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OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND

AGENDA REPORT

08 JAN -3 PM 3:08

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: January 15, 2008

RE: **Public Hearing On An Emergency Ordinance, Pursuant to Charter Section 213, Establishing Interim Controls Applying the S-4 Design Review Combining Zone Which Requires All New Construction or Alterations to Follow Design Review Procedures, to Broadway -- from Hawthorne Avenue to Interstate 580, and from 38th Street to College Avenue, and to the Area Northeast of the Intersection of Broadway and Pleasant Valley to View Place, to Take Effect Immediately Upon Introduction and Adoption**

SUMMARY

At the December 18, 2007, meeting of the Oakland City Council, staff was asked to prepare an emergency ordinance that would add interim regulations, for one year, adding the S-4 Design Review Combining Zone to four zoning districts on Broadway: the existing C-40 zone from Hawthorne Avenue to Interstate 580; the existing C-40 zone from 38th Avenue to College Avenue; the C-30 zone on the lot northeast of the intersection of Broadway and Pleasant Valley; the R-50 zone on the adjacent lot on Pleasant Valley to View Place.

The S-4 Design Review Combining Zone is intended to create, preserve and enhance the visual harmony and attractiveness of areas which require special treatment. It is typically appropriate for areas of special community, historical, or visual significance. This proposal will ensure that all new construction and rehabilitation in these areas of "Upper Broadway" go through the City's standard design review process. The request for this emergency ordinance is part of a package of zoning changes intended to allow the City to implement its Retail Strategy, particularly on sections of Broadway around "Auto Row" and the area to the north.

Staff proposes that the interim controls sunset after one year. This period will allow the Planning Division time to study more comprehensive solutions to the issues outlined in this report.

FISCAL IMPACT

This emergency ordinance has the potential to generate a relatively small increase in permit applications. Any increase in permit application revenue would be deposited into the

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Development Service Fund (2415). Any increased revenue generated would be small relative to permit application revenue currently budgeted. No new fees would need to be established.

Existing staffing and appropriation levels should be sufficient to process any increase in permit applications; therefore no additional costs are expected to be incurred by the Development Service Fund.

ENVIRONMENTAL DETERMINATION

The proposal relies on the following two environmental documents to satisfy any requirements under the California Environmental Quality Act (CEQA): the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the Oakland General Plan (General Plan EIR), adopted 1998 (General Plan EIR) and the Broadway / MacArthur Redevelopment Plan Environmental Impact Report, adopted 2000. Furthermore, the proposal is exempt under CEQA Guidelines section 15061(b)(3), known as the "General Rule," which states a project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment. Staff finds the "General Rule" applies, because the proposed regulations would have no change in the development intensity of the area, as the proposal does not address residential density or floor area ratio, and the proposal contains no change in regulations regarding height, setback, open space or other regulations that have an effect on the environment. The proposed regulations are more stringent, with regards to permitted activities, than the current zoning and regulatory controls.

KEY ISSUES AND IMPACTS

Staff understands that there are pending proposals to establish auto-related activities on parcels which are important to protect for the City's retail strategy. The proposal would create, for a period of one year, an interim level of discretionary review of all construction and rehabilitation projects on the City's major retail corridor, Upper Broadway, while staff researches and prepares permanent controls.

The City Council is considering an S-5 combining zone on Upper Broadway from 23rd Street to Hawthorne Avenue. Complementing this S-5 zoning, the extant proposal adds Design Review controls to areas north of the S-5 zone on Broadway, from Hawthorne Avenue to College Avenue (excepting the area around Kaiser Hospital) and includes the Safeway shopping center at Broadway and Pleasant Valley.

The C-40 zone, mapped on this section of Broadway, is commonly located adjacent to residentially zoned neighborhoods that often suffer noise and parking impacts from automobile related activities. Residential neighborhoods are also impacted by the open storage of cars and toxic fluids that often accompany auto-related activities. Further, automobile related activities

risk displacing land that should remain available to implement the City's retail enhancement strategy, particularly in the Upper Broadway area. The interim controls provide the City an opportunity to evaluate whether a proposal is appropriate for a particular area and mitigate its impacts to neighboring residential properties.

PROJECT DESCRIPTION

The S-4 Design Review Combining Zone, as codified in Chapter 17.80 of the Oakland Municipal Code, requires design review for the construction or alteration of all Local Register properties, Building Facilities, Mixed-Use Development, Telecommunications Facilities, Signs and other associated structures, unless exempt by Section 17.136.025. Because the underlying C-40 and C-30 zones do not currently require design review for non-residential (i.e., "commercial") buildings, adopting this ordinance, and mapping the S-4 zone to these areas along Upper Broadway, will preserve land to implement the City's retail strategy and give staff additional discretionary review over proposed developments on this major thoroughfare.

