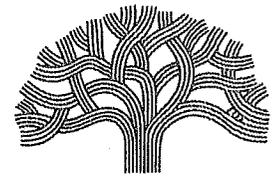


2016 AUG 31 PM 2:35



CITY OF OAKLAND

CITY HALL ■ 1 FRANK H. OGAWA PLAZA, 2nd Floor ■ OAKLAND, CALIFORNIA 94612

Honorable Annie Campbell Washington
Vice Mayor, District 4

ACampbellWashington@Oaklandnet.com

Date: September 13th, 2016

To: President Pro Tempore Larry Reid and
Members of the Community and Economic
Development Committee

Cc: Sabrina Landreth, City Administrator
Claudia Cappio, Assistant City Administrator

Re: CN-1 Zoning Regulations

RECOMMENDATION

Adopt a resolution requesting the Planning Commission to consider CN-1 Zoning Regulation changes allowing the City to deem that a use permit has been abandoned if the use has been discontinued (or its business license is allowed to lapse) for more than one year.

EXECUTIVE SUMMARY

Vice Mayor Campbell Washington requests that the City Council adopt a resolution requesting the City Planning Commission to prepare the appropriate legislation required to address the current problem experienced within the City's CN-1 zoning districts. The resolution states that it is the desire of the City Council to allow the City to deem that a use permit has been abandoned if the use has been discontinued (or its business license allowed to lapse) for more than one year.

BACKGROUND / LEGISLATIVE HISTORY

Each business district in the City of Oakland is zoned with a specific set of regulations. Less than 10 business districts in Oakland are zoned "CN-1." CN-1 zoning districts were established to "to maintain and enhance vibrant commercial districts with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping."¹ To achieve this goal, CN-1 zoning districts allow small (less than 5,000 square feet) general retail uses at street front locations as of right, while requiring a conditional use permit for other uses, such as general, medical, or professional office space, financial services, or a restaurant. These business-types are required to go through this permitting process out of a concern that their non-retail use may restrict the area's ability to maintain the critical mass of retail uses needed to make a business district walkable, complete, and competitive.

With this goal in mind, in order to grant a conditional use permit, the City must find that the use will not "weaken the concentration or continuity of retail facilities at the ground level, and will not impair the retention or creation of an important shopping frontage."²

¹ Planning Code Section 17.33.010(B)(1)

² Planning Code, Table 17.33.01, note L4



Current City Policy

Over the past several years, the Dimond District, located in City Council District 4, has experienced controversy over the granting of conditional use permits in the local Business District. When a new, non-retail business-type considers establishing themselves in the Dimond District, some residents and local businesses experience concern over whether that use will prevent important shopping frontage from ever going into that space. This is because under Oakland's current zoning regulations, when a local business space holds a conditional use permit in a CN-1 zoned district, the permit runs with the land, meaning the permit's effect continues regardless of changes in the business' ownership. The permit also has no expiration date or time. As a result, these conditional use permits run in perpetuity, leaving the concerned residents and local businesses with little hope that the space will ever become shopping frontage again.

Current CN-1 zoning regulations provide that even if a business requiring a use permit, for example, a professional office, closes or is replaced by a different use, the use permit continues to be valid. Even five or ten years later, a new business with a similar use, another professional office, could establish itself based on the earlier-granted permit. In the end, the number of uses allowable at a location without applying for a use permit gradually increases over time, making it increasingly difficult to assure that the critical mass of retail uses is maintained.

Interested in finding out whether they were alone in their concern, these concerned community members and business owners in the Dimond District participated in meetings with representatives from other Oakland commercial districts to review the City's CN-1 zoning regulations and found that they were not unique in experiencing these challenges. Two business districts, the Rockridge Business Improvement District and the Montclair Village Association, have expressed this concern in equal measure to the Dimond District.

ANALYSIS

Community businesses and Planning staff have collaborated with the District 4 office to develop a solution to address this need for an increase in retail space for our business districts, specifically tailored to the CN-1 business districts.

Proposed Solution

The solution we have come to is a proposed amendment to the Planning Code allowing the City to deem that a use permit has been abandoned if the use has been discontinued (or its business license allowed to lapse) for more than one year. This amendment would require notification to the use permit holder at the start of the one-year period, and allows the business to either re-establish itself within that year or apply for an up to one year extension. Once a use permit has been deemed abandoned, re-establishing the use would require applying for a new use permit.

