vibrations or noxious odors that are perceptible without instruments by the average person at the property lines of the site or within the interior of residential units on the site.

### **Lighting**

Outdoor lighting associated with commercial uses shall not adversely impact surrounding residential uses, but shall provide sufficient illumination (or access and security purposes. Such lighting shall not blink, flash, oscillate, or be of unusually high intensity or brightness.

## **MIXED USE DESIGN STANDARDS**

The design standards are intended to ensure the high quality of design in a mixed-use project. The mixed use design requirements allow for more flexibility than those pertaining to other uses within the Code. Aspects ranging from community space, parking, street design, signage and landscaping unique to a mixed use project are outlined below:

### **Community Space**

1. Community space shall include both indoor/interior space and outdoor open space.
2. Community space can be in the form of private open space (e.g., balconies) or common open space (e.g., pool or side or rear setback areas.)
3. An indoor recreational room of up to 600 square feet may be credited toward fulfilling this community space requirement.
4. A utility easement may be credited toward fulfilling this community space requirement if it is properly landscaped in compliance with Chapter 27 (Landscaping Standards).

The community space areas may be provided by private areas, public areas, or a combination of both. Community space areas shall be provided for residential dwellings as set forth in this section. The size of the areas is shown in the following Table.

Minimum Size of Community Space Areas per Unit		
Zone	Studio Units (square feet)	All Except Studio Units (square feet)
(MU)	150	200

### **Private Areas.**

Private patios for ground floor units shall be not less than one hundred (100) square feet in area, with a minimum dimension of eight (8) feet. Private balconies for dwelling units located entirely above the ground floor shall not be less than seventy (70) square feet in area, with a minimum dimension of seven (7) feet. Balcony rails shall be fifty percent (50%) finished with a permanent building material that matches, or is compatible with the building. The private open space shall not exceed 30 percent (30%) of the total requirement for community space. Each private open space shall have a minimum six-foot dimension. This maximum 30 percent (30%) requirement may be modified by not more than five percent if determined to be necessary during design review.

### **Minimum Space per Unit**

Each development project shall provide a minimum of 150 square feet of community space for each dwelling unit. Required front and/or corner side setbacks shall not be credited toward fulfilling this community space requirement.

### **Common Areas**

Any common community space areas shall be conveniently located and readily accessible from all dwelling units located on the building site and shall be integrated with and contiguous to other common areas on the building site. The common community space area may be composed of active or passive facilities and may incorporate any required setback areas other than street setback areas, but shall not include or incorporate any driveways or parking areas, trash pickup or storage areas or utility areas. The common community space area shall have a minimum dimension of fifteen (15) feet, except for private open space (e.g., balconies or patios).

### **Improvement of Common Areas**

Any common community space areas shall be landscaped with lawn, trees, shrubs or other plants as set forth in Chapter 9.27 (Landscaping Standards) with the exception of reasonably required pedestrian walkways and paved recreational facilities such as swimming pools and decks and court game facilities. Fountains, ponds, waterscape, sculpture, planters and decorative screen-type walls, installed incidentally to the primary plants in the landscaping shall be permitted and encouraged. All required common community space areas and other required open space areas shall be developed and maintained in accordance with approved landscape and irrigation plans.

### **Parking Demand Study**

Due to variations in parking demand and needs of mixed-use projects, vehicle parking requirements and the design of the parking areas, including ingress and egress, shall be determined as part of the Planned Development Permit process by the Planning and Transportation Commission based upon information contained in a parking demand study prepared by a California licensed, independent traffic engineer, as approved by

the Transportation Manager. The parking demand study shall be prepared at the applicant's expense and provided at the time of application for the mixed-use project. The Transportation Manager shall approve the scope of work for the parking demand study prior to the traffic engineer commencing work on the study.

### **Parking Area Design**

Parking spaces specifically designated for nonresidential and residential uses shall be marked by the use of posting, pavement markings, and/or physical separation. The parking area design may include the use of alternative parking techniques such as tandem parking in conjunction with a valet, subject to review and approval by the Transportation Manager and Commission. Separate entrances and exits, or a designated lane, shall be provided for residents so that residents are not waiting in line behind non-residential customers.

