

FILED
CITY OF OAKLAND
OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

2010 OCT 14 PM 6:33

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: October 26, 2010

RE: **Report on Food- and Agriculture-Related Zoning Changes to be Included in Phase I of the Citywide Zoning Update and a Plan for Future Analysis Of The Oakland Food Policy Council's Major Recommendations Regarding The City's Food -Related Code Regulations**

SUMMARY

Planning Staff has recently received input from the Oakland Food Policy Council (OFPC) urging adoption of new food policy regulations in the City. The OFPC is an organization established by the Oakland City Council with the mission to promote more efficient food delivery, particularly healthy food to low-income neighborhoods in Oakland. Specifically, the OFPC areas of interest include: adopting new Land Use Classifications for "Farmers Markets", "Community Gardens, Civic", and "Urban Agriculture, Commercial"; clarifying standards for indoor vs. outdoor agricultural operations; clarifying the review procedures for limited duration retail operations, such as "pop-up" markets and seasonal outdoor sales operations; modifying the regulations for "Push Carts" and "Mobile Food Vending", and modifying the City's Sidewalk Seating/Encroachment Permit requirements for restaurants.

Staff has informed the OFPC members that a comprehensive food policy update will require significant coordination with other City agencies, since the regulations for these various activities are integrated into many different sections of both the Municipal and Planning Codes. This effort will require public outreach, as well as involve significant staff and Zoning Update Committee (ZUC) time. Therefore, review of the major OFPC recommendations will need to wait until completion of the current "Phase I" of the Citywide Zoning Update (which involves in Phase I the adoption of new Residential and Commercial Zoning Chapters, and a new Zoning Map).

Staff has committed to the OFPC to begin a comprehensive review of the City's food policy regulations in the early part of 2011, upon completion of "Phase I" of the Zoning Update. In the meantime, the following minor changes to food policy regulations have been incorporated into the current Zoning Update work program:

- 1) Conditionally permit "Crop and Animal Raising Agricultural Activities" in every new Commercial and Residential Zoning District. This change will allow for the potential of small urban farms throughout the City after the noticing of a neighborhood surrounding

Item: _____
CED Committee
October 26, 2010

the site and City analysis of possible impacts relating to noise, hours of operation, soil contaminants, pesticides, traffic, odor, and water runoff;

- 2) Clarify the definition of “Community and botanical gardens” within the City’s current Land Use Classification of “Essential Service Civic Activities”; and
- 3) Clarify that for Industrial and mixed Industrial Zoning Districts, such as CIX, IG, and HBX, *indoor food production* can be interpreted as a “Custom Manufacturing” activity when applied to buildings of less than 10,000 square feet – at least until new “Urban Agriculture” and other new food-related Land Use Classifications can be created during the next phase of the zoning update.

FISCAL IMPACT

Staff has concluded that the proposed Conditional Use Permit requirements for “Crop and Animal Raising Agricultural Activities” in every new Commercial and Residential Zoning District can be implemented at existing budgeted staffing levels.

Fees collected by the City of Oakland’s Community Economic Development Agency (CEDA) will be deposited into the “Development Services Fund” (2415). All activities associated with the review of Crop and Animal Raising Activities will be cost covered. Therefore, the proposed planning review changes will not have a negative impact on the City’s finances.

BACKGROUND

Citywide Zoning Update

Oakland adopted a new General Plan Land Use and Transportation Element (LUTE) in 1998. The LUTE included changes to the city’s Land Use Map, and new policies about how and where development should occur. Adoption of the LUTE established a new vision for Oakland, but also created inconsistencies between the General Plan and the zoning regulations (found in Title 17 “Planning Code” of the Oakland Municipal Code). Although piecemeal changes to the Planning Code have been made over time, it has not been comprehensively amended since 1965. The bulk of Oakland’s zoning regulations remain outdated; not consistent with national best practices in zoning, include many obsolete terms; and are cumbersome for many users.

To address the inconsistency between the Zoning Code and the General Plan, Conformity Guidelines were adopted to provide a procedure for deciding whether a project is consistent with the Plan’s intent.¹ The original intent was for the Conformity Guidelines to be in effect for a short, temporary period until new zoning that was up-to-date and consistent with the General Plan could be adopted, and render them unnecessary. However, they remain in effect today.

¹ General Plan Conformity Guidelines were first adopted in 1999; they have been amended several times subsequently, as new zoning has been adopted and/or as the need to extend the guidelines has arisen. The Guidelines are accessible online at: <http://oaklandnet.com/strategicplanning>

An initial effort to comprehensively update the Zoning Code began in 1999, following adoption of the General Plan LUTE. A consultant was retained, stakeholder meetings were conducted, an ordinance was drafted, and maps were prepared. Agreement was reached on some components of the new draft Zoning Code, including regulations for zones to implement the Open Space General Plan land use designation (Resource and Conservation Area and Urban Open Space) and the Housing Business Mix (HBX) land use designation. However, the overall effort was put on hold in 2003.

In 2007, the City resumed efforts to complete the Citywide Zoning Update. The City Council adopted new zoning for the city's industrial areas (areas designated as Business Mix or General Industrial/Transportation in the LUTE) in June 2008, and new zoning for the Central Business District was adopted in July 2009.

The remaining work to be completed in "Phase I" of the Citywide Zoning Update is comprised of updating the zoning for areas with residential and commercial General Plan LUTE land use designations.² The effort to update residential and commercial zoning was initiated in fall 2008. Land designated with a residential or commercial General Plan land use designation, listed below, represents over half the land area of Oakland:

- **Residential General Plan Land Use Designations** (*53% of the land area of Oakland*):
 - Hillside Residential
 - Detached Residential
 - Mixed Housing Type
 - Urban Residential

- **Commercial General Plan Land Use Designations** (*5% of the land area of Oakland*):
 - Neighborhood Center Mixed Use Commercial
 - Community Commercial
 - Regional Commercial

On October 13, 2010, Staff anticipates a final Zoning Update Committee (ZUC) review of the proposed new Residential and Commercial Zoning Chapters, and the new Zoning Map. The next step would then be 2-3 presentations to the full Planning Commission in November and December 2010. Review by the Oakland City Council is expected in February 2011.

² Mixed Waterfront General Plan land use designation was updated by the Estuary Policy Plan (EPP), which was adopted in 1999. Zoning to implement the EPP will be addressed separately from the Citywide Zoning Update effort by other planning processes including the Central Estuary Specific Plan currently underway.

KEY ISSUES AND IMPACTS

1. Zoning Use Classifications for “Farmers Markets”, “Community Gardens, Civic”, and “Urban Agriculture, Commercial”

The Oakland Food Policy Council (OFPC) is requesting to add a new Zoning Use Classification for “Farmers Markets” and then designate zoning districts where they would be a permitted use. This would also allow for the expansion of outdoor market operations to private property in many parts of the City. Farmer Market designations in the Zoning Code would provide clarity to those wishing to set up new markets in the City; and should include cross references to other code sections and permits that may be necessary for the operation of a Farmers Market. The OFPC is also requesting to create a new Zoning Use Classification for “Community Gardens, Civic” separate from, and replacing, the reference to “Community and botanical gardens” within the City’s current Zoning Use Classification of “Essential Service Civic Activities”. A separate Use Category for “Community Gardens, Civic” would increase public awareness of the use and make code navigation by the public more user-friendly. Thirdly, the OFPC is requesting to create a new Zoning Use Classification for “Urban Agriculture, Commercial” that would replace and/or supplement the current Zoning Use Classifications of “Crop and Animal Raising Agricultural Activities” and “Plant Nursery Agricultural Activities”. The new Use Classifications would allow for clarification between indoor vs. outdoor food production; whether on-site sales would be allowed, and if so, under what conditions; how many and what kind of livestock is allowed in which Zoning districts; and other similar currently unresolved issues.

Response: Planning Staff will review and update the above food-related Use Classifications during the next phase of the Zoning Update.

2. Farmer’s Markets

Farmer’s Markets are not currently explicitly called out anywhere in the Zoning Code as an allowed use, so if a market wanted to operate on *private property*, Planning Staff would have to interpret other use categories to include the operation of a Farmers Market, or tell the applicant that the use is not allowed. On the other hand, Farmer’s Markets taking place on *public property* (such in a public park or within the street right-of-way) do not require a planning permit in order to operate. Instead, this use requires reviews and permits from a multitude of other City and County agencies. This lack of a clear path forward for a new market operator causes confusion and uncertainty.

Response: Planning Staff will review and update the City’s food-related regulations, including the lack of clarity around the operation of a Farmers Market, during the next phase of the Zoning Update.

3. Limited Duration Retail Food Sales, such as “Pop-Up Markets”

The OFPC is requesting to clarify when and where limited duration retail food sales, such as a “Pop-Up Market”, are permitted in the City. Clarifying this issue may also apply to and facilitate seasonal sales, such as pumpkin and Christmas tree lots.

