

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2005 JUN -2 AM 10:18

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: June 14, 2005

RE: **A RESOLUTION AMENDING THE OAKLAND GENERAL PLAN BY: (1) REMOVING THE LIMITATION THAT GENERAL PLAN AMENDMENTS MAY ONLY OCCUR DURING THREE DISTINCT CYCLES PER YEAR; AND (2) ADOPTING LANGUAGE TO CLARIFY THAT THE GENERAL PLAN CONTAINS COMPETING POLICIES, WHICH MUST BE BALANCED WHEN INDIVIDUAL PROJECTS ARE CONSIDERED BY THE CITY**

SUMMARY

The Community and Economic Development Agency (CEDA) is proposing to amend the Oakland General Plan by: (1) revising Policy a3 of the *Land Use and Transportation Element (LUTE)* by removing the limitation that General Plan amendments may only occur during three distinct cycles per year; and (2) adopting language to clarify that the Oakland General Plan contains policies that might compete with each other and that such does not necessarily result in a significant environmental impact under the California Environmental Quality Act (CEQA).

FISCAL IMPACT

Because they are purely administrative in nature, the proposed amendments to the Oakland General Plan would have no foreseeable fiscal impact.

BACKGROUND

Two separate and unrelated amendments are currently being proposed for the General Plan. The first would revise Policy a3 of the *LUTE* by removing the limitation that General Plan amendments may only occur during three distinct cycles per year. Policy a3 states that the City "will limit General Plan amendments to occur during three distinct cycles per year..." (see Attachment 1). However, State law allows each of the seven mandatory elements of a general plan to be amended up to four times during any calendar year.

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The second amendment would adopt language—which would apply not just to the *LUTE* but to all elements of the General Plan—to clarify that the Oakland General Plan contains policies that might compete with each other and that such does not necessarily result in a significant environmental impact under the California Environmental Quality Act (CEQA). While policies in the General Plan must, by State law, be *consistent* with each other, policies may address different goals and objectives, and thus some policies may compete with each other.

A legal notice concerning hearings on the proposed amendments has been published in the *Oakland Tribune* and an announcement about the hearings was sent to the City's mailing list of *neighborhood organizations and other interested parties*. However, as of the writing of this report, no comments have been received from the public regarding the proposal. The Planning Commission is scheduled to hear a report on the proposed General Plan amendments at its hearing of June 1, 2005.

KEY ISSUES AND IMPACTS (Reasons for the amendments)

Whenever it amends its General Plan, the City must make findings addressing: (a) how the amendment advances Plan implementation; (b) how it is consistent with Plan policies; (c) any inconsistencies that would need to be reconciled; and (d) examination of citywide impacts to determine if the amendment is contrary to achievement of citywide goals. The two proposed amendments pose no inconsistencies with General plan policies and are not contrary to achievement of citywide goals. The rationale for the two proposed General Plan amendments is as follows:

- (1) Revising Policy a3 of the *LUTE*: Policy a3 is significantly more restrictive than State law. As mentioned earlier, State law allows *each* of the seven mandatory elements of a general plan to be amended up to four times per year (for up to 28 amendments, combined). However, the City's policy: (a) limits amendments to three times per year; and (b) inadvertently failed to apply the limit to *each* mandatory element of the City's General Plan. As it is, Policy a3 limits the City to amending all elements of its General Plan three times per year, combined. The proposed revision to Policy a3 would restore the City's flexibility to amend its General Plan as necessary. Although the City has historically not required more than three general plan amendments per calendar year (see Attachment 2 for a list of past amendments since adoption of the *LUTE* in March 1998), the City did use all of its amendments last year. More importantly, based upon the number of development applications recently submitted, it is anticipated that the number of general plan amendments in calendar year 2005 could exceed the current limitation of three. These include Wood Street, the *Noise Element*, Kaiser hospital and Pulte Homes (see Attachment 2).