### **Parking Structures**

Parking structures shall be architecturally integrated with the project design and shall be screened from view at street level including architectural detailing, façade treatment, artwork, landscaping, or similar visual features to enhance the street façade. Screening of floors above street level is required through the use of vines or architectural screening detail that is compatible with the project. Parking structures should be designed to provide parking for a range of entertainment, retail, office, and residential uses. Parking structures should also be designed to include retail, office, and similar uses on the ground floor.

### **Location of Parking**

Parking areas shall be provided either at grade, semi-subterranean, or subterranean or in a parking structure consistent with the requirements listed in the Section above. Parking areas (e.g., provided at grade or semi-subterranean) shall not abut the front or corner side street elevations. Only completely subterranean parking facilities may be located within the front or corner side setbacks. All other parking areas shall be located behind the habitable living space.

### **Street and Tree Pattern**

The layout of the street system shall emphasize interconnected streets and the ability to reach local destinations without crossing major streets or primary arterials. It is desirable to have streets with block faces of 400 feet in length or less. The number and width of travel lanes should be reduced to the extent feasible in accordance with Section 9.74.045 (Street Widths). The use of alleys is encouraged. Where possible, streets should frame vistas of the mixed-use core, public buildings, parks, and natural features. The design of the public right-of-way should provide for planting street trees adjacent to the curb in planting strips or tree grates, as appropriate.

### **Signage**

A planned sign program, pursuant to Section 9.29.140 of this Code, shall be submitted for approval for each mixed-use project. A mixed-use project may include projecting signs identifying commercial uses as part of the planned sign program.

### **Landscaping**

Landscaping shall be permitted and/or required subject to the conditions and limitations set forth in Chapter 9.27 (Landscaping Standards).

## **MIXED USE DESIGN GUIDELINES**

Design Guidelines for Mixed Use applications shall be provided by the Community Development Department upon request. These guidelines are supplemental to the design standards found in the ordinance, contained herein. The guidelines were established by the City to encourage flexibility, innovation, and creativity in site and development design by allowing the mixing of permitted uses and/or modification or variation from otherwise applicable zone district and development standards. These guidelines will form the criteria from which projects will be evaluated upon in the Site Design Committee review process. Furthermore, the guidelines provide the implementation procedures unique to the Mixed Use Overlay.

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## **AFFORDABLE HOUSING**

### **PURPOSE**

The purpose of this section is to encourage the construction of housing for Very-Low to Low income households within Mixed Use developments. In return for providing reasonable housing options, the applicant may obtain certain incentives as a matter of discretionary action by the City. The standards and incentives for affordable housing are intended to provide a quality and supportive living environment for Very Low Income households that are compatible with surrounding land uses and neighborhoods.

### **CONDITIONS OF APPROVAL**

Any planned development permit, conditional use permit, or other discretionary permit approving residential development projects subject to this chapter shall contain conditions sufficient to ensure compliance with the provisions of this chapter. Such conditions shall detail the number of affordable units required, specify the schedule of construction of affordable units, set forth the applicant's manner of compliance with this chapter, and require the execution of an agreement imposing appropriate resale controls and/or rental restrictions on the affordable units. Additionally, all affordable units in a project or phase of a project shall be constructed concurrently with market-

rate units, unless the Planning and Transportation Commission determines in writing that extenuating circumstances exist that make concurrent construction infeasible or impractical.

#### DESIGN AND DISTRIBUTION OF AFFORDABLE HOUSING

All affordable units shall reflect the range of numbers of bedrooms provided in the project as a whole and shall not be distinguished by exterior design, construction, or materials. Affordable units may be offered for rent in an otherwise owner-occupied project, or vice versa. The Affordable Units shall be interspersed throughout the project.

#### AFFORDABILITY AND OCCUPANCY STANDARDS

A minimum of twenty percent (20%) of the residential units in any mixed use project permitted by this Overlay Zone shall be affordable to low - or very low-income households, as those terms are defined by Health and Safety Code §§ 50079.5 and 50105, respectively. All units affordable to lower or very low income households shall be restricted to that affordability level for a term of not less than 55 years, as follows:

1. If the residential development consists of sale units, a minimum of five percent (5%) of all the units shall be sold to Low Income Households; the remaining fifteen percent (15%) shall be sold to Very-Low Income Households.
2. If the residential development consists of rental units, a minimum of five percent (5%) of all the units shall be rented to Low Income Households; the remaining fifteen percent (15%) shall be rented to Very-Low Income Households.
3. Affordable Units shall be constructed concurrently with other units unless both the City and the applicant agree to an alternative schedule for development.
4. Affordable Units shall remain restricted and affordable to Low and Very-Low Income Households for a period of not less than fifty-five years.

