

**CITY OF WALNUT CREEK
ORDINANCE NO. 2122**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WALNUT CREEK
PROVIDING FOR THE REZONING OF CERTAIN PROPERTY WITHIN THE CITY OF
WALNUT CREEK FROM PEDESTRIAN RETAIL (P-R) TO PLANNED DEVELOPMENT
DISTRICT (P-D), REZONING APPLICATION NO. Y11-053
(BROADWAY PLAZA PLANNED DEVELOPMENT DISTRICT)**

[(APNs: 183-011-001-9, 183-011-002-7, 183-011-003-5, 183-011-004-3, 183-011-005-0,
183-011-006-8, 183-011-019-1, 183-011-020-9, 183-011-021-7,
183-011-022-5, 183-011-023-3, 183-011-024-1, 183-020-001-8, 183-020-013-3, 183-020-019-0,
183-380-001-2, 183-380-002-0, 183-380-010-3, 183-380-011-1, 183-020-020-8,
183-011-026-6, 183-332-014-0 and 183-020-017)]

The City Council of the City of Walnut Creek does ordain as follows:

RECITALS:

A. OVERVIEW

Applications dated August 10, 2011 and amended applications dated November 17, 2011 were filed by Macerich Northwestern Associates ("Macerich") seeking various enactments and approvals for the Broadway Plaza Long Range Master Plan Project, to redevelop and expand Broadway Plaza. Macy's West Stores, Inc. ("Macy's") subsequently joined in the applications. Included was an application for a General Plan Amendment to increase the Floor Area Ratio allowed on most of Broadway Plaza, a Planned Development Zoning District, and application of that Zoning District to all of Broadway Plaza. The applicants revised their proposals, and ultimately requested approval of this ordinance. This ordinance applies to the Broadway Plaza Planned Development District ("Project Site" or "District" as shown in Figure 1.1) and allows for a net expansion of 300,000 gross square feet (from 796,421 to 1,096,421 gross square feet), describes the commercial and other uses allowed on the site, and imposes requirements related to building height, maximum stories, pedestrian circulation, bicycle and transit access, automobile parking and design review.

B. CEQA REVIEW AND CONSISTENCY

The City prepared an Environmental Impact Report that addresses the impacts of the project that is contemplated by this ordinance. On March 21, 2012, the City published a Draft EIR for the Broadway Plaza Long-Range Master Plan Project. The City made the Draft EIR available for public review and comment for a period of 46 calendar days (March 22, 2012 through May 7, 2012). After the close of the public review and comment period on the Draft EIR, Macerich proposed refinements to the Non-CEQA Relocated Parking Alternative that was described and analyzed in Chapter 5 (Alternatives) of the Draft EIR. The refinements constitute the Refined Project Alternative. The Refined Project Alternative is addressed in Chapter 5A of the Draft EIR, which was published on May 20, 2013. The comment period on the recirculated portions of the Draft EIR closed on July 5, 2013. The City then prepared and on November 1, 2013 made available to other agencies and the public a Final EIR that addressed all substantive environmental issues raised in comments on the Draft EIR, including Chapter 5A. The Draft EIR (including Chapter 5A) and the Final EIR comprise the "EIR" for the project that is subject to this ordinance. The City Council reviewed and considered the

information in the EIR and adopted Resolution 13-39 certifying the EIR and making findings on December 10, 2013. Since that time, there have been no substantial changes to the project, substantial changes with respect to the surrounding circumstances, or new information of substantial importance, any of which show new or more severe significant impacts. Accordingly, no supplemental or subsequent EIR is required. All development implementing this Broadway Plaza Planned District Zoning Ordinance shall be undertaken consistent with the Mitigation Monitoring and Reporting Program for the Broadway Plaza Long Range Master Plan project. The Council confirms and readopts the consistency findings it adopted on December 10, 2013 (Section II of Resolution 13-39).

C. GENERAL PLAN AND FLOOR AREA RATIO (FAR)

Before enacting this ordinance, the Council amended the General Plan to apply a specific Floor Area Ratio (FAR) to most of the Project Site. The entire Project Site retains its pre-existing General Plan designation of Pedestrian Retail (PR), which allows FARs ranging from 0.75 to 2.0. The Project Site also remains subject to pre-existing height limits of 25, 35 and 50 feet. The pre-existing FAR of 1.75, which was established by Initiative Measure I (2009), is retained for Parcel 2 (the parcel occupied by Neiman Marcus, PF Chang and the stores in between as of the date this ordinance is enacted; see Figure 1.2). The Council amended the General Plan to apply an FAR of 1.0 to the remainder of the Project Site, which is to be averaged over all parcels within the Project Site (except Parcel 2).

D. HEARINGS AND STUDY SESSIONS

The Broadway Plaza Development Project, and the alternatives presented in the EIR, have been subjected to numerous hearings and study sessions before the Transportation Commission, Arts Commission, Design Review Commission, Planning Commission and City Council. The Design Review Commission held a public hearing and adopted Resolution 2865 recommending the Broadway Plaza Design Guidelines on November 6, 2013. The Planning Commission held a public hearing and adopted Resolution 3639 recommending this ordinance and application of this new zoning district to Broadway Plaza on November 21, 2013. The Council has considered carefully the recommendation of the Design Review Commission, Planning Commission, and comments regarding the environmental impacts and the merits of the project, made in writing and at meetings and workshops before this Council. There are no subject matters raised before this Council that merit or require a referral back to the Planning Commission. The Council introduced this ordinance on December 10, 2013 and adopted it on December 17, 2013.

E. DEVELOPMENT AGREEMENT

Concurrently with enactment of this ordinance, the Council also approved, by Ordinance No. 2123 and Ordinance No. 2134, the execution of Development Agreements between the City and each of the Applicants, vesting the Applicants into the current land use plans and laws of the City and all approvals granted for the project, including this ordinance.

SECTION I. Rezoning.

The Broadway Plaza Planned Development District ("District") generally bounded by South Main Street to the west, Newell Avenue to the south, South Broadway to the east and Mt. Diablo Boulevard to the north as shown in Figure 1.1 - Broadway Plaza Planned Development District, attached hereto and incorporated herein by reference, is hereby rezoned from a land use classification of Pedestrian Retail (P-R) to Planned Development (P-D) subject to the Land Use and Property Development Regulations as set forth herein.