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- (2) Adopting language to clarify that the General Plan contains policies that might compete with each other: General Plans contain numerous goals, policies and objectives. When a particular development project comes before the City for consideration, it may achieve some goals, policies and objectives, but not others. Indeed, some policies may compete with each other. For example, the City encourages both housing development and the attraction/retention of businesses. A housing development project will be consistent with the goals of providing more housing but will not directly meet the goal of providing more business opportunities. (Indeed, housing could be built to the exclusion of new businesses.) The City has interpreted its General Plan to acknowledge that there are competing policy goals and that particular development projects may meet some goals, policies and objectives but not others. Essentially, it is up to the decision makers—the City Planning Commission and City Council—to evaluate the development project and decide, on the whole, whether the project is consistent with the General Plan. This balancing process is consistent with California law. The purpose of this amendment is to formally acknowledge this practice in the General Plan itself and to make clear that this balancing does not, in and of itself, result in significant impacts to the environment under CEQA. Even if a project is not consistent with a particular general plan policy does not necessarily indicate the project would have a significant effect, unless a physical change would occur. To the extent that physical impacts may result from such conflicts, such physical impacts will be analyzed in the appropriate environmental document for the proposed project.

PROJECT DESCRIPTION

Two separate and unrelated amendments are currently being proposed for the General Plan:

- (1) Revising Policy a3 of the LUTE: This Policy states that the City “will limit General Plan amendments to occur during three distinct cycles per year...” However, per Section 65358(b) of the California Government Code, each of the seven mandatory elements of a general plan—land use, circulation, housing, conservation, open space, noise and safety—may be amended up to four times during any calendar year. Policy a3 would be revised to be consistent with state law, as follows, to give the City the flexibility to amend each mandatory element of its General Plan up to four times per year:

~~“To avoid erosion of the Plan by piecemeal amendments, †The City of Oakland will limit General Plan amendments to any element of its General Plan to occur during three distinct cycles per year to be coordinated with the Plan’s annual review no more than four times per calendar year.”~~

- (2) Adopting language to clarify that the General Plan contains policies that might compete with each other and that such does not necessarily result in a significant environmental impact

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under CEQA: The following language, which would be added to the introductory section of Chapter 4 of the *LUTE* (“Implementation Program”), would apply to all the elements of the General Plan:

“The General Plan contains many policies which may in some cases address different goals, policies and objectives and thus some policies may compete with each other. The Planning Commission and City Council, in deciding whether to approve a proposed project, must decide whether, on balance, the project is consistent (i.e., in general harmony) with the General Plan. The fact that a specific project does not meet all General Plan goals, policies and objectives does not inherently result in a significant effect on the environment within the context of the California Environmental Quality Act (CEQA). As stated in Section 15358(b) of the CEQA Guidelines, “[e]ffects analyzed under CEQA must be related to a physical change.” Section 15125(d) of the Guidelines states that EIRs shall discuss any inconsistencies between the proposed project and applicable General Plans in the “Setting” section of the document (not under impacts). Further, Appendix G of the Guidelines (Environmental Checklist Form) makes explicit the focus on environmental policies and plans, asking if the project would “conflict with any applicable land use plan, policy, or regulation...adopted for the purpose of avoiding or mitigating an environmental effect”. Even a response in the affirmative, however, does not necessarily indicate that the project would have a significant effect, unless a physical change would occur. To the extent that physical impacts may result from such conflicts, such physical impacts would be analyzed in the appropriate environmental document for the project.”

SUSTAINABLE OPPORTUNITIES

Because they are purely administrative in nature, the proposed amendments to the Oakland General Plan would have no adverse economic, environmental or social-equity effects.

DISABILITY AND SENIOR CITIZEN ACCESS

Because they are purely administrative in nature, the proposed amendments to the Oakland General Plan would have no adverse effect on disabled or senior citizens.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the City Council approve the resolution amending the Oakland General Plan as described above. The first amendment—revising Policy a3 of the *LUTE*—is desirable as it would restore the City’s flexibility to amend its General Plan as necessary. The second

amendment—adopting clarifying language regarding General Plan policies—is needed to clarify that some policies may compete with each other and that, as a result, a particular project might meet some policies but not others.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolution amending the Oakland General Plan by (1) removing the limitation that General Plan amendments may only occur during three distinct cycles per year; and (2) adopting language to clarify that the General Plan contains competing polices, which must be balanced when individual projects are considered by the City.