Staff recommends the proposal because it will preserve critical areas along the City's main retail corridor for retail and mixed use activities.

SUSTAINABLE OPPORTUNITIES

Staff foresees no economic, environmental or social equity opportunities, as a result of the enactment of interim controls.

DISABILITY AND SENIOR CITIZEN ACCESS

Staff does not anticipate any particular barriers or benefits resulting from the ordinance, regarding access issues for the disabled or for senior citizens.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the City Council approve the emergency ordinance, pursuant to Section 213¹ of the Oakland City Charter, which will provide the City an opportunity to further review, for the next year, new construction and rehabilitation projects for consistency with the City's emerging retail strategy on Upper Broadway. During that time, the Strategic Planning Division will undertake a study of the potential zoning changes needed to implement the retail strategy, returning to the Planning Commission and the City Council with recommendations for permanent controls, such as a Specific Plan for Upper Broadway.

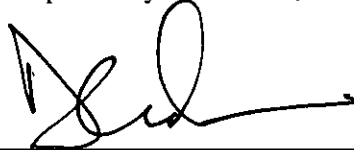
¹ Section 213. **Emergency Ordinances.** Any ordinance declared by the Council to be necessary for preserving the public peace, health, or safety in an emergency, and containing a statement of the reasons constituting such necessity, may be introduced and adopted at the same meeting if passed by the affirmative vote of at least six members. Appropriations to meet an urgent need for public expenditure, to protect the public health, safety, or welfare may be made as an emergency ordinance.

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ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt the Emergency Ordinance, mapping, for the next year, the S-4 Design Review Combining Zone in the areas indicated in this report.

Respectfully submitted,




Dan Lindheim,
Interim Director,
Community and Economic Development
Agency

Reviewed by Eric Angstadt,
Interim Strategic Planning Manager

Prepared by: Devan Reiff, Planner II
Planning and Zoning Division, CEDA

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



Office of the City Administrator

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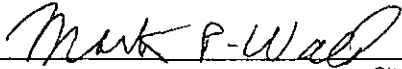
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OAKLAND

08 JAN -3 PM 3:08

6 VOTES REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____



City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, ESTABLISHING INTERIM CONTROLS APPLYING THE S-4 DESIGN REVIEW COMBINING ZONE WHICH REQUIRES ALL NEW CONSTRUCTION OR ALTERATIONS TO FOLLOW DESIGN REVIEW PROCEDURES, TO BROADWAY -- FROM HAWTHORNE AVENUE TO INTERSTATE 580, AND FROM 38TH STREET TO COLLEGE AVENUE, AND TO THE AREA NORTHEAST OF THE INTERSECTION OF BROADWAY AND PLEASANT VALLEY TO VIEW PLACE, TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION

WHEREAS, the S-4 Design Review Combining Zone ("S-4 Zone"), as codified in the Oakland Municipal Code and the Oakland Planning Code, is intended to create, preserve, and enhance the visual harmony and attractiveness of areas which require special treatment and the consideration of relationships between facilities, in areas which are of special community, historical, or visual significance; and

WHEREAS, the S-4 Zone requires that no Local Register Property, Building Facility, Mixed Use Development, Telecommunications Facility, Signs or other associated structures shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136; and

WHEREAS, the City is developing a City-wide retail strategy that focuses on encouraging pedestrian-oriented retail development on the major transportation corridors, particularly Broadway; and

WHEREAS, Upper Broadway, the area approximately between Hawthorne and College Avenues including the parcels northeast of Broadway and Pleasant Valley, is a critical transportation and commercial corridor, containing sites crucial for the City's emerging retail strategy; and

WHEREAS, this section of Upper Broadway is currently mapped with C-40 and C-30 zones which do not require design review of non-residential or commercial development; and

WHEREAS, there is significant development interest on and near Broadway from Hawthorne to College Avenues; and

WHEREAS, the Land Use and Transportation Element of the Oakland General Plan places priority on the successful and attractive development of the transportation corridors; and

WHEREAS, the City on December 18, 2007, as part of a package of regulations which implement the retail strategy, heard the proposal to adopt a new S-5 Broadway Retail Frontage Interim Combining Zone requiring design review approval of all new buildings, and to map it on Broadway from 23rd Street to Hawthorne Avenue; and

WHEREAS, on that date, the City Council directed staff to map the S-4 zone, requiring the City's standard Design Review process for nonresidential development, to the areas of Upper Broadway which are adjacent and contiguous to the areas mapped with the new S-5 Zone, providing the City a tool to enhance the appearance of this critical corridor and better promote the public's health, safety and welfare, while permanent controls are being developed; and

