

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 MAY 29 PM 3:13

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: June 10, 2008

RE: **An Interim Ordinance, Recommended by the Planning Commission, Amending The Zoning Maps For Two Years, Applying The S-4 Design Review Combining Zone, Which Requires New Or Rehabilitated Non-Residential Facilities To Follow Established Design Review Procedures, To Those C-10, C-30, C-35 And C-40 Zones Which Are Designated In The General Plan As Neighborhood Center Commercial, Community Commercial And Urban Residential**

SUMMARY

This proposal maps the S-4 Design Review Combining Zone (S-4 Zone) on some of the City's main commercial streets. It requires all new and renovated non-residential facilities such as commercial buildings to be evaluated under the City's design review procedure, codified in Chapter 17.136 of the Oakland Planning Code. Specifically, the proposal would map the S-4 Zone to those C-10, C-30, C-35 and C-40 commercial zoning districts which are located within the boundaries of areas designated in the 1998 Land Use and Transportation Element of the General Plan (1998 LUTE) as Neighborhood Center Mixed Use, Community Commercial and Urban Residential.

This proposal affects commercial buildings on streets such as International Boulevard, Foothill Boulevard, Grand Avenue, San Pablo Avenue and Telegraph Avenue (See Attachment A). The established design review procedures vary, depending on the scale of the project:

The effect of this proposal is that small commercial renovation projects, façade improvements and new buildings less than 1,000 square feet will be reviewed over the zoning counter; commercial projects over 1,000 square feet will be administratively reviewed by case planners within a few weeks; and commercial projects that are over 25,000 square feet will go to the Planning Commission for review.

This proposal would be an interim measure, lasting two years from the date of adoption by the City Council.

The Planning Commission unanimously forwarded this proposal to the City Council, without change, on May 7, 2008. Staff requests that Council consider and adopt the zoning proposal. Staff also requests the Council consider the proposed interim status of two-years—whether it

Item: _____

Community and Economic Development Committee

June 10, 2008

should be removed, making the zoning map amendment permanent, until such time as new zoning regulations are written for the commercial corridors.

FISCAL IMPACT

The fiscal impact of the S-4 Zone should be an increase in revenue of less than \$50,000 to the Development Services Fund (Fund 2415), with no increase in expenditures.

The S-4 Zone would mandate staff-level review of new and renovated commercial projects that had not previously been reviewed. The additional staff time required should be able to be absorbed within current staffing levels. However, the additional permits that will result from the S-4 Zone will generate additional revenue, as described below.

To predict how many new design review permits might result from the proposed S-4 Zone, staff analyzed all commercial building permits issued in the last 12 months. The results were:

- Buildings less than 1,000 square feet: **10** permits (under the proposal, these applications would be reviewed over the zoning counter)
- Buildings greater than 1,000 square feet: **15** permits (under the proposal, these applications would be assigned to and reviewed by staff planners)

If the next 12 months were to follow the same rate of commercial building permit application as the previous 12 months, then additional staff hours and permit fees can be expected:

Category of permit	Permit Type	Annual Staff Time	Fee	Total annual expected fees
Less than 1,000 sf	Small Project Design Review	½ hour x 10 permits= 5 hours	\$845 per permit	\$8,450
Greater than 1,000 sf	Regular Design Review	20 hours ¹ x 15 permits= 300 hours	\$2,465 per permit	\$36,975

¹ 20 hours is an approximation of the time necessary for Regular Design Review. It includes initial review of submitted plans, a site visit, writing of an incomplete letter, review of a revised set of plans, and an approval letter.

Item: _____

BACKGROUND

The Zoning Update Committee unanimously forwarded the proposal to the Planning Commission on April 16, 2008. The Planning Commission unanimously forwarded the proposal, without change, to the Community and Economic Development Committee on May 7, 2008.