Respectfully submitted,



CLAUDIA CAPUTO
CEDA, Director of Development

Prepared by:
Niko Letunic, Project Manager
CEDA Planning and Zoning Division

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

ATTACHMENTS:

1. Copy of pages 166-167 of the *LUTE*, containing Policy a3
2. List of previous and anticipated General Plan amendments

- ◆ Develop procedures for review of the proposed budget and CIP by the Planning Commission, prior to approval of the CIP and budget, and include Planning Commission training on budget and finance procedures

Lead Agency/Division: CEDA, Strategic Planning

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Develop procedures for annual review of the General Plan and progress in its implementation

State law requires planning agencies to provide an annual report to the City Council on the status of the plan and progress in its implementation. While annual reports on the plan are made to the City's Planning Commission, there are no established procedures specifying when the report should be scheduled, its format, or its content. As a result, monitoring efforts may be incomplete in addressing all elements and their respective implementation programs.

Steps

- ◆ Determine the appropriate procedures for the General Plan Annual Review
- ◆ Provide for a public workshop prior to presentation of a report to the Planning Commission
- ◆ Determine the content, format and timing of the General Plan annual review report
- ◆ Adopt General Plan Annual Review procedures and add the procedures to the Planning and Building division's Policies and Procedures Manual
- ◆ Prepare first annual report

Lead Agency/Division: CEDA, Strategic Planning

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Develop General Plan amendment cycles and related procedures

By State law cities are permitted to make amendments to their general plans "if deemed to be in the public interest" and "not more than four times per year" for each mandatory element (with some exceptions). However, more than one amendment may be processed at one time. To avoid erosion of the Plan by piecemeal amendments, the City of Oakland will limit General Plan amendments to occur during three distinct cycles per year to be coordinated with the Plan's annual review. Additionally, each amendment cycle must include an assessment of the cumulative implication of amendments on the General Plan, and the City must make strict findings that each amendment is consistent with the overall goals, objectives, and policies and the entire General Plan. Findings must specifically address a) how the amendment advances Plan implementation; b) how it is consistent with the policies in Element; c) any inconsistencies that would need to be reconciled; and d) examination of citywide impacts to determine if the amendment is contrary to achievement of citywide goals.

Steps

- ◆ Develop recommended General Plan Amendment procedures including the following provisions:
 - three cycles for plan amendments, one coordinated with the annual review, each including an analysis of cumulative impacts
 - amendments considered at other times to address extraordinary circumstances
 - annual report on the cumulative effects of all proposed amendments
- ◆ Adopt procedures
- ◆ Incorporate procedures into Community and Economic Development Agency (CEDA) and Public Works Agency's Policy and Procedures Manual
- ◆ Develop forms and institutionalize procedures through staff training

Lead Agency/Division: CEDA, Strategic Planning

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Form a General Plan Implementation Committee

Preparation of the Land Use and Transportation Element was guided by the General Plan Congress, a 32-member body appointed to represent the people of Oakland by the Mayor and City Council. The Congress maintained an active outreach program throughout the development of the Land Use and Transportation Element which ensures that the plan truly reflects community values. For continuity, and to facilitate public involvement in the Plan's implementation process, a General Plan Implementation Committee, comprised of the Mayor, At-Large council member, City Planning Commissioners, and Congress members will be formed. This committee will provide guidance for the development of implementation procedures as described in this section. The City Manager will appoint a General Plan Coordinating Committee to support the implementation committee, which will consist of Agency Directors, the Planning Director, and Key Staff.

Steps

- ◆ Prepare descriptions of the broad roles and responsibilities of Implementation Committee members
- ◆ Appoint and convene committee members

