

Brian Mulry
Brian Mulry (Jun 13, 2024 15:43 PDT)

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, TO: (A) MAKE OAKLAND PLANNING CODE AND OAKLAND MUNICIPAL CODE TEXT AND ZONING MAP AMENDMENTS IMPLEMENTING THE POLICIES AND OBJECTIVES OF THE DOWNTOWN OAKLAND SPECIFIC PLAN AND (B) AMEND THE CITY OF OAKLAND MASTER FEE SCHEDULE (ADOPTED BY ORDINANCE NOL. 13747 C.M.S., AS AMENDED) TO ADOPT THE CENTRAL DISTRICT ENTERTAINMENT VENUE FEES IN FURTHERANCE OF THE DOSP GOALS OF FOSTERING ENTERTAINMENT VENUE USES IN THE CENTRAL DISTRICT OF DOWNTOWN

WHEREAS, the City desires to adopt a specific plan for the Downtown area that facilitates dense transit-oriented development that establishes Oakland's downtown as: an employment center independent from San Francisco, a mixed-income residential community that contributes to transit-oriented and equitable housing opportunities for all income levels in the increasingly costly Bay Area, and a vibrant regional entertainment destination; and

WHEREAS, to accomplish this purpose, the Oakland City Council adopted Resolution No. 85584 C.M.S. on April 30, 2015, which authorized the City Administrator to negotiate and execute a Professional Services Agreement ("PSA") with Dover, Kohl & Partners for development of the Downtown Oakland Specific Plan ("DOSP") and Environmental Impact Report ("EIR"); and

WHEREAS, Planning staff involved thousands of City of Oakland ("City") residents in community workshops and a wide range of efforts to develop a vision for the future of Oakland's downtown area and to review several iterations of the DOSP from 2015 to 2023, including: a ten-day public charrette and open house; large public presentations; racial equity-focused interviews and focus groups; topic-focused equity working groups, neighborhood design sessions and creative solutions labs; a survey focusing on older adults and people with disabilities; public events such as Lunar New Year, farmers' markets and the Black Joy Parade; general public meetings and hearings in person and online; online surveys; use of an online tool to receive comments on draft documents; focused meetings with priority equity groups; staff attendance at standing meetings of community organizations, Business Improvement Districts and Neighborhood Councils; sessions with UC Berkeley's Y-PLAN program in middle and high schools; a Youth Summit; and an ongoing Community Advisory Group ("CAG"); and

WHEREAS, on January 7, 2016, the City Council adopted Resolution No. 85958 C.M.S.,

designating the 14th Street corridor from Oak Street to Frontage Road as the “Black Arts Movement and Business District” (“BAMBD”) to highlight, celebrate, preserve and support the contributions of Oakland’s Black artists and business owners and the corridor as a place central both historically and currently to Oakland’s Black artists and Black-owned businesses; and

WHEREAS, the DOSP has been through several iterations, beginning with the original *Alternatives Report*, followed by the *Plan Options Memo*, the *Preliminary Draft Plan* and finally the *Public Review Draft of the DOSP* (“Draft Plan”) and *Draft Environmental Impact Report* (“DEIR”), which were published for review in late 2019; and

WHEREAS, the comment period was extended beyond the legal requirement on the Draft Plan and DEIR, and the City received thousands of community comments; and

WHEREAS, as the DOSP was being finalized and the implementing zoning developed, the COVID-19 pandemic began. Many of the DOSP’s policies and strategies already focused on many of the concerns exacerbated by the pandemic, such as the shift in retail toward online retailers and away from brick and mortar stores that occupy downtown areas, racial inequities in housing access and economic opportunity, and the need to become a more vibrant, culturally active twenty-four-hour downtown with more to offer than office buildings. However, these issues had accelerated and conditions had changed, so Planning staff took a step back to assess the plan and what might need to shift or be emphasized given the changed conditions and need for economic recovery; and

WHEREAS, also during the COVID-19 pandemic, Planning staff worked to take all the feedback heard into account to develop amendments to the City’s Planning Code and Zoning Map that would help implement the DOSP. To this end, an additional economic consultant was brought onto the planning team to help develop the Zoning Incentive Program (“ZIP”), which is one of the more complex elements of the DOSP zoning implementation that permits a developer to receive additional density in exchange for providing the City with community benefits from a preexisting menu developed by Planning staff after community feedback; and

