



# California Fair Political Practices Commission

October 16, 1989

Gregory L. McCoy  
Thiessen, Gagen & McCoy  
279 Front Street  
P.O. Box 218  
Danville, CA 94526-0218

Re: Your Request for Informal Assistance  
Our File No. I-89-516

Dear Mr. McCoy:

You have requested written advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1</sup> Since your questions are general in nature and do not involve specific decisions, we are treating your request as one for informal assistance pursuant to Regulation 18329(c).<sup>2</sup>

## QUESTIONS

As a candidate for city council, you have posed the following questions regarding your ability to participate in decisions of the council if you are elected to office:

1. If a client of your law firm appears before the city council requesting the council to take action or refrain from taking action on a particular item, and no representation of the client is provided by any member of your law firm in connection with the matter then before the council, are there any limits to your participation in a decision to be made?

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

2. If a former client of your law firm appears before the council requesting the council to take action or refrain from acting on a particular matter, and no representation of the client is provided by your law firm in connection with the matter then before the council, and no existing attorney-client relationship exists between your firm and the former client, are there any limits on your participation in a decision to be made?

3. Parkside Associates has received all current and necessary approvals for development of the property which it owns, and no further entitlements are required by Parkside Associates to fully build out the property. As an owner of a 29.05% partnership interest in Parkside Associates, must you abstain from all matters to be acted upon concerning the redevelopment plan, or only those matters which can be shown to have a direct financial impact upon Parkside Associates?

4. As an owner of a residence located outside the redevelopment plan area but not too distant from it, what limitations, if any, would there be on your participation in any matters to be acted upon concerning the redevelopment plan?

#### CONCLUSIONS

1 and 2. If your ownership interest in the firm is 10 percent or greater, clients of the firm are sources of income to you. If your pro-rata share of any such income was \$250 or more within 12 months prior to the decision and the decision will materially affect the client, you must disqualify yourself from participating in the decision. The same test applies whether the client is a current or former client. The effect of a decision is deemed material if the client is directly before the board.

3. Parkside Associates is a business entity in which we presume you have an economic interest that is worth in excess of \$1,000. You may not participate in redevelopment decisions which will materially affect Parkside Associates.

4. The fact that you own a residence near the redevelopment area may affect your ability to participate in some redevelopment decisions, if those decisions will materially affect your property. How materiality will be measured in a particular case will be determined by such factors as the type of redevelopment decision to be made and the distance from your property to the property that is the subject of the decision.

#### FACTS

You are a candidate for the Danville City Council. You are also a practicing attorney with the firm of Thiessen, Gagen & McCoy, whose offices are located in Danville. From time to time members of your firm represent clients before the council seeking favorable determinations on planning and other matters.

You own a 29.05% general partnership interest in Parkside Associates which owns property in downtown Danville. The property is located within the borders of the Danville Downtown Redevelopment Project Area established by a redevelopment plan adopted by the council.

Your residence is also located in Danville. It is in the downtown area, just outside the redevelopment boundaries.

#### ANALYSIS

If you are elected to the city council, you will be a public official who is subject to the provisions of the Act. (Section 82048; Regulation 18700, copy enclosed.) The Act prohibits public officials from making, participating in making, or in any way attempting to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest. (Section 87100.)

Whether an official has a financial interest in a decision is governed by Section 87103, which provides as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value

provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

Section 87103.

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however, certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal.App.3d 983, 989-991; Witt v. Morrow (1977) 70 Cal.App.3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest; it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra, at 823.)

Financial effect on clients of the firm.

You have indicated that you have an ownership interest in your law firm which may exceed ten percent. As an owner with an ownership interest of 10 percent or greater, you may not participate in decisions that will materially affect a client of your firm, if your pro-rata share of income from the client is \$250 or more within the 12 months preceding the decision. (Section 82030(a); Moe Advice Letter, No. A-89-454, copy enclosed.) This is true whether the person is a current or former client.

Whether a decision will materially affect a client of the firm depends upon whether the client is directly or indirectly affected by the decision. If the client is directly involved in the decision, and the decision will have any financial effect on the client, it will be deemed to be material. The test for direct involvement is as follows:

(b) A person or business entity is directly involved in a decision before an official's agency when that person or entity, either personally or by an agent:

(1) Initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request or;

(2) Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

(3) A person or business entity is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the subject person or business entity.

Regulation 18702.1(b), copy enclosed.

If the client is not directly involved in a decision, but it is foreseeable that the decision will indirectly affect the client, you will be able to participate in the decision unless the effect is material. The materiality of indirect effects is measured differently according to the type of economic interest involved. For example, if the client whose interest is affected by the decision is a Fortune 500 company listed on the New York Stock Exchange, the decision would not materially affect the client unless it resulted in an increase or decrease in the company's revenues of \$1,000,000 or more, an increase or decrease in its expenditures of \$250,000 or more, or an increase or decrease in its assets or liabilities of \$1,000,000 or more. Conversely, for a small business those figures would be reduced to \$10,000, \$2,500, and \$10,000 respectively. (See Regulation 18702.2, copy enclosed.)

If the client is an individual, a somewhat different test for materiality is set forth in Regulation 18702.6, which provides:

The effect of a decision is material as to an individual who is a source of income or gifts to an official if any of the following applies:

(a) The decision will affect the individual's income, investments, or other tangible or intangible assets or liabilities (other than real property) by \$1,000 or more; or

(b) The decision will affect the individual's real property interest in a manner that is considered material under Section 18702.3 or Section 18702.4.

Regulation 18702.6, copy enclosed.

Financial effect on your firm.

In addition to decisions which materially affect clients of your firm, you must also disqualify yourself from decisions which materially affect your firm. The test for materiality is the same as that set forth above to determine a material effect on a client which is a business entity. If the firm is directly involved in the decision, the effect of the decision will be deemed material. If the firm is only indirectly involved, materiality will be measured in accordance with the size of the firm.<sup>3</sup>

Financial effect on Parkside Associates.

You have indicated that Parkside Associates is a partnership. Under the Act, a partnership operated for profit is classified as a business entity. (Section 82005.) Therefore, the extent to which you may participate in decisions which may affect Parkside Associates is governed by the same test set forth above for clients of your law firm which are business entities.

Financial effect on your residence.

With respect to decisions affecting your residence, materiality will be measured as follows:

1. Any financial effect on your residence will be material if the property is directly involved in the decision. The test for direct involvement of an interest in real property is as follows:

(3) Interest in Real Property -

(A) The decision involves the zoning or rezoning, annexation or deannexation, sale, purchase, or lease, or inclusion in or exclusion from any city, county, district or other local governmental subdivision, of real property in which the official has a direct or indirect interest (other than a leasehold interest) of \$1,000 or more, or a similar decision affecting such property;

(B) The decision involves the issuance, denial or revocation of a license, permit or other

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<sup>3</sup> When your firm represents a client before the council, the firm is not directly involved in the decision. (Gill Advice Letter, No. A-85-252, copy enclosed.) You must measure the effect on your firm as an indirect effect. For example, you would determine whether the size of the firm's fee is dependent upon the outcome of the case, or whether the outcome of the case will foreseeably affect the firm's future income from that client.

land use entitlement authorizing a specific use or uses of such property;

(C) The decision involves the imposition, repeal or modification of any taxes or fees assessed or imposed on such property; or

(D) The decision is to designate the survey area, to select the project area, to adopt the preliminary plan, to form a project area committee, to certify the environmental document, to adopt the redevelopment plan, to add territory to the redevelopment area, or to rescind or amend any of the above decisions; and real property in which the official has an interest, or any part of it is located within the boundaries (or the proposed boundaries) of the redevelopment area.

(E) For purposes of this subdivision, the terms "zoning" and "rezoning" shall refer to the act of establishing or changing the zoning or land use designation on the subject property, but shall not refer to an amendment of an existing zoning ordinance or other land use regulation (such as changes in the uses permitted, or development standards applicable, within a particular zoning category) which is applicable to all other properties designated in that category.

Regulation 18702.1(3).

2. If your residence is only indirectly affected by the decision, materiality will be determined according to the distance from your property to the property that is the subject of the decision. Those measurements are set forth in Regulation 18702.3 (copy enclosed). For example, if your residence is located within 300 feet of a property that will be the subject of a decision, the decision will be considered to materially affect your property. You would have to disqualify yourself from participating in the decision. Please note that certain redevelopment decisions will require that the distance from your property be measured from the boundary of the redevelopment area rather than from the boundary of a particular property within the area. (Regulation 18702.3(e).)

There may be some situations where you will be able to participate in decisions of the council notwithstanding the fact that the decisions will materially affect your economic interest. This could occur if a decision affects your interest in substantially the same manner as it affects all members of the public or a significant segment of the public. (Regulation 18703, copy enclosed.) Whether the effect of a decision on your interest

is distinguishable from its effect on the public generally must be determined on a case-by-case basis. You should seek advice if you are faced with a specific decision in which you believe the "public generally" exception applies.