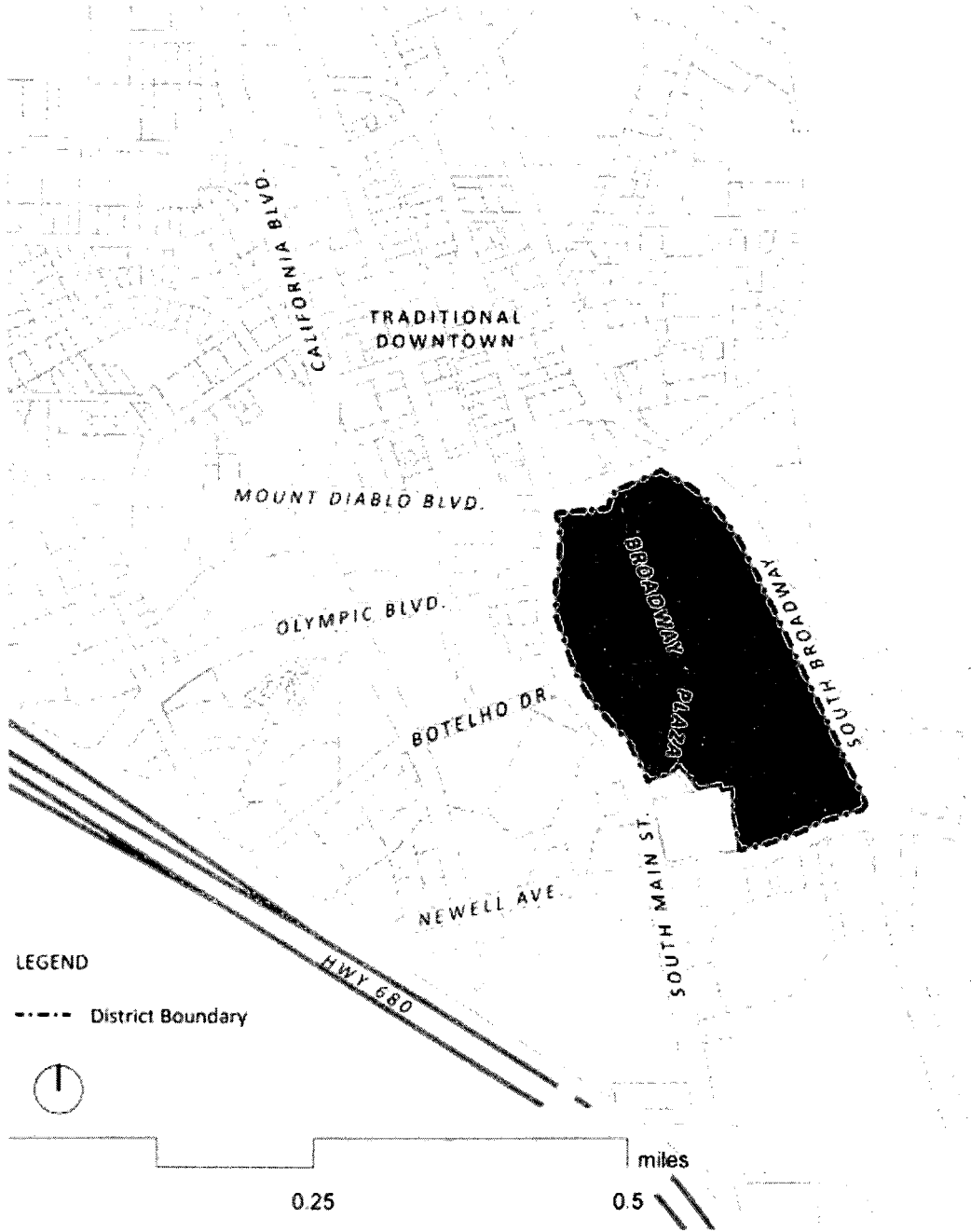


Figure 1.1 – Broadway Plaza Planned Development District

[subject to clarification]

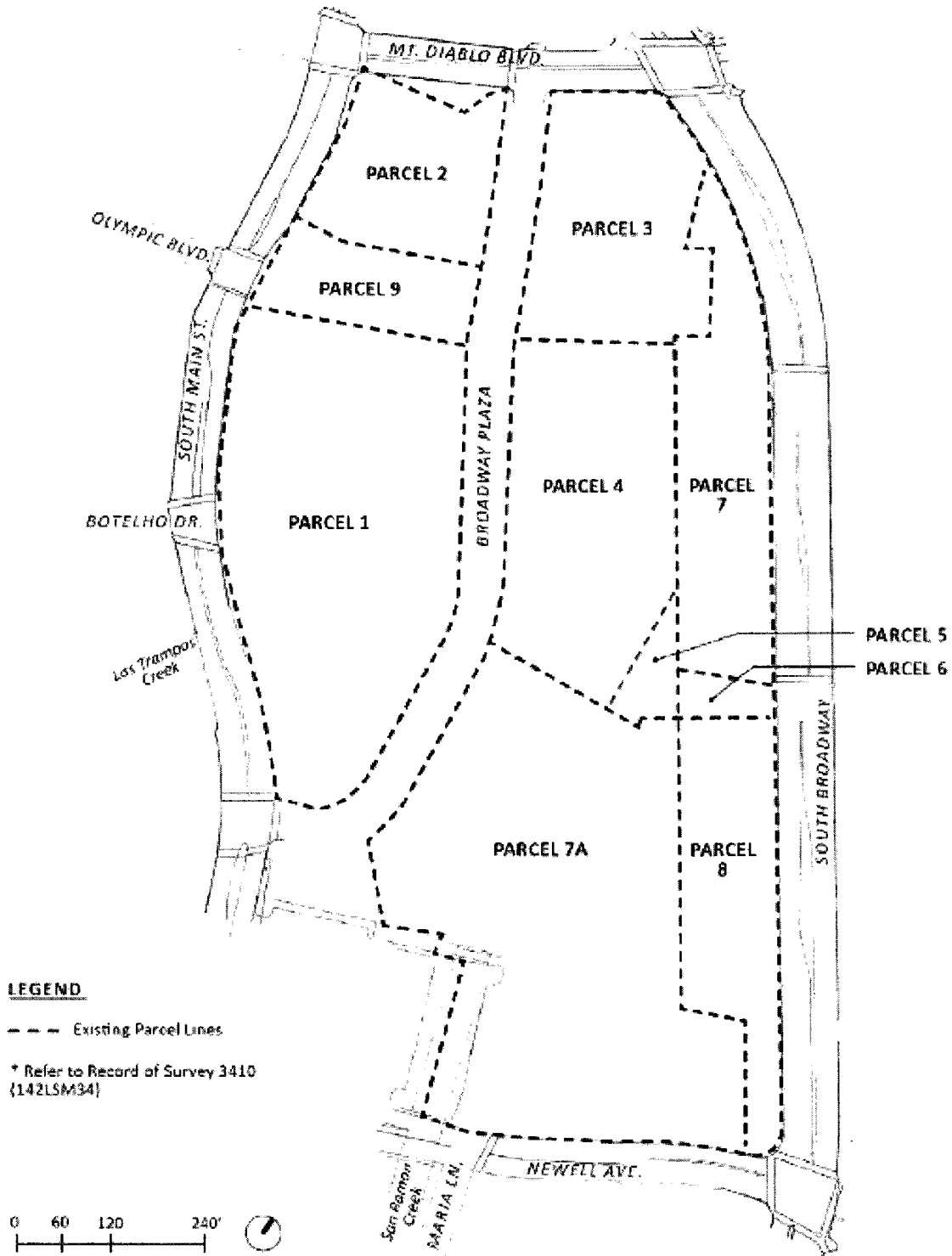


Figure 1.2 – Existing Parcels

SECTION II. Land Use Regulations.

The letters in the "Use Regulation" column in the following table are defined as follows:

- P = A permitted use.
 L = A use permitted subject to certain limitations prescribed by the "Use Regulations" that immediately follow the table.
 U = A use permitted on approval of a Conditional Use Permit.

Letters in parentheses in the "Additional Regulations" column are described in the "Additional Regulations" section following the "Use Regulations." Where a Use Regulation or a letter in parenthesis is opposite a use classification **heading**, the referenced regulations shall apply to all use classifications under the heading. Land uses not listed or indicated by ~~strikeout~~ are not permitted. Capitalized terms not otherwise defined herein shall have the same meaning as set forth in Title 10, Chapter 2, Part I, Articles 3 and 4 (Sections 10-2.1.301 through 10-2.1.403) (entitled "Definitions" and "Use Classifications").

