

**ARTICLE 3. SETBACKS , COURTS AND OPEN SPACE**

**9-4.301 Setbacks.**

(a) **Minimum Setbacks.** The minimum setbacks of buildings from lot lines shall be as prescribed in Table 9-4-301(a).

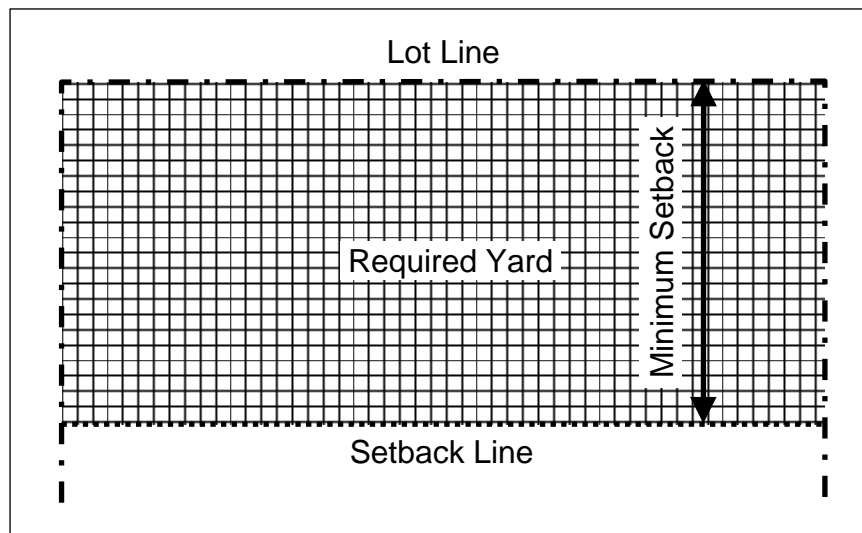
**Table 9-4.301(a): Minimum Setbacks**

Minimum Setback:		Residential Zones:		All Other Zones:	
		RH High Density Residential and RMH Medium High Density Residential	RM Medium Density Residential	Abutting a Lot in a Residential Zone	Not Abutting a Lot in a Residential Zone
Front	If the 2 adjacent lots are developed: <sup>1</sup>	Average of front setbacks on the adjacent lots.		Where street frontage abuts a lot in a residential zone, setback from street line shall be the same as required on the adjacent residential lot. <sup>2</sup>	None.
	If only 1 of the adjacent lots is developed: <sup>1</sup>	Same as front setback on developed lot but not less than 5 feet.	Same as front setback on developed lot but not less than 10 feet.		
	If neither of the adjacent lots is developed:	5 feet	10 feet		
	Corner lot, whether or not adjacent lots are developed:	5 feet	10 feet		
Street Side		3 feet			
Interior Side		3 feet		3 feet, plus an additional 2 feet for each 1 foot by which the height of the building on the nonresidential lot exceeds 30 feet.	None.
Rear		15 feet		10 feet, plus an additional 2 feet for each 1 foot by which the height of the building on the nonresidential lot exceeds 30 feet.	

- Notes: 1. Detached garages and accessory buildings shall not be considered in determining existing front setbacks.
2. Where a lot has frontage on two streets, and both such frontages are adjacent to property in a residential zone, the setback from the street line on each frontage shall be the same as required on the adjacent residential lot.

(b) **Determination of Minimum Setbacks and Required Yards.** Minimum setbacks and required yards shall be determined in accordance with the following definitions.

- (1) Setbacks and Yards are as defined below and illustrated in Figure 9-4.301(b)(1).
  - a. Lot Line. Any boundary of a lot, as further defined in Chapter 8.
  - b. Minimum Setback. The minimum setback distance prescribed in Table 9-4.301(a).
  - c. Setback Line. A line in the interior of a lot parallel to the lot line at a distance from the lot line equal to the minimum setback.
  - d. Required Yard. The area between the lot line and the setback line.