Today, commercial construction of any size can be built along the main commercial streets without any discretionary review from the City, on corridors such as International Boulevard, Foothill Boulevard, Grand Avenue, Telegraph Avenue, and San Pablo Avenue (See Attachment A) This is due either to the inconsistent mapping of zoning districts which require the design review procedure in Chapter 17.136 of the Planning Code, or to inconsistent mapping of the S-4 Combining Zone, which acts as overlay to commercial base zones which don't require design review, such as C-40. For example, C-31 zones (mapped in the Rockridge and Dimond commercial districts) and the C-27 zone (mapped in Montclair) are zones which require "Building Facilities" to be reviewed with the design review procedures of Planning Code Chapter 17.136.² This proposal will bring the same level of commercial design review in Rockridge, Dimond and Montclair to the main commercial streets of the City.

There have been previous mapping actions of the S-4 Zone. On January 15, 2008, the Oakland City Council adopted, as an emergency interim ordinance lasting until January 15, 2009, the S-4 Zone on the zoning districts of Upper Broadway, from Hawthorne Avenue to Interstate 580; from 38th Street to College Avenues; and from the area northeast of the intersection of Broadway and Pleasant Valley, to View Place. The current proposal is similar to this prior action, in that it applies the design review procedure to citywide C-30 and C-40 zoning districts.

Prior to the action on Upper Broadway, the S-4 Zone was last mapped in industrial areas of West Oakland in 2000.

KEY ISSUES AND IMPACTS

In preliminary discussions with City Council staff, and through two public hearings of the Zoning Update Committee and the Planning Commission, no problems or concerns have been raised about the proposed S-4 Zone design review of commercial buildings on main streets. It is important to note that the proposed S-4 Zone would *not* affect residential buildings on these same streets, which are already subject to design review procedures in C-10, C-30, C-35 and C-40 zoning districts.

² "Building Facilities" are defined in the Planning Code as "any structure, open area, or object which accommodates or is intended to accommodate Residential, Civic, Commercial, Manufacturing and/or Mixed Use Activities." For the purposes of this proposal, "Building Facilities" means "commercial" buildings.

Regulatory or Economic Issues

Staff recognizes the proposal raises a possible regulatory or economic issue for property owners. The proposal requires design review of commercial buildings in areas where it is not today required, so owners who build or renovate commercial buildings on the areas of International Boulevard, Foothill Boulevard, San Pablo Avenue, Telegraph Avenue and Grand Avenue which are mapped with the S-4 Zone can expect a building permit to take longer to be issued and also additional costs which result from design review procedure fees. However, projects that are less than 1,000 square feet can be approved in less than 30 minutes at the zoning counter.

Time and cost impacts to commercial property owners under the proposal would be:

1. Time for review of applications

Currently, a new or rehabilitated commercial facility in a C-10, C-30, C-35 and C-40 zone is cursorily reviewed over the zoning counter, without any design review. If the proposed S-4 Zone is adopted, new and rehabilitated non-residential facilities in the major commercial corridors would instead be evaluated with one of the four design review procedures currently used by the Planning and Zoning Division, described in the Program Description section below.

If the proposed S-4 Zone is adopted, applications for design review for commercial buildings would likely average the same length of time as is typical for residential design review applications:

- *Design Review Exemption*: over the zoning counter (approximately 30 minutes)
- *Small Project Design Review*: over the zoning counter (approximately 30 minutes)
- *Regular Design Review*: assigned to a staff planner (approximately twenty hours)
- *Major Design Review*: assigned to Major Projects staff (review period varies)

Under this proposal, applications for new or rehabilitated commercial buildings of less than 1,000 square feet would not require more time for review and approval than is currently experienced by applicants. However, construction or rehabilitation of commercial buildings which measure 1,000 square feet or more would be subject to design review periods of approximately twenty hours before a building permit could be issued; and buildings over 25,000 square feet would be reviewed by the City Planning Commission, which requires several months of preparation and review.

2. Costs of fees

The City of Oakland charges fees for design review by planning staff; these fees are updated yearly in the Master Fee Schedule which is presently being revised for 2008-2009. Currently, fees for the four design review procedures (for new construction) are:

Item: _____

- *Design Review Exemption:* \$300
- *Small Project Design Review:* \$845³
- *Signs and Fences* \$367
- *Regular Design Review:* \$2,465⁴
- *Major Design Review:* \$3,300⁴

If the proposal were to be adopted, applicants of new and rehabilitated commercial buildings will be required to pay these fees, depending on the appropriate type of design review procedure. Currently, applicants for commercial buildings in zoning districts which do not require design review do not pay these design review fees.