If you have any questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn M. Donovan  
General Counsel



By: Margaret W. Ellison  
Counsel, Legal Division

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Enclosures

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August 29, 1989

Certified Mail

Fair Political Practices Commission  
428 J Street  
Sacramento, CA 95814

Re: Request for Written Advice  
Government Code §83114(b)

Gentlemen:

This is a request to the Commission to provide written advice to the undersigned pursuant to Government Code §83114(b). My address is noted on the letterhead above.

The undersigned is a candidate for office for the Danville City Council. I am also an attorney practicing with the firm of Thiessen, Gagen & McCoy, whose offices are located in Danville. From time to time members of my firm appear before the Town Council representing clients seeking favorable determinations on planning and/or other matters within the jurisdiction of the Council.

I also own a 29.05% general partnership interest in a partnership (Parkside Associates) which owns property in downtown Danville. The property is located within the borders of the Danville Downtown Redevelopment Project Area established by a Redevelopment Plan adopted by the Danville City Council. A copy of the Ordinance establishing the Redevelopment Plan is enclosed. The area of the Plan itself is described in Exhibit B to the Ordinance, and the property owned by Parkside Associates is highlighted in yellow on that exhibit. My residence is also located near the downtown area, just outside the redevelopment boundaries itself. It is indicated in green on Exhibit B of the Ordinance.

I request advice on the following items:

1. If a client of my law firm appears before the Council requesting the Council to take action or refrain from taking action on a particular item, and no representation of the client is provided by any member of my law firm in connection with the matter then before the Council, are there any limits on my participation in a decision to be made?

2. If a former client of my law firm appears before the Council requesting the Council to take action or refrain from action on a particular matter, and no representation of the client is provided by my law firm in connection with the matter then before the Council, and no existing attorney-client relationship exists between my Firm and the former client, are there any limits on my participation in a decision to be made?

3. Parkside Associates has received all current and necessary approvals for development of the property which it owns, and no further entitlements are required by Parkside Associates to fully build out the property. As an owner of a 29.05% partnership interest in Parkside Associates, must I abstain from all matters to be acted upon concerning the Redevelopment Plan, or only those matters which can be shown to have a direct financial impact upon Parkside Associates?

4. As an owner of a residence located outside the Redevelopment Plan area but not too distant from it, what limitations, if any, would there be on my participation in any matters to be acted upon concerning the Redevelopment Plan?

Thank you for your advice on these matters.

Very truly yours,



Gregory L. McCoy

BEFORE THE TOWN COUNCIL OF THE TOWN OF DANVILLE

IN THE MATTER OF:

Adopting Title 8 of the Town of Danville	)	Ordinance No.
Municipal Code: Planning and Land Use;	)	
Chapter 35 - Downtown Zoning District	)	
regulating land use and development of	)	
properties within the designated downtown	)	
area.	)	
_____	)	

THE TOWN COUNCIL OF THE TOWN OF DANVILLE DOES ORDAIN AS FOLLOWS:

ARTICLE 1. INTRODUCTION

Section 8-3501. Purpose and Intent.

It is the purpose and intent of this Ordinance to provide the Town of Danville with a set of development standards for the continued physical and economic growth of the designated Downtown area.

Within Danville, there is a significant historical resource in the architectural character of the buildings and development of the Downtown area. This ordinance has been prepared with that historical perspective in mind and with an emphasis on preserving, maintaining and encouraging the significant aspects of the historical environment.

Nine (9) individual sub-areas are created by this Ordinance to guide the uses and development of Downtown Danville in a manner which best achieves specific goals for Downtown Danville and will establish land use controls appropriate to the Downtown area.

Section 8-3502. Applicability.

This Ordinance applies to all development within the Downtown Zoning District and regulates all existing uses, remodels and new construction.

Development Review Procedures: The control of the uses of land will be regulated through the development plan review procedure. The various methods of development review shall be as follows:

(a) Existing Uses and Structures: Existing structures that continue to house existing uses at the adoption of this Ordinance shall be determined to be in compliance with the terms of this Ordinance unless there is a pending project. There will be no review program required for any structure or use currently occupying a site until such time that there is a proposed change of use or revision to the existing structure.

(b) Change of Use Within an Existing Structure: When a new use is proposed for an existing structure, the proposed applicant shall be required to submit a Certificate of Zoning Compliance to the Town of Danville for review and approval. This document shall indicate that the proposed use complies with the land use designations as referenced in this Ordinance and that all of the various development standards, especially parking, have been complied with. Parking standards shall be in accordance with Article 5 of this Ordinance regarding project location and required parking improvements.

(c) Change of Use Within an Existing Structure with Alterations to the Structure of Less Than 50% of the Square Footage: In conjunction with the Certificate of Zoning Compliance, the applicant and/or property owner shall be required to obtain all other Planning approvals.

(d) Change of Use Within an Existing Structure with Alteration to the Structure of More Than 50% of the Square Footage: In conjunction with the Certification of Zoning Compliance, these projects shall be in accordance with the procedure for development plans in Article 3 below.

(e) New Structures: The Development Plan procedure contained in Article 3 of this Ordinance shall be utilized as the review procedure for all new projects. New projects are described as projects that require a complete redevelopment of the site incorporating major remodeling effort or entire new construction to house either existing uses or proposed new uses. The uses permitted by this code are those as referenced in Article 2 of this Ordinance.

Section 8-3503. General Definitions.

(a) Building Site Area: The total land area of the property available for development of buildings, parking, and landscape.

(b) Setbacks from Street Corners: Setbacks from street corners shall be established as that point of intersection of the required setback lines from access streets, prolonged to the point of intersection.

(c) Side and Front of Corner Lots: For the purpose of this ordinance, the narrowest frontage of a lot facing the street is the front, and the longest frontage facing the intersecting street is the side, irrespective of the direction in which the structure faces.

(d) Building Overhangs: Any portion of the structure or appurtenant structure located on site which abuts and extends above the public right-of-way.

(e) Area of Elevation: Shall mean the total height and length of a building as viewed from off-site.

Section 8-3504. Notes.

(a) Grading will be permitted upon securing a grading permit only within areas where a Development Plan has been approved by the Town of Danville.

(b) Grading within the Downtown Business District shall be subject to the approval of the Chief of Planning and the Chief Building Official.

(c) Except as otherwise stated herein, the requirements of the Town of Danville and Town of Danville Municipal Code, as amended, shall apply.

(d) All access plans, necessary right-of-way dedications and improvements shall meet with the requirements and approval of the City Engineer.

(e) No construction shall be allowed within the boundaries of the Downtown Business District except that which complies with all the provisions of applicable building codes and the various mechanical codes related thereto. This refers specifically to Ordinance No. 119 and its future and subsequent amendments regardless of the provision of this supplemental text.

(f) Where regulations contained herein conflict with the regulations of Sections 82-16, 84-52 and 84-66 of the Town of Danville Municipal Code, the regulations of the Downtown Zoning District (Chapter 35) shall take precedence.

(g) The regulations identified in this Ordinance shall not supersede any previously approved P-1 rezoning for any specific property unless subsequent application is made pursuant to this Chapter.

(h) All signs located within the Downtown Zoning District shall be subject to the provisions of Section 88-6 of the Town of Danville Municipal Code, "Outdoor Advertising".

(i) Prior to, or coincidental with, the filing of any development plan, the developer shall submit a drainage plan to the City Engineer for his review and approval.

(j) No excavation or grading shall be made except in connection with the construction of an improvement. Upon completion thereof, exposed openings shall be backfilled and disturbed ground shall be finished and graded. Where not built upon or covered, all sites shall be landscaped consistent with the intent of this Ordinance.

(k) After commencement of any construction of structures or improvements, the property owner or designated agent shall diligently pursue the work thereon. Structures or improvements shall not remain in a partly finished condition any longer than reasonably necessary for completion thereof.

(l) No operation involving the manufacture, compounding, assembling, processing or treatment of any product, nor material stored on property within the Downtown Zoning District shall be injurious to public health and safety.

(m) Prior to any change in occupancy of any existing retail business structure, such new occupant shall be required to obtain a Certificate of Zoning Compliance to be issued by the Chief of Planning.

(n) Prior to accepting any application for processing of a development plan, the Chief of Planning shall determine the historical, archaeological and/or paleontological significance of the site. At the direction of the Chief of Planning, the applicant may be required to submit data from a qualified historical architect, archeologist and/or a qualified paleontologist, determining the significance of the site and making recommendations for preservation. The data submitted shall designate sites proposed to be destroyed by the project, sites which may be built upon and preserved, and sites significant enough to salvage. The archaeologist and paleontologist shall be notified of, and review, the test borings done by the soils engineer.

ARTICLE 2. DOWNTOWN BUSINESS DISTRICT AREAS; SPECIFIC USES AND DEFINITIONS.

Section 8-3510. Exhibit "B"; Land Use Areas.

There are nine (9) specific land use areas within the Downtown Zoning District which specifically limit land uses and are geographically delineated on Exhibit "B". The nine individual land use areas accommodate a mix of uses and guide development to proper locations within the Downtown area. The land use areas are defined in Sections 8-3511 - 8-3519 of this ordinance.

