



CITY OF OAKLAND

# AGENDA REPORT

**TO:** Jestin D. Johnson  
City Administrator

**FROM:** William A. Gilchrist  
Director, Planning &  
Building Department

**SUBJECT:** Keeping Kids Close To Home Act And  
Clean-Up Planning Code  
Amendments

**DATE:** November 13, 2023

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City Administrator Approval

  
Jestin Johnson (Nov 30, 2023 21:28 PST)

Date: Nov 30, 2023

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## RECOMMENDATION

**Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt An Ordinance (1) Amending Chapter 17.10 Of The Oakland Planning Code, As Recommended By The Planning Commission, To Revise The Definitions For Permanent Residential And Semi-Transient Residential Activity Types; (2) Amending The Planning Code, As Recommended By The Planning Commission, To Incorporate Various Clean-Up Items Related To The General Plan Update Phase I Planning Code Amendment Package; (3) Amending The Existing Exemption From Business Taxes For Family Daycares Under Section 5.04.263 Of The Oakland Municipal Code To Conform With The Keeping Kids Close To Home Act (Senate Bill 234); And (4) Making Related California Environmental Quality Act Findings.**

## EXECUTIVE SUMMARY

On November 1, 2023, the Planning Commission recommended that the City Council approve the proposed revisions to the Planning Code Chapter 17.10 to conform with the new state law, Keeping Kids Close to Home Act, as well as Planning Code amendments related to the General Plan Update (GPU) Phase I Planning Code amendment package, as set forth in Exhibits A and B to the proposed Ordinance.

This agenda report describes proposed amendments to align and bring into compliance the City of Oakland (City) OMC with State law, and to make additional clarifying amendments to the Planning Code related to the GPU Phase I Planning Code amendment package.

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## **BACKGROUND / LEGISLATIVE HISTORY**

### ***Proposal to Adopt Revisions to Planning Code Section 17.10.110 “Permanent Residential Activities” and to OMC Section 5.04.263 “Exemption: Family Daycare” to Comply with Senate Bill 234***

Family daycare homes provide critical services to families by assisting in the care of infants and toddlers. These facilities provide flexible hours that enable parents to work and are located in neighborhoods—close to home and businesses. There is a high demand for these services, but a limited supply that was exacerbated during the pandemic.

Effective on January 1, 2020, Senate Bill (SB) 234, the Keeping Kids Close to Home Act, addresses the supply shortage and increases the accessibility and variety of child-care options available by simplifying the regulatory process. The new law reads as follows:

Per California Health & Safety Code Section 1596.78, a Family Daycare Home means a facility that regularly provides care, protection, and supervision for fourteen (14) or fewer children, in the provider's own home, for periods of less than twenty-four (24) hours per day, while the parents or guardians are away. Per California Health & Safety Code Section 1597.42, all Family Daycare Homes are considered a by-right residential use for the purposes of municipal ordinances and regulations, and shall not fundamentally alter the nature of the underlying residential use. State law forbids any attempt to deny or restrict the leasing, renting, or mortgaging to family daycare homes. Further, this activity does not require business license, fee, or tax, nor building permit; providers are not required to submit an annual Business Tax Exemption form or apply for a Zoning Clearance Permit.

Family Daycare Homes will continue to be subject to State licensing provisions, including an approved fire safety clearance, for a large family childcare home (caring for more than 6 children).

On November 1, 2023, the Planning Commission reviewed and recommended that the City Council adopt revisions to Planning Code, OMC Section 17.10.110 “Permanent Residential Activities,” to comply with SB 234, as provided in Exhibit A to the proposed Ordinance. In addition, the proposed Ordinance includes a minor revision outside the Planning Code, to Section 5.04.263 of the OMC, to conform with SB 234.

### ***Proposal to Adopt Revisions to Planning Code Section 17.10.120 “Semi-Transient Residential Activities” to Limit Semi-Transient Activities for Primary Residential Use***

On October 3, 2023, the City Council enacted [Ordinance No. 13763 C.M.S](#) to approve Planning Code amendments that implement several key actions proposed in the City's 2023-2031 Housing Element, GPU Phase I, including an amendment that allowed for Semi-Transient Residential Activities to be permitted in more areas of the City.