The Planning Commission determined that reviewing the design of commercial buildings with the same procedures as required in the Rockridge, Dimond and Montclair neighborhoods will improve the built environment of the city's major commercial corridors, to the benefit of the merchants and residents of these areas. This benefit is considered by the Council to outweigh the identified issues of time of review and costs of fees.

Environmental Issues

The proposal relies on the previously adopted 1998 LUTE Environmental Impact Report. The proposal is also exempt under CEQA Guidelines section 15061(b)(3): "General Rule", which 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. Staff finds the "General Rule" applies because the proposed regulation would have no change in the development intensity of the area, the proposal does not address residential density or floor area ratio, and the proposal contains no change in regulations regarding height, setback, open space or other regulations that have an effect on the environment. The proposed regulation is more stringent than the current zoning and regulatory controls, because it requires the planning staff to review the aesthetics of new and renovated commercial facilities, when no similar review is currently required.

PROGRAM DESCRIPTION

The proposal gives the City discretionary design review of new and rehabilitated commercial buildings on the major commercial streets, which are designated by the 1998 LUTE as Neighborhood Center Mixed Use, Community Commercial and Urban Residential (See

³ This figure is an average of the current fees for two tracks of Small Project Design Review: Track 1 is \$722.93 and Track 2 (Local Register Properties such as Potentially Designated Historic Properties) is \$967.35.

⁴ These figures presume a single permit for new construction, exempt from CEQA, with no other administrative actions (i.e. variances, etc). Permits for rehabilitation are approximately \$500 less than those for new construction. See "Zoning Permit Fees" handout for full description.

Attachment A). The proposal would amend, for an interim period of two years, the Zoning Maps by adding the S-4 Design Review Combining Zone to those C-10, C-30, C-35 and C-40 commercial zoning districts that are mapped in the 1998 LUTE as Neighborhood Center Mixed Use, Community Commercial and Urban Residential. Under the proposed mapping, all new and expanded commercial facilities in these zones would be evaluated through the City's design review procedure. This action will give the City the opportunity to protect the built fabric of these commercial corridors from hasty demolition, and from inappropriate and incompatible construction types and materials.

Chapter 17.80 of the Planning Code explains the intention of the S-4 Zone:

"...to create, preserve, and enhance the visual harmony and attractiveness of areas which require special treatment and the consideration of relationships between facilities, and is typically appropriate to areas of special community, historical, or visual significance."

The S-4 Zone requires that the design for all "Building Facilities" (i.e., commercial buildings, residential, and Mixed Use Developments) go through the design review procedure codified in Chapter 17.136 of the Oakland Municipal Code. The base zones C-10, C-30, C-35 and C-40 which are the subject of this proposal do not require design review of commercial buildings; these zoning districts, when on any other street not designated in the 1998 LUTE will not be mapped with the S-4 Zone under this proposal. However, in the few instances where parcels fronting on major streets (such as San Pablo Avenue) are zoned C-10, C-30, C-35 or C-40, but are not designated in the 1998 LUTE as Neighborhood Center Commercial, Community Commercial or Urban Residential, those parcels *will* be mapped with the S-4 Zone, under this proposal.

Planning and Zoning staff uses the city's *Small Project Design Guidelines* handbook to regulate different types of construction in four design review procedures. Each procedure reviews different types of construction; the first three are performed administratively, at the discretion of the Director of City Planning, while the fourth, Major Design Review, requires project review by the City Planning Commission in a public hearing.

Depending on the scale of the proposed construction, four design review procedures are used:

1. *Design Review Exemption:*
 - construction within the building envelope
 - additions outside the building envelope which measure less than 10% of total floor area or footprint on the site
2. *Small Project Design Review*
 - repair or replacement of existing building components

Item: _____

Community and Economic Development Committee
June 10, 2008

- Additions outside the building envelope that equal *more* than 10% of total floor area or footprint on the site, but *less* than 1,000 square feet (or 100% of the total floor area or footprint on site, whichever is less)
- changes to storefronts or street-facing facades
- new or modified signs or awnings (the fee for reviewing signs/awnings is reduced)