Section 8-3511. Area 1; Old Town Pedestrian Retail.

(a) Intent and Purpose: To allow for an intensely developed central core area including retail uses where merchandise is stored on-site and all transactions occur entirely within an enclosed building. This shall include any business which provides pedestrian interest and amenities but does not generate "stop and go" traffic. Uses in this area encourage shoppers to visit several stores after parking or arriving by public transit.

(b) Permitted Uses:

- (1) Retail businesses selling items such as, but not limited to, the following:
  - a. Accessories
  - b. Antiques/Clocks
  - c. Bakery/Restaurants/Taverns
  - d. Books
  - e. Candy
  - f. Creamery
  - g. Clothing
  - h. Delicatessens
  - i. Drug Stores
  - j. Dry Goods
  - k. Florist
  - l. Food Market
  - m. Gifts
  - n. Hobby Items and Shops/Toys
  - o. Jewelry
  - p. Linens
  - q. Liquor/Tobacco
  - r. Luggage
  - s. Music
  - t. Newsstand/office supply/stationary/cards

- u. Pets
- v. Photo supply/one hour developing
- w. Picture framing/art gallery/artist supply
- x. Shoes
- y. Sporting Goods
- z. Stamps/Coins

(2) Service/commercial uses providing services such as, but not limited to, the following:

- a. Barber/beauty shop
- b. Cultural improvement schools such as, but not limited to, music, dance and judo
- c. Escrow/title/notary public
- d. Financial institutions/banks/savings & loan
- e. Health/fitness club
- f. Insurance
- g. Interior decorator
- h. Investment Brokers/Mortgage Brokers
- i. Optical goods and services
- j. Places of cultural entertainment including museums, libraries and theaters
- k. Portrait studio
- l. Post office/parcel service
- m. Public utilities
- n. Real estate
- o. Travel Agency
- p. Other similar uses as described above shall be determined by the Chief of Planning

(3) Government Facilities

(4) Political, civic, eleemosynary and charitable organizations

(5) Accessory uses and structures where related and incidental to permitted uses.

(c) Development Requirements: A maximum floor area ratio (F.A.R.) of .8 (80% of the gross site area) is permitted. One hundred percent (100%) of the ground floor space shall be devoted to retail/ restaurant space as defined by Section 8-3531(b) along the main street frontage. Service/commercial businesses will be allowed to locate in 20% of the ground floor in courtyard areas of the main pedestrian access or in second stories provided such uses involve substantial pedestrian traffic on a daily basis, which provides further on-site service to customers as their primary activity and which are compatible with the immediate area. The regulations specified in this section apply to Area 1 on Exhibit B. (See map of Land Use Areas).

Total square footage of any second floor space shall not exceed 40% of the total building floor area and shall be devoted to retail, office or service/commercial uses.

Section 8-3512. Area 2; Old Town Retail Transition.

(a) Intent and Purpose: To provide a transition and buffer between the more intensely developed central business district (Old Town Pedestrian Retail; Area 1) and areas designated for commercial development (Resident Serving Commercial - Area 3). Permitted uses presented herein are intended to draw patrons from the pedestrian oriented uses in Area 1 on a limited basis due to the proximity of the pedestrian uses and the required off-site parking associated with Area 1. This area incorporates uses which require larger amounts of storage and staging areas while providing access to both the pedestrian and automobile user. The regulations specified in this section apply to Area 2 on Exhibit B. (See map of Land Use Areas).

(b) Permitted Uses:

- (1) Retail businesses selling or providing services such as, but not limited to, the following
  - a. Amusement places
  - b. Appliances
  - c. Auditorium
  - d. Bicycles
  - e. Bowling Alley
  - f. Business machines
  - g. Catering
  - h. Child care
  - i. Dance Hall
  - j. Emergency medical care
  - k. Floor coverings
  - l. Furniture
  - m. Game arcades
  - n. Hardware
  - o. Hotels/motels
  - p. Paint/wallpaper
  - q. Saddlery
  - r. Skating Rink
  - s. Television/radio
- (2) All uses as permitted in Section 8-3531; Area 1; Old Town Pedestrian Retail.
- (3) Accessory uses and structures where related and incidental to permitted uses.

(c) Development Requirements: A maximum floor area ratio (F.A.R.) of .8 (80% of the gross site area) is permitted. 50% of the ground floor space shall be devoted to retail/restaurant uses.

Section 8-3513. Area 3; Resident Serving Commercial.

(a) Intent and Purpose: To provide services for the convenience of residents and the general community. Uses for this area include those uses which are not compatible with uses in a traditional central business district (Areas 1 and 2). This area is provided to permit absorption of service/commercial uses now located elsewhere in Danville. The regulations specified in this section apply to Area 3 on Exhibit B. (See map of Land Use Areas)

(b) Permitted Uses:

- (1) Service/Commercial uses selling a service or providing products such as, but not limited to, the following:
  - a. Blacksmith
  - b. Business/professional/trade schools
  - c. Cabinet shop
  - d. Clothes/carpet/drapery cleaners
  - e. Copying/duplicating/printing
  - f. Equipment sales/rental
  - g. Glass shops and repair facilities
  - h. Gunsmith
  - i. Heating/air conditioning/plumbing supply and repair
  - j. Home improvement services
  - k. Janitorial supply and service
  - l. Laundromat
  - m. Locksmith
  - n. Miscellaneous repair of household goods and/or business equipment
  - o. Mortuary
  - p. Nursery and gardening sales and supplies
  - q. Nursing/convalescent home
  - r. Pool supply
  - s. Restaurant/tavern
  - t. Service station
  - u. Shoe/garment repair
  - v. Sign painting
  - w. Storage buildings
  - x. Upholstery supply/repair
  - y. Veterinarian hospital/boarding/pet grooming

- (2) Automotive oriented services including, but not limited to, the following:
  - a. Auto/boat/motorcycle/trailer/recreational vehicle sales or rentals
  - b. Auto wash
  - c. Auto repair (body, paint and tire) excluding wrecking and salvage
  - d. Auto upholstery
- (3) Bulk item retail such as but not limited to computers, spas, etc.
- (4) Wholesale/assembly/minor manufacturing plants with storage and processing incidental to retail operation where not offensive or objectional because of odor, dust, smoke, noise or vibration.

(c) Development Requirements: A maximum floor area ratio (F.A.R.) of .5 (50% of the gross site area) is allowed.

Section 8-3514. Area 4; Old Town Mixed Use.

(a) Intent and Purpose: To introduce uses that are consistent and compatible with the central pedestrian orientation of Area 1; Old Town Pedestrian Retail (Section 8-3531). The regulations specified in this section apply to Area 4 on Exhibit B. ( See map of Land Use Areas)

(b) Permitted Uses:

- (1) All uses included in Section 8-3531; Area 1; Pedestrian Retail and Section 8-3532; Area 2 Old Town Retail Transition;
- (2) All uses permitted in Section 8-3536; Area 6; Business and Professional Offices

(c) Development Requirements: A maximum floor area ratio (F.A.R.) of .65 (65% of the gross site area) is allowed.

Section 8-3515. Area 5; Commercial/Residential Mixed Use

(a) Intent and Purpose: To develop a mixture of uses serving to complement and support the retail and restaurant uses of Areas 1, 2 and 4. The regulations specified in this section apply to Area 5 on Exhibit B. (See map of Land Use Areas)

(b) Permitted Uses: The following uses shall be permitted:

- (1) Cinemas
  - (2) Day Care Facilities shall be considered as a permitted use when the entire land area contained in Land Use Area 5; Commercial/Residential Mixed Use is considered as a contiguous project to be coordinated and developed in its entirety.
  - (3) Hotel
  - (4) Housing (As defined in Section 8-3539).
  - (5) Office
  - (6) Public Uses: Such as but not limited to meeting rooms, theaters, auditoriums, libraries, etc. A minimum of 2 acres shall be devoted to Public Uses.
  - (7) Restaurants
  - (8) Retail (As defined in Section 8-3531 and Section 8-3532)
  - (9) Accessory uses and structures where related and incidental to permitted uses
- (c) Development Requirements: A maximum floor area ratio (F.A.R.) of .5 (50% of the gross site area) is allowed over the portion of the site to be developed with private uses. A maximum of 200,000 square feet of private development may be permitted on the site.

Section 8-3516. Area 6; Business and Professional Offices.

(a) Intent and Purpose: To allow a combination of commercial activity and business and professional offices in support of the general community, except for retail commercial sales which are not ancillary to the specifically permitted uses. Each use shall have sufficient parking on-site to support its function. Product handling storage and/or distribution is determined to be ancillary to the permitted uses referenced below and shall not significantly impact this area. A previous project has been developed for this area (REZ 84-5, VAR 84-33 and DP 84-30). In no way do the provisions of this Section alter the previous approvals. The regulations specified in this section apply to Area 6 on Exhibit B except as noted in Section 8-3504 (g). (See map of Land Use Areas)

(b) Permitted Uses:

(1) Professional Offices, including, but not limited to, the following:

- a. Accountants
- b. Attorneys
- c. Consultants
- d. Doctors, dentists, etc.
- e. Engineers, Architects, Planners, etc.