WHEREAS, the DOSP, its environmental review document and its accompanying General Plan, Planning Code, Zoning Map and Municipal Code amendments have undergone thoughtful development and scrutiny for over eight (8) years; and

WHEREAS, on July 19, 2022, the City Council adopted Resolution No. 89345 C.M.S., recognizing the disproportionate impacts of climate change on Black, Indigenous, People of Color (“BIPOC”) and low-income communities in Oakland and directing the City Administrator to engage in an equitable process for integrating climate resilience and mitigation strategies and policies into the General Plan; and

WHEREAS, the existing Downtown Zoning Districts and Height and Intensity Maps do not implement the intent of the DOSP or the Estuary Policy Plan (“EPP”) and therefore need to be amended to better align with the DOSP’s plan for development; and

WHEREAS, adopting amendments to the Oakland Municipal Code (“O.M.C.”), Planning Code, Zoning Map, and Height and Intensity Maps consistent with the DOSP is a critical implementation step and adopting them concurrently is necessary to ensure that new development approved under the DOSP achieves its goals; and

WHEREAS, the following legislative amendments: (1) DOSP Planning Code

Amendments, (2) Zoning and Combining Zone Maps, (3) Height and Intensity Area (“HIA”) and ZIP Benefit Area Maps, and (4) O.M.C. Amendments to O.M.C. Chapter 5.12 Cabarets and the Master Fee Schedule amendments to facilitate efficient review of Entertainment Venues, O.M.C. Chapter 15.62, Affordable Housing Trust Fund, O.M.C. Chapter 15.72, and Affordable Housing Impact Fee are contained in **Exhibit A**, **Exhibit B**, **Exhibit C**, and **Exhibit D** respectively, and serve to implement significant aspects of the DOSP to facilitate a dense mix of residential and commercial development in the DOSP area in a manner that also thoughtfully addresses the potential for displacement, the preservation of cultural and entertainment uses and historic resources, and the need for equitable zoning outcomes (collectively, the “DOSP Legislative Amendments”); and

WHEREAS, the City used the community feedback received through the nine (9) years of community engagement and public hearings regarding the DOSP (2015-2024), and developed proposed DOSP Legislative Amendments that respond to this feedback and implement the policies, goals, and implementation measures of the DOSP; and

WHEREAS, Planning staff responded to community requests to create a community benefits program focused on zoning incentives, referred to herein and throughout the DOSP as the Zoning Incentive Program (“ZIP”), for new development, while engaging a consultant, Hausrath Economics Group (“HEG”), to study the ZIP’s economic impacts on new development as well as the value of community benefits that would be provided to the City; and

WHEREAS, as part of the DOSP Legislative Amendments, Planning Staff has proposed new DOSP zoning districts that assist in facilitating downtown residential and commercial development; and

WHEREAS, as part of the DOSP Legislative Amendments, Planning staff have proposed amendments to Zoning, HIA, and ZIP Benefit Area Maps that thoughtfully chart out where height and intensity of development shall be allocated, with special focus on historic resources and facilitating the Transfer of Development Rights (“TDR”) and ZIP programs; and

WHEREAS, the DOSP General Plan Amendments and Zoning Amendments were made available and presented for a public review at various times from 2022 to present, including on April 27, 2022 (Part I) and July 6, 2022 (Part II), with the revised versions of the DOSP General Plan Amendments and Zoning Amendments being published on April 19, 2024 prior to Planning Commission consideration of a recommendation; and

WHEREAS, in addition to facilitating public engagement meetings, Planning staff brought various elements of the DOSP Legislative Amendments to applicable City boards, committees and commissions, encouraged public participation; and

WHEREAS, Planning staff solicited feedback on the DOSP at the following public meetings and hearings: (a) the Zoning Update Committee (“ZUC”) on July 13, 2022, which was continued to August 24, 2022 and May 10, 2023; (b) the Landmarks Preservation Advisory Board (“LPAB”) on August 29, 2022 and May 6 2024, which was continued to June 3, 2024; (c) the Community and Economic Development (“CED”) Committee of the City Council on June 25, 2024; and (d) the City Council on July 2, 2024 and July 16, 2024; and

WHEREAS, the City received approximately forty (40) comment letters, and emails during the comment period, including recommendations from the CAG on various aspects of the DOSP and the DOSP Legislative Amendments; and