The intent of this Housing Element change is to allow the Semi-Transient Residential Activity type in more areas of Oakland, but only for use as someone's primary residence and not for transient guests or tourists. The proposed code amendment will clarify that the purpose of the

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Semi-Transient Activity is for use as a primary residence, not to accommodate short-term rentals to transient guests or tourists.

On November 1, 2023, the Planning Commission reviewed and recommended that the City Council approve the proposal to adopt revision to Planning Code Section 17.10.120 “Semi-Transient Residential Activities” to limit Semi-Transient Activities for Primary Residential Use as provided in Exhibit A to the proposed Ordinance.

***Proposal to Incorporate Various Clean-Up Items Related to the General Plan Update Phase I Planning Code Amendment Package***

On October 3, 2023, the City Council enacted [Ordinance No. 13763 C.M.S.](#) to approve Planning Code amendments that implement several key actions proposed in the City’s 2023-2031 Housing Element. The GPU Phase 1 Planning Code amendment package additionally included changes to industrial and commercial zoning regulations that align with the newly adopted Environmental Justice and Safety Elements; and also incorporate various amendments which codify administrative practices, update references, clarify language, and provide additional conforming changes. incorporate various amendments which codify administrative practices, update references, clarify language, and provide additional conforming changes.

In reconciling these text amendments into the full Planning Code, Planning Staff identified some additional related clean-up text needed that either provide additional clarification or related revisions that were included in some Planning Code chapters but were erroneously not included in other chapters that cover the same topic. The additional Planning Code changes are needed for consistency.

On November 1, 2023, the Planning Commission reviewed and recommended that the City Council approve the clean-up items related to the GPU Phase I Planning Code amendment package as provided in ***Exhibit B*** of the proposed Ordinance.

**ANALYSIS AND POLICY ALTERNATIVES**

***Proposal to Adopt Revisions to Planning Code Section 17.10.110 “Permanent Residential Activities” and to OMC Section 5.04.263 “Exemption: Family Daycare” to Comply with Senate Bill (SB) 234***

Existing Planning Code permits Family Daycare Homes under the broader term, “Limited Child-Care,” which allows Family Daycare Homes in nearly all zones where residential activities are permitted. Current practice requires the filing of a zoning clearance application. The proposed amendment does not alter Limited Childcare procedures. The amendment clarifies the Code specifically for Family Daycare Homes and eliminates the zoning clearance requirement for Family Daycare Homes. This change was initiated at the request of the California Family Childcare Law Center and in accordance with the recently adopted state law SB 234.

Section 17.10.110 of the Planning Code, which defines “Permanent Residential Activities”, is proposed to be updated to align with provisions for “family daycare homes”, defined in California Health & Safety Code section 1596.78. The following proposed amendment to the definition of Permanent Residential Activities in Section 17.10.110 would include the term “Family Daycare

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Homes” as a Permanent Residential Activity and establish Family Daycare Homes as a by-right residential use, clarifying any existing confusion or inconsistency with state law. Section 5.04.263 of the OMC currently provides a business tax exemption for Family Daycare Homes but requires persons seeking an exemption to submit an annual statement and a copy of the most current license issued by the State of California Department of Social Services to the City.

Proposed amendment to OMC Section 5.04.263 eliminates the requirement to submit an annual statement, tax exemption form, and business license. The OMC amendment incorporates changes mandated by the newly adopted state law SB 234.

Staff will also update City webpages to provide clarity on exemptions from filing zoning clearance and business license exemption forms. These updates are consistent with state law SB 234.

***Proposal to Adopt Revision to Planning Code Section 17.10.120 “Semi-Transient Residential Activities” to Limit Semi-Transient Activities for Primary Residential Use***

The recently adopted Planning Code amendment package which implemented the GPU Phase I allowed for Semi-Transient activities to be permitted in more areas of the City. This code amendment will clarify that the purpose of the Semi-Transient Activity is for use as a primary residence, not to accommodate short-term rentals to transient guests or tourists.