(2) Business Offices, including, but not limited, to the following:

- a. Advertising Agencies
- b. Answering services
- c. Banks and other financial offices
- d. Corporate headquarters
- e. Employment agencies
- f. Escrow and real estate companies
- g. Insurance companies
- h. Laboratories
- i. Newspapers
- j. Photographers, artists, etc.
- k. Public relations
- l. Secretarial services
- m. Travel agencies

(3) Hospitals

(4) Veterinarians

(5) Health Clubs

(6) Restaurants

(7) Government Facilities

(8) Political, civic, eleemosynary and charitable organizations

(9) Accessory uses and structures where related and incidental to permitted uses

(c) Development Requirements: A maximum floor area ratio (F.A.R.) of .65 (65% of the gross site area) is allowed.

Section 8-3517. Area 7; Retail.

(a) Intent and Purpose: To allow the continued use of the sites within this Area for retail business. Retail businesses are classified as those businesses which sell goods, wares and merchandise directly to the ultimate consumer. A previous project has been approved within this Land Use Area (DP 87-1, and VAR 87-2). The regulations contained herein in no way alter the Conditions of Approval of the previous project. The regulations specified in this section apply to Area 7 on Exhibit B (See map of Land Use Areas)

(b) Permitted Uses:

(1) All uses as permitted in Section 8-3531; Area 1; Old Town Pedestrian Retail

(2) All uses as permitted in Section 8-3532; Area 2; Old Town Retail Transition

(c) Development Requirements: A maximum floor area ratio (F.A.R.) of .35 (35% of the gross area) is allowed.

Section 8-3518. Area 8; Retail/Office.

(a) Intent and Purpose: To allow the continued use of the site within this area for Retail/Office use. This site was developed under an existing P-1 Planned Unit Area and maintains its own land uses and controls. The controls are stated in Conditions of Approval 3083-79, Planned Unit Development No. 84-8 and Development Plan No. 84-9. Any development within this designated area shall utilize the previously adopted standards. The regulations specified in this section apply to Area 8 on Exhibit B. (See map of Land Use Areas)

(b) Permitted Uses: As previously approved.

(c) Development Requirements: A maximum floor area ratio (F.A.R.) of .35 (35% of the gross site area) is allowed.

Section 8-3519. Area 9; Multi-family Residential.

(a) Intent and Purpose: To permit the continued use of properties in this land use area for multi-family residential uses consistent with the adopted land use designations in the General Plan. The regulations specified in this section apply to Area 9 on Exhibit B. (See map of Land Use Areas).

(b) Permitted Uses:

(1) All multi-family residential uses as described in the Town of Danville Municipal Code provided that said uses shall not exceed a density of 21 dwelling units to the acre.

(2) Senior Citizen Residential Facilities shall be permitted within the terms of this Ordinance and the Town of Danville Municipal Code with the following exceptions:

- a. Parking: Recognizing that a lower than normal parking ratio is appropriate for senior citizen housing, a reduced parking ratio will be determined based on studies submitted by project proponents and approved by the Planning Commission during Development Plan review.
- b. Density: A 25% density bonus may be allowed over the existing density cap for the provision of senior citizen housing.

ARTICLE 3.

REVIEW PROCEDURES.

Section 8-3525.

Development Plans.

All land within the Downtown Zoning District is designated a P-1 planned unit district and may be used as allowed and regulated in this Ordinance. No development is lawful in the Downtown Zoning District until a development plan for it has been submitted, and approved.

(a) Development plan application: Except as waived in writing by the Chief of Planning, the application for approval of a development plan consists of thirty (30) copies of each of the following:

- (1) A development plan, drawn to scale, indicating:
  - a. Proposed use(s) of all land in the subject area,
  - b. Existing natural land features, and topography of the subject area,
  - c. Circulation plan for all vehicular and pedestrian ways,
  - d. Metes and bounds of the subject property,
  - e. Location and dimensions of all existing structures,
  - f. Landscaping, parking areas, and typical proposed structures,
  - g. Anticipated grading for the development;

- (b) A written legal description of the subject area;
- (c) A preliminary report on provisions for storm drainage, sewage disposal and public utilities;
- (d) A residential density analysis of the subject area, and the estimated population resulting therefrom;
- (e) A statement of how the proposed development conforms to, and is consistent with, the general plan;
- (f) A request for development plan signed by the owner, and by the owner of any option to purchase the property or any portion thereof, if any;
- (g) Schematic drawings indicating the architectural design of all nonresidential buildings and structures and all residential buildings having attached units. Residential buildings utilizing zero lot line or cluster/patio design techniques shall be submitted. Single-family detached units on difficult topography may require design and placement review when requested by the Chief of Planning;
- (h) A statement of the stages of development proposed for the entire development, indicating the sequence of units and explaining why each unit standing by itself would constitute reasonable and orderly development in relation to the entire contemplated development where it is proposed to file final development plans by units for portions of the area to be covered by the preliminary development plan; and
- (i) Additional Requirements: The development plan drawn to scale, shall:
  - (1) Indicate the metes and bounds of the boundary of the subject property together with dimensions of lands to be divided;
  - (2) Indicate the location, grades, widths and types of improvements proposed for all streets, driveways, pedestrian ways and utilities;
  - (3) Indicate the location, height, number of stories, use and number of dwelling units for each proposed building or structure;
  - (4) Indicate the location and design of vehicle parking areas;
  - (5) Indicate the location and design of proposed landscaping;

- (6) Indicate the location and design of all storm drainage and sewage disposal facilities;
- (7) Provide an engineer's statement of the proposed grading;
- (8) Indicate the location and extend of all proposed land uses;
- (9) Indicate elevations of all buildings and structures;
- (10) Provide a statement indicating procedures and programming for the development and maintenance of public or semi-public areas, buildings and structures;
- (11) Provide a statement indicating the stages of development proposed for the entire development;
- (12) Provide any additional drawings or information as may be required by the Chief of Planning.

Section 8-3526            Approval Procedure.

(a) The application for development plan permit shall be submitted to the Planning Department for approval. The development plan shall be reviewed and acted upon by the Planning Commission. The Planning Commission's decision may be appealed to the Town Council within 10 calendar days, or it shall be deemed as final.

(b) A phased development plan may be approved by the Planning Commission in accordance with the sequence of units authorized by its conditions of approval, or upon a showing of good cause and that the proposed portion or unit would, standing by itself, constitute reasonable and orderly development in relation to the entire development.

Section 8-3527            Findings.

When approving and adopting the development plan permit application, the Chief of Planning and/or Planning Commission, as the case may be, shall be satisfied that:

(a) The applicant intends to obtain permits for construction within one year from effective date of plan approval;

(b) The proposed development plan is consistent with the Town's general plan;

(c) In the case of residential development, it will constitute a residential environment of sustained desirability and stability, and will be in harmony with the character of the surrounding neighborhood and community;

(d) In the case of the commercial development, it is needed at the proposed location to provide adequate commercial facilities of the type proposed, and that traffic congestion will not likely be created by the proposed center, or will be obviated by presently projected improvements and by demonstrable provisions in the plan for proper entrances and exits, and by internal provisions for traffic and parking, and that the development will be an attractive and efficient center which will fit harmoniously into and will have no adverse effects upon the adjacent or surrounding development;

(e) In the case of proposed industrial development, it is fully in conformity with the applicable performance standards, and will constitute an efficient and well organized development, with adequate provisions for railroad and/or truck access, service and necessary storage, and that such development will have no adverse effect upon adjacent or surrounding development; and

(f) The development of a harmonious, integrated plan justifies exceptions from the normal application of this Ordinance.

Section 8-3528                      Termination.

(a) Procedure: Development plan approval shall become null and void within twelve months after the Planning Commission's approval of the development plan if building permits for the construction specified in the final development plan have not been issued and construction commenced.

(b) Time Limit Exception: The time limitation in this section applies only to the first phase of a phased development plan; it does not apply after approval and implementation of such first development plan.

(c) Extensions: Upon showings of good cause, the Planning Commission may grant not more than two extensions of the time limitations set forth in subsection (a) above, each for no more than one year.

Section 8-3529                      Plan Changes or Amendments.

(a) Development Plan Change: Changes in the approved development plan and its conditions of approval, may be approved

by the Planning Commission, as with land use permit applications, except that it is the Planning Commission which hears and reviews them. The Planning Commission's decision is final unless appealed to the Town Council.

Section 8-3530            Variance Permits.

(a) Granting Procedure: Variance permits to modify the provisions contained in this Ordinance may be granted in accordance with those certain sections of the Danville Municipal Code pertaining to variances.

(b) General Plan Consistency: Such variance permit shall not be granted by the planning agency hearing the matter unless it finds that the variance is consistent with the general plan.