WHEREAS, Planning staff considered all community feedback and incorporated responsive changes where appropriate; and

WHEREAS, the DOSP responds to local, regional and international imperatives to develop in the center of dense urban areas served by transit and other amenities to reduce vehicle miles traveled and the impacts of greenhouse gases on climate and health; and

WHEREAS, the City has prepared an Environmental Impact Report (“EIR”) for the DOSP pursuant to the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines to analyze potential physical environmental impacts of the proposed DOSP and its implementing DOSP Legislative Amendments; and

WHEREAS, the DOSP does not propose any specific private development projects, but establishes a Development Program representing the maximum feasible development that the City has projected can be reasonably expected to occur in the DOSP area over a 20-year planning period. The EIR utilizes the maximum Development Program to assess the potential impacts of the development that is likely to occur under the DOSP; and

WHEREAS, since publication of the Draft EIR, available on the DOSP website at: www.oaklandca.gov/DOSP, the City has refined the Development Program, which is detailed in Table II-1 of the FEIR/RTC Document, Chapter II, entitled Plan Revisions and Draft EIR Project Description. The analysis supports that the revisions would not substantially change the findings of the Draft EIR and that they do not trigger recirculation of the Draft EIR; and

WHEREAS, the FEIR/RTC Document is available to the public at the project website: www.oaklandca.gov/DOSP. The FEIR is also available for review at the Oakland Planning and Building Department, Strategic Planning Division, 250 Frank Ogawa Plaza, Suite 3315, Oakland, California, 94612; and

WHEREAS, a summary of the environmental review for the DOSP is as follows:

- Notice of Preparation (“NOP”) of an EIR was initially published on January 4, 2019. The public comment period for the scope of the EIR lasted from January 4, 2019 to February 21, 2019 and was extended 19 days longer than the 30 days required by the CEQA Guidelines to allow more opportunity for public comment;
- An EIR Scoping Meeting was held before LPAB on February 6, 2019 and before the Planning Commission on February 4, 2019, which was continued to February 20, 2019.
- A “Notice of Availability / Notice of Release of a Draft EIR” and Draft EIR were published for public review on August 30, 2019;
- The public comment period for the Draft EIR began on August 30, 2019 and was scheduled to end on Tuesday October 15, 2019. Ultimately the comment period was extended to November 8, 2019 (from the required 45 days to 70 days) at the direction of the Planning Commission in response to requests of members of the public and LPAB;
- Two LPAB meetings were held on the Draft EIR on September 23 and October 14, 2019 respectively;
- Two Planning Commission hearings on the Draft EIR were held on October 2 and November 6, 2019, respectively;

- The public comment period on the Draft EIR closed on November 8, 2019;
- The “Notice of Availability/Release of a Response to Comments (RTC) Document/Final EIR” was published for public review on May 1, 2024. The RTC together with the Draft EIR constitutes the Final EIR for the DOSP;
- On May 5 and June 3, the LPAB considered the DOSP, as well as aspects of the EIR that pertain to cultural resources, recommending to the Planning Commission and Council that the DOSP be adopted; and

WHEREAS, Planning and Economic and Workforce Development (“EWD”) staff recommends amending O.M.C. Chapter 5.12, Cabarets, to further the goals of the DOSP by simplifying the process for approving entertainment venues in the Downtown that offer their customers alcohol; and

WHEREAS, currently entertainment venues in the Downtown have to undergo a time-intensive Major Conditional Use Permit (“CUP”) process for the approval of their sale of alcohol; and

WHEREAS, Planning and EWD staff proposes the creation of a Central District Entertainment Venue permitting process via OMC Chapter 5.12 to save permit applicants and Planning and EWD staff alike from the cumbersome CUP process while still preserving the City’s ability to regulate alcohol venues to avoid nuisance activity that may result from alcohol uses; and

WHEREAS, Planning and EWD staff has analyzed the resources needed to implement a Central District Entertainment Venue permitting process, including the time required by Planning and EWD staff and the Oakland Police Department to process applications, monitor venues, and address potential nuisance activity;

WHEREAS, Planning and EWD staff proposes recovering the costs associated with implementing a Central District Entertainment Venue permitting process through an application fee and an annual permit fee;

