

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

2006 MAY 11 AM 9:17

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: May 23, 2006

RE: **Ordinance Extending the Interim Controls for the Implementation of the Oakland General Plan to December 31, 2007**

SUMMARY

Staff is proposing a two year extension of the Interim Controls (Oakland Planning Code Chapter 17.01) that provide a process for evaluating a project where the Land Use and Transportation Element of the General Plan (LUTE) and Planning Code are inconsistent. These regulations are required frequently in the Planning Division because, despite several accomplishments by the Planning Division, the Planning Code and Map have not been comprehensively revised to become consistent with the LUTE. The Interim Controls lapsed on December 31, 2005, but it is not uncommon for interim controls to be extended in this manner.

Staff recommends adoption of the ordinance because not extending the Interim Controls would create confusion and uncertainty among the community, developers, city staff and land use decision-makers (Planning Commission and City Council). A specific set of tasks has been outlined in order to complete key parts of the rezoning within the two year timeframe that is being requested.

FISCAL IMPACT

Adoption of this ordinance will not have any direct impacts on City revenue. The City Council has previously established a surcharge on planning and building permits to fund zoning updates and General Plan revisions. The surcharge became a permanent part of the City's Master Fee Schedule in June, 2003 and hence does not need to be extended. Current planning activities are funded through permit application fees. A detailed six year summary of the revenues collected and expenditures made under the General Plan surcharge are attached to this report as requested by the Rules Committee on April 27, 2006.

BACKGROUND

In March of 1998, the City of Oakland adopted the LUTE and an associated land use map. These documents lay out the City's vision for future development and represent the land use "constitution" for the City. All of the City's land use decisions and plans must be generally consistent with these documents.

Item: _____
CED Committee
May 23, 2006

The development standards contained in a city's Planning Code and zoning maps should directly implement the intent of the General Plan. However, revisions of these zoning documents were not made at the time of the passage of the General Plan, creating several conflicts between the General Plan, the Planning Code, and the Zoning Map. For instance, there are several areas of the City where the LUTE encourages more intense development patterns than allowed by the Planning Code, such as downtown and along the City's corridors and public transportation routes. Also, several areas have an industrial zoning designation but a residential LUTE designation because a neighborhood contains predominantly single family homes. Conversely, several areas are residentially zoned that the LUTE designates as commercial or industrial.

In May 1998, the City Council adopted Ordinance Number 12504 C.M.S. to bridge this gap. Ordinance 12504 C.M.S. created Interim Controls in the Planning Code (Chapter 17.01) that provided a process for evaluating projects where the LUTE and the Planning Code are inconsistent. For instance, the interim controls provide a process to approve a project that is encouraged by the LUTE but not allowed by the Planning Code. The specific procedures required for a development to gain approval when this conflict occurs is contained in Chapter 17.01 of the Planning Code, which also authorized the Planning Commission to adopt detailed implementing regulations -- the "Guidelines For Determining Project Conformity with the General Plan and Zoning Regulations." These General Plan Conformity Guidelines also provide the procedure to determine whether a project conforms to the General Plan in terms of development intensity and activity.

Section 5 of Ordinance Number 12504 C.M.S. states that these Interim Controls shall expire after a three year period but may be extended for an additional two years. The Interim Controls were subsequently twice extended for two years by the City Council in 2001 and 2003, but lapsed in December 2005. However, it is not uncommon for interim controls to be extended in this manner.

PROGRAM DESCRIPTION

Progress and Major Work Accomplished 2003-2005. Since 2003, the Planning staff has accomplished several strategic planning objectives, including:

- Finalization of the new Housing and Business Mix (HBX) Zoning District and design guidelines that implement the Housing and Business Mix General Plan land use designation. This new zone has been through Planning Commission review with a recommendation to adopt. It is tentatively scheduled for the City Council's consideration at the June 13, 2006 CED Committee.