(c) Special Uses: Land use permits for the special uses as deemed appropriate by the Chief of Planning and variance permits to modify the provisions contained in Articles 2, 3, 4 and 5 of this Ordinance may be granted after application in accordance with Chapter 82-6 of the Town of Danville Municipal Code.

ARTICLE 4.            DEVELOPMENT STANDARDS.

Section 8-3535.            Architectural Development Standards.

(a) Intent and Purpose: To set forth specific architectural design guidelines for the rehabilitation of existing structures and the development of new structures in the designated Downtown area.

(b) Design objectives: To achieve design and aesthetic quality for integrated developments and/or general plan special areas of concern, the following design objectives shall be met:

- (1) Building bulk, height, land coverage, visual appearance from adjacent land, and design compatibility with existing adjoining development and land which will remain, shall be considered and controlled;
- (2) A development's design should successfully integrate individual buildings and building groups with the surrounding development, other physical features in the area, and existing development which will remain;
- (3) The design of structures should provide for harmonious composition of mass, scale, color, and textures, with special emphasis on the transition

from one building type to another, termination of groups of structures, relationships to streets, exploitation of views, and integration of spaces and building forms with the topography of the site and the urban or suburban character of the area.

- (4) Provisions are to be made for an efficient, direct and convenient system of pedestrian circulation, together with landscaping and appropriate treatment of any public areas of lobbies.
- (5) Off-street parking and loading areas should be integrated into the overall vehicular circulation system.

(c) Architecture: New and remodeled structures shall be compatible with the architectural character of Downtown Danville. This character embodies certain examples of existing historic buildings done in a frontier/victorian theme with recently completed new buildings and the stated design goals of the Downtown Master Plan. Structures need not be exact replicas of historic structures but shall be compatible in certain basic features. These features as enumerated herein are intended to provide for variation in architectural themes while creating the feeling of charm.

Buildings shall be sufficiently detailed through the use of projections and recesses to create architectural character consistent with buildings from the turn of the century. All materials shall be authentic and used in a historic manner.

Building projections including bay windows, balconies, porches, overhangs and arbors shall be combined with recessed entries, courtyards, and shared alleyways to create a variety of visual experiences that invite pedestrian usage of Downtown.

The following requirements shall be applied to all nine of the Land Use Sub Areas addressed by this Ordinance:

- (1) The overall scale of buildings and exterior spaces should be reduced into smaller components to create an appropriate pedestrian scale.
- (2) Building height shall not exceed two stories above grade or thirty five (35) feet, including architectural features and appurtenances such as, but not limited to, clock towers, identification monuments, chimneys and other similar features.

Existing multi-story buildings shall be scaled down to the pedestrian level with an articulated facade or pedestrian scale overhang, such as an awning or balcony when an application is submitted for further development.

(3) Construction Materials and Detailing:

The following construction materials and detailing are considered to be appropriate with the Downtown Zoning District:

a. Windows:

1. Windows above the first floor shall be placed in a regular pattern or patterns.
2. Victorian or other carpenter style windows with 2 X 4 bracketing framing, built out lintels and trim are encouraged.
3. Storefront windows shall emphasize vertical composition in a manner consistent with a frontier/victorian design theme. Vast plate glass panels should be avoided. Divided light windows are encouraged.
4. Wide or strip upper story windows are not appropriate. Flush mounted windows are discouraged. Nail-on windows shall not be permitted.

b. Materials and Colors:

1. Wood siding: Smooth finish horizontal butt and lap clapboard siding is appropriate. Decorative wood shakes are appropriate for the architectural style prevalent in the Downtown Business District.
2. Masonry: Sandblasted or used brick and certain types of stone, (consistent with the frontier/Victorian Theme), are considered appropriate when combined with wood siding or stucco.

3. Stucco may be considered appropriate if combined with the use of masonry. Exclusive use of stucco and the combination of wood siding and stucco are discouraged.
4. Materials not considered appropriate are those inconsistent with the present quality and character of Danville i.e., masonry including; lavarock, permastone, "antiqued" brick and slumpstone, and wood including; plywood siding, hard- board or pressboard, fiberglass wood panels, corrugated siding or plastic. "Glass Box" architecture is not appropriate for the Downtown Business District.
5. Building colors shall be consistent with the period's architectural theme of the building. Subdued background colors and colorful trim are generally encouraged.

c. Building Projections and Sidewalk Coverings:

1. Arbors:

Arbors are transparent trellis-like elements which can be used to emphasize building entries or outdoor activity spaces and provide protection from the elements. Arbors encourage overhead planting or hanging gardens to define a special area such as a plaza, scenic viewpoint or other outdoor space. Arbors add texture to the environment through creation of patterns of light and shade.

2. Awnings:

Awnings are opaque canvas or synthetic fiber coverings which provide shade from sun and protection from rain; protect windows from excessive heat-grain and glare; and act as scale reducing elements which create comfortable, aesthetically pleasing entrances. General use of awnings along

a row of contiguous buildings shall be coordinated and integrate the same general form and height. Signage may be attached to an awning, provided that it shall be restricted to the front flap and shall comply with all applicable area requirements. The materials, type and color of awnings shall be consistent in character with the building to which they are attached.

3. Overhead projections as described in this section are encouraged but they shall not be allowed to overhang the public right-of-way.

(d) Roofs: Roofs shall be a cohesive and an integral part of the building design. Roofs shall not dominate a structure but rather complement the structure in scale, height and mass.

- (1) Roof elements shall be similarly treated and architecturally integrated on all elevations of an entire perimeter of the building. The combination of incompatible roof elements (i.e. hip and mansard) shall not be permitted.

- (2) Roof lines shall provide interest in shape, color and texture.

- (3) Roof shape, color and texture shall be compatible architecturally with the perimeter walls of the structure.

- (4) All roof mounted mechanical and electrical equipment shall be fully integrated into the overall roof design so as to be totally screened from off-site view.

- (5) Decorative parapets, shakes and cornices may be used to terminate building facades. Mansard roofs are not considered appropriate within the Downtown Business District.

- (6) Materials: The following roof materials are considered appropriate for the design theme within this Area when designed as a Class A or B occupancy rating under the Uniform Building Code:

- a. Wood shingles

- b. Wood shakes
- c. Concrete tile, such that the architectural character of the Area is maintained.
- d. Artificial roof materials consistent with the historical architectural theme of the Downtown Zoning District may be considered if it can be demonstrated to the Chief of Planning that such materials meet the intent of this Ordinance, and only if such materials can be applied to create similar shades, shadows, textures, etc.
- e. Slate
- f. Built up roofing as applied to flat or minimally sloped roof structures. It is comprised of a combination of tar paper, hot mop material and asbestos type sheet roofing. Built-up roofing may be utilized when the architectural style of the entire structure is that of a "false front" providing that no portion of the roof structure may be viewed from off-site.

(7) Roof Pitch: The following roof designs and pitches are considered appropriate for the Downtown Zoning District:

- a. Hip and/or Gable roofs with a minimum roof pitch of 6:12 on roof structures visible from off-site.
- b. Flat/minimum pitch roofs will be permitted where a false front architectural building style is incorporated providing that no portion of the roof structure is visible from off-site.

(8) Roof Styles specifically prohibited: The following roof styles and designs are considered inappropriate for the Downtown Business District and will not be permitted:

- a. Mansard
- b. Shed
- c. Built up or flat/minimum pitch roofs such that they may be viewed from the off-site.

(e) Fascia and Soffit:

- (-1) Fascias, as the term is applied in this Ordinance, is that portion of an elevation which presents a flat horizontal band across the

building elevation that services to "finish" the detailing of the roof structure. Fascias shall be continuous and deep creating a unifying element that ties existing and new developments together visually.

- (2) For the terms of this Ordinance, a soffit is referred to as the horizontal underside of either eaves or building projections. Typically a soffit would cover a porch or walkway and provide shelter from the elements. Soffits shall be utilized wherever possible and shall incorporate lighting. Soffits shall be utilized to hang business identification signs.

(f) Storefronts:

- (1) Storefront design shall integrate the function and character of the building and the use with the pedestrian level streetscape.
- (2) Storefront design shall integrate all architectural features including interiors, storefronts, window displays and signage into a unified whole.

(g) Project Design:

- (1) In designing site plans and building forms or massing spaces, "positive" outdoor use spaces shall be created. These spaces shall be defined or partially enclosed by the building and designed to function as nodes.
- (2) Building edge treatment shall foster a sense of place by creating areas for sitting and walking. Long, straight building shapes which are uninviting and do not contribute positively to the streetscape shall be avoided.
- (3) False detailing is discouraged as it detracts from the integrity of the structure.
- (4) Detailing shall be an integral part of the building design and used appropriately throughout. It shall be used as it was in its historical context for the purpose of adding relief and shadow patterns to otherwise flat facades.