LAND USE	USE REGULATIONS	ADDITIONAL REGULATIONS
A. Residential Use Classifications		
1. Adult Day Care Home		
2. Congregate Living Facility		
3. Family Day Care Home		
 a. Small Family Day Care Home		
 b. Large Family Day Care Home		
4. Group Residential		
5. Multiple Family Residential		
6. Residential Care Home		
7. Second Family Unit		
8. Single Family Residential		
B. Commercial Use Classifications		(B) (K)
1. Ambulance Services		
2. Animal Sales and Services		
 a. Animal Hospital		
 b. Animal: Retail Sales and Grooming	P	
 e. Horse Stables		
 d. Kennels		
3. Artist Studios	L(3)	
4. Banks and Savings and Loans		
 a. Banks and Savings and Loans	L(4)	
 (1) With Drive-up Services		

LAND USE	USE REGULATIONS	ADDITIONAL REGULATIONS
(2) <i>With Automated Teller Machines</i>	L(5)	
5. Catering Services	L(6)	
6. Communication Facilities		
7. Custom Manufacturing	L(3)	
8. Eating and/or Drinking Establishments		(J)
<i>a. Eating and/or Drinking Establishments</i>	P	
(1) <i>With Beer and Wine Service Ending at or Before 11:00 p.m.</i>	L(8)	
(2) <i>With Wine and Beer Service Ending After 11:00 p.m.</i>	L(9)	
(3) <i>With Full Alcoholic Beverage Service Ending at or Before 11:00 p.m.</i>	L(8)	
(4) <i>With Full Alcoholic Beverage Service Ending After 11:00 p.m.</i>	L(9)	
(5) <i>With Live Entertainment</i>	L(10)	(C)
(6) <i>With Dancing</i>	L(10)	(C)
(7) <i>With Take-out Service</i>	L(11)	
(a) Drive-up		
(8) <i>With Permanent Outdoor Seating</i>	L(12)	
(9) <i>With Off-site Distribution</i>	U	(D)
<i>(a) Microbrewery</i>	U	(D)
9. Food and Beverage Sales		
<i>a. Food and Beverage Sales</i>	L(13)	
<i>b. Convenience Market</i>		
(1) <i>With Gasoline Sales</i>		
<i>c. Specialty Food Shops</i>	L(13)	
(1) <i>With Off-Site Distribution</i>	U	(D)
10. Funeral and Interment Services		
11. Health Clubs	U	
12. Home Improvement Sales and Services		
13. Horticultural Establishments		
14. Lumber and Building Material Yard		
15. Maintenance and Repair Services/Small Equipment	L(3)	

LAND USE	USE REGULATIONS	ADDITIONAL REGULATIONS
16. Mini Storage		
17. Nursery		
18. Offices, Business and Professional		
<i>a. Offices, Business and Professional</i>	L(7)	
<i>(1) Offices, Medical</i>	L(15)	
19. Parking, Commercial Facilities	L(16)	
20. Pawn Shop		
21. Personal Improvement Services	L(17)	
22. Personal Services	L(18)	
23. Recreation and Entertainment, Commercial		
<i>a. Within a Building</i>	L(19)	
<i>b. Outside a Building</i>		
24. Research and Development Services		
25. Retail Sales/Rentals	P	
26. Vehicle/Equipment Sales and Services		
<i>a. Automobile Rental and Leasing</i>	L(20a)	
<i>b. Automobile Sales/New and Used</i>	L(20b)	
<i>c. Automobile Washing</i>	L(20c)	
<i>d. Automobile Wrecking</i>		
<i>e. Service Stations</i>		
<i>(1) Automobile Washing</i>		
<i>f. Vehicle/Equipment Repair</i>		
<i>(1) Limited Vehicle Service</i>		
<i>g. Vehicle/Equipment Sales and Rentals</i>		
<i>h. Vehicle Storage</i>		
27. Visitor Accommodations		
<i>a. Bed and Breakfast Inns</i>		
<i>b. Hotels</i>	U	
<i>c. Motels</i>		
C. Industrial Use Classifications		
1. General Industry		
2. Limited Industry		
3. Research Development Industry		

LAND USE	USE REGULATIONS	ADDITIONAL REGULATIONS
4. Wholesaling, Distribution and Storage		
D. Agricultural Use Classifications		
1. Animal Husbandry		
2. Crop Production		
E. Community Facility Use Classifications		(K)
1. Adult Day Care Facility		
2. Child Day Care Facility (Day Care Center)		
3. Clubs and Lodges		
4. Colleges, Public or Private		
5. Cultural Institutions		
a. <i>Cultural Institutions</i>	P	
b. <i>Natural History/Science Museums</i>	P	
6. Emergency Medical Care/No Inpatient		
7. Government Offices	P	
8. Hazardous Waste Management Facilities		
9. Heliports		
10. Hospitals		
a. <i>Acute Care</i>		
b. <i>Other</i>		
11. Housing for the Homeless		
a. <i>Emergency Shelters</i>	U	
b. <i>Transitional Housing</i>	U	
12. Maintenance and Service Facilities		
13. Park and Recreation Facilities		
14. Public Parking Facilities		
15. Public Safety Facilities	P	
16. Public Transit Terminals		
17. Recycling Facilities		
a. <i>Collection Facilities</i>		
(1) <i>Reverse Vending Machine</i>		
(2) <i>Small Collection Facility</i>		
(3) <i>Large Collection Facility</i>		
b. <i>Processing Facility</i>		
18. Religious Assembly	U	

LAND USE	USE REGULATIONS	ADDITIONAL REGULATIONS
19. Residential Care Facilities		
20. Schools, Public or Private		
21. Skilled Nursing Facilities		
22. Utilities, Major	L(23)	
23. Utilities, Minor	P	
F. Accessory Uses		
1. Accessory Living Quarters		
2. Accessory Structure		
3. Accessory Uses	L(25)	
a. Garage Sales		
b. Home Occupations		
G. Temporary Uses		(B)
1. Arts and Crafts Shows, Outdoor	L(27)	
2. Christmas Tree Sales	L(27)	
3. Civic/Community Events	L(27)	
4. Farmers Markets	L(27)	
5. Live Entertainment Events	L(27)	
6. Outdoor Seating for Eating and Drinking Establishments	L(12)	
7. Pumpkin Sales	L(27)	
8. Retail Sales, Outdoor	L(27)	
9. Swap Meets, Non-Recurring		
10. Swap Meets, Recurring		
11. Street Fairs	L(27)	
12. Vendor-Carts	L(28)	

USE REGULATIONS	
L(1)	N/A
L(2)	N/A
L(3)	Permitted provided that the primary use of the facility is retail sales. Where retail sales are not the primary use of the facility the uses are permitted subject to L(7).
L(4)	Permitted upon approval of a Conditional Use Permit. In approving the Use Permit, the Planning Commission shall find that the location of the proposed bank does not impede or discourage the flow of pedestrian traffic.
L(5)	If the ATM is to be located on the exterior wall of an existing bank or an off-site

USE REGULATIONS	
	building it shall be reviewed and approved by the Community Development Director. In approving the exterior ATM, the Community Development Director shall find that the ATM has appropriate lighting and that queuing for the ATM does not impede pedestrian or vehicle traffic flow.
L(6)	Permitted as an accessory use associated with Food and Beverage Sales or an Eating and Drinking Establishment, otherwise not permitted.
L(7)	Not permitted on the ground floor level with frontage on a public right of way. Permitted on floors above ground level or on the ground level without frontage on a public right-of-way.
L(8)	Permitted upon approval of an Administrative Use Permit pursuant to Article 12 of Part III of the Walnut Creek Zoning Ordinance, entitled "Alcoholic Beverage Sales."
L(9)	Not permitted if located within 600 feet of the boundary of any school (as defined in Article 4, Sec. 10-2.1.403.E) if providing full alcoholic beverage service. Otherwise, permitted upon approval of a Conditional Use Permit pursuant to Article 12 of Part III of the Walnut Creek Zoning Ordinance, entitled "Alcoholic Beverage Sales."
L(10)	Not permitted if located within 600 feet of a school. Otherwise permitted upon approval of a Conditional Use Permit. The criteria found in Sec. 10-2.4.605 shall not apply to such Conditional Use Permit, nor shall any such Conditional Use Permit be modified or revoked except for reasons related to this paragraph. The Planning Commission shall grant the Conditional Use Permit unless it finds that: (1) noise from the interior of the facility will be audible from a hospital or residentially zoned property, or (2) noise from the parking lot, other than normal conversation levels, will be audible to a hospital or residentially zoned property.
L(11)	Permitted upon approval of Conditional Use Permit. (See Sec. 10-2.1.403(B)12.a.(7) Definitions .) In considering the use permit, the following factors shall be considered: <ul style="list-style-type: none"> a) Exterior changes, including signage, shall be in keeping with the Broadway Plaza Design Guidelines, and shall not be designed to primarily attract the attention of vehicular traffic. b) The Planning Commission may approve the use permit if it finds that "The facility will not rely on customers making a one stop trip by automobile." In making the finding the Planning Commission may consider the following criteria, among others: <ul style="list-style-type: none"> i) The facility has direct driveway access from a major arterial. ii) The facilities for on-premises consumption are insufficient for the anticipated volume of customers. iii) The location has an off-street parking lot that discourages pedestrian traffic by virtue of its size and location. iv) Client statistics or demographics from other localities (similarly placed in a pedestrian retail area) document that the typical client is a destination oriented customer (making a one-stop trip by automobile) rather than a pedestrian shopper or worker. c) Due to the volume of disposable packaging required for take out, a condition of approval shall be imposed that requires the establishment to have identifiable containers and napkins for all carryout food. All resulting litter, including litter on adjacent property and public rights-of-way, shall be promptly removed by the permitted establishment. Additional conditions of approval may also be imposed.