Lead Agency/Division: CEDA, Strategic Planning

**General Plan Amendments
March 1998 to Present:**

Revised 5/25/2005

New General Plan Element	Text Amendments	Map Amendments	Resolution No.	Date of Adoption
Land Use/Transportation	Historic Preservation Re: Removing "C" rated properties as PDHPs		74129 74403	March 24, 1998 July 21, 1998
	Land Use/Transportation Re: County Hazardous Waste Management Plan		74403	July 21, 1998
Estuary Policy Plan			75037	June 8, 1999
Bicycle Master Plan (LUTE)			75148	July 20, 1999
	Land Use/Transportation Re: Conditionally permit secondary units		75412	December 14, 1999
		West Oakland - Clawson School (Business Mix to Housing & Business Mix) West Oakland - Center Street (Business Mix to Mixed Housing Type)	76071	October 17, 2000
Pedestrian Master Plan (LUTE)			77514	November 12, 2002
		West Oakland – Mandela Transit Village Project (Business Mix to Community Commercial)	78205	November 18, 2003
		Coliseum Gardens – Change the General Plan Designation of 928-998 66 th Avenue and 801-931 69 th Avenue (Housing and Business Mix, General Industrial/Transportation, and Park and Urban Open Space to Neighborhood Center Mixed Use and Park and Urban Open Space).	78328	February 3, 2004

New General Plan Element	Text Amendments	Map Amendments	Resolution No.	Date of Adoption
Housing Element Update			78636	June 15, 2004
Safety Element Update			78915	Nov. 16, 2004
		10900 Edes Avenue (Business Mix to Housing & Business Mix)	78915	Nov. 16, 2004
Noise Element Update				(pending)
		Wood Street Development (Business Mix to Urban Residential)		(pending)
	Land Use/Transportation Re: amend p. 166 a3 regarding number of General Plan Amendments permitted per year			(pending)

The following are potential General Plan amendments:

- 1) NPDES changes to the OSCAR Element (~summer 2005)
- 2) OARB land swap between City and Port (~2006)
- 3) Oak to Ninth Development (~late 2005/early 2006)
- 4) Tidewater (~2006)
- 5) Kaiser Expansion (Fall 2005)
- 6) 98th/San Leandro (Fall 2005)
- 7) 47th/E. 12th – Olson Company (~Fall 2005)
- 8) Bicycle Element
- 9) Bay Trail alignment
- 10) Fruitvale Gateway
- 11) Zoning update

[Signature]
OFFICE OF THE DEPUTY CITY ATTORNEY
DEPUTY CITY ATTORNEY

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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C. M. S.

INTRODUCED BY COUNCILMEMBER _____

A RESOLUTION AMENDING THE OAKLAND GENERAL PLAN BY: (1) REMOVING THE LIMITATION THAT GENERAL PLAN AMENDMENTS MAY ONLY OCCUR DURING THREE DISTINCT CYCLES PER YEAR; AND (2) ADOPTING LANGUAGE TO CLARIFY THAT THE GENERAL PLAN CONTAINS COMPETING POLICIES, WHICH MUST BE BALANCED WHEN INDIVIDUAL PROJECTS ARE CONSIDERED BY THE CITY

WHEREAS, per California Government Code Section 65358(b), each of the seven mandatory elements of a general plan—land use, circulation, housing, conservation, open space, noise and safety—may be amended up to four times during any calendar year, for up to 28 amendments, combined; and

WHEREAS, Policy a3 of the *Land Use and Transportation Element (LUTE)* of the Oakland General Plan states that the City “will limit General Plan amendments to occur during three distinct cycles per year...”; and

WHEREAS, Policy a3 of the *LUTE* is significantly more restrictive than State law since it limits the City to amending all elements of its General Plan three times per year; and

WHEREAS, the City seeks to make Policy a3 consistent with State law and to restore the City’s flexibility to amend its General Plan as necessary; and

WHEREAS, while the City has historically not required more than three general plan amendment per calendar year, the City did use all of its amendments last year; and more importantly, based upon the number of development applications recently submitted, it is anticipated that the number of general plan amendments in calendar year 2005 could exceed the current limitation of three; and

WHEREAS, while policies in the General Plan must, by State law, be *consistent* with each other, General Plans contain numerous goals, policies and objectives that may also *compete* with each other if they address different goals, policies or objectives; and

WHEREAS, the City has interpreted its General Plan to acknowledge that there are competing policy goals and that a particular development projects may meet some goals, policies and objectives but not others, and that it is up to the decision makers to evaluate the development project and decide, on the whole, whether the project is consistent with the General Plan; and

WHEREAS, the balancing process between competing policies present in a development projects is consistent with California law; and

WHEREAS, competing policies do not necessarily result in a significant environmental impact under the California Environmental Quality Act (unless a physical change would occur); and