(h) Storefront Entries:

- (1) Awnings or overhead projections are encouraged in order to shade pedestrians and storefronts and provide a sense of arrival. They also help create pedestrian scale spaces.
- (2) Storefront windows shall project or be recessed for added shadow interest, especially on facades, with minimal relief.
- (3) Entries shall be designed as focal points to the pedestrian user through the use of color, charm and visibility.
- (4) Doors which feature glass as the primary material shall be french doors and contribute to the window display area of the storefront in areas with particularly small amount of street frontage.
- (5) Solid doors shall be finely detailed and trimmed so as to attract the pedestrian user.
- (6) Recessed entries are encouraged to create added window display area and allow for increased outdoor entry space for waiting, socializing or window shopping.
- (7) Rear and side entries shall be designed similar to front entries unless such entries are visually inaccessible.
- (8) Window coverings, including permanent and temporary signage, shall not block pedestrian views to the interior.

(i) Storage and Refuse Collection Areas:

- (1) All outdoor storage areas and refuse collection areas shall be screened so that materials stored within these areas shall not be visible from access streets, freeways, and adjacent properties.
- (2) Outdoor storage of all company owned and operated

motor vehicles, except for passenger vehicles, shall be screened from view from access streets, freeways, and adjacent properties.

- (3) Storage or refuse collection shall not be permitted within setback areas.

Section 8-3536. Landscaping Development Standards

The following landscaping development standards shall be incorporated within all projects in the Downtown Business District.

(a) General: All improved building sites shall have a minimum landscaped coverage of twenty (20) percent. Landscaping shall consist of an effective combination of sculpturing (berming and pruning), street trees, trees, ground cover, shrubbery, and hardscape and shall be provided with an automatic irrigation system. All trees shall be 15 gallon minimum. All shrubs shall be 5 gallon minimum. Shrubs used as ground cover shall be 1 gallon minimum. Dry landscape materials may be used in side and rear setback areas only. All unpaved, non-work areas (excluding vacant lots) shall be landscaped.

(b) Hardscape: Sidewalks, decks and patios shall be constructed using concrete, exposed aggregate, stamped concrete, bricks, brick pavers, wood decking, tile or terrazzo. The use of asphalt pavement is only permitted in driveway and parking areas. Hardscape shall consist of an effective combination of pavement materials which promote the architectural theme of the Downtown Business District and provide embellished walkways, plazas and gathering places which encourage pedestrian activity. No more than twenty-five (25) percent of the total landscape area may be hardscape.

(c) Boundary Areas: Boundary landscaping is required on all interior property lines where buildings do not abut a common lot line. The landscaping shall be placed along the entire length of these property lines and shall be of a sufficient width to accommodate the number of trees required. One (1) tree per thirty (30) linear feet of each interior property line, which may be clustered or grouped, shall be planted in the boundary area in addition to required ground cover and shrub material. Frontage landscaping along Hartz Avenue shall conform with the Streetscape Beautification Guidelines.

(d) Landscaping Requirements for Parking Areas: The following landscaping standards shall be required for parking areas on all projects within the Downtown Business District.

- (1) A planter or landscaped strip at least five (5)

feet in width shall be provided adjacent to street right-of-ways. Attempts should be made to screen the automobiles from off-site views with a combination of planting, berming and walls.

- (2) Driveway and parking areas shall be separated from adjacent landscaping by a wall or curb at least four (4) inches high, but no more than three feet six inches (3'6") high.
- (3) One (1) tree (15 gallon minimum) per each five (5) parking stalls, which may be clustered or grouped shall be installed within fingers or medians which project into the paved area. The intent of this section is to provide a vertical element in the horizontal row of automobiles and to create a canopy effect over the automobiles.
- (4) Dead corners and other waste areas shall be landscaped to provide a visual break in the paved areas.
- (5) Parking areas of more than five (5) parking spaces shall provide, in addition to the required parking area, and area equal to not less than five percent (5%) of the total parking area in landscaping. Within this designated area, an automatic irrigation system shall be utilized to assure watering of the landscaping.

(e) Pavement Markings: Pavement markings shall be utilized to indicate the direction of traffic flow, stall width and length and any other directional signage and marking required to insure the maximum utilization of space, sufficient traffic flow and general safety of persons using the parking area.

(f) Lighting: Parking lot lighting shall be required during the hours of darkness when the businesses utilizing the parking lot are open for business and for a reasonable period thereafter to insure the safety of the workers and patrons. Lighting shall be directed downward and all rays confined to the site. Lighting intensity shall be no greater than that required to reasonably light the parking areas.

(g) Access to public parking areas and curb cuts shall be so located as to insure an efficient and safe traffic flow into the parking areas and the public streets.

(h) Parking areas shall be designed such that vehicular parking does not overhang public right-of-ways, planters and landscaped strips. Parking stall depth may be decreased two (2) feet in length when it is desired to utilize a bumper overhang. However, the two (2) feet that is subtracted from the parking stall must be replaced by landscaping which the vehicle can overhang. This square footage area may be counted toward the required five percent (5%) landscaping within the parking area provided the remaining landscaping is significantly upgraded both in plant size and number of plants to create a more dense look.

(i) Within any of the Downtown Land Use Areas, parking areas shall be designed to prohibit vehicles from backing onto the public right-of-way.

(j) A minimum six foot high solid fence or masonry wall of a design acceptable to the Chief of Planning shall be provided along the edge(s) of any public parking areas adjacent to residentially designated property.

(k) A barrier curb or wheel stop at least six (6) inches in height shall be provided adjacent to landscaping, buildings and other areas located at sufficient distance to eliminate damage from automobiles utilizing the parking facilities.

(l) Undeveloped Areas:

- (1) Landscaping plans will incorporate provisions for interim landscaping including erosion control measures on all graded sites which will remain vacant prior to building construction.
- (2) Undeveloped areas will be maintained in a weed free condition.

(m) Landscaping Maintenance:

- (1) Lawn and ground covers are to be trimmed or mowed regularly. All planting areas are to be kept free of weeds and debris.
- (2) All plantings are to be kept in a healthy and growing condition. Fertilizing, cultivation and tree pruning shall be a part of regular maintenance.

- (3) Automatic irrigation systems shall be kept in working condition. Adjustments, replacements, repair and cleaning shall be a part of regular maintenance.
- (4) Stakes, guys and ties on trees shall be checked regularly for correct function. Ties are to be adjusted to avoid creating abrasions or girdling on trunks or branches.
- (5) All landscaping including sidewalks, patios and decks shall be repaired and cleaned as part of regular maintenance.

Section 8-3537. Lot Area.

All buildings or parts of buildings hereinafter erected or altered for use for retail businesses shall be situated on a lot at least thirty-five hundred square feet (3500) in area, and at least thirty-five (35) feet in average width.

Section 8-3538. Building Height.

No building, structure or portion of thereof shall be more than two (2) stories and thirty-five (35) feet in height from the highest point of ground elevation to the highest point of the structure. Maximum building height in Land Use Area 5 shall be similarly regulated except that a maximum of fifty (50) feet from the highest point of the natural ground to the highest point of the structure may be permitted. In all cases, the maximum height shall include roofs, roof projections, mechanical equipment and penthouses, microwave sending and receiving devices and all other projections.

Section 8-3539. Setbacks.

The following setbacks shall apply to improvements in all land use areas:

- (a) Side Yard Setbacks: No side yards are required.
- (b) Right-Of-Way Setbacks: Every structure erected for retail business use and every structure accessory to it shall be located at least ten feet from the boundary line of any existing road or highway.

Section 8-3540

Administrative Relief.

Administrative relief from the provisions of this Article may be granted by the Chief of Planning or the Planning Commission provided that the following findings can be made:

- (a). that the intent of this Ordinance will be preserved.
- (b). that the applicant/developer can demonstrate the regulations of this Ordinance are inapplicable to the characteristics of the Land Use Area in which the project is located.

ARTICLE 5.            PARKING STANDARDS

Section 8-3545

Purpose and Intent.

All land uses shall be provided with sufficient space located off-street for the parking of vehicles to meet the needs of persons employed at, or making use of, such land uses. No application for a building permit for the erection of a new structure or for the enlargement of an existing structure, or for the development of a land use, shall be approved unless it includes sufficient off-street parking facilities as required by this ordinance.

Section 8-3546

Basic Requirements For Off-Street Parking.

(a) Applicability to Existing Land Uses: Land uses in existence within the Downtown Zoning District on the effective date of this Ordinance, or for which building permits have been approved, shall not be subject to the requirements of this Section provided that any off-street parking facilities now required or serving such land uses shall not, in the future, be reduced below these requirements. Projects previously approved shall be required to comply with their original conditions of approval until such time as a new project is submitted and approved for the site. Any parking required by the original conditions of approval shall be maintained on-site. Existing on-site parking shall be maintained unless removal is consistent with the intent and purpose of this ordinance.

(b) Fractional Parking Space: Where the computation of required off-street parking spaces results in a fractional number, only the fraction of one-half or more shall be counted as one.

(c) Mixed Uses: Where property is occupied or intended to be occupied by two or more establishments falling into different classes of uses, the off-street parking requirement shall be the sum of the requirements for the various individual uses, computed separately; off-street parking provided for one use shall not be considered as being provided for any other use.