WHEREAS, staff has identified the following three areas of Broadway which would be appropriate for the design review controls of the S-4 Zone: between Hawthorne Avenue and Interstate 580; between 38th Street and the intersection with College Avenue; the two lots northeast of the intersection of Broadway and Pleasant Valley, to View Place; and

WHEREAS, this proposed mapping of the S-4 Zone on Upper Broadway excludes the existing Kaiser Permanente zoning; and

WHEREAS, there are currently before the City, or there are anticipated to be, proposals to establish auto-related activities on lots critical to the City's retail strategy in Upper Broadway, as well as non-residential development not subject to design review or other discretionary review; and

WHEREAS, there is insufficient time to develop permanent controls regulating automotive uses in C-40 zones, and present them to the City Planning Commission and City Council for review, recommendation, and adoption; and

WHEREAS, the provisions of the California Environmental Quality Act (CEQA) have been satisfied and the proposal relies on the following environmental documents to satisfy any requirements under the California Environmental Quality Act (CEQA): the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the General Plan, adopted in 1998 (General Plan EIR) and the Broadway/MacArthur Redevelopment Plan Environmental Impact Report, adopted in 2000; and

WHEREAS, as a separate and independent basis, the proposal is also exempt from CEQA under several CEQA Guidelines: section 15061(b)(3), known as the "General Rule," that states a project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment; and

WHEREAS, for the reasons set forth above, pursuant to City Charter section 213, the Council declares that this ordinance is necessary to preserve the public peace, health, welfare or safety and to avoid a direct threat to the health, safety, and welfare of the community, and the “Whereas” clauses above taken together constitute the City Council’s statement of the reasons constituting such necessity and emergency; now, therefore

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

Section 1. The recitals above are true and correct and are an integral part of this Ordinance.

Section 2. This Ordinance complies with the California Environmental Quality Act.

Section 3. The zoning maps shall be amended to apply the S-4 Design Review Combining Zone to parcels on Broadway within: the C-40 zone between Hawthorne and Interstate 580; and the C-40 zone between 38th Street and College Avenue; and the C-30 zone northeast of the intersection of Broadway and Pleasant Valley; and the R-50 zone on Pleasant Valley to View Place, as generally shown in Exhibit A, attached hereto and incorporated by reference.

Section 4. No building, zoning or other permit that has been issued for any building or structure for which rights to proceed with said building or structure have not vested pursuant to the provisions of State law shall proceed without complying with this ordinance. Further, no building, zoning or other permit for any building or structure shall be issued by any department, agency, employee or agent of the City of Oakland to allow for any building or structure, without complying with the requirements of Section 3, above. No use which has not vested prior to the date of this Ordinance shall commence in violation of the provisions of this Ordinance.

Section 5. The controls imposed by this ordinance shall remain in place and be effective for a continuous one year period from the effective date of this ordinance, or until the City Council adopts permanent controls for design review on Upper Broadway, whichever comes first.

Section 6. *The Community and Economic Development Agency is directed, over the next one year, to conduct a study and develop a draft set of permanent amendments to the Planning Code and/or Municipal Code regarding the subject matter of this ordinance.*

Section 7. For the term of this ordinance, as set for the in Section 5 above, the provisions of this ordinance shall govern, and to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

Section 8. This ordinance shall be effective immediately upon its adoption by the City Council, subject to the provisions of Section 213 of the Charter of the City of Oakland.

Section 9. This Ordinance is enacted pursuant to the City of Oakland’s general police powers, Sections 106 and 213 of the Charter of the City of Oakland, and Article XI of the California Constitution.

Section 10. If any provision of this ordinance or the 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.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