Response: Planning Staff will review and update the above regulations during the next phase of the Zoning Update.

4. Mobile Food Vending

Over the years, mobile food vending activities have raised a series of concerns around such issues as:

- (a) The potential for competition with existing “brick and mortar” restaurants;
- (b) The need to ensure public health permitting and inspections; and
- (c) The legitimacy of any associated commercial commissaries.

Because of these concerns, Mobile Food Vending is currently subject to extensive regulations in Chapters 5.49 and 8.09 in the Oakland Municipal Code, and is only permitted along certain major corridors within the city’s “pilot program” area. Outside of this permitted area, the use requires a Major Conditional Use Permit (CUP), which must be reviewed by the Planning Commission.

Mobile Food Vending is currently classified in the Oakland Zoning Code as a “Fast Food Restaurant Commercial” Activity, and defined as: *“The sale of ready-to-consume prepared foods from trucks, pushcarts or other movable equipment located on private property on a semi-permanent basis during hours of operation. Vehicular food vending generally has the following characteristics:*

- *Food is ordered and served from a take-out counter that is integral to the catering truck;*
- *Food is paid for prior to consumption;*
- *Catering trucks, pushcarts or other movable equipment from which the food is sold typically have a take-out counter and space for customer queuing;*
- *Food and beverages are served in disposable wrappers, plates or containers; and*
- *Food and beverages are prepared and sold for off-site consumption.”*

Any change to Mobile Food Vending regulation will need to balance the objectives of the OFPC with the concerns that have been expressed about food cart operations above.

Response: Planning Staff will update and modernize the City’s food vending regulations during the next phase of the Zoning Update. In recent years, one of the more noteworthy food trends in West Coast cities like Portland, Seattle, San Francisco, and Los Angeles is the increasing number and popularity of high-quality food carts offering a

diversity of food choices from around the world. This food sales model has had a difficult time taking root in Oakland though, due to the City's restrictive food regulations that: 1) prevent food carts from congregating together into "pods" like they do successfully in Portland and other places; 2) don't allow vendors to locate downtown, in Jack London Square, or within 500 feet of a public park; and 3) prevent vendors from providing chairs or other site furniture next to the food cart.

One option is to move the review of Mobile Food Vending and Push Carts located on private property out of Municipal Code Chapters 5.49 and 8.09 and into the Planning Code. This would allow for the review, and potential clustering, of food vendors on private property through an administrative Conditional Use Permit (CUP). In line with OFPC objectives, the CUP review criteria for neighborhoods with limited access to nutritious foods, for example, could emphasize vendors who sell healthier foods. Potential concerns such as the number and location of food vendors in relation to other types of businesses and uses, as well as food safety issues, could also be considered as part of this CUP review. In Los Angeles, for example, mobile food facilities will soon require twice-a-year inspections and the posting of letter grades from public health officials evaluating their food handling practices.

In summary, if the concerns with mobile food that have been expressed in the past can be addressed to the satisfaction of the council and the public, Planning Staff can see the potential for properly permitted mobile food facilities to operate successfully in the future on otherwise vacant or underutilized private properties in the city; and bring vitality, pedestrian activity, and spillover economic activity to surrounding districts.

Roving truck vendors wanting to locate in different locations at different times would still need to be addressed in the Municipal Code and administered by another department or agency, since the Planning Department does not have authority over activities in the Public Right-of-Way.

5. Sidewalk Seating and Encroachment Permits

Sidewalk Seating regulations were amended by Planning Staff in 2007 to facilitate sidewalk café review and approval, with the intention of encouraging more café businesses in the City. However, the OFPC points out that many applicants continue to have difficulty getting final approval of their sidewalk seating plan due to problems obtaining an Encroachment Permit from Building Services/Public Works after the Planning review.

Response: Like many other permit procedures, the request for sidewalk seating requires the review and approval of many different city departments and agencies. Planning Staff are very interested in bringing representatives from all the various departments together to develop a streamlined cross-departmental review and approval process that would apply not only to sidewalk seating permits, but to other types of desirable business activities.

