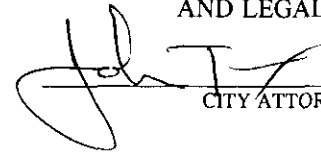


FILED
OFFICE OF THE CITY CLERK
OAKLAND

2003 JUL 31 PM 9:17
INTRODUCED BY COUNCIL MEMBER _____

APPROVED
AS TO FORM
AND LEGALITY


CITY ATTORNEY

ORDINANCE No. 12514 C.M.S.

ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO EXTEND THE EXPIRATION DATE OF THE INTERIM CONTROLS FOR THE IMPLEMENTATION OF THE OAKLAND GENERAL PLAN TO DECEMBER 31, 2005, AND REVISING SECTIONS 17.01.070, 17.01.080 AND 17.01.120 PERTAINING TO THE GENERAL PLAN CONFORMITY REQUIREMENTS AND PROVIDING FOR THE INTERPRETATION OF THE LAND USE DIAGRAM BY THE DIRECTOR OF PLANNING AND ZONING

WHEREAS, on May 12, 1998, the City Council passed Ordinance No. 12054 C.M.S. adopting interim controls for implementation of the Oakland General Plan prior to the comprehensive revision of the Oakland Planning Code including new zoning, 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 following the recommendation of the Planning Commission; and

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

WHEREAS, the Community and Economic Development Agency is in the process of updating the Oakland Planning Code to implement the General Plan, a process which was expected to be completed three years from May 12, 1998; and

WHEREAS, on June 5, 2001, the City Council passed Ordinance No. 12332 C.M.S. extending the interim controls for a two-year period until June 30, 2003; and

WHEREAS, the zoning code update project is not yet completed and it is necessary to again extend the interim controls; and

WHEREAS, as noted at page 143 of the Land Use and Transportation Element (LUTE) and following, the General Plan Land Use Diagram is intended to be illustrative of the General Plan goals and policies and was primarily intended to reflect existing land use patterns; and

WHEREAS, during the zoning update process staff has determined that in many instances the Land Use Diagram is neither accurate nor precise and in fact in some instances it has mapped classifications in error and in a manner that clearly contradicts the intent of the map as described in the LUTE; and

WHEREAS, amendments are necessary to the Oakland Planning Code and the interim controls to accommodate situations where staff has in the past or will in the future determine that the Land Use Diagram has mapped an area of the City in error, making it erroneously appear that certain predominant land uses or densities are not allowed when in fact that was not the intent of the LUTE; and

WHEREAS, staff has determined that it will recommend amendments to the Land use Diagram when the zoning map is updated to correct areas where the General Plan land use classification may have been assigned without a parcel by parcel survey; and

WHEREAS, revisions are proposed to the interim guidelines to allow applicants to request a General Plan conformity determination from the Director of Planning and Zoning if it can be demonstrated that a proposed project meets the intent of the written goals and policies of any element of the General Plan and other findings as described in the Ordinance; and

WHEREAS, revisions are proposed to the interim guidelines to allow projects to be approved with an interim or permanent conditional use permit notwithstanding apparent inconsistency with the Land Use Diagram if certain findings can be made by the Planning Director pertaining to the predominant uses and densities in the area of the proposal and if it can be demonstrated that a proposed project meets the intent of the written goals and policies of any element of the General Plan and other findings as described in the Ordinance; and

WHEREAS, the written determination by the Director of Planning and Zoning is required to be sent to all property owners within 300 feet of the property involved; and

WHEREAS, the written determination by the Director of Planning and Zoning may be appealed to the City Council; 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 COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Pursuant to the provisions of Section 5 of Ordinance No. 12054 C.M.S., Ordinance 12054 C.M.S shall remain in effect for an additional four years beyond the original period set forth in that section, and thus it shall remain in effect until December 31, 2005.

SECTION 2. The Oakland Planning Code is hereby amended as follows:

“Chapter 17.01.070 Determination of General Plan conformity by Director of City Planning

The Director of City Planning shall determine whether any specific proposal conforms to the General Plan. The Director shall use the guidelines adopted pursuant to Section 17.01.060 in making this determination. Any interested party may apply for a written General Plan conformity determination upon payment of a fee as prescribed in the city master fee schedule. Prior to making a decision, there shall be notice given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved pursuant to Section 17.134.040.

“Chapter 17.01.080 Appeal of Director’s determination

A. Within ten calendar days of a written determination by the Director of City Planning pursuant to Section 17.01.070, an appeal of such determination may be taken to the City Planning Commission by the applicant or any other interested party. Such appeal shall be accompanied by a fee as prescribed in the city master fee schedule, and shall be processed in accordance with the administrative appeal procedure in Chapter 17.132.

