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REVISED

APPROVED AS TO FORM AND LEGALITY

Mark P. Wald

City Attorney

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE NO. 12850 -C.M.S.

INTERIM ORDINANCE AMENDING THE ZONING REGULATIONS FOR THREE YEARS OR UNTIL THE CITY COUNCIL ADOPTS PERMANENT REGULATIONS TO A) CREATE THE S-5 BROADWAY RETAIL FRONTAGE INTERIM COMBINING ZONE REGULATIONS (S-5 ZONE) AND B) AMEND THE ZONING MAPS TO INCLUDE THE S-5 ZONE ON AND NEAR BROADWAY FROM 23RD STREET TO HAWTHORNE AVENUE.

WHEREAS, Oakland lacks adequate retail facilities in key categories; experiences a significant degree of retail leakage; community retailing desires are not met, and national retailers are significantly underrepresented in Oakland; and

WHEREAS, Oakland stores sell \$1 billion less than Oakland residents demand for comparison retail goods; and

WHEREAS, Oakland currently captures only twenty-four percent of the trade area's retail sales for comparison goods, compared to other City's such as San Leandro, Berkeley, and Alameda, which capture about forty-eight percent of their potential retail sales, indicating that Oakland has the potential to capture millions of dollars of sales tax revenue currently leaking out to neighboring cities and a portion of those that leak outside the trade area; and

WHEREAS, these conditions exist despite that Oakland is well-positioned to attract retail both geographically and from a standpoint of overall household income; and

WHEREAS, on February 6, 2007, the City Council directed staff to enter into a contract with the Conley Consulting Group to conduct a Citywide Retail Recruitment Strategy and Implementation Plan and to initially analyze retail opportunities for Upper Broadway because of properties for sale and probable relocation of existing auto dealerships to the former Oakland Army Base; and

WHEREAS, the Conley Consulting Group has outlined strategies for the redevelopment of the Upper Broadway/Auto Row area to create a pedestrian oriented retail center; and

WHEREAS, a key component of all the strategies is to adopt a specific plan that would provide

an area-wide set of development regulations and requirements that would accommodate new retail development and infrastructure improvements to the Upper Broadway/Auto Row area; and

WHEREAS, the existing zoning regulations are inadequate and otherwise contrary to the public interest and an interim ordinance is necessary to assure that the ground floor of new and existing construction is preserved for pedestrian oriented retail businesses until such time that a specific plan is adopted; and

WHEREAS, adoption of Chapter 17.81 of the Oakland Planning Code (S-5 Broadway Retail Frontage Interim Combining Zone) would assure that the ground floor of new and existing construction is preserved for pedestrian oriented retail businesses until such time that a specific plan is adopted; and

WHEREAS, the Zoning Update Committee at its meeting of October 17, 2007 recommended forwarding the proposed Chapter 17.81 (S-5 Broadway Retail Frontage Interim Combining Zone Regulations) and recommended approval of the proposal to amend the zoning maps to include the S-5 zone on Broadway from 23rd Street to Hawthorne Avenue to the full Planning Commission; and

WHEREAS, the Community and Economic Development Committee of the City Council recommended adoption of the S-5 zone with certain modifications after a duly noticed meeting on November 27, 2007; and

WHEREAS, the Planning Commission recommended adoption of the S-5 zone to the City Council after a duly noticed public hearing at their November 28, 2007 meeting; and

WHEREAS, the provisions of the California Environmental Quality Act (CEQA) have been satisfied and the proposal relies on the following environmental documents to satisfy any requirements under the California Environmental Quality Act (CEQA): the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the General Plan, adopted 1998 (General Plan EIR) and the Broadway/MacArthur/San Pablo Redevelopment Plan Environmental Impact Report, adopted 2000; and

WHEREAS, as a separate and independent basis, the proposal is also exempt from CEQA under CEQA Guidelines section 15061(b)(3), known as the “General Rule”, that states a project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment; now, therefore

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

Section 1. The Oakland Planning Code is hereby amended to add a new Chapter 17.81 (S-5 Broadway Retail Frontage Interim Combining Zone Regulations) to the Oakland Planning Code, as detailed in Exhibit A, hereby incorporated by reference.

Section 2. The designation and location of zones and zone boundaries on the City of Oakland zoning maps are hereby amended as set forth in Exhibit B.

Section 3. This Ordinance complies with the California Environmental Quality Act.