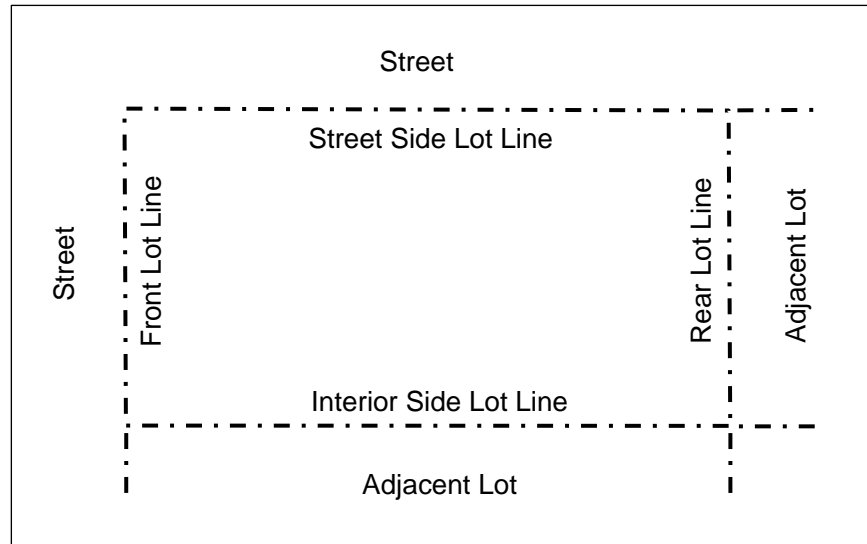


**Figure 9-4.301(b)(1): Setbacks and Yards.**

- (2) Front, Rear, and Side Lot Lines are as defined below and illustrated in Figure 9-4.301(b)(2).
  - a. Front. The lot line abutting a public street, with the following caveats:
    - i. Through Lot. A through lot that extends across a block has two front lot lines, one on each abutting street, and no rear lot line.
    - ii. Corner Lot. The front lot line of a corner lot shall be determined based on the development patterns of the lot and adjacent lots, and on the characteristics of the abutting streets. Where no Planning Commission or City Council approval is required, the Director shall determine the front lot line; the Director's determination may be appealed to the Planning Commission in accordance with the appeal procedures in Article 14 of Chapter 7. Where Planning Commission or City Council approval is required, the Commission or Council, as the case may be, shall determine the front lot line based on a recommendation from the Director.

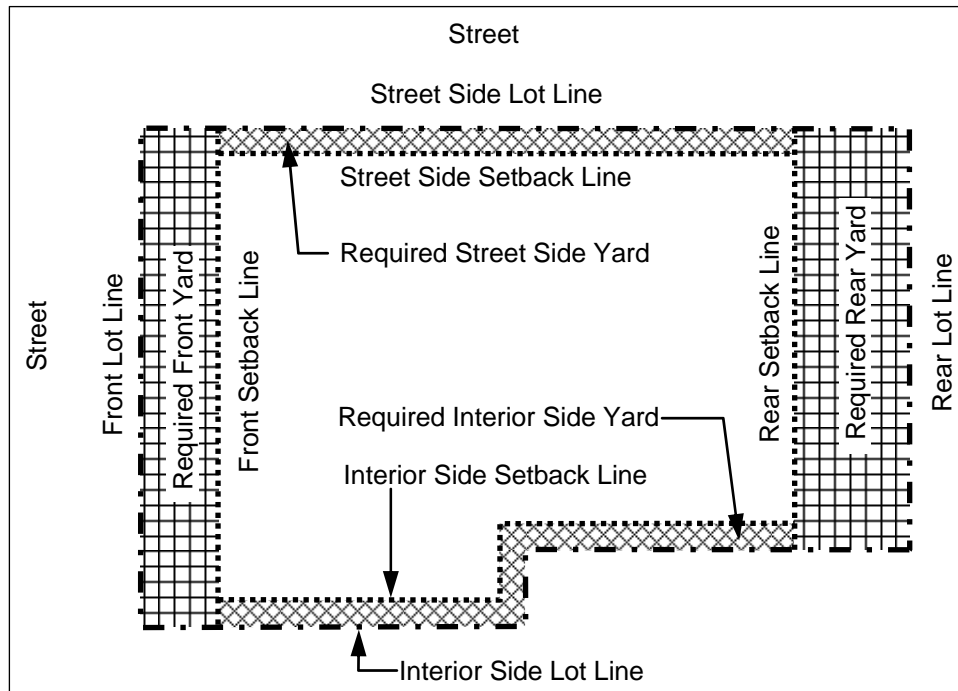
- b. Rear. The lot line most distant from and most closely parallel to the front lot line.
- c. Side. A lot line that is neither front nor rear, as follows:
  - i. Interior Side. A side lot line that does not abut a street.
  - ii. Street Side. A side lot line that abuts a street.