In determining the maximum Affordable Rent for Affordable Units, the following household and unit size assumptions shall be used:

Number of Bedrooms (or, for live/work units square foot equivalency)	Number of Persons in Household
0 (Less than 600 square feet)	1
1 (601 to 850 square feet)	2
2 (851 to 1100 square feet)	3
3 (1101 to 1300 square feet)	4
4 (More than 1300 square feet)	5

## PROCEDURES FOR IMPLEMENTING AFFORDABLE HOUSING

### ~~PROCEDURES FOR IMPLEMENTING AFFORDABLE HOUSING~~

#### **Agreements**

Prior to the issuance of a building permit for an affordable unit, resale restrictions or rental controls, or both, as the case may be, shall be set forth in an agreement between the City and the applicants, in a form approved by the City Attorney, which shall be recorded against the property containing the affordable units. The agreement shall be executed by the City Manager, and its requirements shall run with the land and bind the applicant's successors.

#### **Rental Units; Occupancy; Annual Report**

Agreements involving rental units shall require the owner of the affordable units to ensure that the units are occupied by tenants whose monthly income levels do not exceed specified income levels and shall preclude tenants from subletting or subleasing the unit. The agreement shall also require the owner of the affordable unit to submit an annual report to the Community Development Director, in a format approved by the City. The report shall include, but not be limited to the following information: an identification of the affordable units within the project; the monthly rents charged and proposed to be charged; vacancy information for the prior year; and the monthly income for tenants of each affordable unit throughout the prior year.

#### **Ownership Units; Occupancy; City's Right of First Refusal**

Agreements for ownership of affordable units shall specify that the inclusionary units must be occupied by the owner or owners as their primary residence and may not be leased or rented without the written approval of the City. The agreement shall also require the owner of each affordable unit to provide the City with annual proof of residence. Acceptable proof shall be copies of voter registration or driver's license showing the address of the affordable unit in combination with two utility bills. The resale restrictions shall provide that in the event of the sale of an affordable unit, the City shall have the right to purchase any affordable owner-occupant unit at the maximum price that could be charged to an eligible household.

#### **Selection Criteria**

No household shall be permitted to occupy a unit that is required under this chapter to be affordable unless the City or its designee has approved the household's eligibility. Eligible potential occupants of affordable units will be qualified on the basis of household income, the median combined household income statistics for Orange County published periodically by the California Department of Housing and Community Development, all sources of household income and assets, the relationship between household size and the size of available units, and any further criteria required by law. The applicants shall use an equitable selection method established in conformance with the terms of this chapter, however shall be neutral as to age, race, religion, sex, creed

and ethnic origin or any other Constitutionally impermissible standard. Additionally, the selection criteria may not distinguish between adults and children.

## INCENTIVES TO ENCOURAGE CONSTRUCTION OF AFFORDABLE HOUSING

The City shall offer incentives or financial assistance to encourage the construction of affordable units in the project to the extent resources for this purpose are available and approved for such use by the Community Development Director. Such incentives may include, but shall not be limited to, the following:

### **1. Expedited Filing and Processing Incentives**

The Community Development Department shall allow for the expedited filing and processing of Mixed Use Developments.

### **2. Density Bonus**

Provided the applicant agrees to construct and restrict twenty percent (20%) of the units as Affordable Units, the Mixed Use Development shall receive upon request from the applicant a Density Bonus of a maximum of thirty-five percent (35%). Refer to Section 9.10.020 (3) – Density Bonus/Affordable Housing of the Development Code for further information regarding implementation.

### **3. Financial Assistance**

To the extent budgeted by the City Council and otherwise available, financial assistance for the affordable housing component of the Mixed Use Development may be in the form of loans or grants from sources as may be available to the City. An informational brochure detailing the various financial options available for the production of affordable housing shall be provided by the Community Development Department upon request.

## REQUIREMENTS FOR AFFORDABLE HOUSING AGREEMENT

Applicants utilizing this chapter shall enter into an affordable housing agreement with the City, in accordance with this chapter and in a form and substance acceptable to the City. The affordable housing agreement, or memorandum thereof, shall be recorded against the development site prior to issuance of building permits for the mixed use development. The affordable housing agreement shall be binding on all future owners and successors in interest.