(d) Joint Parking Agreements: Joint parking agreements may be utilized when it is determined that all of the required parking cannot be met on-site or in the Town's Municipal Parking Lot. Joint parking agreements may be activated when the joint parking is to be provided on an adjacent lot but in no instance shall the distance from the adjacent parking to the proposed facility be greater than one hundred fifty (150) feet. Such parking shall be specifically designated for the uses to which it is assigned. The same parking spaces may not be counted toward the required parking for more than one use at a time. The applicant shall be required to provide evidence to the satisfaction of the Chief of Planning that the agreement is enforceable, provides a specified number of parking stalls and includes the length of time involved in the agreement.

(e) Shared Parking: Shared parking is specifically permitted in Areas 1, 2, 4 and 5. Shared parking shall result when a portion of the required parking is provided in the municipal parking lot and a portion of the required parking is provided on-site. Shared parking applies to the municipal parking lot where the same parking spaces are assigned to more than one use at one time.

Recognizing that Land Use Areas 1, 2, 4 and 5 as represented on Exhibit B are developed with high density retail businesses and the availability of on-site parking is limited, a twenty percent (20%) parking reduction may be considered pursuant to this section when it can be determined that a shared parking concept will be utilized. This parking reduction will only be allowed when a minimum of fifty percent (50%) of the required parking is purchased in the off-site public lot or when the development exceeds 40,000 square feet of gross building floor area.

(f) Tandem Parking: Tandem parking may be considered only when the parking is utilized to meet the needs of employees or valet services and is posted or designated as such.

(g) Compact Parking: Up to thirty percent (30%) of the required parking may be provided in compact stalls. The compact stall dimension shall measure a minimum of 8 feet by 16 feet. This depth of stall may be reduced by two (2) feet to permit front bumper overhang onto landscaped areas in accordance with the landscaping requirements referenced in Section 8-3521.

(h) Historic Preservation Parking Relief: Special consideration may be given by the Chief of Planning for a reduction in the total number of parking spaces required under the terms of this Ordinance to those properties having a qualified historic structure on-site.

(i) In-Lieu Fees: Assessment District 73/74 (Existing Municipal Lot, located at the northeast corner of Railroad Avenue and Prospect Street): Any property in the existing Municipal Lot District will receive credit for the actual amount originally paid into District 73/74 against payment of required in-lieu fees. In the case of multiple tenant buildings, the amount of the contribution shall be divided according to the total square footage occupied by each tenant.

(j) Administrative Relief and Parking Reductions: Administrative relief from the terms of this Ordinance may be granted by the Chief of Planning or Planning Commission provided that the following findings can be made:

- (1) That the intent and purpose of this Ordinance is maintained.
- (2) The applicant proposes measures, such as a transportation systems management plan, which makes the application of the strict requirements of this Ordinance inappropriate.

(k) Loading: Deliveries are encouraged in the Downtown Business District between the hours of 7:00 A.M. and 10:00 A.M. due to the commercial density of the area and the disruptive nature of loading activities. Each Development Plan shall be required to include provisions for off-street loading. A designated area, parking management plan or provisions for the use of a required parking stall to be utilized for loading during off business hours must be included as a part of the Development Plan submittal. Handicapped parking stalls may be utilized during hours in which the business being served is not open to the public.

Section 8-3547      Old Town Parking Area:

(a) Parking District Requirements:

- (1) Parking District A: The boundaries of Parking District A shall be contiguous with the boundaries of Land Use Area 1; Pedestrian/Retail as designated on Exhibit C. Proposed developments within Parking District A shall conform to the following standards and those standards as referenced in Section 8-3546 (b).

- a. A minimum of fifty percent (50%) of the required parking shall be provided off-site in municipal parking lots. Up to 100% of the required parking may be provided off-site in municipal lots.
- b. On-site parking shall be provided under ground.
- c. New curb cuts shall not be allowed on Hartz Avenue, Prospect Street, Linda Mesa Avenue, School Street, Church Street and Diablo Road.
- d. New development approvals that encompass more than one parcel of land shall attempt to consolidate existing curb cuts to the extent possible.

(2) Parking District B: The boundaries of Parking District B shall be contiguous with the boundaries of Land Use Area 2; Old Town Retail Transition and Area 4; Old Town Mixed Use as designated on Exhibit C. Proposed developments within Parking District B shall conform to the following standards and those standards as referenced in this Article.

- a. Twenty-Five percent (25%) (minimum and maximum) of the required parking shall be provided off-site in municipal parking lots.
- b. Surface on-site parking shall be allowed.

(b) Exhibit C; Parking Districts: The boundaries of these parking areas are detailed in Exhibit C as amended.

(c) Applicability:

Existing on-site parking shall be allowed until such time as any one of the following occurs:

- (1) Property in question is completely redeveloped with new structures and new uses, or
- (2) The property in question changes use or remodeling of the existing structure occurs which intensifies parking demand, or

(3) Additions or remodeling occurs to existing structures pursuant to the following requirements:

- a. The addition or remodel is less than 50% of the existing square footage of the structure, all new square footage added must comply with the new parking standards.
- b. The addition or remodel is greater than 50% of the existing square footage of the structure, then the entire square footage of the building, both existing and new, must be parked according to these standards.

Section 8-3548. Design And Layout:

Off-street parking areas shall be designed in such a manner as to conform to the following regulations subject to review by the Chief of Planning:

(a) Dimensions of the required off-street parking spaces and driveways shall have minimums as per the following table:

Angle of Parking (Degrees)	Stall Width	Curb Length	Stall Depth	Driveway Width
0	9'0"	22'0"	8'0"	12'0"
30	9'0"	18'0"	17'4"	11'0"
45	9'0"	12'9"	19'10"	13'0"
60	9'0"	10'5"	21'0"	18'0"
90	9'0"	9'0"	19'0"	24'0"

(b) All off-street parking facilities shall be designated with appropriate maneuvering areas and means of vehicular access to the main and auxiliary streets. Where the parking area does not abut a street, there shall be provided an access drive not less than twelve feet (12) in width in the case of one-way traffic and not less than twenty feet (20) in all other cases, leading to the parking area in such a manner as to secure the most appropriate development of the property in question.

(c) Required off-street parking areas shall be surfaced with an asphaltic or Portland cement binder pavement, or similar material so as to provide a durable and dustless surface and shall be so graded and drained as to prevent the ponding of water.

(d) Parking areas shall not be used for automobile sales, storage, repair work dismantling or servicing of any kind.

(e) Covered parking: Driveways providing access to parking areas with garages and carports taking access from either or both sides shall be a minimum of twenty-four (24) feet in width and all garage and carport spaces at an angle of sixty (60) degrees or greater shall be setback a minimum of four (4) feet on one side only, thus providing a twenty-eight (28) foot separation between structures and/or obstructions to facilitate vehicular turning movements.

Section 8-3549. Maintenance and Operation.

All required parking facilities shall be provided and maintained so long as the use exists which the parking areas were designed to serve. Off-street parking facilities shall not be reduced in total area, except when such reduction is in conformity with the requirements of this Ordinance.

Section 8-3550. Parking Requirements

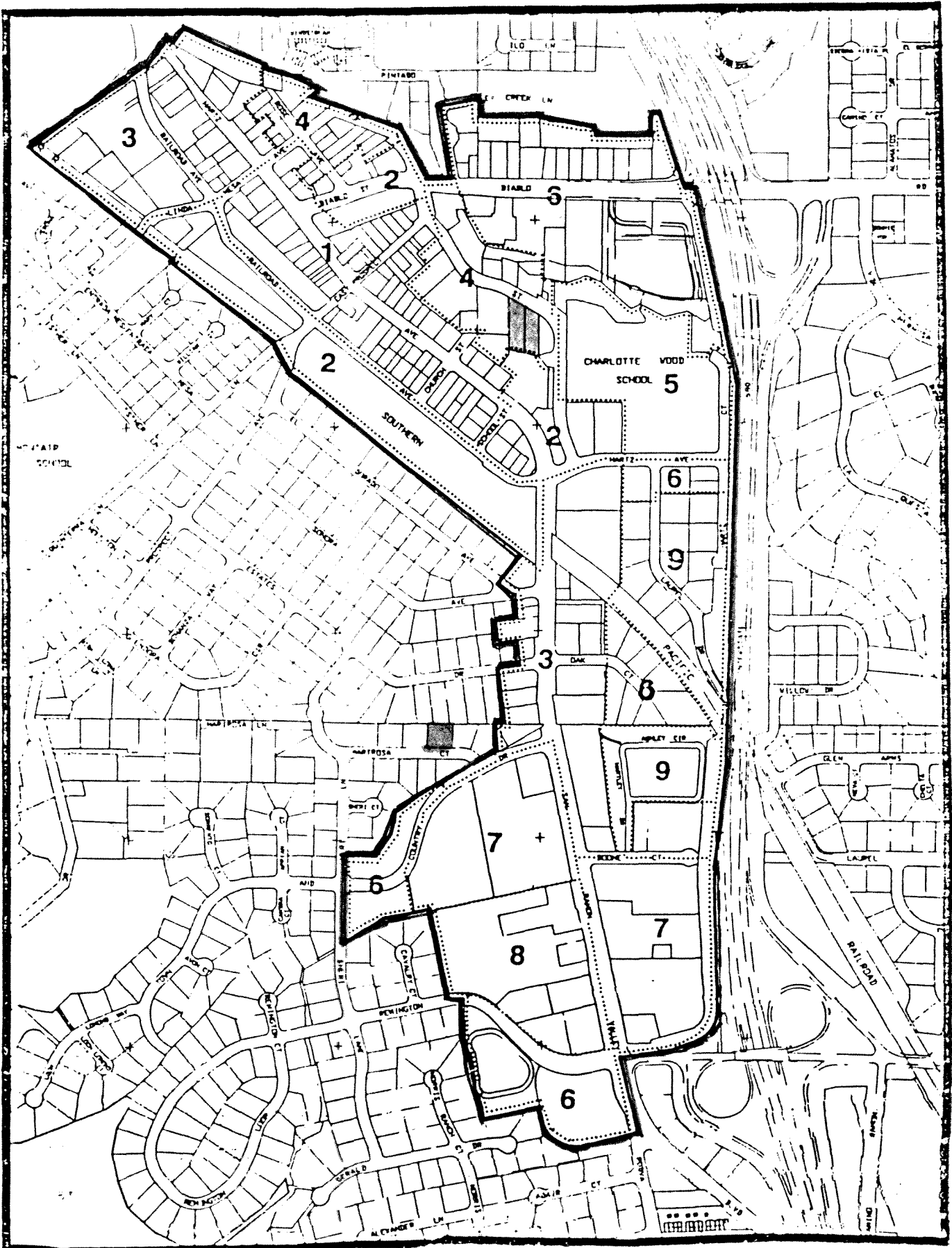
Off-street parking spaces shall be provided for each land use on the basis of the following schedules:

- (a) Hotels and Motels:  
One (1) space for each sleeping unit
- (b) Hospitals:  
One (1) space for each two (2) beds
- (c) Sanitariums, Convalescent Homes, Rest Homes, Nursing Homes:  
One (1) space for each three (3) beds
- (d) Churches:  
One (1) space for each three (3) seats. Eighteen (18) linear inches of bench shall be considered one (1) fixed seat.
- (e) Bowling Alleys:  
Five (5) spaces for each alley, plus one (1) space for each two (2) employees
- (f) Rooming and Lodging Houses:  
One (1) space for each bedroom

- (g) Auditoriums and Assembly Halls:
  - (1) With fixed seats:  
One (1) space for each four (4) fixed seats
  - (2) Without fixed seats:  
One (1) space for each forty (40) square feet of gross floor area
- (h) Night Clubs, Cocktail Lounges and Restaurants:  
One (1) space for each three (3) seats
- (i) Medical and Dental Offices:  
One (1) space for each fifteen (15) square feet of waiting room area, plus one (1) space for each examining room, dental chair or similar use area.
- (j) Banks, Business and Professional Offices, other than Medical and Dental offices:  
One (1) space for each Two Hundred Twenty Five (225) square feet of gross floor area
- (k) Retail Stores and Shops, except as otherwise specified herein:  
One (1) space for each Two Hundred Fifty (250) square feet of gross floor area
- (l) Commercial Service, Repair Shops, Wholesale Establishments and Retail and Wholesale Establishments where business is conducted primarily outside of buildings:  
One (1) space for each five hundred (500) square feet of gross floor area
- (m) Retail Stores which handle ONLY bulky merchandise, such as furniture, household appliances and automobiles: One (1) space for each five hundred (500) square feet of floor area.
- (n) Warehouses and other storage buildings:  
One (1) space for each one thousand (1,000) square feet of gross floor area
- (o) Mortuaries:  
One (1) space for each fifty (50) square feet of gross floor areas in the chapel areas
- (p) Multi-family Residential:  
Every apartment or dwelling unit shall have, on the

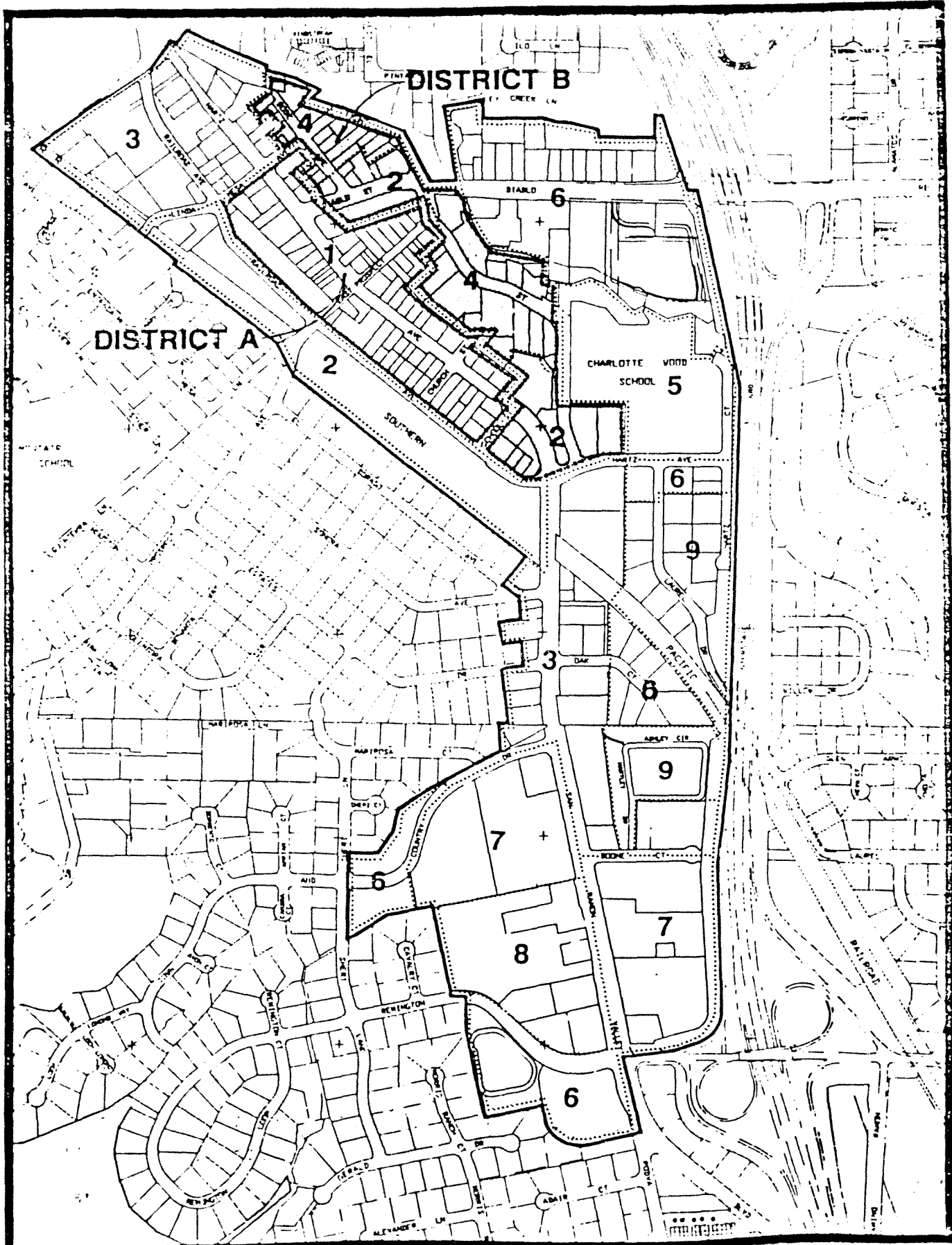
same lot or parcel, off-street automobile storage space as follows:

- (1) Studio dwelling unit:  
One (1) space
- (2) One bedroom dwelling unit:  
One and one-half (1 1/2) spaces
- (3) Two (2) or more bedroom units:  
Two (2) spaces plus one-quarter (1/4) space per each dwelling unit for guest parking, which may include available curb parking along the subject property's street frontage, and fractional amounts of which shall be rounded out to the next higher whole number of spaces.
- (4) Each space shall have minimum dimensions of nine (9) feet clear by nineteen (19) feet surfaced area, and shall not be located within the side yard or setback areas of the principal structure.
- (5) In no event shall there be less than one (1) covered space per dwelling unit regardless of unit design or the number of bedrooms. Covered parking spaces shall have minimum dimensions of nine (9) feet by nineteen (19) feet, clear of columns or carport structure.



**DOWNTOWN BUSINESS DISTRICT  
LAND USE AREAS EXHIBIT B**





**DOWNTOWN BUSINESS DISTRICT  
PARKING DISTRICTS EXHIBIT C**





# California Fair Political Practices Commission

September 5, 1989

Gregory L. McCoy  
Thiessen, Gagen & McCoy  
P.O. Box 218  
Danville, CA 94526-0218

Re: Letter No. 89-516

Dear Mr. McCoy:

Your letter requesting advice under the Political Reform Act was received on August 30, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh