

2018 JAN 12 AM 9:24 **OAKLAND CITY COUNCIL**

ORDINANCE NO. ~~13495~~ C.M.S.

AN ORDINANCE, TO REZONE PORTIONS OF TWO PARCELS LOCATED AT 4432-4434, AND 4444 TELEGRAPH AVENUE FROM THE RM-1 MIXED HOUSING TYPE RESIDENTIAL ZONE TO THE CN-2 NEIGHBORHOOD CENTER ZONE AND TO ADOPT RELATED CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

WHEREAS, the applicant owns properties located at 4432-4434 and 4444 Telegraph Avenue in the City of Oakland, Alameda County; and

WHEREAS, the applicant proposes to rezone portions of two parcels located at 4432-4434 and 4444 Telegraph Avenue from the RM-1 Mixed Housing Type Residential Zone (RM-1 Zone) to the CN-2 Neighborhood Center Zone (CN-2 Zone); and

WHEREAS, prior to 2011, the subject sites were zoned C-28 Commercial Shopping District Zone (C-28 Zone) with the rear portions located in the R-35 Special One-Family Residential Zone (R-35 Zone); and

WHEREAS, the Zoning boundary, at that time, still bisected the lots, but seemed to follow the rear of the building located at 4432-4434 Telegraph Avenue; and

WHEREAS, in 2011, the Oakland City Council adopted new Zoning districts for most of the City to conform to the Land Use and Transportation Element (LUTE) of the General Plan and as part of the Zoning update effort, extensive field work was conducted as part of the mapping process resulting generally in a much finer-grained Zoning map and new Zoning text that considered what was occurring "on the ground" and parcel-specific Zoning; and

WHEREAS, currently, the boundary bisects an existing commercial building, ignoring the "flag" portion of one of the lots fronting onto 44th Street, and retaining the residential zoning of the parcel that backs up onto an AT&T switching station; and

WHEREAS, currently most of the parcels are in the CN-2 Zone; however, the rear 25-35 feet is in the RM-1 Zone; and

WHEREAS, the adjustment of the Zoning would create uniform Zoning that follows the rear property lines, reflects the fact that all parcels front onto a major arterial, acknowledges a major Essential Service Activity is located at the rear of one of the parcels, provides for the existing building to be in one Zone, and accommodates the flag portion of the interior lot; and

WHEREAS, on November 1, 2017 the City Planning Commission conducted a duly noticed public hearing to consider the rezoning and, after conducting and closing the public hearing, recommended that the City Council adopt the California Environmental Quality Act CEQA findings and rezoning, subject to the requirements and findings contained in the staff report ("City Planning Commission Report"); and

WHEREAS, after a duly noticed public meeting on January 23, 2018, the Community and Economic Development Committee of the City Council voted to approve staff's recommendation and forward the recommendation to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on February 6, 2018 to consider the Project; and

WHEREAS, the City Council independently reviewed and considered the findings made by the Planning Commission for approval of the rezoning of the properties from the RM-1 Mixed Housing Type Residential Zone to the CN-2 Neighborhood Center Zone, and hereby affirms said findings; and

WHEREAS, the proposal relies on the previously certified Final Environmental Impact Report (EIR) for the LUTE (1998), and on a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Section 15183 "Projects Consistent with a Community Plan, General Plan or Zoning"; and now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council finds and determines the foregoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

Section 2. The City Council hereby adopts the proposed rezoning of portions of two parcels located at 4432-4434 and 4444 Telegraph Avenue from the RM-1 Mixed Housing Type Residential Zone to the CN-2 Neighborhood Center Zone, as detailed in *Exhibit A*, attached hereto and hereby incorporated by reference, based in part upon the findings contained in the approved City Planning Commission Report and the City Council Agenda Report.

Section 3. The City Council has reviewed the proposal and the CEQA exemptions described in the approved City Planning Commission Report and the City Council Agenda Report and independently finds and determines that this action relies on the previously certified Final Environmental Impact Report (EIR) for the LUTE and on a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Section 15183 "Projects Consistent with a Community Plan, General Plan or Zoning". The Environmental Review Officer or designee shall file a Notice of Exemption with the appropriate agencies.

Section 4. The provisions of this Ordinance are severable, and if any section, subsection, sentence, clause, phrase, paragraph, provision, or part of this Ordinance, or the application of this Ordinance to any person, is for any reason held to be invalid, preempted by state or federal law, or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance. It is hereby declared to be the legislative intent of the City Council that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

Section 5. The record before this Council relating to this Ordinance include, without limitation, the following:

1. The July 19, 2017 Rezoning application, as may be amended or supplemented, and all related materials, including all accompanying maps, papers and appendices;
2. All final staff reports, final decision letters, and other final documentation and information produced by or on behalf of the City, including all related/supporting final materials, and all final notices relating to the Project and attendant hearings;

3. All oral and written evidence received by the Oakland Planning Commission, City Administrator's Office, and City Council during the public hearings on the Project as well as all written evidence received by the relevant City Staff before and during the public hearings on the Project; and
4. All matters of common knowledge and all official enactments and acts of the City, such as: (a) the General Plan; (b) Oakland Municipal 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. Except as specifically set forth herein, this ordinance suspends and supersedes all conflicting resolutions, ordinances, plans, codes, laws and regulations.

Section 7. If any provisions of this ordinance or application thereof to any person or circumstances are held invalid, the remainder of this ordinance and the application of provisions to the other persons or circumstances shall not be affected thereby.

Section 8. Pursuant to Section 216 of the Charter of the City of Oakland, this Ordinance shall become effective immediately upon final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption by the Council of the City of Oakland.

Section 9. 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) Planning and Building Department, Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 2114, Oakland, California; (b) City Administrator's Office, One Frank H. Ogawa Plaza, 1st Floor, Oakland, California; and (c) Office of the City Clerk, One Frank H. Ogawa Plaza, 1st Floor, Oakland, California.

Section 10. The recitals contained in this Ordinance are true and correct and are an integral part of the City Council's decision.

MAR 2 0 2018

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, ~~WATSON~~, KALB, KAPLAN, AND PRESIDENT REID - 7

NOES- 0

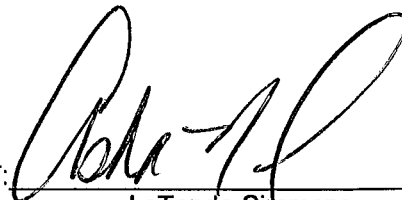
ABSENT- 0

ABSTENTION- 0

Revised - Guillen - 1
Introduction Date

FEB 0 6 2018

ATTEST:



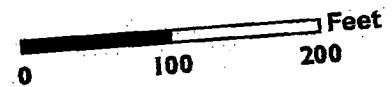
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: 3/22/2018

EXHIBIT A



Existing Zoning
4432 - 4444 Telegraph Avenue



Planning & Building Department
November 1, 2017



EXHIBIT A



COMMUNITY & ECONOMIC
DEVELOPMENT CMTE.
JAN 9 2 2010

Proposed Zoning
4432 - 4444 Telegraph Avenue



Planning & Building Department
November 1, 2017



NOTICE & DIGEST

AN ORDINANCE, TO REZONE PORTIONS OF TWO PARCELS LOCATED AT 4432-4434, AND 4444 TELEGRAPH AVENUE FROM THE RM-1 MIXED HOUSING TYPE RESIDENTIAL ZONE TO THE CN-2 NEIGHBORHOOD CENTER ZONE AND TO ADOPT RELATED CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

This Ordinance is to rezone portions of two parcels located at 4432-4434 and 4444 Telegraph Avenue from the RM-1 Mixed Housing Type Residential Zone (RM-1 Zone) to the CN-2 Neighborhood Center Zone (CN-2 Zone). The rezoning would occur for a 25 – 35 foot portion at the rear of the parcels. The purpose of the rezoning is to eliminate the Zoning boundary running through the parcels and existing building, and create a uniform line that follows the rear property lines such that consistent Zoning regulations would apply to the entire property.