Section 4. This Ordinance shall be effective upon adoption, subject to the provisions of Section 216 of the Charter of the City of Oakland, but shall not apply to building/construction-related permits already issued and not yet expired, zoning applications approved by the City and not yet expired, or to zoning applications deemed complete by the City as of the effective date.

Section 5. 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 other persons or circumstances shall not be affected thereby.

Section 6. The recitals are true and correct and an integral part of this ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, JAN 15 2008, 20

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and ~~PRESIDENT DE LA FUENTE~~ - 7

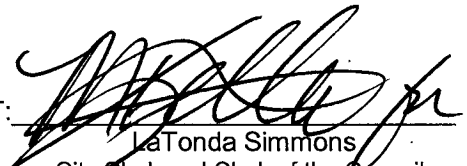
NOES- 0

ABSENT- 0

ABSTENTION- 0

Excused- De La Fuente - 1

ATTEST:


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

Introduction Date: **DEC 18 2007**

REVISED

EXHIBIT A

AMENDMENTS TO OAKLAND PLANNING CODE

Chapter 17.81 S-5 Broadway Retail Frontage Interim Combining Zone Regulations is added to the Planning Code to read as follows.

“Chapter 17.81 S-5 Broadway Retail Frontage Interim Combining Zone Regulations

Sections:

17.81.010 Title, purpose, and applicability.

17.81.020 Expiration for S-5 zone.

17.81.030 Zones with which the S-5 zone may be combined.

17.81.040 Relationship to base zone.

17.81.050 Required design review process.

17.81.060 Permitted and conditionally permitted activities.

17.81.070 Special regulations regarding facilities on the ground level of principal facilities.

17.81.080 Special ground floor height regulation.

17.81.090 Building location.

17.81.100 Special regulations applying to new construction over 10,000 square feet.

17.81.010 Title, purpose, and applicability.

The provisions of this chapter shall be known as the S-5 Broadway retail frontage interim combining zone regulations. The S-5 zone is intended to create, preserve, and enhance ground level retail opportunities on the commercial areas of Broadway north of the Central Business District. These interim regulations anticipate the adoption of more comprehensive and detailed regulations and a plan to attract retail opportunities on this area of Broadway.

17.81.020 Expiration for S-5 zone.

The regulations contained in the S-5 zone shall remain in place and be effective for a continuous period of three years from the date of the adoption of the regulations or until the City Council adopts permanent regulations, whichever comes first.

17.81.030 Zones with which the S-5 zone may be combined.

The S-5 zone may be combined with any commercial zone.

17.81.040 Relationship to base zone.

The regulations in the S-5 zone are supplementary to the regulations applying in the zone or zones with which the S-5 zone is combined. Whenever any provision of the S-5 zone imposes overlapping or contradictory regulations with those contained in the applicable base zone, or contains restrictions covering any of the same subject matter, the provision within the S-5 zone shall control, except as otherwise expressly provided in the zoning regulations.

17.81.050 Required design review process.

Except for projects that are exempt from design review as set forth in Section 17.136.025, no Local Register Property, Building Facility, Telecommunications Facility, Sign or other associated structure in the S-5 combining zone shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

17.81.060 Permitted and conditionally permitted activities.

The following table lists activities permitted, conditionally permitted, and prohibited in the S-5 zone. The descriptions of these activities are contained in Chapter 17.10.

“P” designates permitted activities in the corresponding zone.

“C” designates activities that are permitted only upon the granting of a conditional use permit (see Chapter 17.134) in the corresponding zone.

“L” designates activities subject to certain limitations listed at the bottom of the table.

“--” designates activities that are prohibited in the corresponding zone.

Activity	Regulations	Additional Regulations
Residential Activities		
Permanent Residential	C(L1)	
Residential Care occupying a One-Family Dwelling Residential Facility	C(L1)	17.102.212
Residential Care not occupying a One-Family Dwelling Residential Facility	C(L1)	17.102.212
Service-Enriched Permanent Housing	C(L1)	17.102.212
Transitional Housing	C(L1)	17.102.212
Emergency Shelter	--	17.102.212
Semi-Transient Residential	--	17.102.212
Civic Activities		
Essential Service	P	
Limited Child-Care	C(L1)	
Community Assembly	C(L1)	
Community Education	P(L1)	
Nonassembly Cultural	P	
Administrative	P(L1)	
Health Care	C	
Special Health Care	--	17.102.410
Utility and Vehicular	--	
Extensive Impact	--	
Telecommunication	P	17.128
Commercial Activities		
General Food Sales	P	
Convenience Market	C	17.102.210
Fast-Food Restaurant	C	
Alcoholic Beverage Sales	C	17.102.210
Convenience Sales and Service	P	
Mechanical or Electronic Games	--	17.102.210
Medical Service	P(L2)	
General Retail Sales	P	
Large-Scale Combined Retail and Grocery Sales	--	
General Personal Service	P	