3. *Regular Design Review:*

- construction or alteration of structures requiring a conditional use permit or variance
- additions that are outside the existing building envelope and which exceed 1,000 square feet or 100% of the total floor area or footprint on site, whichever is less

4. *Major Design Review:*

- construction of more than 25,000 square feet of new floor area
- applications requiring an Environmental Impact Report

The timeline for implementation is upon passage by the City Council, the design review procedures would take effect. Two years later, the S-4 zone would be removed from the zoning maps. During that two-year period (2008-2010), it is expected that the Strategic Planning Division, as part of the approved schedule for the zoning update, would bring to the Council new zoning districts for the commercial corridors, and that this new zoning would have some form of mandatory design review for commercial buildings. Comprehensive commercial design review after the interim period in this proposal will require amending the thresholds in Section 17.136 (O.M.C.), which was modified in 2007 for *residential* design review. Additionally, the two-year time frame will allow the City to evaluate and adopt the retail strategy currently being developed by the Conley Group and its consulting team.

SUSTAINABLE OPPORTUNITIES

There are no immediate economic, environmental or social equity opportunities associated with this proposal. Reviewing new and renovated commercial projects on the major streets could, in the future, offer an opportunity for planning staff to encourage building owners to make investments in green building or high-performance materials which conserve resources and/or generate alternative energy.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no immediate benefits for the disabled or for senior citizens with the proposal. However, the added review by planning staff could include recommendations to building owners for improvements in ADA design and access.

Item: _____

Community and Economic Development Committee
June 10, 2008

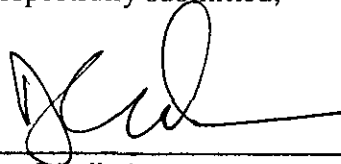
RECOMMENDATION

Staff recommends the Committee refer the Ordinance mapping the S-4 Zone to major commercial streets to the full City Council for review and adoption.

ACTION REQUESTED OF THE CITY COUNCIL

The Community and Economic Development Agency recommends that the City Council approve the Ordinance mapping, for an interim period of two years, the S-4 Design Review Combining Zone to those C-10, C-30, C-35 and C-40 zones which are designated in the General Plan as Neighborhood Center Commercial, Community Commercial and Urban Residential.

Respectfully submitted,



Dan Lindheim
Director, Community and Economic
Development Agency

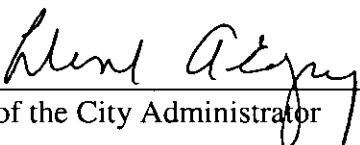
Reviewed by:

Eric Angstadt, Interim Strategic Planning Manager

Prepared by:

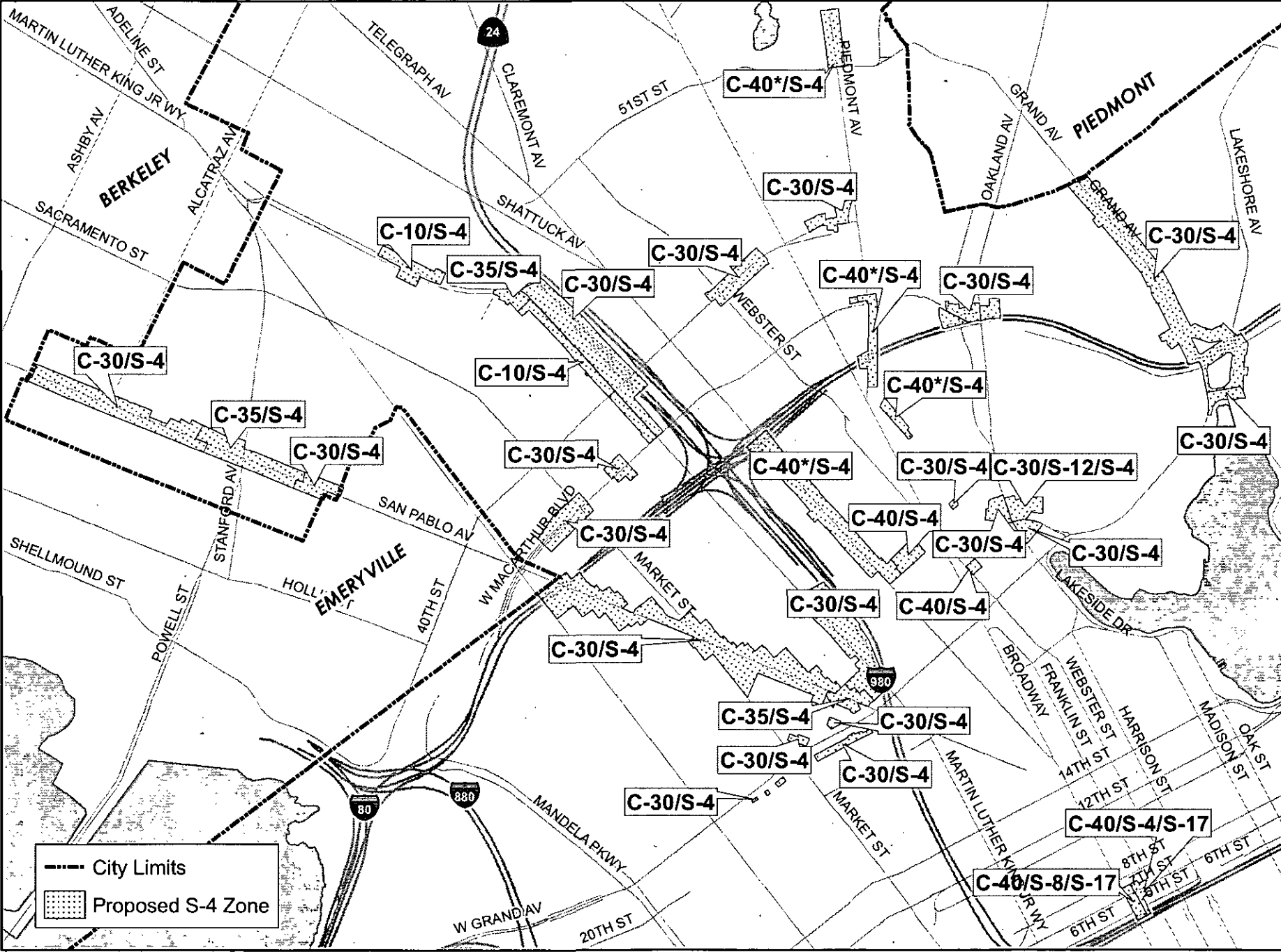
Devan Reiff, AICP, Planner II
Strategic Planning Division

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



Office of the City Administrator

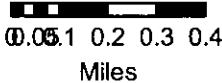
Item: _____
Community and Economic Development Committee
June 10, 2008



