

OFFICE OF THE CITY CLERK  
OAKLAND  
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REVISED 7/1/08

APPROVED AS TO FORM AND LEGALITY  
*Mark P. Walsh*  
DEPUTY CITY ATTORNEY

# OAKLAND CITY COUNCIL

## ORDINANCE NO. 12883 C.M.S.

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**ORDINANCE REZONING THE MACARTHUR TRANSIT VILLAGE PROJECT SITE LOCATED AT THE MACARTHUR BART STATION BETWEEN 40TH STREET, TELEGRAPH AVENUE, WEST MACARTHUR BOULEVARD AND HIGHWAY 24 FROM THE C-28 COMMERCIAL SHOPPING, R-70 RESIDENTIAL HIGH DENSITY AND THE S-18 DESIGN REVIEW COMBINING ZONE TO THE S-15 TRANSIT ORIENTED DEVELOPMENT ZONE; AND ADOPTING A TEXT AMENDMENT TO MODIFY REQUIRED OPEN SPACE IN THE S-15 ZONE**

**WHEREAS**, the approximately 8.2-acre site of the MacArthur Transit Village Project (“Project”), located At The Macarthur Bart Station Between 40th Street, Telegraph Avenue, West Macarthur Boulevard And Highway 24, is currently located in the C-28 Commercial Shopping Zone, R-70 Residential High Density Zone and S-18 Design Review Combining Zone according to the Oakland Zoning Regulations; and

**WHEREAS**, the intent of the C-28 Commercial Shopping Zone is to create, preserve, and enhance major boulevards of medium-scale retail establishments featuring some specified higher density nodes; and

**WHEREAS**, the intent of the R-70 Residential High Density Zone is to create, preserve, and enhance areas for apartment living at high densities in desirable; and

**WHEREAS**, MacArthur Transit Community Partners (“Applicant”) filed an application for rezoning, planned unit development permit, design review, and conditional use permit (“Applications”) to demolish the existing BART surface parking lots and all existing buildings within the project site to allow for the construction of a new mixed-use, transit village development project (624 residential units, 42,500 square feet of neighborhood-serving retail and commercial uses (including 7,000 square feet of live/work units) a 5,000 square feet community center use and 300-space parking garage for BART patrons) on October 5, 2007; and

**WHEREAS**, the application for the rezoning petitioned the City to rezone the Project site from the C-28 Commercial Shopping Zone, R-70 Residential High Density Zone and S-18 Design Review Combining Zone to the S-15 Transit Oriented Development Zone; and

**WHEREAS**, the intent of the S-15 Zone is to create, preserve and enhance areas devoted primarily to serve multiple nodes of transportation and to feature high-density residential, commercial and mixed-use developments to encourage a balance of pedestrian-oriented activities, transit opportunities, and concentrated development; and encourage a safe and pleasant pedestrian environment near transit stations by allowing a mixture of residential, civic, commercial, and light industrial activities, allowing for amenities such as benches, kiosks, lighting, and outdoor cafes; and by limiting conflicts between vehicles and pedestrians, and is typically appropriate around transit centers such as Bay Area Rapid Transit District (BART) stations, AC Transit Centers and other transportation nodes; and

**WHEREAS**, the S-15 Zone would allow the proposed density and mix of land uses proposed for the transit village project; and

**WHEREAS**, the S-15 Zone is a “best fit” zone for the project site’s General Plan land use designation of Neighborhood Center Mixed Use; and

**WHEREAS**, the S-15 Zone includes provisions for minimum useable open space for residential housing units: 150 square feet of group open space and 30 square feet of private open space per unit; and

**WHEREAS**, a reduction in the minimum useable open space requirement in the S-15 Zone to be consistent with the S-17, Downtown Residential Open Space Combining Regulations, would further the goals for Transit-Oriented Development including increased density and flexibility of design to best suit the proposed mix of land uses; and

**WHEREAS**, the S-17 Zone includes provisions for minimum useable open space for residential housing units: 75 square feet of open space per unit; and

**WHEREAS**, in accordance with the California Environmental Quality Act (“CEQA”), the City issued a Notice of Availability for the MacArthur Transit Village Draft Environmental Impact Report (EIR) on January 31, 2008, and circulated the Draft EIR for 45 days; and