Issues Requiring Additional Consideration

The Planning and Building Department and local business owners who operate in CN-1 business districts have provided feedback on the proposed amendments to the Planning Code,



identifying possible areas of concern, areas which require additional consideration and potential solutions for those concerns. Four outstanding issues raised by the Planning and Building Department staff and/or by local business owners remain:

1. Geographic Scope of the Change - Planning staff raised the issue of the potential scope of this change in CN-1 language. From narrowest to broadest, the scope of this change could include (1) One CN-1 zoned district only, for example, the Dimond District, allowing the City to evaluate the impact on this one business district before initiating this change in regulation across all CN-1 zones; (2) Several but not all CN-1 zoned districts, for example, the Dimond, Montclair and Rockridge business districts, which would allow the City to evaluate how this change in City policy functions within different contexts with different struggles. The Rockridge area has a great deal of restaurants using what would otherwise be retail space, whereas the Montclair district has a large number of service-related businesses (dry-cleaning, nail salons, etc.) using what would otherwise be retail space; and (3) All CN-1 zoned districts, making the regulation City-wide policy all at once, allowing the City to prevent the harm it aims to prevent more rapidly. For the purposes of presenting one, cohesive vision, the draft language presented here uses option 3, including all CN-1 zoned districts at once in this language change.
2. Noticing Process - Planning staff has expressed concern regarding the noticing process. It may not be feasible for City staff to serve written notice of the apparent abandonment on the holder of the permit. The City does not have the necessary information recorded in a way that makes this process efficient. Instead, staff should consider a policy in which a new holder of the use permit and/or new property owner must demonstrate that the use existed within the last year. This would place the onus on the new user of the use permit to provide some evidence or documentation of use within that year, rather than placing the onus on the City to make this determination.
3. Definition of Abandonment - In order to make determinations of abandonment clear and fair, it would be critical that staff determine the definition of "abandonment" in such a way that evidence or documentation of use/abandonment of use is consistent.

One example a local business district representative provided to illuminate this point is in the case of a ground-floor medical office or real estate firm. Could this business technically serve one "client" once every two months to maintain operating status? This is the type of question staff would need to address.

4. Length of Time for Abandoned Use - In the proposal included in the Resolution, the use must be discontinued (or its business license allowed to lapse) for one year. This is intended to provide sufficient opportunity to the current use permit holder. Some business district representatives, however, believe that a 90 or 120 day length of time for abandoned use would be more appropriate and more effective at addressing this problem. This is an issue Planning staff would be best equipped to consider and address upon further outreach and research.

In accordance with Oakland Planning Code section 17.144.030, this Resolution requests the City Planning Commission to initiate action to amend the Planning Code, identify any potential unforeseen consequences of this amendment, and conduct the necessary public outreach in all CN-1 zoned districts. At this end of this consideration and outreach process, this resolution requests the Planning and Building Department and the Oakland City Planning Commission to prepare the appropriate legislation required to meet this goals stated in this staff report.



FISCAL IMPACT

There is no fiscal impact to the adoption of this resolution. Additional staff time may be required for noticing, evaluation of abandonment, and consideration of appeals. However, this increase in staff time is not likely to require additional hiring within the Planning Department.

PUBLIC OUTREACH/ INTEREST

This resolution was developed in coordination with community members with the Dimond Improvement Association, in consultation with the Montclair Village Association. The original proposed amendment language was developed in consultation with the Executive Director of the Rockridge Business Improvement District.

COORDINATION

The Planning and Building Department provided feedback on proposed amendment language, identifying possible areas of concern, areas which require additional consideration and potential solutions for those concerns.

SUSTAINABLE OPPORTUNITIES

Economic: These recommended changes to the City's Planning Code will ensure greater viability of Oakland's business districts zoned CN-1.

Environmental: In creating business districts with a wide array of retail stores, the City of Oakland will establish more walkable neighborhoods, requiring residents to drive less in their vehicles, with the potential to reduce vehicle emissions.

Social Equity: Small to medium sized retail spaces fronting sidewalks in business districts provide emerging business owners with opportunities to begin their own business with lower overhead costs and an opportunity for window-front advertising. As a result, this resolution will likely help to promote growth in the numbers of small, diverse business owners in the City of Oakland.

For questions regarding this report, please contact Adam Simons, Office of Vice Mayor Annie Campbell Washington, ASimons@oaklandnet.com, 510-238-7004.

ACTION REQUESTED

Adopt a resolution requesting the Planning Commission to consider CN-1 Zoning Regulation changes allowing the City to deem that a use permit has been abandoned if the use has been discontinued (or its business license allowed to lapse) for more than one year pursuant to future amendments to Oakland Municipal Code and Oakland Planning Code.



The resolution initiates the process for the City Council to consider legislation before calendar year 2017 that either adds the recommended resolution language to the Planning Code or achieves the aforementioned goals by similar means.