USE REGULATIONS	
L(12)	Outdoor seating which requires the construction of permanent structures or alterations to existing buildings shall be subject to the Broadway Plaza Design Guidelines. A Temporary Encroachment Permit is required for the temporary use of the public right-of-way for the placement of tables and chairs.
L(13)	Facilities having a gross floor area of 10,000 square feet or less are permitted. Facilities that exceed 10,000 square feet in gross floor area are permitted on approval of a Conditional Use Permit. In considering the use permit, the following factors shall be considered: a) Exterior changes, including signage, shall be in keeping with the Broadway Plaza Design Guidelines, and shall not be designed to primarily attract the attention of vehicular traffic. b) The Planning Commission may approve the use permit if it finds that "The facility will not rely on customers making a one stop trip by automobile." In making the finding the Planning Commission may consider the following criteria, among others: i) The facility has direct driveway access from a major arterial. ii) The location has an off-street parking lot that discourages pedestrian traffic by virtue of its size and location. iii) Client statistics or demographics from other localities (similarly placed in a pedestrian retail area) document that the typical client is a destination oriented customer (making a one-stop trip by automobile) rather than a pedestrian shopper or worker.
L(14)	N/A
L(15)	Services of an optometrist in conjunction with retail sales of prescription and non-prescription eyeglasses is a permitted use. Other medical offices are not permitted.
L(16)	A Temporary Commercial Parking Lot is permitted subject to the approval of a Minor Use Permit. A Permanent Commercial Parking Lot is permitted subject to the issuance of a Conditional Use Permit.
L(17)	Business and Trade Schools are not permitted. Fine arts, crafts, dance or music studios, exercise or aerobic studios, driving schools, and diet centers are permitted.
L(18)	Permitted with the exclusion of self-service laundries.
L(19)	Dance halls, ice/roller skating rinks, scale model course and bingo parlors are not permitted. Billiard parlors, bowling alleys and game centers including pinball arcade, coin operated electronics or mechanical game machines are permitted on approval of a Conditional Use Permit. All other uses within this classification are permitted.
L(20)	N/A
L(20a)	Membership-based car sharing organizations providing automobile reservations to its members, billable by the hour or day are permitted subject to a Conditional Use Permit. The Planning Commission may approve the use permit if it finds that there is adequate parking provided and that all vehicles are parked and all operations conducted entirely within a parking garage. All other automobile rental and leasing is prohibited.
L(20b)	A limit of two new vehicle sales showrooms shall be allowed within the District, subject to the following conditions:

USE REGULATIONS	
	<p>a) Any such new vehicle sales showroom shall be permitted up to 3,000 square feet of gross floor area, which must be fully enclosed within a building.</p> <p>b) Up to six vehicles per showroom (per 3,000 square feet of gross floor area) may be maintained outside the showroom within an on-site parking garage for test drives, subject to Design Review for location, signage, lighting, and related aspects. There shall be no advertising, prices, banners or other evidence of vehicle sales at the outdoor parking area.</p> <p>c) Parking spaces devoted to test drive vehicles shall not be counted toward providing the number of parking spaces required by Section VI below.</p> <p>d) There shall be no vehicle storage lots within this District.</p> <p>e) Auto transporters shall not use Broadway Plaza street to deliver vehicles.</p>
L(20c)	Permitted upon approval of a Conditional Use Permit if located entirely within a parking garage. All water shall be captured and conveyed to the sanitary sewer.
L(21)	N/A
L(22)	N/A
L(23)	Water pumping stations, flood control or drainage facilities are permitted uses. All other uses within this classification are not permitted.
L(24)	N/A
L(25)	See the use regulation for the primary use classification.
L(26)	N/A
L(27)	Permitted subject to the approval of a Temporary Activity Permit. (See Sec. 10-2.3.118. Temporary Activity Permits.) District-wide events shall be limited to ten per year.
L(28)	<p>Permitted if they are operating under the same business license and selling the same products as an immediate adjacent eating and drinking establishment or immediate adjacent retail establishment.</p> <p>Independently operated vendor carts are permitted subject to a Conditional Use Permit. The following restriction shall apply to independently operated vendor carts:</p> <p>1) The location, number of vendor carts and nighttime cart storage provisions shall be subject to review by the Planning Commission, 2) They shall not be visible from the street right of way (with the exception of the Broadway Plaza street Right of Way).</p> <p>The following restriction shall apply to all vendor carts: 1) Vendor carts shall only be permitted on private property, 2) The size, design and exact placement of the vendor carts shall be subject to the Broadway Plaza Design Guidelines. 3) Adequate pedestrian passage and emergency access around carts shall be maintained at all times, 4) Other than plants or flowers, merchandise shall not be displayed outside the confines of the approved cart structure. Other restrictions may be placed on merchandise display as necessary to ensure the carts have an attractive appearance.</p>

ADDITIONAL USE REGULATIONS

ADDITIONAL USE REGULATIONS	
(A)	N/A
(B)	See Sec. 10-2.3.121. Regulations for Outdoor Sales, Service, Display.
(C)	See Title 4, Chapter 11 Public Dance Permits.
(D)	See Sec. 10-2.3.123. Offsite Distribution for Eating and Drinking Establishments and Specialty Food Shops.
(E)	N/A
(F)	N/A
(G)	N/A
(H)	N/A
(I)	See Sec. 10-2.3.302. Continuation of Nonconforming Uses.
(J)	See Part III, Article 12. Alcoholic Beverage Sales.
(K)	See Sec. 10-10.100 et seq. Public Art

SECTION III. Development Regulations:

A. The District shall be developed in substantial compliance with this Broadway Plaza Planned Development District Ordinance.

B. The District, which contained 796,421 square feet of gross floor area as of the Effective Date of this Broadway Plaza Planned Development District Ordinance as originally adopted, shall be permitted a maximum increase of 300,000 square feet of gross floor area for a maximum District total of 1,096,421 square feet of gross floor area, configured substantially as depicted in Figure 3.2.

C. Between Thanksgiving Day through New Year's Day, there shall be no construction that would require an encroachment permit in the City right of way. Construction work located entirely on private property and not requiring City right-of-way for staging, access, or deliveries is permitted. Exceptions for emergencies and special conditions may be authorized by the Director of Public Services.

D. All code and section references in this Broadway Plaza Planned Development District Ordinance shall mean the Walnut Creek Municipal Code in effect as of the Effective Date of this Broadway Plaza Planned Development District Ordinance. All references to the General Plan shall mean the General Plan in effect on the Effective Date of this Broadway Plaza Planned Development District Ordinance. All references to the Broadway Plaza Planned Development District Ordinance shall mean this ordinance as amended and in effect at the time the action subject to this ordinance is taking place, unless reference is made to the ordinance as originally adopted.

E. The following schedule prescribes development regulations for the District. The symbol "NA" indicates that there is no restriction for that particular development regulation or it is not applicable in this District. Letters in parentheses refer to the "Additional Development Regulations" following the schedule.