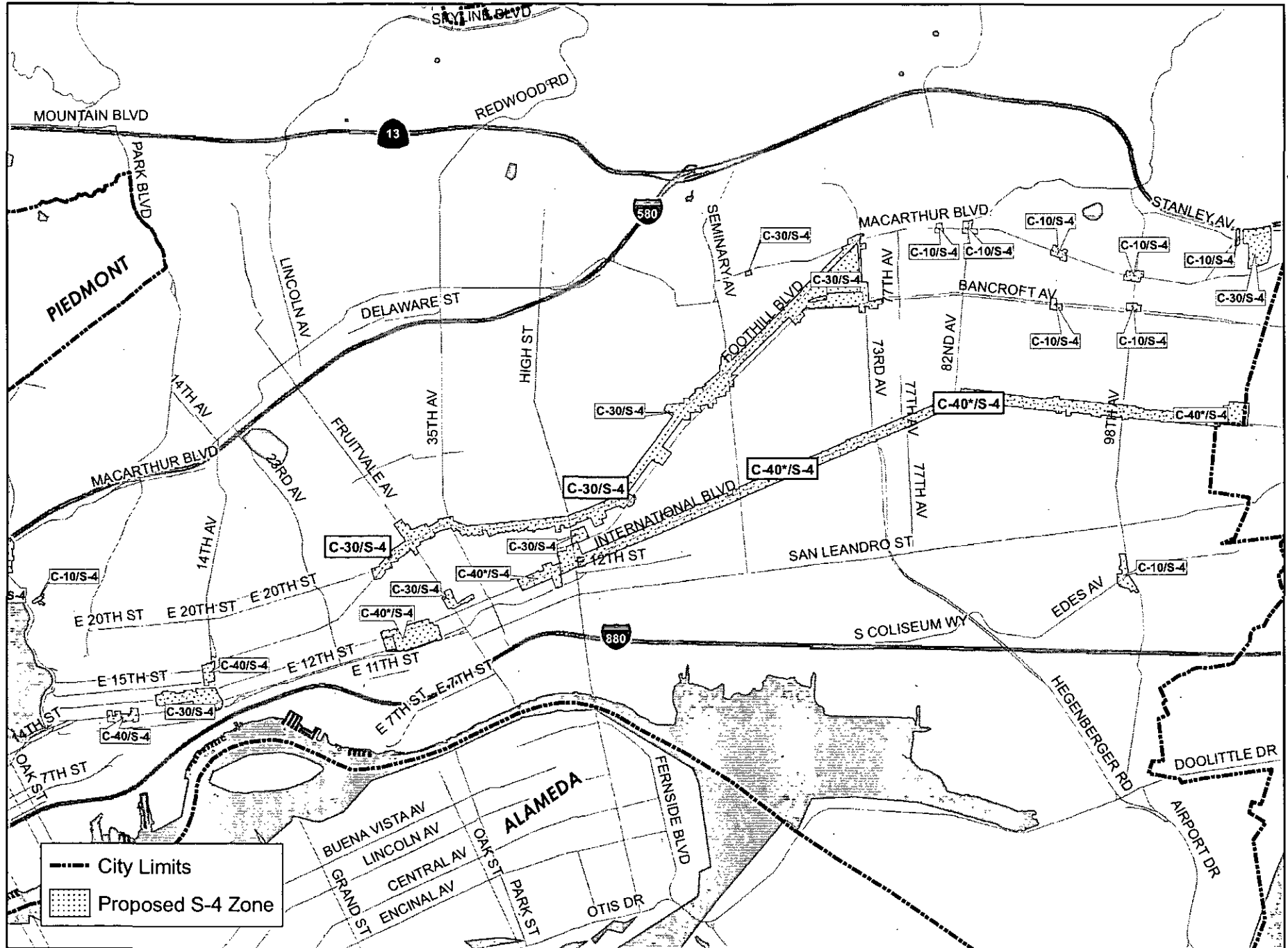
--- City Limits
 [Stippled Box] Proposed S-4 Zone



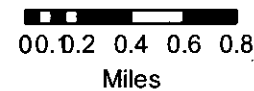
**Commercial areas proposed for S-4 Design Review Combining Zone
 For Illustrative Purposes Only**



CED Committee
 June 10, 2008



**Commercial areas proposed for S-4 Design Review Combining Zone
For Illustrative Purposes Only**



CED Committee
June 10, 2008

OFFICE OF THE CITY CLERK
OAKLAND

2008 MAY 29 PM 3:13

APPROVED AS TO FORM AND LEGALITY

Mark F. Wald

City Attorney

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

INTERIM ORDINANCE, RECOMMENDED BY THE PLANNING COMMISSION, AMENDING THE ZONING MAPS FOR TWO YEARS, APPLYING THE S-4 DESIGN REVIEW COMBINING ZONE, WHICH REQUIRES NEW OR REHABILITATED NON-RESIDENTIAL FACILITIES TO FOLLOW ESTABLISHED DESIGN REVIEW PROCEDURES, TO THOSE C-10, C-30, C-35 AND C-40 ZONES WHICH ARE DESIGNATED IN THE GENERAL PLAN AS NEIGHBORHOOD CENTER COMMERCIAL, COMMUNITY COMMERCIAL AND URBAN RESIDENTIAL

WHEREAS, the S-4 Design Review Combining Zone ("S-4 Zone"), as codified in Chapter 17.80 of Oakland Planning Code (OPC), is intended to create, preserve, and enhance the visual harmony and attractiveness of areas which require special treatment and the consideration of relationships between facilities, in areas which are of special community, historical, or visual significance; and