Proposed amendment to Section 17.10.120 would revise the definition of Semi-Transient Residential Activities, which currently allows for the occupancy of living accommodations partly on a thirty days or longer basis but with less than thirty percent of the living units to be occupied on a less-than-thirty days basis. The proposed amendment would require that the units used on a less-than-thirty-days basis may only be occupied by renters for the purpose as their primary residence. The revised definition would apply to new proposals for Semi-Transient Residential Activities and would not apply to permitted semi-transient activities existing prior to the effective date of the enacting ordinance. The intent of this clarification is to continue to allow and expand semi-transient activities, while clarifying that their use shall be directed toward individuals as their primary residence. The proposed change prohibits the use of semi-transient housing for short-term rental and hotel use, which are intended to accommodate tourists.

***Proposal to Incorporate Various Clean-Up Items Related to the General Plan Update Phase I Planning Code Amendment Package***

On October 3, 2023, the City Council enacted Ordinance No. 13763 to approve Planning Code Amendments that implement several key actions proposed in the City’s 2023-2031 Housing Element. The GPU Phase 1 Planning Code amendment package additionally included changes to industrial and commercial zoning regulations that align with the newly adopted Environmental Justice and Safety Elements and incorporate various amendments which codify administrative practices, update references, clarify language, and provide additional conforming changes.

In reconciling these text amendments into the full Planning Code, Planning staff identified some additional related clean-up text needed that either provide additional clarification or related revisions that were included in some Planning Code chapters but were erroneously not included

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in other chapters that cover the same topic. The additional Planning Code changes are needed for consistency.

See Exhibit B to the proposed ordinance for the detailed code amendments. A summary of the Planning Code clean-up changes are as follows:

- Adopted GPU Phase 1 Planning Code changes to Chapter 17.11 provided that commercial kitchen uses in existing recreation center buildings were permitted in specified Open Space zones. Proposed clarification would allow for commercial kitchen uses in both new and existing recreation center buildings.
- Adopted GPU Phase 1 Planning Code changes revised the Open Space zoning regulations so that Park Uses consistent with a City Council-adopted Park Master Plan would be permitted by right. Proposed clarifying changes to Chapters 17.11, 17.134, and 17.135 would provide updated procedures for issuance of planning permits for Park Uses consistent with a Master Plan adopted by City Council.
- Adopted GPU Phase 1 Planning Code changes allowed for a range of multi-unit or “missing middle” housing types and eliminated Mini-Lot Planned Unit Developments from Chapter 17.142, since it was determined to be an unnecessary tool in light of the significant minimum lot size reductions incorporated into individual Planning Code Chapters. Proposed clarifying changes would eliminate remnant references to Mini-Lot Planned Unit Developments.
- Adopted GPU Phase 1 Planning Code changes provided streamlined approval for developments that include one hundred percent affordable housing units. Proposed cleanup changes would clarify that manager’s units provided in such developments do not disqualify the use of these streamlined procedures.
- Adopted GPU Phase 1 Planning Code changes revised minimum parking requirements, loading berth requirements, and open space requirements. Proposed clarifying changes would include similar development standard changes in additional Planning Code Chapters.
- Adopted GPU Phase 1 Planning Code changes required a Conditional Use Permit for certain heavier industrial uses in the Commercial Industrial Mix (CIX), General Industrial (IG), and Industrial Office (IO) Zones if located within 600 feet of a Residential Zone, to minimize impacts on the residential uses nearby. Proposed clarifying changes would capture the six-hundred-foot buffer consistently in the Planning Code.
- Adopted GPU Phase 1 Planning Code changes revised regulations for fence, dense hedge, barriers, and similar freestanding structures. Proposed clarifying changes would remove remaining internal inconsistencies regarding fence heights and similar regulations in industrial and commercial zones.
- Adopted GPU Phase 1 Planning Code changes created a new residential facility type called “Two- to Four-Family Residential Facility” to replace the former “Two-Family Residential Facility” Type. Proposed clarifying changes ensure this new facility type is used throughout the Planning Code.