WHEREAS, on May 15, 2024 and June 5, 2024, the Planning Commission held a public hearing and recommended that the City Council adopt the DOSP, the DOSP General Plan Amendments, the DOSP Zoning Amendments, and certify the DOSP EIR; and

WHEREAS, the Planning Commission provided additional recommendations, which have been incorporated into the final DOSP Package, including removing the Green Loop and other non-industrial improvements from Howard Terminal, adding a policy to facilitate reuse of existing space for new arts and work/live uses, clarifying housing measures, removing the historic Floral Depot building parcel from the Zoning Incentive Program (ZIP) area, and clarifying that a new train station could be either BART or Capital Corridor, consistent with the regional Link 21 project; and

WHEREAS, on June 25, 2024, at a duly noticed public meeting, the CED Committee of the City Council voted to recommend that the Council adopt this entire DOSP legislative package, including the proposed adoption of the DOSP, the DOSP Legislative Amendments, and the amendment to the Master Fee Schedule to create a separate fee for the review and approval of Entertainment Venue uses; and

WHEREAS, the City Council held a duly noticed public hearing on July 2, 2024 to review and consider adoption of the DOSP, the DOSP Legislative Amendments, and amendment to the

Master Fee Schedule for the review and approval of Entertainment Venue Uses; and

WHEREAS, the City Council considered this Ordinance on second reading at the July 16, 2024 City Council hearing on consent, formally adopting the Ordinance; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the forgoing recitals to be true and correct and an integral part of the City Council’s decision, and hereby adopts such recitals as findings.

SECTION 2. The City Council, as the final, legislative decision-making body for the City, has independently reviewed, considered, and analyzed the final DOSP available at: https://cao-94612.s3.us-west-2.amazonaws.com/documents/DOSP_Final-Draft-Plan_042524.pdf to the City Council Resolution Adopting the DOSP and DOSP General Plan Amendments, and certifying the DOSP EIR (“DOSP Resolution”).

SECTION 3. The City Council, as the final, legislative decision-making body for the City, has independently reviewed, considered, and analyzed the DOSP EIR and the CEQA findings attached at **Exhibit B** to the DOSP Resolution.

SECTION 4. The City Council, as the final decision-making body for the City, hereby confirms, adopts and incorporates by reference into this Ordinance (as if fully set forth herein) the final DOSP, all CEQA findings contained in **Exhibit B** to the DOSP Resolution prior to taking action in approving the DOSP and the DOSP Legislative Amendments set forth in **Exhibit A**, **Exhibit B**, **Exhibit C**, and **Exhibit D**, which are attached to this Ordinance.

SECTION 5. The City Council adopts and incorporates by reference into this Ordinance (as if fully set forth herein), as conditions of approval of the DOSP EIR, the Standard Conditions of Approval and Mitigation Monitoring Program (“SCAMMRP”) contained in **Attachment A** to **Exhibit B** to the DOSP Resolution.

SECTION 6. The DOSP Legislative Amendments are presented as follows:

- The Planning Code Amendments are attached hereto at **Exhibit A** and are incorporated by reference as if fully set forth herein. Additions to the Planning Code (Title 17 of the O.M.C.) are shown as underline and deletions are shown as ~~strikethrough~~. In summary, the Planning Code Amendments delete the existing Chapter 17.58 (Central Business District) and replace with a new Chapter 17.101K (Downtown District) to: 1) establish new Downtown base zones with updated land use, design, and development standards; 2) establish a new zoning section for freeway zones under interstates 880 and 980; 3) establish new combining zones related to Downtown’s BAMBD, Sea Level Rise, Employment Priority Sites, and development along a new Downtown Green Loop; 4) establish Height and Intensity Areas for the DOSP area; 5) create a ZIP that allows increased development height and intensity in certain areas in return for defined community benefits; and 6) codify administrative practices, update references; clarify language, and other conforming changes; and
- The Zoning and Combining Zone Maps are attached hereto at **Exhibit B** and are incorporated by reference as if fully set forth herein; and