The charts below summarize the timeline for inclusion of OFPC areas of interest in the Zoning Update process:

MINOR ITEMS INCLUDED AS PART OF THE CURRENT PHASE OF THE ZONING UPDATE (2010-11)

TOPIC	DESCRIPTION OF DESIRED OUTCOME	TIMELINE FOR REVIEW
Crop and Animal Raising	<ul style="list-style-type: none"> ▪ As an interim measure, until new Agriculture-related Land Use Classification can be created: <ul style="list-style-type: none"> – Conditionally permit “Crop and Animal Raising Agricultural Activities” in every new Commercial and Residential Zoning District. 	<ul style="list-style-type: none"> ▪ Zoning Update Cmte. (ZUC) review on 10/13/10. ▪ Planning Commission (PC) review on 11/3/10, 11/17/10, and 12/1/10. ▪ Expected review for adoption by City Council (CC) in February 2011.
Community and botanical gardens	<ul style="list-style-type: none"> ▪ Clarify definition of “Community and botanical gardens” within the City’s current Land Use Classification of “Essential Service Civic Activities” 	
Indoor food production	<ul style="list-style-type: none"> ▪ Clarify that for Industrial and mixed Industrial Zoning Districts (such as CIX, IG, and HBX), <i>indoor food production</i> can be interpreted in the interim, as a “Custom Manufacturing” activity when applied to buildings of less than 10,000 square feet. 	

MAJOR ITEMS TO BE INCLUDED AS PART OF THE NEXT PHASE OF THE ZONING UPDATE (2011)

TOPIC	DESCRIPTION OF DESIRED OUTCOME	TIMELINE FOR REVIEW
Urban Agriculture	<ul style="list-style-type: none"> ▪ Create new Land Use Classifications for: <ul style="list-style-type: none"> – Community Gardens, Civic; and – Urban Agriculture, Commercial. ▪ Specify zoning districts where allowed. ▪ Clarify livestock regulations. ▪ Clarify regulations for indoor vs. outdoor food production. ▪ Specify when and where associated retail sales are allowed. 	<p><u>9-12 months required for Planning Staff and public review - beginning in approx. February 2011, following Council adoption of Phase I of the Citywide Zoning Update (which includes new Residential and Commercial Zoning Chapters and a new Zoning Map)</u></p> <p>NOTE: To expedite the timeline for review, a code amendment package of the least controversial of these food policy elements could be brought forward separately.</p>
Farmers Markets	<ul style="list-style-type: none"> ▪ Clarify process for reviewing a new Farmer’s Market on: <ul style="list-style-type: none"> – Private property (in Zoning Code); and – Public property (include references in Zoning to other review agencies) 	
Pop up Markets	<ul style="list-style-type: none"> ▪ Clarify when and where limited duration retail food sales, such as “Pop-Up Markets”, are permitted in the City. 	
Mobile food	<ul style="list-style-type: none"> ▪ Create new Use Classification for “Mobile Food Vending” separate from Fast Food. ▪ Move regulations for Mobile Food Vending on private property into the Oakland Zoning Code (Title 17). ▪ Revise regulations to conditionally permit: <ol style="list-style-type: none"> 1) food carts to congregate together into “pods”; 2) locate downtown, in Jack London Square, near a public park, or other desirable location; and 3) provide chairs or other site furniture next to the food cart. 	
Sidewalk seating. Cabaret Licensing.	<ul style="list-style-type: none"> ▪ Work with other City Agencies to coordinate creation of: <ul style="list-style-type: none"> – A streamlined review process for sidewalk Encroachment Permits, and – A “Cabaret Lite” Special Activity Permit category. 	

SUSTAINABLE OPPORTUNITIES

The mission of the Oakland Food Policy Council (OFPC) is to establish an equitable and sustainable food system in Oakland, California.

Economic:

The economic goals of the OFPC are to:

- Promote community economic development; and foster development in the food sector that creates living-wage jobs and local ownership in many sectors of the food system; and
- Support local agriculture that is economically viable, environmentally sustainable and socially responsible; and make Oakland a market for processing and consuming local food, with the objective of having at least 30 percent of Oakland's food needs sourced from within the City and the surrounding region.

Environmental:

The environmental goals of the OFPC are to:

- Promote energy efficiency; reduce energy consumption; and promote local, sustainable food production that helps Oakland transition to a locally- and regionally-based food system;
- Promote a “closed-loop” food system that eliminates pollution and use of non-renewable materials, and will promote food scrap composting; and
- Support the protection of environmental resources by promoting consumption of locally and sustainably-grown food, particularly food produced using environmentally-benign and energy-efficient growing, processing and distribution practices.