- Preparation of Zoning text amendments to expand the geographic areas for single family residential design review, consolidate the various single family design review procedures into one unified process and make it more efficient. This item has been scheduled for the CED Committee meeting of June 13, 2006.
- Consolidation and comprehensive reformatting of the zoning chapters and other chapters of the Planning Code to be more user friendly and to remove redundancies. This effort has been reviewed by the Zoning Update Committee (ZUC), a subcommittee of the Planning Commission, where it was recommended to be heard in front of the full Planning Commission. It is expected that this will be brought to the Planning Commission for consideration by September, 2006 and forwarded to the City Council for consideration during October, 2006.
- Adoption by the City Council of a new Safety Element of the General Plan.
- Adoption by the City Council of a new Housing Element of the General Plan.
- Adoption by the City Council of a new Noise Element of the General Plan.
- Preparation of draft development of new zoning regulations for industrial areas; revisions to the land use classification section of the Planning Code; draft policies for the General Plan LUTE that would strengthen retention of industrial land uses and provide findings for when industrial lands could be converted. This work is expected to be completed by the ZUC and Planning Commission during the summer with public hearings before the City Council during October, 2006.
- Preparation of a Mills Act Historic Preservation Contract and related amendments to the Historic Preservation Element of the General Plan. It is expected that this will be brought to the City Council for consideration in June, 2006.
- Preparation of analysis and mapping rezone properties on Skyline Blvd. and Panoramic Hill. It is expected that this will be brought to the City Council for consideration in May, 2006.
- Adoption of Butters Canyon rezoning.
- A recommendation by the Planning Commission to the City Council to adopt a Lot Merger Ordinance that would reduce the development potential of adjacent substandard lots that are owned by the same entity. It is expected that this will be brought to the City Council for consideration by September, 2006.

Item: _____
CED Committee
May 23, 2006

- Completion of the General Plan analysis, required amendments and new zoning districts for the major projects at 16th and Wood Mixed Use Project and the Oak to Ninth Project.
- Completion of the General Plan analysis and rezoning for the Oakland Army Base to make the land use designations consistent with the proposed uses once the land exchange takes place between the Port and the City in August, 2006.

Delay in Completion of Zoning and General Plan Update Effort. During the past two years, there has been a huge jump in the number of current planning projects, both large and small. This high level of activity has necessitated moving staff to current planning projects in order to keep up with demand. In addition, two key members of the strategic planning staff got promoted to positions in the Redevelopment Agency and three more resigned their positions. The vacant positions were filled by staff who were assigned to focus on current projects. One strategic planner remains in the division. Thus, the revised set of zoning standards and a revision of the Zoning Map to implement the LUTE have been delayed.

As part of the FY2005-07 Mid Year Budget Review, staff has proposed several new planning positions in order to accommodate both current planning projects and strategic planning efforts. Six new positions have been proposed; two of these will be dedicated to strategic planning and another one will have major responsibilities in strategic as well as current planning. The three other planning positions will focus on current planning duties.

Delay also resulted due to rethinking some procedural and substantive portions of the new draft zones. The Development Director believed that a more straightforward approach with objective standards and criteria was superior to detailed sets of findings and more general policies. This approach would enable planning staff to more effectively present the City's standards and expectations for development. Under this direction, the Planning Code would become a more streamlined set of development standards, regulations and procedures, accompanied by various sets of design guidelines that would be developed for various smaller planning areas of the City. The Development Director also made a determination that amending and revising the current Planning Code was a superior approach rather than a wholesale replacement.

In summary, major accomplishments have been achieved during the past two years and a number of long term efforts are about to be brought forward for final review and consideration, including the HBX zones, the Mills Act and the reformatting of the current Planning Code. However, critical tasks remain in order to complete the update process. These are outlined in the next section of this report.

KEY ISSUES AND IMPACTS

Importance of Extending the Ordinance. Staff requests approval of the ordinance currently in front of the City Council to extend the Interim Controls and continue to implement General Plan Conformity Guidelines until December 31, 2007. Given the amount of time that has transpired, a more focused strategy is necessary to accomplish some key pieces of the remaining work. This strategy includes:

- The recent direction from the City Council concerning industrial zoning policy;
- The retail revitalization strategy for the Broadway corridor, given the land use changes occurring with car dealerships and housing construction;
- The neighborhood planning and design guidelines for each of the City Council districts in conjunction with remapping and cleaning up zoning districts to be consistent with the General Plan LUTE and vice versa.

Adoption of the ordinance will allow the City to continue its development permitting processes in areas where the LUTE and the Planning Code are in conflict. Several impacts could result if the City does not adopt the ordinance:

- The City would have no procedure to evaluate whether a project's land use intensity and activity adheres to the LUTE, the City's most important land use plan (land use intensity is measured by residential density and floor area ratio. Examples of land use activities are retail, residential, and manufacturing).
- The City would have no standardized process to control incompatible land uses in many parts of the City. For instance, the City would not have a standardized process to deny an application for a factory use in a single family residential neighborhood with a residential LUTE designation but an industrial zoning designation. This situation occurs frequently because zoning designations have been modified over time in an inconsistent manner and thus several areas have an inappropriate zoning designation.
- There would be no standardized process to evaluate projects that implement the intensities encouraged by the General Plan along the City's corridors and downtown. This would create confusion and uncertainty among the community, developers, city staff and land use decision-makers (Planning Commission and City Council) as there would be different expectations for how to evaluate projects.