- The Height and Intensity Maps and ZIP Benefit Area Maps are attached hereto at **Exhibit C** and are incorporated by reference as if fully set forth herein; and
- The O.M.C. Amendments amending O.M.C. Chapters 5.12 Cabaret and the Master Fee Schedule to facilitate approval of Entertainment Venues in the Central District, O.M.C. 15.62, Affordable Housing Trust Fund, and O.M.C. 15.72, Affordable Housing Impact Fee are attached hereto at **Exhibit D** and are incorporated by references as if fully set forth herein. Additions to the O.M.C. are shown as underline and deletions are shown as ~~strike through~~. In summary, the amendments to O.M.C. Chapters 15.62, Affordable Housing Trust Fund, and O.M.C. Chapter 15.72, Affordable Housing Impact Fee, clarify how affordable housing impact fees are paid and received by the City when a development project utilizes the ZIP program. The amendments to O.M.C. 5.12 and the Master Fee Schedule facilitate an easier process for Entertainment Venues to be approved in the Central District of downtown Oakland.

SECTION 6. Effective Date. This Ordinance shall become effective thirty (30) days after final adoption of the DOSP and DOSP Legislative Amendments, and certification of the EIR. This Ordinance shall not apply to: (a) building/construction-related permits issued prior to the effective date of the Ordinance and not yet expired; (b) zoning applications that have been deemed complete; (c) zoning applications approved by the City prior to the effective date and not yet expired; or (d) zoning applications approved prior to the effective date of the Ordinance and pending appeal before the City Planning Commission and/or City Council. These limitations on applicability to certain development permits may be waived by a development applicant so that the Ordinance is deemed to apply to them.

SECTION 7. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty this in conflict with any Federal or State law.

SECTION 8. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 9. This Ordinance serves the public interest and is necessary to protect the health, safety and/or general welfare of the citizens of the City and is enacted pursuant to the City's general police powers, Section 106 of the Charter of the City of Oakland, and Article XI, Sections 5 and 7 of the California Constitution.

SECTION 10. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the DOSP, the DOSP Legislative Amendments, the DEIR, EIR, SCAMMPR, and other supporting environmental documents, including all accompanying maps, papers, and appendices of the DOSP and DOSP EIR;
2. all final staff reports, final decision letters and other final documentation and information produced by or on behalf of the City, including without limitation the DOSP EIR and supporting technical studies and appendices, and all related/supporting final materials, and all final notices relating to the DOSP and attendant hearings;

3. all oral and written evidence received by the LPAB, ZUC, City Planning Commission, CED Committee, and City Council during the public hearings and meetings; and all written evidence received by the relevant City staff before and during the public hearings and/or meetings; 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 11. That 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 3315, Oakland, California; and (b) Office of the City Clerk, One Frank H. Ogawa Plaza, 1st Floor, Oakland California.

SECTION 12. The Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Determination (“NOD”) with the appropriate agencies within five (5) days of final passage of this Ordinance.

SECTION 13. The City Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), including omnibus cross-referencing conforming changes throughout the Planning Code, prior to formal publication of the Amendments in the Oakland Planning Code.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, TO: (A) MAKE OAKLAND PLANNING CODE AND OAKLAND MUNICIPAL CODE TEXT AND ZONING MAP AMENDMENTS IMPLEMENTING THE POLICIES AND OBJECTIVES OF THE DOWNTOWN OAKLAND SPECIFIC PLAN AND (B) AMEND THE CITY OF OAKLAND MASTER FEE SCHEDULE (ADOPTED BY ORDINANCE NOL. 13747 C.M.S., AS AMENDED) TO ADOPT THE CENTRAL DISTRICT ENTERTAINMENT VENUE FEES IN FURTHERANCE OF THE DOSP GOALS OF FOSTERING ENTERTAINMENT VENUE USES IN THE CENTRAL DISTRICT OF DOWNTOWN

This Ordinance adopts Planning Code, Municipal Code, and Zoning Map Amendments to implement the policies and objectives of the Downtown Oakland Specific Plan (“DOSP”) and also amends the Master Fee Schedule to adopt Central District Entertainment Venue Fees in furtherance of the DOSP goals of fostering entertainment venue uses in the Central District of Downtown. The City also incorporates, as if adopted within the Ordinance, the City Council Resolution adopting the DOSP and certifying the DOSP’s Environmental Impact Report (“EIR”).

Exhibit A

Planning Code (O.M.C. Title 17) Amendments

Exhibit B

Zoning & Combining Zones Maps

Exhibit C

HIAs and ZIP Fee Maps

Exhibit D

DOSP Oakland Municipal Code Amendments and Master Fee Schedule Amendment