CLASSIFICATION	DEVELOPMENT REGULATIONS	ADDITIONAL REGULATIONS
A. Minimum Lot Area	NA	
B. Minimum Lot Width	NA	
C. Minimum Lot Frontage	NA	
D. Minimum Lot Depth	NA	
E. Minimum Setbacks	-	D(1) D(2) D(3)
1. Front	NA	
2. Side	NA	
3. Corner Side	NA	
4. Rear	NA	
F. Maximum Height	-	D(4)
G. Density	NA	
H. Maximum Lot Coverage	NA	
I. Maximum Floor Area Ratio	1.0	D(5)
J. Access	-	D(7)
K. Design Review	-	D(9)
L. Landscaping		D(8) D(9)
M. Storage Space for Residential Units	NA	-
N. Fences & Walls		D(9)
O. Antennas	See Sec. 10-2.3.120 of the Walnut Creek Municipal Code.	-
P. Non-Conforming Conditions	See Title 10, Chapter 2, Part III, Article 3 of the Walnut Creek Municipal Code.	
Q. Elevators	See Sec. 10-2.3.124 of the Walnut Creek Municipal Code.	
R. Recycling Facilities	NA	-
S. Parking and Loading	See Title 10, Chapter 2, Part III, Article 2 of the Walnut Creek Municipal Code	D(6)
T. Signs		D(9)

CLASSIFICATION	DEVELOPMENT REGULATIONS	ADDITIONAL REGULATIONS
U. Preservation of Trees	See Title 3, Chapter 8 of the Walnut Creek Municipal Code.	-
V. Hillside Performance Standards	N/A	-
W. Stormwater Control	See Title 9, Chapter 16 of the Walnut Creek Municipal Code	-
X. Temporary Construction Fencing	See Title 9, Chapter 9, of the Walnut Creek Municipal Code	D(10)

ADDITIONAL DEVELOPMENT REGULATIONS	
D(1)	See Walnut Creek Municipal Code Sec. 10-2.3.106. Exclusion of Rights of Way.
D(2)	Refer to the Zoning Map for Future Street Line Setbacks.
D(3)	Refer to General Plan Chapter 4, Figures 11 and 12, Building Setbacks and Setback Averaging Principle as applicable.
D(4)	Refer to Figures 3.1 – Building Height Limits, and 3.2 – Maximum Building Stories.
D(5)	The maximum FAR within the District shall be 1.0, with the exception of Parcel 2 (see Figure 1.2 – Existing Parcels) which shall be 1.75.
D(6)	Off-street parking and loading regulations shall generally be subject to Walnut Creek Municipal Code Title 10, Chapter 2, Part III, Article 2 (entitled “Off-Street Parking and Loading”) , with the only exceptions thereto as noted in Section V and VI of this Broadway Plaza Planned Development District Ordinance (Bicycle and Transit Access, and Automobile Parking and Loading).
D(7)	Refer to Section IV – Pedestrian Circulation and Section V – Bicycle and Transit Access of this Ordinance.
D(8)	See Walnut Creek Municipal Code Title 10, Chapter 2, Part III, Article II.
D(9)	Design Review for the erection, construction, or alteration of the exterior of any building, structure, or sign, or the substantial alteration of any landscaping or other features required pursuant to any City approval, or the alteration of any parking layout or dimensions, or in conjunction with any building or site development permit for such activities within District shall be subject to the Broadway Plaza Design Guidelines. See also Section VII – Administration of this Ordinance.
D(10)	Temporary construction fencing installed in connection with site demolition and site development shall include design elements or other decorative features that are artistic or promote civic events or Broadway Plaza, as approved by the Planning Manager.