Not adopting the extension may place the City in a difficult situation. For instance, if a development is denied because it is inconsistent with the General Plan, a developer could argue

in court that the project should have been approved because it is consistent with the zoning designation. Conversely, an approved development consistent with the LUTE could be subject to a lawsuit against the City because it is not consistent with the Zoning.

In short, not adopting the ordinance would create confusion and uncertainty among the community, developers, city staff and land use decision-makers (Planning Commission and City Council) as there would not be a consistent set of procedures and expectations for how to evaluate projects and this could result in the City having to defend more lawsuits challenging land use decisions.

Framework for Completing the Remaining Key Tasks for the Zoning and General Plan Update Process. At this point, with current planning applications continuing at a high and sustained level, the next two year period would still not be enough time to complete the process given existing and proposed staffing levels. Staff believes that a more strategic approach is required, with annual monitoring on progress of the efforts.

The following description of major work tasks is realistic given projected current planning application loads, existing staffing levels and implementation of major projects underway (Jack London Square Redevelopment, Kaiser Hospital Expansion, Uptown and Wood Street Mixed Use Project). While these tasks would not result in the completion of the Zoning-General Plan Update Project, it would certainly bring the City to the point of substantial completion.

Group 1:

- a. Complete HBX Zone adoption process
- b. Complete the zoning text amendment project
- c. Complete the single family design review zoning revisions.
- d. Complete Mills Act adoption

Target Date for Completion: September – November, 2006

Group 2:

- a. Complete revisions to the One and Two Unit Design Review Guidelines Manual (Interim Manual adopted by the Planning Commission in 2005 – revisions and reformatting need to be completed.)
- b. Complete the Multiple Unit – mixed use Design Review Manual (request for proposals will be released during the next two weeks.) This manual is an update of an old set of guidelines. The new manual will be the base document of the effort outlined in Group 3.
- c. Complete the revisions and base documents for the industrial zones, following Planning Commission and City Council direction pertaining to re-mapping zoning and General Plan land use designations. The new industrial zoning districts have been drafted; they need to be

Item: _____
CED Committee
May 23, 2006

revised to reflect current policies and strengthen the industrial land preservation policies of the General Plan.

- d. Complete the required base studies and draft a retail-mixed use overlay zone for the Broadway corridor for consideration to the Planning Commission and the City Council.

Target Date for completion: November 2006-February 2007

Group 3:

- a. Complete one neighborhood planning – design and rezoning effort in a portion of every Council District, beginning with key areas of concern. Some suggestions include:
 - The Temescal District, Fruitvale District and other neighborhoods slated for increased density and commercial activity along major corridors such as Telegraph, San Pablo, MacArthur and International Boulevards.
 - West Oakland mixed use – housing vs. retention of industrial activities.
 - Eastlake and San Antonio Districts down-zoning in order to retain neighborhood character and improve design quality for new development.
 - Hill areas – consideration of slope density, drainage, geotechnical and other infrastructure considerations for steep hillside lots.

Target Date for completion of three studies: September 2006 to June 2007

SUSTAINABLE OPPORTUNITIES

Economic: Adoption of the ordinance will increase job opportunities and housing in the City by allowing a more efficient development review process.

Environmental: Adoption of the ordinance will alleviate transportation related pollution and preserve natural open space by allowing a greater degree of infill development along transportation corridors.

Social Equity: Increased housing and jobs benefit citizens of all income levels.

DISABILITY AND SENIOR CITIZEN ACCESS

All new development accommodated by this ordinance will be required to comply with the Americans with Disabilities Act.

Item: _____
CED Committee
May 23, 2006

RECOMMENDATION(S) AND RATIONALE

Staff recommends adopting the proposed ordinance that approves a two year extension of the Interim Controls and related General Plan Conformity Guidelines. Staff also suggests that the Council, by separate motion, request staff to submit a status report to the City Council after one year to assure completion dates are accurate. Staff makes this recommendation, because, as discussed in the Key Issues and Impacts section, not adopting the ordinance would create several legal and development processing problems for the City.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the attached ordinance.