B. Within ten calendar days of a written determination by the Director of City Planning pursuant to Section 17.01.120 C. an appeal of such determination may be taken to the City Council by the applicant or any other interested party. Such appeal shall be accompanied by a fee as prescribed in the city master fee schedule. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the Director and shall be filed with the City Clerk. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Planning Director or wherein his/her decision is not supported by the evidence in the record. Upon receipt of such appeal, the Council shall set the date for consideration thereof. After the hearing date is set, the Planning Director shall refer the matter to the Planning Commission for its review and advice. The Planning Commission shall consider the matter at its next available meeting. Such referral shall be only for the purpose of issue clarification and advice to the City Council. The City Clerk shall not less than ten days prior to the Council hearing, give to the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, written notice of the date and place of the hearing on the appeal. In considering the appeal, the Council shall determine whether the proposal conforms to the provisions of section 17.01.120.C., and may approve or disapprove the proposed determination. The decision of the City Council shall be made by resolution and shall be final.

“Chapter 17.01.120 Proposals clearly not in conformance with the General Plan or the Land Use Diagram.

Any proposal determined to clearly not conform to the General Plan shall not be allowed and no application shall be accepted, nor shall any permits be approved or issued, for any such proposal, except as provided in this section or in Section 17.01.040 or Section 17.01.070.

A. If Permitted or Conditionally Permitted by Zoning and/or Subdivision Regulations ("Express Conflict"). At his or her option, the applicant may modify the project to conform to the General Plan, request a General Plan conformity determination from the Director of City Planning pursuant to Section 17.01.070, or may apply for a General Plan Amendment. If such amendment involves the land use classification, the amendment shall be to the land use classification corresponding to the "best fit zone" or other possible zone in which the proposal is located, as determined in accordance with the guidelines adopted pursuant to Section 17.01.060.

B. If Not Permitted by Zoning and/or Subdivision Regulations (No "Express Conflict"). If proposal is not permitted under the Zoning Regulations, the applicant may apply for a rezoning pursuant to the rezoning and law change procedure in Chapter 17.144 in addition to a General Plan amendment. Any such rezoning shall be to the "best fit zone": or other possible zone corresponding to the land use classification of the associated General Plan amendment, as determined in accordance with the guidelines adopted pursuant to Section 17.01.060. If such a rezoning is approved, the proposal shall then be subject to all of the provisions of the new zone, including but not limited to any required conditional use permit.

C. If permitted or conditionally permitted by zoning, and where determined by the Planning Director to be consistent with the surrounding land uses and appropriate for the area, notwithstanding that the project may not be consistent with the General Plan classification shown on the Land Use Diagram. It is recognized that the General Plan land uses have been broadly applied to areas without parcel by parcel specificity and that the Land Use Diagram details are largely illustrative of the Plan's written goals and policies. Because the Diagram is generalized, and does not necessarily depict the accuracy of each parcel or very small land areas, a determination of project consistency can be requested of the Director of City Planning. The applicant must demonstrate to the satisfaction of the Planning Director that the predominant use, or average density, is different from that shown on the Diagram and is appropriate for the area in question and that the project is in conformance with the written goals and policies of the General Plan. The project may be allowed upon the granting of an interim conditional use permit or a conditional use permit. Written notice of the Director's determination shall be sent to all property owners within 300 feet of the property involved. The Director's determination may be appealed to the City Council pursuant to Section 17.01.080 B.

SECTION 3. This ordinance complies with the California Environmental Quality Act because the interim controls are covered by the Environmental Impact Report for the Land use and Transportation Element of the General Plan that was certified by the City Council on March 24, 1998.

SECTION 4. This ordinance shall be effective upon adoption, subject to the provisions of Section 213 of the Charter of the City of Oakland.

SECTION 5. 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.

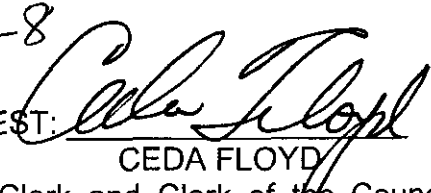
JUL 15 2003

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

AYES-
NOES-
ABSENT-
ABSTENTION-

**BROOKS, BRUNNER, CHANG,
NADEL, REID, QUAN, WAN
AND PRESIDENT DE LA FUENTE -8**

ATTEST:


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

Introduction Date:

JUN 17 2003