WHEREAS, the S-4 Zone requires that no Local Register Property, Building Facility, Mixed Use Development, Telecommunications Facility, Signs or other associated structures shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in OPC Chapter 17.136; and

WHEREAS, Oakland's major commercial streets, such as International Boulevard, Foothill Boulevard, Grand Avenue, San Pablo Avenue and Telegraph Avenue, which are currently zoned C-10, C-30, C-35 and C-40, do not require design review of non-residential or commercial development; and

WHEREAS, the City is developing a City-wide retail strategy that focuses on encouraging pedestrian-oriented retail development on the major commercial streets; and

WHEREAS, the City is updating its zoning on the major commercial streets, and will likely include some form of commercial design review in its permanent zoning controls for the areas designated in the 1998 Land Use and Transportation Element of the Oakland General Plan as Neighborhood Center Commercial, Community Commercial and Urban Residential; and

WHEREAS, until such time as the City adopts new zoning for the major commercial streets which requires some form of commercial design review, this interim proposal will be in effect for two years from date of passage; and

WHEREAS, the Land Use and Transportation Element of the Oakland General Plan places priority on the successful and attractive development of the transportation corridors; and

WHEREAS, staff has identified the following areas where the S-4 Design Review Combining Zone should apply: parts of International Boulevard, Foothill Boulevard, Grand Avenue, San Pablo Avenue and Telegraph Avenue; and

WHEREAS, on May 7, 2008 the Planning Commission held a duly noticed public hearing and at its conclusion, forwarded, without change, the proposal to map the S-4 Design Review Combining Zone on the major streets to the Community and Economic Development Committee of the City Council and the City Council; and

WHEREAS, the provisions of the California Environmental Quality Act (CEQA) have been satisfied and the proposal relies on the following environmental document to satisfy any requirements under CEQA: the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the General Plan, adopted in 1998; and

WHEREAS, as a separate and independent basis, the proposal is also exempt under CEQA Guidelines section 15061(b)(3): "General Rule", which 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; the proposed regulation would have no change in the development intensity of the area, and the proposed regulation is more stringent than the current zoning and regulatory controls, because it requires the planning staff to review the aesthetics of new and renovated commercial facilities, when no similar review is currently required; now therefore

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

Section 1. The recitals above are true and correct and are an integral part of this Ordinance.

Section 2. This Ordinance complies with the California Environmental Quality Act for the reasons stated above.

Section 3. The zoning maps shall be amended to apply the S-4 Design Review Combining Zone to those areas currently zoned C-10, C-30, C-35 and C-40 and designated in the 1998 Land Use and Transportation Element of the Oakland General Plan as Neighborhood Center Commercial, Community Commercial and Urban Residential; and as generally shown in Exhibit A, attached hereto and incorporated by reference, and shall remain in place and be effective for a continuous two-year period from the effective date of this ordinance, or until the City Council adopts permanent, citywide, commercial design review regulations, whichever comes first.

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 provision of this ordinance or the application thereof to any person or

circumstances is held invalid, the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

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

DATE OF ATTESTATION: _____

MPW

NOTICE AND DIGEST

AN INTERIM ORDINANCE, RECOMMENDED BY THE PLANNING COMMISSION, AMENDING THE ZONING MAPS FOR TWO YEARS, APPLYING THE S-4 DESIGN REVIEW COMBINING ZONE, WHICH REQUIRES NEW OR REHABILITATED NON-RESIDENTIAL FACILITIES TO FOLLOW ESTABLISHED DESIGN REVIEW PROCEDURES, TO THOSE C-10, C-30, C-35 AND C-40 ZONES WHICH ARE DESIGNATED IN THE GENERAL PLAN AS NEIGHBORHOOD CENTER COMMERCIAL, COMMUNITY COMMERCIAL AND URBAN RESIDENTIAL.

This interim ordinance amends the zoning maps, adding the S-4 Design Review Combining Zone (Oakland Planning Code, Chapter 17.80) to C-10, C-30, C-35 and C-40 Zones which are designated in the General Plan as Neighborhood Center Commercial, Community Commercial and Urban Residential. All new construction and rehabilitation of commercial and other non-residential buildings will require the design review procedures codified in Chapter 17.136. The ordinance will sunset in two years after adoption.