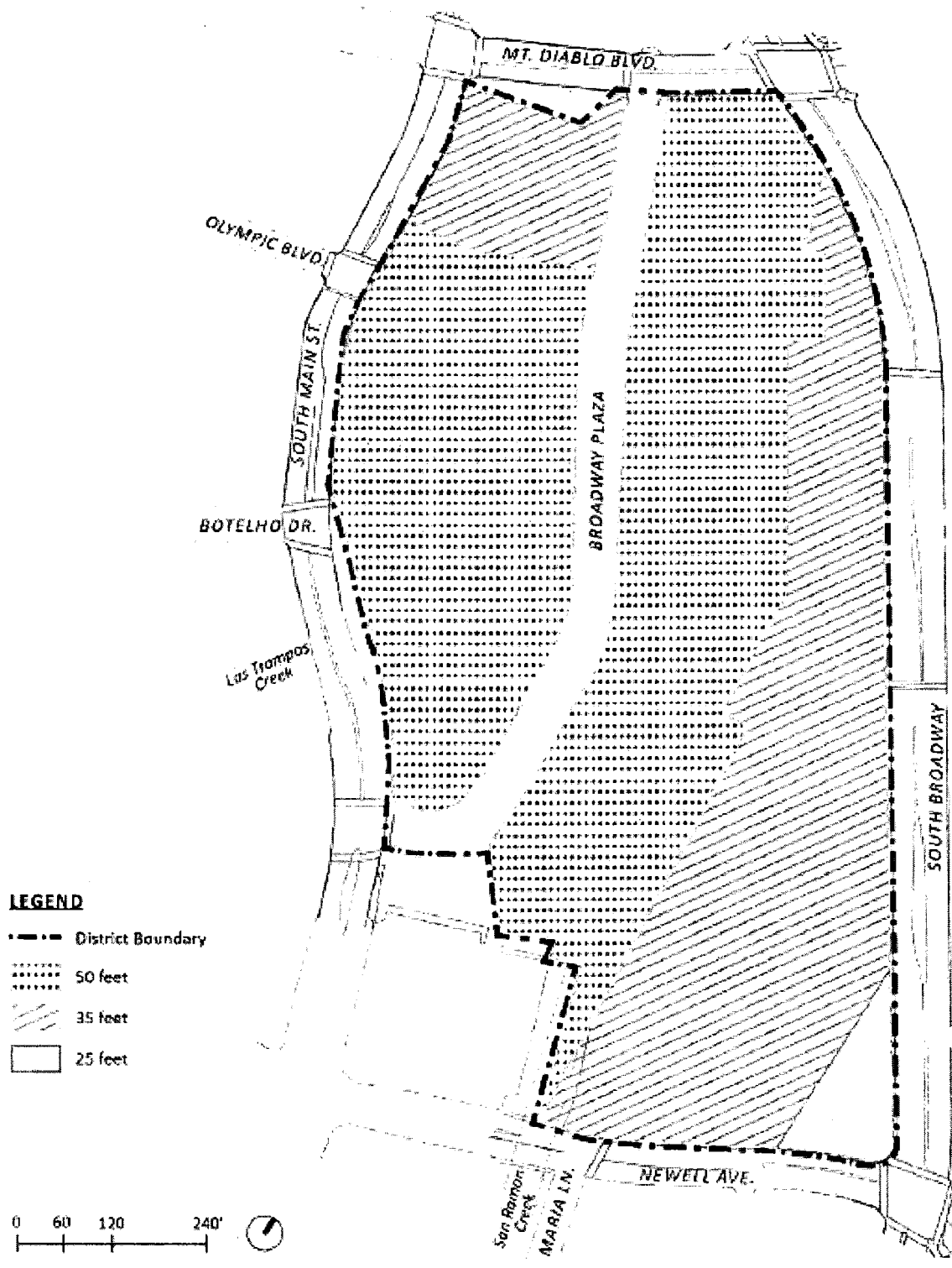


Figure 3.1 - Building Height Limits

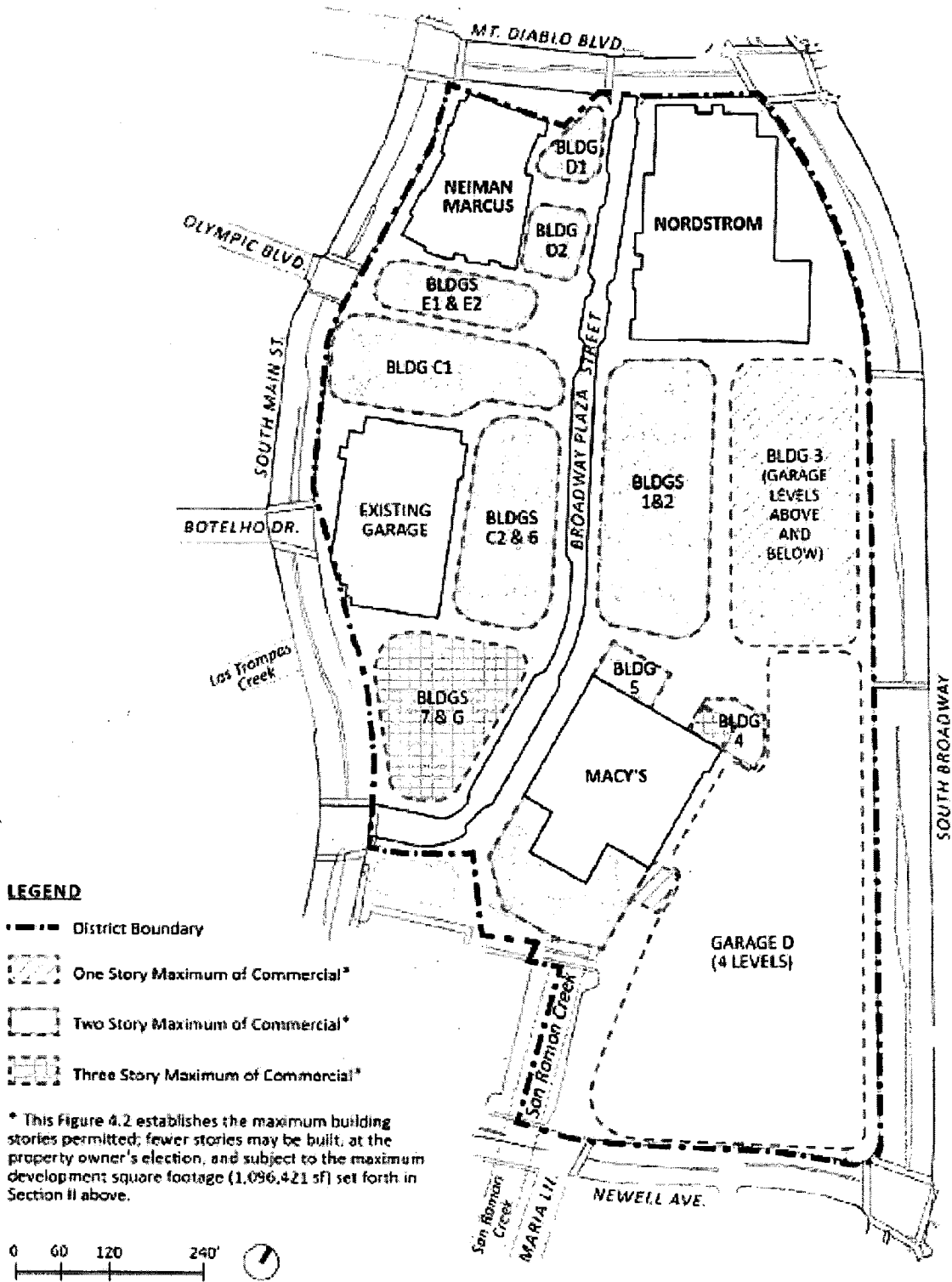


Figure 3.2 – Maximum Building Stories

SECTION IV. Pedestrian Circulation.

Pedestrian circulation shall be developed consistent with the Broadway Plaza Design Guidelines.

SECTION V. Bicycle And Transit Access.

A. **Generally.** Bicycle circulation and parking shall be developed consistent with the Broadway Plaza Design Guidelines.

B. **Newell Avenue Improvements.** Newell Avenue between South Broadway and Capwell Lane / Maria Lane shall be widened to accommodate a Class III bike facility on both sides of the street. In addition, a Class I bike lane shall be provided along the north side of Newell Avenue from S. Broadway to Maria Lane to the satisfaction of the City Engineer.

C. **Bicycle Parking.** Notwithstanding the provisions of Municipal Code Section 10-2.3.202.G, bicycle parking shall be governed by this Section V as follows:

1. **Number of Bicycle Parking Spaces Required.** In recognition of the fact that the development of the District shall happen in phases and the need for bicycle parking will thus fluctuate over time, the number of bicycle parking spaces required within the District shall be calculated on the basis of a percentage of the rentable floor area. For the purposes of this Ordinance, Rentable Floor Area shall be defined as 97.5% of gross floor area. All uses within the District shall have a minimum bicycle parking requirement of one (1) bicycle parking space per ten thousand (10,000) square feet of rentable floor area. Additional spaces shall be provided in an amount to meet bicycle parking demand, up to the maximum number under Section 10-2.3.202.G.2 (10% of the requirement for automobile parking spaces). The property owners shall demonstrate, upon request, to the satisfaction of the Planning Manager that the number of bicycle parking spaces in the District meets these requirements. No Certificate of Occupancy shall be issued unless bicycle parking spaces have been provided in a number sufficient to satisfy these requirements for the entire District as it exists at the time such Certificate of Occupancy is issued.

2. **Location of Bicycle Parking Spaces.** All bicycle parking required by this Broadway Plaza Planned Development District Ordinance shall be provided within this District. All required bicycle parking shall be located on the same legal parcel as the use by virtue of which it is required, unless (a) the legal parcel on which said bicycle parking is provided is held in the same ownership as the parcel on which said use is located, or (b) all persons or entities owning an interest in the parcels have entered into a recorded agreement providing for the shared bicycle parking, which agreement shall be in a form satisfactory to the City Attorney. Subject to this Section V.C.2, the location of all bicycle parking areas shall be consistent with the Broadway Plaza Design Guidelines.

D. **Transit Access.** Transit access shall be consistent with the Broadway Plaza Design Guidelines and shall be reviewed for approval by the Central Contra Costa Transit Authority (CCCTA) and the City's Traffic Engineer. CCCTA buses shall have continued access through the District along Broadway Plaza street.

SECTION VI. Automobile Parking And Loading.

A. **Generally.** Except as otherwise set forth within this Section VI, off-street parking and loading regulations pertaining to the District shall be governed by Title 10, Chapter 2, Part III, Article 2 (Sections 10-2.3.201 through 10-2.3.208) (entitled "Off-Street Parking and Loading Regulations").

B. Off-Street Parking and Loading Regulations

1. **Number of Automobile Parking Spaces Required.** All uses permitted and conditionally permitted within the District shall have a parking requirement of one (1) space per three hundred (300) square feet of rentable floor area. For the purposes of this Ordinance, Rentable Floor Area shall be defined as 97.5% of gross floor area. Computation of spaces required for the Eating and Drinking Establishments use classification shall exclude floor area used for permanent outdoor seating. No Certificate of Occupancy shall be issued unless automobile parking spaces have been provided in a number sufficient to satisfy these requirements for the entire District as it exists at the time such Certificate of Occupancy is issued. All automobile parking required by this ordinance shall be provided within this District, except as may be otherwise temporarily allowed per Section VI.C below.

2. **Location of Automobile Parking.** All automobile parking required by this ordinance shall be provided within this District, except as may be otherwise temporarily allowed per Section VI.C below. All required automobile parking spaces shall be located on the same legal parcel as the use by virtue of which it is required, unless (a) the legal parcel on which said automobile parking is provided is held in the same ownership as the parcel on which said use is located, or (b) all persons or entities owning an interest in the parcels have entered into a recorded agreement providing for the shared automobile parking, which agreement shall be in a form satisfactory to the City Attorney.