Respectfully submitted,



Claudia Cappio
Development Director, CEDA

Prepared by:
Neil Gray, Planner III
Planning and Zoning Division

APPROVED AND FORWARDED TO THE
CED COMMITTEE:



OFFICE OF THE CITY ADMINISTRATOR

Attachments:

Proposed Ordinance

Revenues and Expenditures Summary for General Plan Surcharge

Ordinance No. 12515 re: General Plan Surcharge (2003)

Item: _____
CED Committee
May 23, 2006

Revenue and Expenditure Summary for the General Plan Update

FY 2000 to 2006

FISCAL YEAR	REVENUE	EXPENDITURE	BALANCE
FY 00-01	549,117.65	195,735.86	353,381.79
FY 01-02	517,775.49	466,772.79	51,002.70
FY 02-03	502,824.97	384,365.97	118,459.00
FY 03-04	410,661.87	855,350.35	(444,688.48)
FY 04-05	538,153.26	614,973.16	(76,819.90)
FY 05-06	551,539.00*	180,593.30 *	370,945.70 *
TOTAL	3,070,072.24	2,697,791.43	372,280.81

* Data through 4/24/06

General Plan Update - Staffing report for FY 2005-06 and FY 2004-05:

FY 2005-06			
Org	FTE	Budgeted Annual Salary	Budgeted Position
88211 - Major Projects	0.50	99,906	Project Manager III
88219 - Zoning	1.00	95,352	Project Manager III
88219 - Zoning	1.00	164,376	Manager Zoning
88229 - City Planning Other	1.00	71,148	Planner I
88229 - City Planning Other	1.00	111,240	Planner III
TOTAL	4.50	542,022	

FY 2004-05			
Org	FTE	Budgeted Annual Salary	Budgeted Position
04111 - City Attorney Admin Unit	1.00	87,770	Paralegal
04311 - Advisory Unit	1.00	182,758	Deputy City Attorney IV
88215 - Zoning Update	1.00	79,524	Planner III
88215 - Zoning Update	1.00	96,519	Planner III
88215 - Zoning Update	1.00	96,905	Planner III
88215 - Zoning Update	1.00	117,763	Planner IV
TOTAL	6.00	661,239	

INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM
AND LEGALITY
OFFICE OF THE CITY CLERK
CITY ATTORNEY
2003 MAY 15 PM 4:36

ORDINANCE No. 12515 C.M.S.

**ORDINANCE AMENDING THE MASTER FEE SCHEDULE
(ORDINANCE NUMBER 9663 C.M.S.) TO EXTEND FOR AN
INDEFINITE PERIOD OF TIME THE GENERAL PLAN SURCHARGE
ON BUILDING AND DEMOLITION PERMITS AND PRIVATELY-
CONTRACTED PUBLIC IMPROVEMENT PROJECTS**

WHEREAS, the City of Oakland periodically updates its Master Fee Schedule to account for general cost of living increases and other program changes or costs; and

WHEREAS, on March 9, 1993, the City Council approved the General Plan Update Work Program prepared by the Office of Planning and Building, now known as the Community and Economic Development Agency; and

WHEREAS, on April 13, 1992 the Finance committee of the Oakland City Council approved the concept of a surcharge of 10 cents per \$100 dollars of construction value on building, demolition permits and private construction of public improvement ("P-Job") permits, to partially fund the General plan update, the ongoing maintenance of the General Plan and future preparation of additional General Plan Elements; and

WHEREAS, the City Council held a duly noticed public hearing on the proposed surcharge and the City Council approved the General Plan Surcharge on June 1, 1993; and

WHEREAS, on January 20, 1998 the City Council approved a further extension until 2001; and

WHEREAS, on June 5, 2001 the City Council approved a further extension through June 30, 2003; and

WHEREAS, on June ____ the City Council considered at a public hearing extending the General Plan Surcharge for an indefinite period of time; and

WHEREAS, the City Council finds and determines that there is a nexus between the General Plan and Zoning Code Update and the permits against which the surcharge will be assessed, in that both related to the City's physical development, and an adequate and up-to-date General Plan and Zoning Code is a necessary prerequisite to the issuance of such permits; and

WHEREAS, the City Council finds and determines that the fee charges shall not exceed the reasonable cost for which it is imposed (General Plan, Zoning Code update, neighborhood plans, transit village plans, design guidelines, and studies requested by the City Council); and