**WHEREAS**, the City received a total of twenty-four (24) comments on the Draft EIR; and

**WHEREAS**, the City issued a Notice of Availability for the MacArthur Transit Village Response to Comments Documents, which included responses to comments received and text revisions, on May 23, 2008; and

**WHEREAS**, the Planning Commission conducted a duly noticed public hearing on the Final Environmental Impact Report, which is made up of the Draft EIR and Response to Comments Document on June 4, 2008; and

**WHEREAS**, at the June 4, 2008, hearing, the Planning Commission certified the Final EIR and adopted appropriate CEQA-related findings, recommended approval of the rezoning to the City Council, recommended approval of the text amendment to the S-15 Zone to the City Council, and recommended approval of the applications for planned unit development permit, design review, and conditional use permit (collectively called "Development Permits"), along with revisions to the conditions of approval and draft TDM plan, to the City Council; and

**WHEREAS**, the City Planning Commission's Design Review Committee held a duly noticed special meeting on June 18, 2008, and recommended revisions of the Design Review Guidelines to the City Council; and

**WHEREAS**, the Community and Economic Development Committee of the City Council conducted a duly noticed meeting on the Project on June 24, 2008 and recommended Project approval, with further revisions to the conditions of approval and Design Review Guidelines; and

**WHEREAS**, the City Council of the City of Oakland conducted a duly noticed public hearing on the Project on July 1, 2008; and

**WHEREAS**, all interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

**WHEREAS**, the public hearing was closed by the City Council on July 1, 2008;

**NOW, THEREFORE**, the Council of the City of Oakland does ordain as follows:

**SECTION 1.** The City Council, as the final decision-making body of the lead agency, independently confirms and adopts as its own findings and determinations (i) the certification of the FEIR and adoption of the CEQA-related Findings made and adopted by the Planning Commission on June 4, 2008, prior to taking action on the Project, and (ii) the Conditions of Approval and Mitigation Monitoring and Reporting Program adopted by the Planning Commission on June 4, 2008, as modified in the July 1, 2008 City Council Supplemental Agenda Report; all incorporated by reference herein.

**SECTION 2.** The City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Applications and the Planning Commission's decision on the Project, hereby amends the designation and location of zones and zone boundaries on the Zoning Map as shown on the map attached to this Ordinance as **Exhibit A** and further amends the text of the zoning regulations (Planning Code Section 17.97.170) as shown in this Ordinance as **Exhibit B**, all hereby incorporated by reference.

**SECTION 3.** The City Council finds that it is necessary, desirable, and in the public interest to amend the Zoning Map and Text of the S-15 Zone for the reasons set forth herein and in the June 24, 2008, Community and Economic Development Committee Agenda Report, the June

4, 2008, Planning Commission Report, and the MacArthur Transit Village Environmental Impact Report, all of which are hereby incorporated by reference as if fully set forth herein.

**SECTION 4.** The City Council finds and determines that this Ordinance complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies.

**SECTION 5.** The record before this Council relating to the Project Applications includes, without limitation, the following:

1. the Project Applications, including all accompanying maps and papers;
2. all plans submitted by the Applicant and his representatives;
3. all staff reports, decision letters and other documentation and information produced by or on behalf of the City, including without limitation the Environmental Impact Report and supporting technical studies, all related and/or supporting materials, and all notices relating to the Project Applications and attendant hearings;
4. all oral and written evidence received by the City staff, the Planning Commission, and the City Council before and during the public hearings on the Project Applications; and
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations and Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations.

**SECTION 6.** 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 respectively: (a) Community & 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, 1<sup>st</sup> floor, Oakland, California.

**SECTION 7.** If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and this Council hereby declares that it would have passed the remainder of this Ordinance if such invalid portion thereof had been deleted.

**SECTION 8.** This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter, if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

**SECTION 9.** The recitals contained in this Ordinance are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 15 2008, 2008

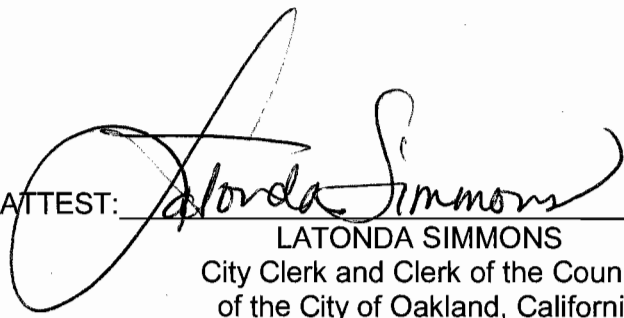
**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID,  
AND PRESIDENT DE LA FUENTE - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

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

ATTESTATION DATE: 7-22-08

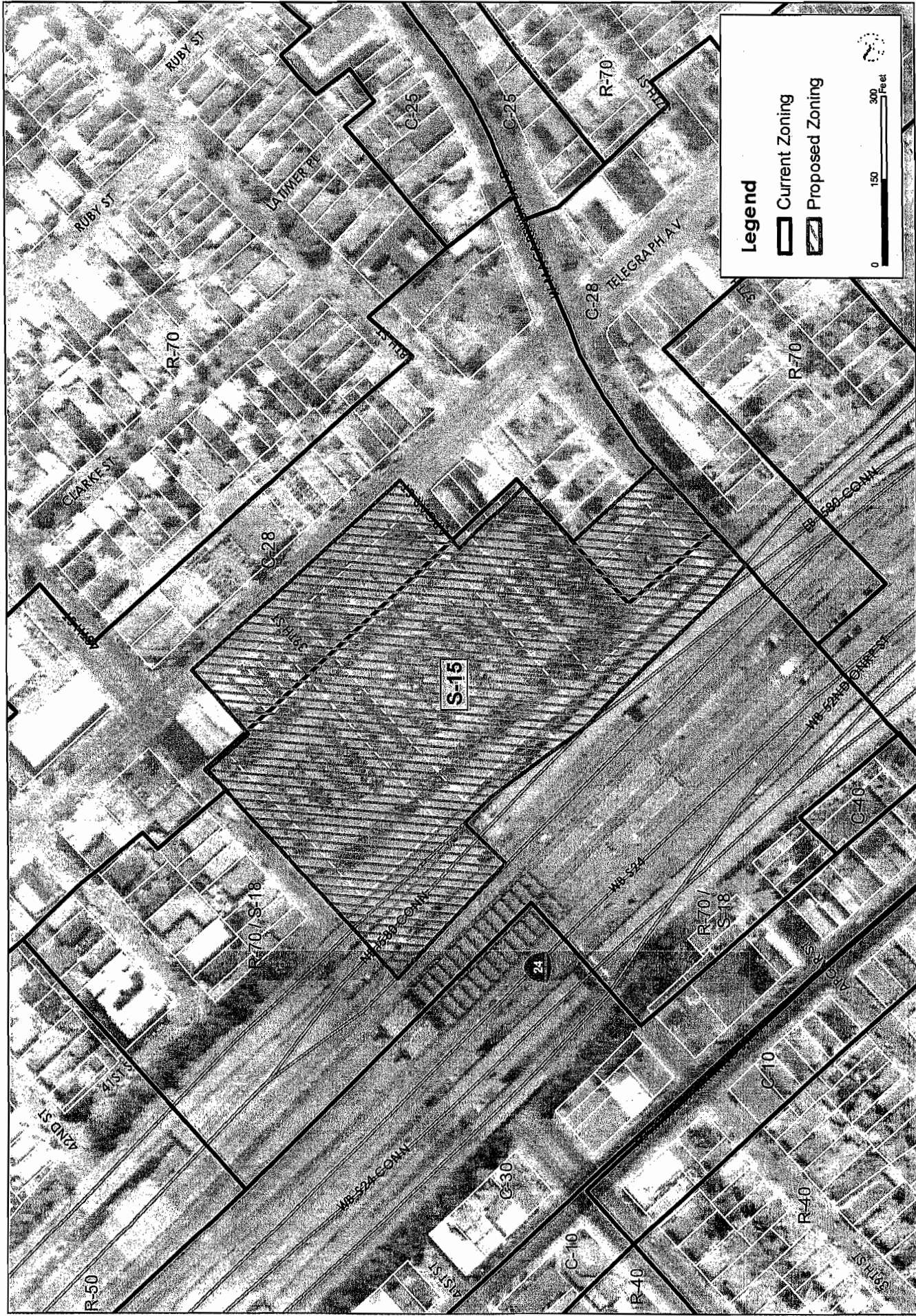
Introduction Date: **JUL 1 2008**

**EXHIBIT A**

**AMENDMENT TO ZONING MAP  
MACARTHUR TRANSIT VILLAGE PROJECT SITE**

(APNS 012-0969-053-03, 012-0968-055-01, 012-0967-049-01, 012-0969-002-00, 012-0969-003-00, 012-0969-053-02, 012-0969-004-00, 012-0968-003-01, 012-0967-009-00, AND 012-0967-010-00)

EXHIBIT A



Planning Commission  
June 4, 2008

MacArthur Transit Village Development  
Proposed Rezoning (From: C-28 and R-70/S-18 To: S-15)



**EXHIBIT B**

**TEXT AMENDMENT TO S-15 ZONE RELATED TO MINIMUM USABLE OPEN SPACE**



## TEXT AMENDMENT TO S-15 ZONE RELATED TO MINIMUM USABLE OPEN SPACE

~~Strike-out text = deleted text~~

Underline text = new text

17.97.170 Minimum usable open space.

Usable Open Space for all Residential Facilities shall comply with the following open space standards (17.97.170A and 17.97.170B).

~~1A. Group Usable Open Space for Residential Facilities. On each lot containing Residential Facilities with a total of two or more living units, group usable open space shall be provided for such facilities in the minimum amount of one hundred fifty (150) square feet per regular dwelling unit plus one hundred (100) square feet per efficiency dwelling unit. All required group usable open space shall conform with the standards set forth in Chapter 17.126, except that group usable open space may be located anywhere on the lot, and may be located entirely on the roof of any building on the site.~~

~~2B. Private Usable Open Space for Residential Facilities. Private usable open space shall be provided in the minimum amount of thirty (30) square feet per regular dwelling unit and twenty (20) square feet per efficiency unit. All required space shall conform to the standards for required private usable open space in Section 17.126.040. All private usable open space may be substituted for group usable open space with a ratio prescribed in Section 17.126.020 except that actual group open space shall be provided in the minimum amount of seventy five (75) square feet per regular dwelling unit and fifty (50) square feet per efficiency unit. (Ord. 12776 § 3, Exh. A (part), 2006; Ord. 11892 § 4 (part), 1996; prior planning code § 6871)~~

A. Definitions. As used in this section, usable open space categories shall be defined as follows:

1. Private Usable Open Space. Private usable open space is accessible from a single unit and may be provided in a combination of recessed and projecting exterior spaces.

2. Public Ground-Floor Plaza. Public ground-floor plazas (plazas) are group usable open space located at street-level and adjacent to the building frontage. Plazas are publicly accessible during daylight hours and are maintained by the property owner. Plazas shall be landscaped and include pedestrian and other amenities, such as benches, fountains and special paving.

3. Widened Sidewalk. A widened sidewalk includes paving, landscaping and pedestrian amenities along the building frontage and within the property boundaries, and constitutes group usable open space. A widened sidewalk shall involve either a land dedication or easement to allow public access at all times and a seamless connection to the public right-of-way.

4. Rooftop Open Space. Rooftop open space, a type of group usable open space, includes gardens, decks, swimming pools, spas and landscaping located on the rooftop and accessible to all tenants.

5. Courtyard. A courtyard is a type of group usable open space that can be located anywhere within the subject property.

6. Off-site Open Space. Privately owned and maintained group usable or public open space at ground-floor or podium level within one thousand (1,000) feet of a residential development, intended to fulfill the usable open space requirement of said residential development, only. (Ord. 12776 § 3, Exh. A (part), 2006; Ord. 12343 § 2 (part), 2001)

B. All required usable open space shall be permanently maintained and shall conform to the following standards:

1. Area. On each lot containing Residential Facilities, usable open space shall be provided for such facilities in the minimum amount of seventy-five (75) square feet per regular dwelling unit plus fifty (50) square feet per efficiency dwelling unit. Residential units developed in the S-15 zone shall provide a combination of the following usable open space categories, as defined in this section, in order to satisfy the standards established in this section:

- a. Private usable open space;
- b. Public ground-floor plaza;
- c. Widened sidewalk;
- d. Rooftop open space;
- e. Courtyard; and
- f. Off-site open space.

2. Size and Shape. An area of contiguous space shall be of such size and shape that a rectangle inscribed within it shall have no dimension less than the following dimensions:

Private Usable Open Space	10' (ground floor)
Public Ground-Floor Plaza	10'
Widened Sidewalk	10'*
Rooftop	15'**
Courtyard	15'

\* Measurement does not include width of existing and/or required sidewalk, and is additive to existing and required sidewalk.

\*\* When open space is located on a roof, the area occupied by vents or other structures which do not enhance usability of the space shall not be counted toward the above dimension.

3. Location and Accessibility. Usable open space, other than private usable open space and off-site open space, may be located anywhere within the development and shall be accessible to all the living units within the development. It shall be served by any stairway or other accessway qualifying under the Oakland Building Code as an egress facility from a habitable room. Private usable open space may be located anywhere on the lot except that ground-level space shall not be located in a required minimum front yard and except that above-ground-level space shall not be located within five feet of an interior side lot line. Above-ground-level space may be counted even though it projects beyond a street line. All private usable open space shall be adjacent to, and not more than four feet above or below the floor level of, the living unit served. Private usable open space shall be accessible to only one living unit by a doorway to a habitable room or hallway.
4. Usability. A surface shall be provided which prevents dust and allows convenient use for outdoor activities. Such surface shall be any practicable combination of lawn, garden, flagstone, wood planking, concrete, asphalt or other serviceable, dustfree surfacing. Slope shall not exceed ten percent. Off-street parking and loading areas, driveways, and service areas shall not be counted as usable open space. Adequate safety railings or other protective devices shall be erected whenever necessary for space on a roof, but shall not be more than four feet high.
5. Openness. There shall be no obstructions above the space except for devices to enhance its usability, such as pergola or awning structures. There shall be no obstructions over ground-level private usable open space except that not more than fifty (50) percent of the space may be covered by a private balcony projecting from a higher story. Above-ground-level private usable open space shall have at least one exterior side open and unobstructed, except for incidental railings or balustrades, for eight feet above its floor level.
6. Limitations. Not more than twenty (20) percent of the required area shall be provided in widened sidewalks.
7. Landscaping and Amenities. At least ten percent of usable open space area (with the exception of private usable open space) shall include landscaping enhancement as well as user amenities. Landscaping shall consist of permanent features, such as trees, shrubbery, decorative planting containers and coverings (mulch, gravel), fountains, boulders or artwork (sculptures, murals). User amenities shall include seating, decorative paving or playground structures.

MPW

## NOTICE AND DIGEST

**ORDINANCE (A) REZONING THE MACARTHUR TRANSIT VILLAGE PROJECT SITE LOCATED AT THE MACARTHUR BART STATION BETWEEN 40TH STREET, TELEGRAPH AVENUE, WEST MACARTHUR BOULEVARD AND HIGHWAY 24 FROM THE C-28 COMMERCIAL SHOPPING, R-70 RESIDENTIAL HIGH DENSITY AND THE S-18 DESIGN REVIEW COMBINING ZONE TO THE S-15 TRANSIT ORIENTED DEVELOPMENT ZONE; AND (B) ADOPTING A TEXT AMENDMENT TO MODIFY REQUIRED OPEN SPACE IN THE S-15 ZONE.**

This ordinance would (1) rezone the 8.2-acre property from the C-28 Commercial Shopping, R-70 Residential High Density and S-18 Mediated Design Review Overlay Zone to the S-15 Transit Oriented Development Zone; and (2) amend the text of the S-15 Zone related to minimum open space making it consistent with the S-17 Zone in order to facilitate the MacArthur Transit Village Project.