A corner lot has an interior side lot line and a street side lot line. A non-corner lot has two interior side lot lines.



**Figure 9-4.301(b)(2): Front, Side, and Rear Lot Lines.**

- (3) Required Yards. Required front, rear, and side yards are as defined below and illustrated in Figure 9-4.301(b)(3).
  - (a) Front Yard, Required. The area bounded by the front lot line, side lot lines, and front setback line.
  - (b) Rear Yard, Required. The area bounded by the rear lot line, side lot lines, and rear setback line.
  - (c) Side Yard, Required. The area bounded by the side lot line, side setback line, and front and rear setback lines. Note that a required side yard does not extend to the front or rear lot lines, and does not overlap the required front or rear yards. A required side yard may be either street side or interior side.
- (c) **Openness of Required Yards.** All required yards shall have pervious surfaces and shall be open and unobstructed from the ground to the sky, except as provided in subsections (d) and (e) below.



**Figure 9-4.301(b)(3): Required Yards.**

- (d) **Features Allowed in Required Yards Without Restriction.** The following features are allowed anywhere in any required yard without restriction:
- (1) Plant material including trees, shrubs, vines, hedges, and groundcover.
  - (2) Uncovered landscape features such as paths, benches, patios, flagpoles, sculptures and similar decorative features.
  - (3) Trellises and arbors to support vines and planting.
  - (4) Retaining walls, berms, earthen mounds, embankments, and other fill.
  - (5) Irrigation, drainage, and lighting systems.
  - (6) Utility poles, wires, and pipes.
  - (7) Stormwater treatment features required by Chapter 13 of Title 6.
  - (8) Disabled access features, including, but not limited to, ramps and mechanical lifts, if such features are in compliance with applicable requirements of the California Building Code and/or Americans with Disabilities Act.
  - (9) Entry features such as gates, arbors, and similar entry features not exceeding 8 feet in height, 10 feet in width, and 6 feet in depth.
- (e) **Features Allowed in Required Yards With Restrictions.** Certain features are allowed in required yards with restrictions as indicated in Table 9-4.301(e). The restrictions imposed by this subsection may be modified, and additional features may be allowed in required yards, upon the granting of a minor conditional use permit pursuant to Article 5 of Chapter 7.