Social Equity:

The social equity goals of the OFPC are to:

- Strive to ensure access to healthy, affordable food within walking distance of every Oakland resident;
- Increase food security in Oakland to ensure that no Oakland resident experiences hunger;
- Build greater public health in Oakland; and support the development of balanced food environments that empower residents with opportunities to make healthy food choices and reduce environmental causes of obesity, diabetes, heart disease and other diet-related illnesses; and
- Increase public “food literacy” by sharing information that will allow communities to make food-related choices that positively influence public health, social responsibility and environmental sustainability.

DISABILITY AND SENIOR CITIZEN ACCESS

Disability and senior citizen access will not be affected as the Zoning text changes will not alter any requirements related to the Americans with Disabilities Act (ADA), the Older Americans Act, or other applicable laws.

RECOMMENDATION(S) AND RATIONALE

After much discussion, Planning Staff and the Oakland Food Policy Council (OFPC) appear to be in agreement about the timeline and phasing of review of their food policy recommendations. Planning Staff have agreed to incorporate their minor recommendations as part of the current zoning update work (see “Minor Items” Chart on page 7 of this staff report); while the major aspects of the OFPC proposal that involve: adding new Zoning Use Classifications for “Farmers Markets”, “Urban Agriculture, Civic”, and “Urban Agriculture, Commercial”; modifying the City’s Cabaret License requirements for restaurants; and modifying the review procedures and regulations for “Mobile Food Vending” (see “Major Items” Chart on page 8 of this staff report), will need to undergo a separate public review process, because they are more complicated; potentially controversial; connected like a web to other parts of the Zoning and Municipal Code; and involve multiple City Divisions and Agencies.

Therefore, to avoid slowing down the current “Phase I” work of the zoning update (adoption of new Residential and Commercial Zoning chapters), Staff recommends that the City Council accept the following timeline for review of the Oakland Food Policy Council’s recommended changes to the City’s food -related regulations:

- I. **Minor Items** included as part of the **current phase** of the Zoning Update (2010-11) -
 - Conditionally permit “Crop and Animal Raising Agricultural Activities” in every new Commercial and Residential Zoning District;
 - Clarify definition of “Community and botanical gardens” within the City’s current Land Use Classification of “Essential Service Civic Activities”;
 - Clarify that *indoor food production* can be interpreted in the interim, as a “Custom Manufacturing” activity when applied to buildings of less than 10,000 square feet.

- II. **Major Items** to be included as part of the **next phase** of the Zoning Update (2011) -
 - Create new Land Use Classifications for Community Gardens and Urban Ag.;
 - Clarify process for reviewing a Farmer’s Market;
 - Clarify when and where limited duration retail food sales are permitted in the City;
 - Review the regulations and review procedures for “Mobile Food Vending” activities;
 - Work with other City Agencies to create a streamlined review process for sidewalk Encroachment Permits, and a “Cabaret Lite” Special Activity Permit category.

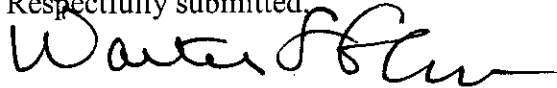
ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council accept the following timeline for review of the Oakland Food Policy Council's recommended changes to the City's food -related regulations:

- I. **Minor Items** included as part of the **current phase** of the **Zoning Update (2010-11)** -
 - Conditionally permit "Crop and Animal Raising Agricultural Activities" in every new Commercial and Residential Zoning District;
 - Clarify definition of "Community and botanical gardens" within the City's current Land Use Classification of "Essential Service Civic Activities";
 - Clarify that for Industrial and mixed Industrial Zoning Districts (such as CIX, IG, and HBX), *indoor food production* can be interpreted in the interim, as a "Custom Manufacturing" activity when applied to buildings of less than 10,000 square feet.

- II. **Major Items** to be included as part of the **next phase** of the **Zoning Update (2011)** -
 - Create new Land Use Classifications for "Community Gardens, Civic" and "Urban Agriculture, Commercial";
 - Clarify process for reviewing a Farmer's Market on public and private property;
 - Clarify when and where limited duration retail food sales, such as "Pop-Up Markets", are permitted in the City;
 - Review the regulations and review procedures for "Mobile Food Vending" activities;
 - Work with other City Agencies to create a streamlined review process for sidewalk Encroachment Permits, and a "Cabaret Lite" Special Activity Permit category.

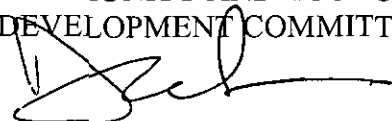
Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

Prepared by:
Edward Manasse, Planner V, Strategic Planning Division

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:



Office of the City Administrator

Item: _____
CED Committee
October 26, 2010