WHEREAS, the City Council finds and determines that the herein referenced modifications to the Master Fee Schedule are necessary to reimburse the City for the costs of performing the various municipal and regulatory functions; and now therefore

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:


Section 1. The Master Fee Schedule as set in Ordinance Number 9336 C.M.S. and as amended by Ordinance Number 11592 C.M.S. and ordinance Number 12029 C.M.S. is hereby amended to impose extend the General Plan Surcharge indefinitely during any period of time that the City is incurring costs associated with the revision of any element of the General Plan, the adoption of any specific plan, or the revision or adoption of any land use ordinance or regulation, which costs may legally be passed on to developers pursuant to state law and which costs are reflected in the amount of the surcharge. This surcharge, which is assessed by the Community and Economic Development Agency of Oakland, is 10 cents per \$100 dollars of construction value on building permits and private construction of public improvements ("P-Job") permits, and 10 percent of the permit fee for demolition permits, shall be charged to applicants to cover the costs of maintaining current General Plan elements, citywide zoning code and maps, and to prepare other planning studies.

Section 2. This ordinance shall be effective upon approval by the City Council.

Introduction Date: JUN 17 2003

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 15 2003, 2003
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG,
NOES- NADEL, REID, QUAN, WAN
ABSENT- AND PRESIDENT DE LA FUENTE -8
ABSTENTION-

ATTEST: 
CEDA FLOYD
City Clerk and Clerk of the Council of
the City of Oakland, California

MPW

NOTICE AND DIGEST

AN ORDINANCE EXTENDING THE INTERIM CONTROLS FOR THE IMPLEMENTATION OF THE OAKLAND GENERAL PLAN TO DECEMBER 31, 2007

This Ordinance provides a two year extension of the Interim Controls (Oakland Planning Code Chapter 17.01) that provide a process for evaluating a development project's consistency between the General Plan and Planning Code

2006 MAY 11 AM 9:17

Approved as to Form and Legality


Deputy City Attorney

OAKLAND CITY COUNCIL

Ordinance No. _____ C.M.S.

ORDINANCE EXTENDING THE INTERIM CONTROLS FOR THE IMPLEMENTATION OF THE OAKLAND GENERAL PLAN TO DECEMBER 31, 2007

WHEREAS, on May 12, 1998, the City Council passed Ordinance No. 12054 C.M.S., which adopted Interim Controls for implementation of the Oakland General Plan prior to the comprehensive revision of the Oakland Planning Code, subdivision, environmental review, and related regulations; and

WHEREAS, Section 5 of Ordinance No. 12054 C.M.S. provides that the Interim Controls shall expire after a three-year period unless extended for an additional two year period; and

WHEREAS, on June 5, 2001, the City Council adopted Ordinance No. 12332 C.M.S., which extended the Interim Controls until June 30, 2003; and

WHEREAS, on July 15, 2003, the City Council adopted Ordinance No. 12514 C.M.S., which extended the Interim Controls until December 31, 2005; and

WHEREAS, on May 6 1998, the Planning Commission adopted "Guidelines for Determining Project Conformity with the General Plan Guidelines and Zoning Regulations." The Planning Commission amended the Guidelines on November 3, 1999, August 8, 2001, December 5, 2001, July 15, 2003, May 28, 2004, and January 4, 2005; and

WHEREAS, the Community and Economic Development Agency is still in the process of updating the Oakland Planning Code to implement the General Plan and thus the Interim Controls are still necessary; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970 are satisfied because the Interim Controls are covered by the Environmental Impact Report prepared for the Land Use and Transportation Element that was certified by the City Council on March 24, 1998; and

WHEREAS, the Council finds and determines that the public safety, health, convenience, comfort, prosperity, and general welfare will be furthered by extending the Interim Controls; now, therefore,

THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. This ordinance shall be effective upon its adoption if it receives at least six affirmative votes; otherwise, it shall be effective upon the seventh day after final adoption, but shall be retroactively applied as of January 1, 2006 and shall remain in effect until December 31, 2007, or until the comprehensively updated Oakland Planning Code and Zoning Maps are completed and adopted, whichever comes first.

Section 2. The ordinance complies with CEQA because the Interim Controls are covered by the Environmental Impact Report prepared for the Land Use and Transportation Element that was certified by the City Council on March 24, 1998.

Section 3. If any provision of this ordinance or application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 4. The recitals are true and correct and an integral part of this ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, AND
PRESIDENT DE LA FUENTE

NOES –

ABSENT –

ABSTENTION –

ATTEST:

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California