**Table 9-4.301(e): Features Allowed in Required Yards With Restrictions**

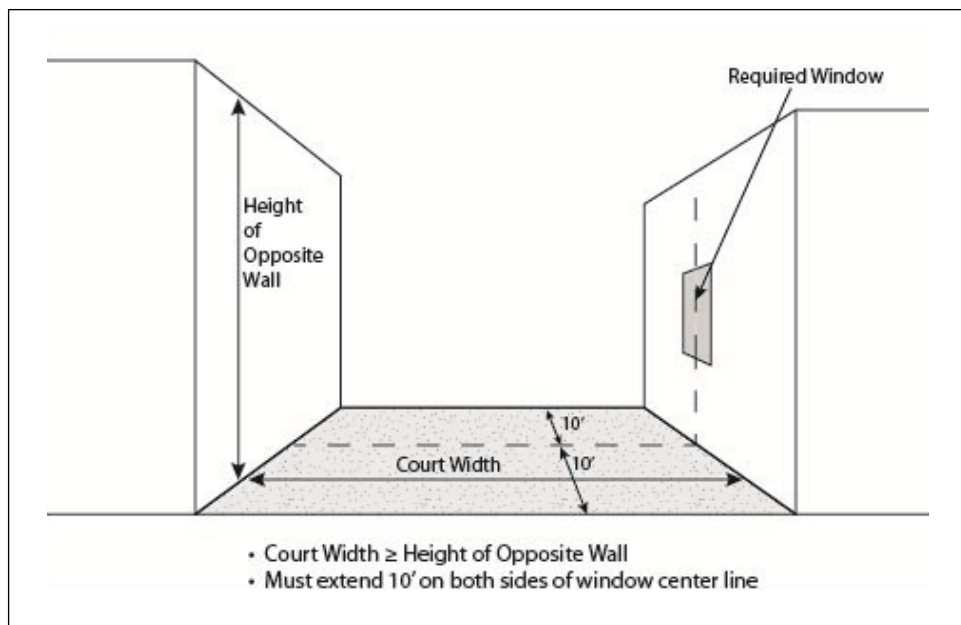
Feature	Distances that features may extend over setback line into required yard.			
	Front Setback	Street Side Setback	Interior Side Setback	Rear Setback
(1) Eaves; awnings, louvers, and similar shading devices; sills, cornices, and chimneys; and similar architectural projections from a building	3 feet	2 feet	2 feet	4 feet
(2) Patio roofs and similar structures if such structures do not exceed 12 feet in height and if each has open, unwallied sides along not less than 50% of its perimeter.	4 feet	2 feet	2 feet	No restriction.
(3) Breezeways and similar roofed passageways if they do not exceed 12 feet in height and 8 feet in width and are not enclosed on the sides.	4 feet	2 feet	2 feet	No restriction.
(4) Bay windows, if the aggregate width of bay windows on any one story does not exceed 50% of the length of the wall containing them, no individual bay window exceeds 15 feet in width, and all such windows are cantilevered only.	3 feet, but not to within 5 feet of the front lot line for a Single Unit or Two Unit Dwelling.		Not allowed.	5 feet
(5) Uncovered balconies or decks, including access stairs or ramps to balconies, decks, or doors.	6 feet, but not to within 5 feet of the front lot line for a Single Unit or Two Unit dwelling.	2 feet	2 feet	6 feet. No restriction for decks no higher than 30 inches from the ground.
(6) Exterior access facilities leading to the second or higher story of a building, including open or enclosed fire escapes and open, unroofed outside stairways, and landings.	4 feet	2 feet	Not allowed.	6 feet
(7) Covered porches, including access stairs and ramps.	8 feet, but not to within 3 feet of the front lot line for a Single Unit or Two Unit dwelling.	2 feet	2 feet	Allowed anywhere, but not to within 5 feet of the rear lot line.

Feature	Distances that features may extend over setback line into required yard.			
	Front Setback	Street Side Setback	Interior Side Setback	Rear Setback
(8) Air conditioners, compressors, hot tub motors, and similar devices if emitting noise readily noticeable by the average person at or beyond the lot line, whether or not the devices are attached to a building.	Not allowed.			Any distance, but not to within 5 feet of the rear lot line.
(9) Play structures, clotheslines, compost bins.	Not allowed.		No restriction.	
(10) Detached or attached garages, carports, sheds, trash and recycling enclosures, and other accessory structures no more than 10 feet in height and with no habitable space.	Not allowed.		Allowed anywhere, provided that the horizontal dimension parallel to the lot line is no more than 20 feet.	Allowed anywhere, provided that the horizontal dimension parallel to the lot line is no more than 20 feet, but not to within 3 feet of a street side lot line.
(11) Covered, underground or partially excavated structures including, but not limited to garages, wine cellars, and basements.	Allowed anywhere, provided that the surfaces of such structures are landscaped or developed as patios or terraces and do not extend more than 30 inches above finished grade.			
(12) Fences and walls.	Allowed anywhere, subject to the requirements of Section 9-4.505.			
(13) Short-term bicycle parking.	Allowed anywhere, subject to the requirements of Section 9-4.408(e)(2).			
(14) Signs.	Allowed anywhere, subject to the requirements of Article 15 of Chapter 5.			
(15) Radio or television antennas, including dishes.	Not allowed	Allowed anywhere but not to within 1 foot of the lot line, and subject to the requirements of Article 16 of Chapter 5.		
(16) Secondary Residential Units.	Not allowed.			Up to 5 feet from the rear lot line, and 3 feet from the side lot lines, subject to the dimensional requirements of Section 9-5.1408.

**9-4.302 Courts.**

Courts shall be provided between facing exterior walls of residential buildings on the same lot in accordance with the requirements of this Section. See Figure 9-4.302 for a general illustration.