Respectfully submitted,

Vice Mayor Annie Campbell Washington
District 4, City of Oakland





12:45
OFFICE OF THE CITY ATTORNEY
OAKLAND
16 AUG 31 PM 2:06

Approved as to Form and Legality

Office of the City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY VICE MAYOR ANNIE CAMPBELL WASHINGTON

RESOLUTION REQUESTING THE CITY PLANNING COMMISSION TO CONSIDER ZONING REGULATION CHANGES TO THE CN-1 NEIGHBORHOOD COMMERCIAL CN – 1 ZONE TO ALLOW THE CITY TO DEEM A USE PERMIT TO BE ABANDONED IF THE USE HAS BEEN DISCONTINUED OR IF THE BUSINESS LICENSE LAPSES FOR MORE THAN ONE YEAR.

WHEREAS, the City of Oakland’s business districts strive to create the most diverse set of businesses, providing opportunities for residents to get all of their shopping needs met in single areas, helping to make neighborhoods more walkable; and

WHEREAS, several of Oakland’s business districts include properties that are located in the CN-1 Neighborhood Commercial – 1 Zone, a label which establishes which set of regulations apply to that specific business district; and

WHEREAS, the intent of the CN-1 Zone is to maintain and enhance vibrant commercial districts with a wide range of retail establishments serving both short and long term needs in attractive settings oriented to pedestrian comparison shopping; and

WHEREAS, CN-1 zoning regulations currently allow properties that obtain conditional use permits to continue to hold onto the use for which the permit was granted, even when the use has been abandoned or discontinued for long periods of time, preventing new types of businesses to begin using that space for an alternate use; and

WHEREAS, the City seeks to stimulate the economic viability of, encourage new business types in, and advance the pedestrian access throughout the City’s business districts; and

WHEREAS, the City Council requests that the City Planning Commission initiate action to change the text of the zoning regulations for the CN-1 Neighborhood Commercial – 1 Zone to allow the City to deem a conditional use permit to be

abandoned if the use has been discontinued or if the business license lapses for more than one year; and

WHEREAS, the purpose of the proposed amendments to the CN-1 zoning regulations is to revitalize Oakland's business districts and enhance mixed use neighborhood commercial centers by enabling new types of businesses to replace uses that have been abandoned or discontinued; and

WHEREAS, Chapter 17.144 of the Oakland Planning Code sets forth the Rezoning and Law Change Procedure, and describes the procedure by which changes may be made in the text of the citywide zoning regulations; and

WHEREAS, Oakland Planning Code section 17.144.030 provides that, upon request of the City Council, the City Planning Commission shall initiate action to change the text of the zoning regulations; now, therefore, be it

RESOLVED: That, in accordance with Oakland Planning Code section 17.144.030, the City Council requests the City Planning Commission to initiate action to change the text of the CN-1 Neighborhood Commercial – 1 zoning regulations to allow the City to deem that a conditional use permit has been abandoned if the use has been discontinued or if the business license lapses for more than one year; and be it

FURTHER RESOLVED: That the City Planning Commission shall consider adopting the following addition to Chapter 17.33 of the Planning Code:

In the CN-1 Zone, in addition to the conditional use permit procedures set forth in Chapter 17.134, the following special provisions shall apply to use permits granted subject to note L4 of table 17.33.01. These provisions shall take precedence over any conflicting provision of Chapter 17.134.

1. Any use permit granted pursuant to this provision shall run with the land and remain valid regardless of a change in the ownership of the property or the use.
2. A use for which a use permit has been granted pursuant to this provision shall be deemed abandoned if either of the following occurs:
 - a. The business license for the use has expired for a period of at least one year; or
 - b. Either:
 - (1) The use for which the use permit was granted has ceased operation; or
 - (2) Other evidence is provided to the City that is found sufficient to show the intent of the permit holder to abandon the use;

- c. And the discontinuance of use has lasted for a continuous period of at least one year.
- 3. The City shall serve written notice of the apparent abandonment of the holder of the use permit and the property owner at their address of record, along with a copy of this subsection. The one-year period for being deemed abandoned shall not commence until the date notice is served to both individuals (if the two are not the same individual).
- 4. At any time during the one year period, the use permit holder and/or property owner may, by renewal of the business license and/or submission to the City of other evidence, submit a request that the City find the use has not been abandoned, or may request an extension of the one-year period for a maximum of one additional year based on a showing of good cause.
- 5. Upon receipt of such request from the permit holder, the City shall establish an administrative process with public notice provided upon each administrative decision. This decision is appealable by residents who disagree. The fee for this appeal shall be the same as the current appeal fee in the Master Fee Schedule. The use permit shall continue in effect until the request has been administratively processed and a final decision has been made.
- 6. If a use has been deemed abandoned, it may not be resumed without following the procedures of Chapter 17.134 for issuance of a new use permit; and be it

FURTHER RESOLVED: That the City Council wishes to consider legislation within calendar year 2016 that either adds the above described recommended language to the Planning Code or achieves this Resolution's stated goals by similar means.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
 LATONDA SIMMONS
 City Clerk and Clerk of the Council of the City
 of Oakland, California