Activity	Regulations	Additional Regulations
Consultative and Financial Service	P	
Check Cashier and Check Cashing	--	
Consumer Laundry and Repair Service	P	
Group Assembly	C	
Administrative	P(L1)	
Business and Communication Service	P	
Retail Business Supply	C	
Research Service	--	
General Wholesale Sales	--	
Transient Habitation	--	17.102.370
Construction Sales and Service	--	
Automotive Sales, Rental, and Delivery	C	
Automotive Servicing	--	
Automotive Repair and Cleaning	--	
Automotive Fee Parking	C	
Transport and Warehousing	--	
Animal Care	C	
Undertaking Service	--	
Scrap Operation	--	17.102.210
<i>Manufacturing activities</i>		
Custom Manufacturing	--	
Light Manufacturing	--	
General Manufacturing	--	
Heavy Manufacturing	--	
Small Scale Transfer and Storage Hazardous Waste Management	--	
Industrial Transfer/Storage Hazardous Waste Management	--	
Residuals Repositories Hazardous Waste Management	--	
<i>Agricultural and Extractive activities</i>		
Plant Nursery	--	
Crop and Animal raising	--	
Mining and Quarrying Extractive	--	
<i>Accessory off-street parking serving prohibited activities</i>	C	17.102.110

Limitations:

- L1- These activities shall not be located on the ground floor of a building on a lot with a property line that abuts the Broadway right of way except for incidental pedestrian entrances that lead to one of these activities in stories above the ground floor.
- L2- These activities may only be located on the ground floor of a building on a lot that has a property line abutting the Broadway right of way upon the granting of a conditional use permit (see Chapter 17.134), and shall conform to the additional criteria contained in Section 17.25.030. However, incidental pedestrian entrances that lead to one of these activities in stories above the ground floor are permitted without the granting of a conditional use permit.

17.81.070 Special regulations regarding facilities on the ground level of principal facilities.

A. This section shall only apply to lots that have a property line abutting the Broadway right of way.

B. For the purposes of this section, the front of a building shall be that side facing Broadway and is within 50 feet of the lot line abutting the Broadway right of way.

C. Except upon the granting of a conditional use permit (see subsection E), only principal nonresidential facilities (excluding joint living and working quarters) shall be located within the front thirty (30) feet of the ground floor of any new principal facility located on a corner lot that abuts the Broadway right of way.

D. Except upon the granting of a conditional use permit (see subsection E), only principal nonresidential facilities (excluding joint living and working quarters) and a maximum one driveway shall be located within the front thirty (30) feet of the ground floor of any new principal facility located on an interior lot that abuts the Broadway right of way. This driveway shall be a maximum nineteen (19) feet in width and lead to parking that is at least thirty feet (30) from the front of the building.

E. Upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134, twenty (20) percent of the width of the front thirty (30) feet of the ground floor of a new principal facility may contain required parking. This conditional use permit may be granted only upon determination that the proposal conforms to the general use permit criteria set forth in the conditional use permit procedure in Chapter 17.134 and the following additional criterion:

1. That the requirements contained in subsections C or D are infeasible due to lot dimensions, topographic features, or other site constraints.

F. The ground level of Broadway facing facades of new principal facilities shall have a store front appearance defined by at least the following design elements:

1. An ample amount of street-facing ground level building facade comprised of clear, non-reflective windows that allow views of indoor commercial space. This includes:

a. A minimum of sixty (60) percent of the front building façade between 3.5 feet and 10 feet in height comprised of clear, non-reflective windows that allow views of indoor commercial space or product display areas. The total area of the front building façade shall not include the area with the driveway;

b. The bottom of any window or product display window being no more than four (4) feet above the abutting sidewalk; and

c. Product display windows used to satisfy that are a minimum height of 4.5 feet and internally lighted.

2. A prominent and primary entrance feature facing Broadway; and

3. An area designated for signage.

17.81.080 Special ground floor height regulation.

The minimum height from the grade to the ground floor ceiling of newly constructed principal facilities shall be fourteen (14) feet. This regulation does not apply to additions to existing buildings.