3. **Number of and Criteria for Loading Spaces.** Walnut Creek Municipal Code Section 10-2.3.206 notwithstanding, the required number of loading spaces within the District shall be one space per 150,000 square feet of gross floor area, distributed within the District, which shall be provided prior to issuance of any Certificate of Occupancy, except as may be otherwise temporarily allowed per Section VI.C below. Each such loading space shall:

- a. Have dimensions of not less than 12' x 55' x 14' (vertical clearance);
- b. Be accessible without backing a truck across a street property line unless the Transportation Administrator determines that provision of turn-around space is not feasible and approves alternative access;
- c. Not prevent access to a required off-street parking space at any time;
- d. Be screened and architecturally compatible, subject to Design Review and Transportation Administrator approval.

C. Onsite and Offsite Automobile Parking and Loading During a Construction Parking Event

1. **Construction Parking.** A "Construction Parking Event" is a construction event that involves demolition and reconstruction of existing and new parking stalls within the District that temporarily renders the remaining parking stalls in the District insufficient to meet parking requirements under Section VI.B of this Broadway Plaza Planned Development District Ordinance.

2. **Construction Parking Plan.** A proposed Construction Parking Plan for temporary parking during a Construction Parking Event shall be submitted to the Community Development Director prior to issuance of a permit to demolish any parking stalls if the demolition will result in a Construction Parking Event. No demolition or building permits shall be issued until the Community Development Director has approved a temporary parking plan for a Construction Parking Event, after finding that the Construction

Parking Plan was reviewed and accepted by the City Traffic Engineer, contains substantial evidence in support of the proposal, will result in an acceptable level of impact to the local roadway network and parking supply, and will adequately serve the project. A monitoring and reporting program shall be included in the Construction Parking Plan. The Community Development Director may, upon review of the first year of the monitoring and reporting program for the first Construction Parking Event, refer any subsequent Construction Parking Plan to the Transportation Commission for review prior to granting any subsequent Construction Parking Plans. Any such Construction Parking Plan shall address the following options:

- a. The availability and evidence of an agreement for use of offsite parking that is within a reasonable walking or transit distance of the District.
- b. The provision of an onsite valet parking program.
- c. The availability and frequency of shuttles or other means of local transportation that are provided between offsite parking locations and the District, including possible increases in the frequency of the free downtown shuttle.
- d. The provision of offsite employee parking programs that result in preferences of customer use of onsite parking.
- e. The availability of ridesharing and vanpool programs.
- f. The provision of employee vouchers for subsidized public transportation, including but not limited to CCCTA and BART.
- g. Convenient, safe and available free bicycle and motorcycle parking.
- h. Decreased parking demand resulting from demolition and construction activities within and around the District.
- i. A construction schedule that demonstrates the Construction Parking Event is not anticipated to exceed a period of 11 months, preferably January to November.

SECTION VII. Administration.

A. Definitions.

1. **Definition Of Land Use Approval.** As used in this Section VII, a "Land Use Approval" refers to decisions made in connection with one or more of the following:

- a. Conditional Use Permit (but not including any Conditional Use Permits processed pursuant to Article 12 of Part III of the Walnut Creek Zoning Ordinance, entitled "Alcoholic Beverage Sales").
- b. Minor Use Permit.
- c. Special Use Permit.
- d. Variance.

- e. Temporary Activity Permit.

2. **Definition Of Design-Related Approval.** As used in this Section VII, a “Design-Related Approval” refers to decisions made in connection with one or more of the following:

- a. Design Review Approval.
- b. Sign Permit.
- c. Public Art Approval.
- d. Street Trees.
- e. Amendment of the Broadway Plaza Design Guidelines.

3. **Definition Of Approvals Other Than Land Use And Design-Related Approval**

Definition. As used in this Section VII, the phrase “Approvals Other Than Land Use And Design-Related Approvals” refers to decisions made in connection with approvals that are not Land Use Approvals or Design-Related Approvals, which include the following:

- a. **Tree Removal.** Applications for tree removal on private property pursuant to Title 3, Chapter 8 (Sections 3-8.01 through 3-8.09) (entitled “Preservation of Trees on Private Property”).
- b. **Alcohol Conditional Use Permits and Administrative Use Permits** Applications for Conditional Use Permits and Administrative Use Permits that are subject to Title 10, Part III, Article 12 (Sections 10-2.3.1201 through 10-2.3.1225) (entitled “Alcoholic Beverage Sales”).
- c. **Encroachment Permits.** Applications for Encroachment Permits pursuant to Title 7, Chapter 1 (Sections 7-1.101 through 7-1.507) (entitled “Encroachments”).
- d. **Public Dance Permits.** Applications for Public Dance Permits pursuant to Title 4, Chapter 11 (Sections 4-11.01 through 4-11.14) (entitled “Public Dance Permits”).
- e. **Holiday Encroachment Moratorium.** Determinations regarding holiday encroachment moratorium exceptions pursuant to Section III.C of this Broadway Plaza Planned Development District Ordinance.
- f. **Temporary Parking Plans.** Approval of parking plans for temporary parking pursuant to Section VI.C of this Broadway Plaza Planned Development District Ordinance.

B. Design-Related Approvals.

1. **Generally.** The Broadway Plaza Design Guidelines, which were adopted by the City Council concurrently with its adoption of this Broadway Plaza Planned Development District Ordinance, illustrate the anticipated scale, appearance and textures of Broadway Plaza, as well as provide the proposed design approach to buildings and open spaces. The Broadway Plaza Design Guidelines include standards, to which any proposed design must conform in order to obtain approval, and broader principles of design intent, which are strongly encouraged but not necessarily required for approval. Design-Related Approvals for the various buildings and areas within the District, and determinations related to Tree Removal, shall be consistent with the Broadway Plaza Design Guidelines.

2. **Conflicts and Omissions.** In the event the Broadway Plaza Design Guidelines are silent as to an issue otherwise governed by the Design Guidelines approved for city-wide use, the latter document shall govern. In the event of conflict between the Broadway Plaza Design Guidelines and the Design Guidelines approved for city-wide use, the former shall govern. In the event of a conflict between this Broadway Plaza Planned Development District Ordinance and the Broadway Plaza Design Guidelines, the Broadway Plaza Planned Development District Ordinance shall govern.

3. **Design Review Approval.** Applications for Design Review Approval shall be subject to Title 10, Chapter 2, Article 12 (Sections 10-2.4.1201 through 10-2.4.1210) (entitled "Design Review"), modified as follows:

a. **Design Review Approval Required.** No building permit or site development permit to erect, construct or alter the exterior of any building, structure, or sign, or to substantially alter any landscaping or other features required pursuant to any City approval, or the alteration of any parking layout or dimensions in the District may be issued without first obtaining Design Review Approval of the design plan and/or the site plan, as may be required, associated with such activities.

b. **Decision-Maker For Property Owner or Ground Lessee Design Review Applications.** Applications for a Design-Related Approval submitted by an applicant in its capacity as a legal owner or ground lessee of any parcel (and not as a lessee of space within a building) within the District shall be acted on by the Design Review Commission.

c. **Decision-Maker For All Other Design Review Applications.** Applications for Design Review Approval submitted by an applicant in its capacity as a lessee of space within a building (not as a legal owner or ground lessee of any parcel) within the District shall be acted on by the Planning Manager in accordance with Municipal Code Section 10-2.4.1210, except to the extent the Design Review Commission retained jurisdiction in a prior Design Review Approval, or if the Planning Manager elects to refer such action to the Design Review Commission or to an ad-hoc subcommittee of the Design Review Commission for input after which the Planning Manager may decide the application or refer the application to the Design Review Commission.

d. **Findings.** In order to approve any application for design review proposed within the District, the decision-maker identified above must make the following findings in lieu of the findings that would otherwise be required by Section 10-2.4.1206:

i. The plan is consistent with the Walnut Creek General Plan and this Broadway Plaza Planned Development District Ordinance;

ii. The plan is in the best interest of the public health, safety, and general welfare; and

iii. General site, architectural, and landscape considerations are consistent with the Broadway Plaza Design Guidelines and the City arborist's recommendations.