- (a) **Opposite Living Room Windows.** The minimum width of a court opposite a living room window shall equal the height of the opposite wall, but need not exceed 50 feet, and shall not be less than 20 feet if there is a required window of a habitable room, as defined in the Building Code, in the opposite wall.
- (b) **Opposite Other Habitable Rooms.** The minimum width of a court opposite a window of a habitable room other than a living room shall equal the height of the opposite wall, but need not exceed 50 feet, and shall not be less than 14 feet if there is a required window of a habitable room other than a living room in the opposite wall.
- (c) **Dimensions of Courts.** Required courts shall extend horizontally ten feet in both directions from the centerline of a required window, and shall extend upward from the lowest floor level of the exterior wall containing the window.
- (d) **Design.** Courts shall be designed to provide adequate light and air to the adjacent residential units. To the maximum extent feasible, courts shall be landscaped and designed to provide amenities for residents such as patios, play areas, barbeques, and swimming pools, and may be counted towards the private and common open space requirements of Section 9-4.303.



**Figure 9-4.302: Courts**

**9-4.303 Open Space.**

**(a) Open Space Requirements.**

(1) Purpose. These requirements are intended to provide high quality open spaces for active and passive recreation. They establish minimum standards for the amount and type of open spaces required, the size of such spaces, and provisions for security and privacy.

(2) Multi-Unit Residential and Live/Work Uses.

a. Applicability and General Standards. A minimum of 60 square feet of required open space shall be provided per dwelling or live/work unit, consisting of 40 square feet of private open space and 20 square feet of common open space, except as stipulated below.

i. To the maximum extent feasible, each unit shall be provided with a private open space.

ii. Where infeasible to provide private open space, common open space may be substituted for private open space at the ratio of 2:1 (i.e. 80 square feet of common open space may substitute for 40 square feet of required private open space).

b. Driveways, loading, and service areas. Required open spaces may not be located in driveways, loading, and service areas, except in projects of ten units or less, and as permitted by a minor conditional use permit with the following provisions:

i. Driveways may constitute up to 50% of the total common required open space for a given project.

ii. A minor conditional use permit shall only be granted with the finding that the driveway was designed in such a way that is usable and pleasant, and minimizes conflict with parked vehicles.

iii. Suggested surface treatments include unit pavers, supported turf, and painted play courts.

iv. Vehicular access shall not infringe upon residents' use of the open space. The driveway must be clearly designed as common open space and include adequate traffic calming measures.

v. No surface parking may be placed within 15 feet of the edge of a play court.

(3) All Other Uses.

a. Applicability and General Standards. These provisions apply to new buildings or additions of 10,000 square feet of gross floor area or greater.

i. Residential Uses Other Than Multi-Unit Uses. Except as provided in Section 9-4.303(a)(5)a below, new buildings or additions that exceed 10,000 square feet shall provide a minimum area of



common open space and/or Privately Owned Public Open Space (POPOS) that totals at least five percent of the gross floor area.

ii. Commercial and Institutional Uses.

1. New buildings or additions that exceed 10,000 square feet but are less than 100,000 square feet shall provide a minimum area of common open space and/or Privately Owned Public Open Space (POPOS) that totals at least five percent of the gross floor area.

2. New buildings or additions that exceed 100,000 square feet shall provide a minimum area of common open space and/or Privately Owned Public Open Space (POPOS) that totals at least five percent of the gross floor area. Included in this requirement, the developer shall provide a minimum area of POPOS that totals at least one percent of the gross floor area.

iii. Industrial, Agricultural, and Communication, Transportation and Utilities Uses. New buildings or additions that exceed 10,000 square feet shall provide a minimum area of common open space that totals at least two percent of the gross floor area.

b. Open Space In-Lieu Fees for Nonresidential Projects. Instead of providing required open space pursuant to this Section, applicants for nonresidential projects may provide a payment of an open space in-lieu fee to allow the City to acquire sites for open space to meet the open space needs that cannot be supplied on site. An open space in-lieu fee shall be provided for nonresidential uses only as follows:

i. Open Space In-Lieu Fee Amount. The amount of the open space in-lieu fee shall be as set forth in the Master Fee Schedule

ii. Deposit of Funds. Open space in-lieu fees shall be deposited with the City of Emeryville prior to issuance of a building permit in the Citywide Parks Fund and shall be used for open space facilities, including property acquisition and development of open space facilities in Emeryville.

iii. Refund of Fee. An open space in-lieu fee may be refunded, without interest, to the person who made such payment, or his assignee or designee, if the project provides the required open space. To obtain a refund, the required open space must be in place prior to issuance of a certificate of occupancy and before funds are spent or committed by the City.