Exhibit A: Existing & Proposed Upper Broadway Zoning

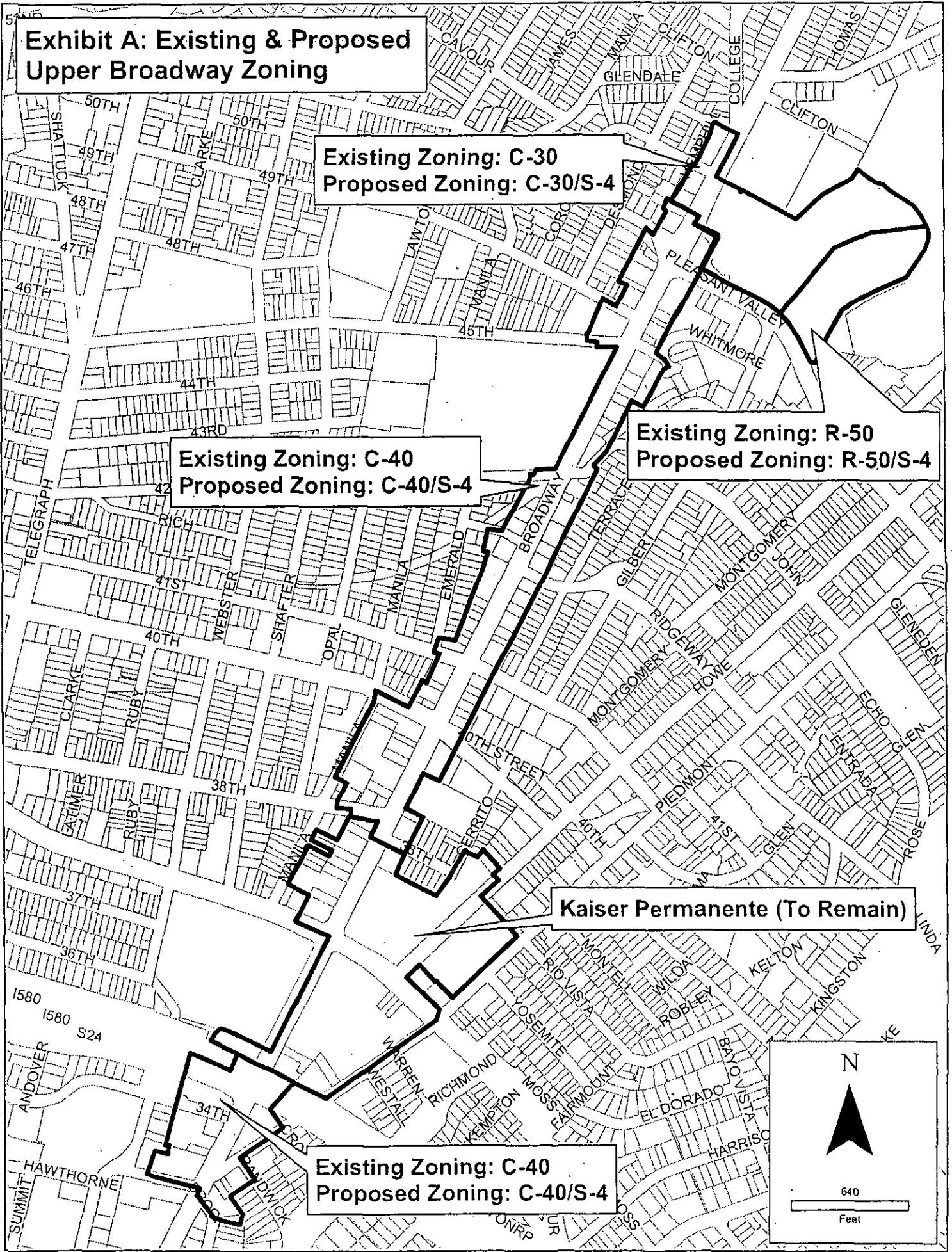
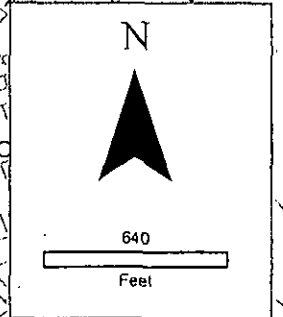
**Existing Zoning: C-30
Proposed Zoning: C-30/S-4**

**Existing Zoning: C-40
Proposed Zoning: C-40/S-4**

**Existing Zoning: R-50
Proposed Zoning: R-50/S-4**

Kaiser Permanente (To Remain)

**Existing Zoning: C-40
Proposed Zoning: C-40/S-4**



MPW

NOTICE AND DIGEST

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, ESTABLISHING INTERIM CONTROLS APPLYING THE S-4 DESIGN REVIEW COMBINING ZONE WHICH REQUIRES ALL NEW CONSTRUCTION OR ALTERATIONS TO FOLLOW DESIGN REVIEW PROCEDURES, TO BROADWAY -- FROM HAWTHORNE AVENUE TO INTERSTATE 580, AND FROM 38TH STREET TO COLLEGE AVENUE, AND TO THE AREA NORTHEAST OF THE INTERSECTION OF BROADWAY AND PLEASANT VALLEY TO VIEW PLACE, TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION

This interim ordinance amends the zoning maps, adding the S-4 Design Review Combining Zone (Oakland Planning Code, Chapter 17.80) to the following areas of Broadway: from Hawthorne Avenue to Interstate 580; and from 38th Street to College Avenue; and to the area northeast of the intersection of Broadway and Pleasant Valley, to View Place. All new construction and rehabilitation in these areas of Broadway will require the design review procedures codified in Chapter 17.136. The ordinance will sunset in one year after adoption, and is a part of the City Council's retail strategy for Oakland.