The affordable housing agreement shall include, but not be limited to, the following:

1. The total number of units approved for the project, including the number of affordable units;



2. The location, unit sizes (square feet), and number of bedrooms of each of the affordable units;
3. The standards for determining the affordable rent for each affordable unit;
4. A term of at least fifty-five (55) years;
5. A description of the density bonus and incentive(s), if any, being provided by the City;
6. The obligation of the owner to provide for professional on-site management of the project, including maintenance thereof. On-site management shall also monitor the use of parking spaces within the development to assure that the parking spaces are provided, maintained and used in accordance with the terms of the affordable housing agreement;
7. A limitation on occupancy of each unit in the project not to exceed more than such number of persons as is equal to the sum of the number of bedrooms in the unit, multiplied by two, plus one;
8. The obligation of the owner to comply with an acceptable written management plan to the Community Development Director, setting forth the owner's policies and procedures for renting, managing, maintaining and operating the project, to assure a healthy and secure living environment for the residents, which is consistent with reasonable business practices and property management standards established in Orange County, California, and which shall be attached to the affordable housing agreement;
9. A description of remedies for breach of the agreement by either party (the City may identify tenants as third-party beneficiaries under the agreement); and
10. Other provisions to ensure implementation and compliance with this chapter, matters addressed in the application, and the affordable housing agreement.

#### **DEFINITIONS** DEFINITIONS

For purposes of this chapter, the following words, terms and phrases shall have the following meanings:

"Affordable Housing Agreement" means an unsubordinated legally binding agreement between the applicant and the City to be recorded against the property on which the Mixed Use Development is to be constructed to ensure that the requirements of this chapter are satisfied. The Affordable Housing Agreement should, among other things, establish occupancy limits, the number, size, location and management of the Affordable Units, and the terms and conditions of affordability.

"Affordable Rent" means the amount of monthly housing expenses, including a reasonable allowance for utilities as determined by the County Housing Authority, paid by a tenant for an Affordable Unit which amount shall not exceed thirty percent of fifty percent of the area median income for Orange County, adjusted for household size and divided by twelve.

"Density Bonus" means a density increase, in accordance with state and local law, over the otherwise Maximum Allowable Residential Density for the Development Site upon which the Mixed Use Development is to be constructed as of the date the application is filed with the City.

"Development Incentive" means an incentive designed to encourage the development of affordable housing.

"Development Standard" means any ordinance, General Plan element, specific plan, or other local condition, law, policy, resolution, or regulation of the City.

"Market-Rate Unit" means a unit that is not an Affordable Unit.

"Maximum Allowable Residential Density" means the maximum density allowed at the time of application under the applicable zoning code, excluding the provisions of this chapter for the Development Site.

"Affordable Unit" means an ownership or rental-housing unit, including senior housing, affordable to households with very-low and low incomes as defined in this chapter. Rental units are deemed affordable units if the annual rent does not exceed 30% of maximum income level for very-low and low income households, adjusted for household size and as defined below. Owner-occupied units are deemed affordable units if the sales price results in annual housing expenses that do not exceed 30% of income level for very-low and low income households, adjusted for household size and as defined below.

"Applicant" means any person, firm, partnership, association, joint venture, corporation, or any entity or combination of entities that seeks city real property development permits or approvals.

"Dwelling unit" has the meaning set forth in Section 9.01.050 (a) (71). of this Code.

"Very-low and low income" means those income and eligibility levels determined periodically by the California Department of Housing and Community Development based on Orange County median income levels adjusted for family size. Such levels shall be calculated on the basis of gross annual household income considering household size and number of dependents, income of all wage earners, elderly or disabled family members, and all other sources of household income and will be recertified as set forth by local standards, and state and federal housing law. "Very-low income" means 50% or less of the median income, adjusted for actual household size. "Low income" means between 50% and 80% of the median income, adjusted for actual household size.

"Resale controls and/or rent restrictions" means legal restrictions by which the affordable units shall be restricted to ensure that the unit remains affordable to very-low and low income households, as applicable, for a period of not less than 55 years. With respect to rental units, such rent restrictions shall be in the form of a regulatory agreement recorded against the applicable property. With respect to owner-occupied units, such resale controls shall be in the form of resale restrictions, deeds of trust, and/or other similar documents recorded against the applicable property.