4. **Sign Permit.** Applications for Sign Permits shall be subject to Title 10, Chapter 8 (Sections 10-8.101 through 10-8.113), except that appeals shall be processed as set forth in section VII.C of this Broadway Plaza Planned Development District Ordinance.

5. **Public Art Approval.** Development within the District shall comply with Title 10, Chapter 10 (Sections 10-10.100 through 10-10.106) (entitled "Public Art"), except that appeals shall be processed as set forth in Section VII.C of this Broadway Plaza Planned Development District Ordinance.

6. **Street Trees.** Development within the District shall comply with Title 7, Chapter 1, Article 4 (Sections 7-1.401 through 7-1.410) (entitled "Street Trees") except that (a) street trees reviewed as part of a Design Review Approval application shall be processed as set forth in Section VII.B.3 of this Broadway Plaza Planned Development District Ordinance, and the decision-maker for street tree decisions shall be the same as the decision-maker for Design Review Approval; and (b) all appeals shall be processed as set forth in Section VII.C.4 of this Broadway Plaza Planned Development District Ordinance.

7. **Broadway Plaza Design Guidelines Amendment.** Upon application of the affected property owner or owners, the Broadway Plaza Design Guidelines may be amended. The Design Review Commission shall hear and decide any applications for amendment to the Broadway Plaza Design Guidelines. Processing of any such applications shall be in accordance with the procedures applicable to Design Review within the District. In order to approve an amendment, the Design Review Commission must find that:

- a. The amendment is consistent with the Walnut Creek General Plan and this Broadway Plaza Planned Development District Ordinance;
 - b. The amendment is in the best interest of the public health, safety, and general welfare;
- and
- c. General site, architectural, and landscape considerations reflected in the amendment are consistent with the rest of the Broadway Plaza Design Guidelines.

C. Appeals of Land Use Approvals and Design-Related Approvals.

1. **Applicability.** Notwithstanding any of provision of law, the ability to appeal and the appellate process for decisions made with respect to Land Use Approvals or Design-Related Approvals in the District shall conform to this Section VII.C of this Broadway Plaza Planned Development District Ordinance.

2. **Appeal of Land Use Approvals by the Planning Manager or Zoning Administrator.** All decisions by the planning manager or the zoning administrator relating to any Land Use Approval shall be appealable to the Planning Commission and shall comply with the procedures applicable to an appeal of a decision of the Zoning Administrator pursuant to Sections 10-2.4.502 A, C and D (except that the appeal of Land Use and Design-Related Approvals issued by the Planning Commission shall be subject to paragraph 5 below). Section 10-2.4.502.B shall not apply and there shall be no direct appeal to the Council.

3. **Appeal of Design-Related Approvals by the Planning Manager.** All decisions by the planning manager relating to any Design-Related Approval shall be appealable to the Design Review Commission and the appeal shall comply with Sections 10-2.4.1208 (for decisions related to design review, public art or street trees) or 10-8.103 (for decisions related to signs).

4. **Appeal of Land Use and Design-Related Approvals Issued By the Design Review Commission or By the Arts Commission.** All decisions by the Design Review Commission or by the

Arts Commission relating to Land Use Approvals or Design-Related Approvals shall be appealable to the Planning Commission and shall comply with the procedures applicable to an appeal of a decision of the Zoning Administrator pursuant to Sections 10-2.4.502 A, C and D (except that the appeal of Land Use and Design-Related Approvals issued by the Planning Commission shall be subject to paragraph 5 below). Section 10-2.4.502.B shall not apply and there shall be no direct appeal to the Council.

5. Appeal of Land Use Approvals or Design-Related Approvals Issued By Planning Commission. Decisions of the Planning Commission relating to Land Use Approvals or Design-Related Approvals (on first impression or on appeal) shall be reviewable only as follows:

a. **Review by Council.** Any member of the City Council shall have authority to request the Council to review any such decision of the Planning Commission by filing a written request with the City Clerk prior to the expiration of the time during which an appeal can be made. When such review is requested by any member of the City Council, the review shall be processed in the same manner as an appeal, and all procedures set forth in Article IV of Part IV of Chapter 2 of the Municipal Code that are not inconsistent with this Broadway Plaza Planned Development Ordinance shall apply. A request for review need not state the reasons for the request. A request for review shall not be deemed to be an allegation of any flaw in or a pre-judgment of the decision below, nor shall it affect any Council member's right to act on the appeal of the decision below.

b. **Appeal by City Manager.** The City Manager on behalf of the City may appeal to the City Council any such decision of the Planning Commission that may adversely affect the City by filing a "notice of appeal" with the City Clerk prior to the expiration of the time during which an appeal can be made. The City Clerk shall immediately transmit one (1) copy to the Planning Manager and one (1) copy to the applicant. The notice of appeal shall specify the decision appealed from and shall state in clear and concise language the reasons for the appeal. When such appeal is filed, all provisions of this section relating to appeals shall apply.

c. **Notice and Public Hearing.** After the filing of the notice of appeal, or after an oral or written request for Council review has been made by a Councilmember, the City Clerk shall schedule a public hearing before the City Council within a reasonable period of time. Notice of the public hearing shall be given in the manner specified in Title 10, Chapter 2, Part IV, Article 3 (Sections 10-2.4.301 through 10-2.4.305) (entitled "Notices and Hearing").

d. **Council Decision on Appeals.** After the public hearing on an appeal, the City Council may refer the matter back to the Planning Commission for further consideration, or may reverse, affirm or modify the decision of the Commission.

e. **Planning Commission Decision Final If No Appeal.** If there is no timely request by a Councilmember or timely appeal by the City Manager, then the decision of the Planning Commission shall be final in the matter, and subject to judicial review if a petition for writ of mandate is filed within the time limits specified in Code of Civil Procedure Section 1094.6.

D. Other Approvals. Applications related to Approvals Other Than Land Use And Design-Related Approvals (as defined in this Section VII) shall not be subject to Sections B or C of this Section VII, but shall instead be subject to the provisions of the Municipal Code that apply to such decisions outside the District and the Broadway Plaza Design Guidelines.

E. **Continued General Applicability of Municipal Code.** To the extent not expressly amended, supplemented or made inapplicable by this Broadway Plaza Planned Development District Ordinance, all other provisions of the Walnut Creek Municipal Code shall continue to govern the development and use of the District.

SECTION VIII. Zoning Map Amendment.

The Community Development Director is hereby directed to make changes on the zoning maps of the City of Walnut Creek as amended by this ordinance as shown in Exhibit A.

SECTION IX. City Clerk.

The City Clerk is directed to format and number this ordinance to be in conformance with this title as appropriate.

SECTION X. Effective Date.

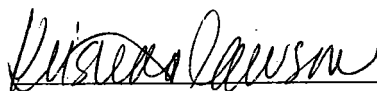
This ordinance shall become effective on the 31st day after its adoption. References in this Broadway Plaza Planned Development District Ordinance to the "Effective Date" refer to the 31st day after this ordinance is originally adopted, without regard to dates of any later amendments.

PASSED AND ADOPTED by the City Council of the City of Walnut Creek at a regular meeting thereof held on the 17th day of December, 2013, by the following called vote:

AYES: Councilmembers: Haskew, Silva, Simmons, Wedel, Mayor Lawson

NOES: Councilmembers: None

ABSENT: Councilmembers: None




Kristina Lawson
Mayor of the City of Walnut Creek

Attest:



Suzie Martinez, CMC
City Clerk of the City of Walnut Creek

I HEREBY CERTIFY the foregoing to be a true and correct copy of Ordinance No. 2122, duly passed and adopted by the City Council of Walnut Creek, County of Contra Costa, State of California, at a regular meeting of said Council held on the 17th day of December, 2013.



Suzie Martinez, CMC, City Clerk
City of Walnut Creek