(4) Mixed Uses. Open space requirements for mixed use projects shall be the sum of the requirements of individual uses as provided in this Section.

(5) Exemptions. The requirements of this Section do not apply to the following situations:

- a. Uses Exempted. The following uses shall be exempt from the requirements of this Section:

**Residential Use Types**

Single Unit  
Two Unit

**Commercial and Institutional Use Types**

Arts and Entertainment  
Outdoor Entertainment  
Community Assembly  
Small  
Large  
Eating and Drinking Establishments  
Mobile Food Vendors  
Lodging  
Bed & Breakfast  
Marina  
Major Public Services  
Parking  
Recreation  
Outdoor  
Retail  
Outdoor Sales

**Industrial Use Types**

Storage and Distribution  
Outdoor

**Agriculture Use Types**

Community Gardens  
Outdoor Agriculture  
Animal Husbandry

**Communication, Transportation and Utilities Use Types**

Communication Facilities  
Transmission Towers  
Equipment within Buildings  
Transportation and Delivery Services  
Human-Powered

- b. The reconstruction of an existing building of which 50% or less of the floor area was destroyed or ruined by flooding, fire, wind storm, or some other natural disaster provided that reconstruction will not result in an increase in building size.
- c. Any use, building, or structure for which only a change of use is requested and which requires no structural modifications that increase its floor area by more than 10,000 square feet.

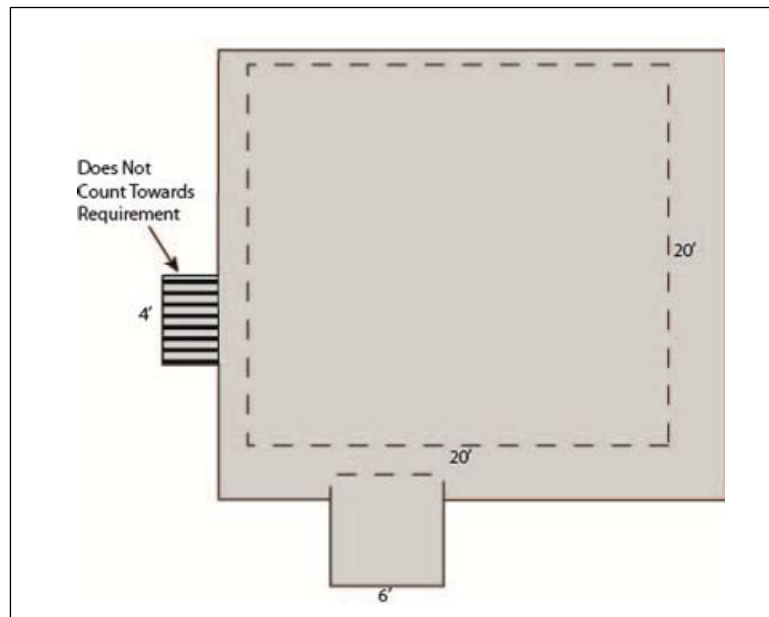
(b) **Open Space Standards.**

- (1) All Open Spaces.
  - a. Required open space must comply with the Emeryville Design Guidelines and any other applicable design guidelines.
  - b. Required open space must comply with relevant provisions in this Code including but not limited to: Landscaping and Screening (Title 9, Chapter 4, Article 5), Water Use (Title 9, Chapter 4, Article 6), Lighting and Illumination (Title 9, Chapter 4, Article 7) and Stormwater Treatment Design, Management, and Discharge Control Program (Title 6, Chapter 13).
  - c. Dimensions. All required open spaces except for private open spaces shall meet or exceed the following dimensional standards.
    - i. At least one open space within the project shall accommodate a square laid flat with minimum dimensions as specified in Table 9-4.303(b):

**Table 9-4.303(b): Minimum Open Space Dimensions**

Total Required Square Feet of Open Space	Dimensions of Square (in feet)
40-199	6 x 6
200-299	10 x 10
300-399	15 x 15
600-899	20 x 20
900 and up	25 x 25

- ii. A six foot by six foot square, laid flat, must fit within every part of the open space, as illustrated in Figure 9-4.303(b).