17.81.090 Building location.

The entire building façade that faces Broadway shall be located within five (5) feet of the sidewalk. This standard shall not apply to plazas, recessed entrances, parks, or space designed to accommodate sidewalk seating areas for restaurants, cafes, and similar businesses. No more than 50 percent of a building frontage shall qualify for the exception for plazas, recessed entrances, or sidewalk seating areas.

17.81.100 Special regulations applying to new construction over 10,000 square feet.

New construction shall only exceed ten thousand (10,000) square feet upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134.

Exhibit B: Existing & Proposed Upper Broadway Rezoning

Existing Zoning: C-40
Proposed Zoning: C-40/S-5

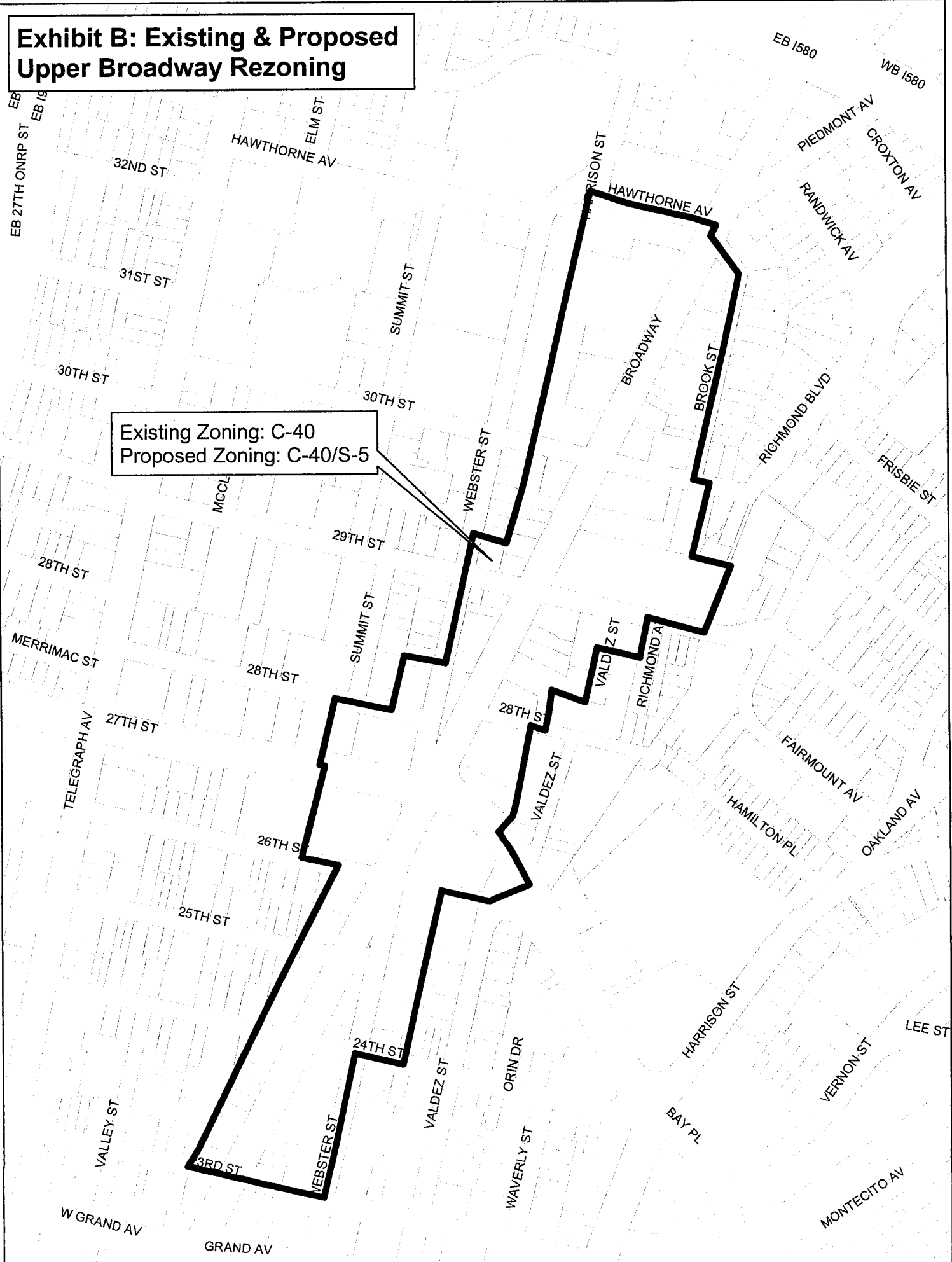


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