WHEREAS, the City has determined that the proposed amendments to the General Plan are not subject to environmental review under the California Environmental Quality Act since there is no possibility of a significant environmental effect [general rule; CEQA Guidelines §15061(b)(3)]; and

WHEREAS, the City Planning Commission at its meeting of June 1, 2005, considered the proposed amendments to the General Plan, and recommended to the City Council approval of the proposed amendments; and

WHEREAS, the Community and Economic Development Committee of the City Council at its meeting of June 14, 2005, also considered the proposed amendments to the General Plan, and also recommended to the City Council approval of the proposed amendments; now, therefore, be it

RESOLVED: that the City Council amends the Oakland General Plan by revising Policy a3 of the *Land Use and Transportation Element* as follows, by removing the limitation that General Plan amendments may only occur during three distinct cycles per year:

~~“To avoid erosion of the Plan by piecemeal amendments, t~~The City of Oakland will limit General Plan amendments to any element of its General Plan to occur during three distinct cycles per year to be coordinated with the Plan’s annual review no more often than four time per calendar year.”

FURTHER RESOLVED: that the City Council amends the Oakland General Plan by inserting the following language to the introductory section of Chapter 4 of the *LUTE* (“Implementation Program”)—which would apply to all the elements of the General Plan—in order to clarify that the General Plan contains policies that might compete with each other and that such does not necessarily result in a significant environmental impact under CEQA:

“The General Plan contains many policies which may in some cases address different goals, policies and objectives and thus some policies may compete with each other. The Planning Commission and City Council, in deciding whether to approve a proposed project, must decide whether, on balance, the project is consistent (i.e., in general harmony) with the General Plan. The fact that a specific project does not meet all General Plan goals, policies and objectives does not inherently result in a significant effect on the environment within the context of the California Environmental Quality Act (CEQA). As stated in Section 15358(b) of the CEQA Guidelines, “[e]ffects analyzed under CEQA must be related to a physical change.” Section 15125(d) of the Guidelines states that EIRs shall discuss any inconsistencies between the proposed project and applicable General Plans in the “Setting” section of the document (not under impacts). Further, Appendix G of the Guidelines (Environmental Checklist Form) makes explicit the focus on environmental policies and plans, asking if the project would “conflict with any applicable land use plan, policy, or regulation...adopted for the purpose of avoiding or mitigating an environmental effect”. Even a response in the affirmative, however, does not necessarily indicate that the project would have a significant effect, unless a physical change would occur. To the extent that

physical impacts may result from such conflicts, such physical impacts would be analyzed in the appropriate environmental document for the project.”

FURTHER RESOLVED: that the City finds that, (a) the above amendments advance implementation of the General Plan by making City policy consistent with State law and restoring the City’s flexibility to amend its General Plan as necessary, and by acknowledging that the General Plan, even though it is internally consistent, contains competing policy goals; (b) the amendments are consistent with General Plan policies; (c) there are no inconsistencies between the amendments and existing General Plan policies; and (d) the amendments are not contrary to the achievement of citywide goals.

FURTHER RESOLVED: that the above amendments are not subject to environmental review under the California Environmental Quality Act since there is no possibility of a significant environmental effect [general rule; CEQA Guidelines §15061(b)(3)], and that the City Administrator is directed to file a notice of exemption for the amendments.

FURTHER RESOLVED: that the record before this Council relating to this resolution includes, without limitation, the following: (1) all final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation all related/supporting final materials and final notices regarding the above General Plan amendments; (2) all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the proposed General Plan amendments, and all written evidence received by relevant City Staff before and during the public hearings on the above amendments; and (4) all matters of common knowledge and all official enactments and acts of the City, such as the general plan, Oakland Municipal Code (including, without limitation, the Oakland real estate regulations and Oakland Fire Code), Oakland Planning Code, other applicant City policies and regulations, and all applicable state and federal laws, rules and regulations.

FURTHER RESOLVED: that the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council’s decision is based are: (a) Community and Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, California.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2005

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

ATTEST

LATONDA SIMMONS
Agency Secretary/City Clerk and
Clerk of the Council of the City of Oakland, California