**Figure 9-4.303(b): Illustration of Minimum Open Space Dimensions.**

- d. Sun Exposure. Open space shall be located and designed to maximize exposure to the sun. Required open space must be 75% open to the sky, balconies and patios excepted. This does not preclude the use of removable shade features such as table umbrellas or retractable awnings.
  - e. Surface materials. Surface materials shall contribute to usability, be dust free, and be as pervious as possible. Examples include ground cover, flagstone, wood planking, unit pavers or other serviceable surfacing.
- (2) Private Residential Open Space.
- a. Definition. Private open space is an individual yard, patio, porch, or balcony directly accessible from the dwelling unit for which the open space provides an opportunity for private outdoor recreation and relaxation.
  - b. Dimensions, access, and placement.
    - i. In order for private open space to count toward the minimum required open space, a five foot by six foot rectangle, laid flat, must fit within every part. This requirement includes balconies.
    - ii. A private open space may not be more than 36 inches above or below the threshold of the doorway serving as its primary access.
  - c. Screening of private open space.
    - i. Acceptable screening materials include wood, painted or anodized metal, vegetation, masonry, ceramic and other materials deemed acceptable by the Director.
    - ii. If a private open space is located adjacent to a common open space or public right-of-way, it shall be screened with a barrier, such as a decorative wall, hedge, or landscaping, which is at least three feet tall and at least 50% solid.
    - iii. Balconies, patios, and porches. No more than 50% of the perimeter of balconies, patios, and porches not abutting the building may be enclosed by anything more than four feet tall. Anything more than four feet tall shall be transparent.
  - d. Each private open space greater than 40 square feet shall only count as 40 square feet toward private open space requirements.
  - e. Required private open space may not be located in required front yards.
- (3) Common Open Space.
- a. Definition. Common open spaces are courtyards, sport courts, play areas, and gardens for communal use within a development.
  - b. Access and Placement, Residential Development.
    - i. When feasible, the primary route to an interior unit shall be through common open space.

- ii. When feasible, a common open space should be directly visible and accessible from all of the units it is intended to serve.
  - c. Screening. Ground level common open space shall be enclosed by buildings, or have partially transparent screening or landscaping, such as a fence, decorative wall, hedge, or tall grasses.
  - d. Required open spaces may be located on rooftops.
  - e. A planted area shall be provided within the common open space that consists of at least 25% of the required common open space.
  - f. All required common open spaces shall include one seat or 30 inches of bench or seat wall for every 100 square feet of required open space.
  - g. All required common open spaces shall provide one tree per 1,000 square feet of required open space.
- (4) Privately Owned Public Open Space (POPOS)
- a. Definition. Privately owned public open space are courtyards, plazas, parks, walkways and gardens for use by the public on privately owned land.
  - b. Dimensions, access, and placement.
    - i. A minimum of 25% of the perimeter of all POPOS must abut a sidewalk or a publicly accessible pathway.
    - ii. POPOS shall not be more than three feet above or below an adjacent sidewalk or, if not, shall be served by a publicly accessible pathway.
    - iii. Privately owned public open spaces shall include signage that is located in a publicly conspicuous place stating that the open space is available for public use and the hours of use. If the POPOS is within three feet above or below the sidewalk level, a sign must be located at the sidewalk level. If the POPOS is more than three feet above or below sidewalk level, a sign must be located at both the public access level and at the sidewalk level. There shall be a sign at each public access point with a minimum of one sign per street frontage. Each sign shall be at least two square feet.
    - iv. Required open space shall be directly and conveniently accessible to the general public at least during all hours that City of Emeryville parks are open pursuant to Chapter 24 of Title 5.
  - c. POPOS may be located on rooftops provided that they meet all of the other requirements of this Section.
  - d. A planted area shall be provided within the POPOS that consists of at least 25% of the required open space.
  - e. All POPOS shall include one seat or 30 inches of bench or seat wall for every 100 square feet of required open space.
  - f. All POPOS shall provide one tree per 1,000 square feet of required open space.