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- Adopted GPU Phase 1 Planning Code changes created more opportunities to permit Emergency Shelter activities. Proposed clarifying changes incorporate similar revisions into special S- and D- Zones, as well as additional changes to the S- and D- chapters that are consistent with the GPU Phase 1 Planning Code amendment package.
  - Adopted GPU Phase 1 Planning Code changes provided clarifications regarding specific activities, such as agricultural activities, sidewalk cafes, and other civic and commercial activities. Proposed clarifying changes carry these GPU Phase 1 Planning Code amendment package changes into additional Planning Code chapters.
  - Adopted GPU Phase 1 Planning Code changes improve public noticing to include building occupants, not just owners. Proposed clarifying changes carry these GPU Phase 1 Planning Code amendment package changes into additional Planning Code chapters.
  - Adopted GPU Phase 1 Planning Code changes extend Planning entitlement periods to further support a project's ability to move forward into the building permit stage and ultimately into construction and completion for Conditional Use Permits and variances. Proposed clarifying changes would additionally apply these changes to design review and planned unit development entitlements, which were unintentionally omitted.

Finally, the proposed Planning Code and Municipal Code changes advance the Citywide priorities:

**Housing, economic, and cultural security:** Housing security is advanced by revising Planning Code Section 17.10.120 "Semi-Transient Residential Activities" to limit Semi-Transient Activities for Primary Residential Use. This amendment protects vulnerable Oaklanders that depend on short-term housing as their primary residence. In addition, the clean-up items related to the GPU Phase 1 Planning Code amendment package further implementation of the Housing Element.

**Responsive, trustworthy government:** The clean-up items corresponding to the GPU Phase 1 Planning Code Amendments which improve public noticing to include building occupants, not just owners, provide improved transparency within the planning process to ensure trustworthy governance. In addition, the amendments which update Planning Code Section 17.10.110 "Permanent Residential Activities" to include "Family Daycare Homes" and update OMC Section 5.04.263 to eliminate regulations for filing exemption forms, respond to a public request for clarity regarding and conformity with state mandated provisions for family daycare homes.

### **FISCAL IMPACT**

Staff does not anticipate any direct fiscal impact from the proposal. Application of the revised Planning Code will be a routine component of project review administered by the Planning and Building Department. Revision of the existing exemption for family daycares from business license and tax requirements has no fiscal impact as the exemption is already provided for in the code and is aligned with state requirements.

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## **PUBLIC OUTREACH / INTEREST**

The proposed amendments to Section 17.10.110 of the Planning Code and Section 5.04.263 of the OMC provide clarifying language regarding provisions and exemptions for Family Daycare Homes to provide consistency with the newly adopted state law SB 234. These proposed amendments were initiated in response to concerns raised by the Child Care Law Center. City staff has worked in coordination with the Staff Attorney of the Child Care Law Center to clarify code provisions and exemptions for Family Daycare Homes, and to provide clarity via public facing webpages.

The proposed amendments were presented at a public meeting of the Planning Commission on November 1, 2023 and there were no speakers on the item. The meeting was noticed in the *Oakland Tribune*.

## **COORDINATION**

The Draft Planning Code and Municipal Code amendments were developed with the collaboration of the City Attorney's Office and the Planning and Building Department's Planning Bureau as well the Revenue Management Bureau of the Finance Department.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Family daycare homes provide critical services to families, with flexible hours that enable parents to work. There is a high demand for these services, but a limited supply that was exacerbated during the pandemic. The added language to Section 17.10.110: Permanent Residential Activities clarify SB 234 exemptions which are intended to address the supply shortage and provide ease of access to childcare services, which dually benefits workers in need of childcare services and Family daycare providers. This service is beneficial to Oakland's economic wellbeing.

***Environmental:*** Providing for more family daycare homes throughout residential areas has the potential to create more opportunities for Oakland parents to find daycares within their own neighborhood, potentially within walking distance.

***Race & Equity:*** The following racial equity opportunities exist with the Planning Code Amendments. Updating the existing Permanent Residential Activities definition to be in conformance with state law will make it clearer that Family Daycare Homes are allowed by right everywhere that Permanent Residential Activities are permitted. The added language to Section 17.10.120: Semi-Transient Activities is intended to protect semi-transient rental units as primary residences for those who need them. The Racial Equity Impact Analysis (REIA) of the [2023-2031 Housing Element, Safety, and Environmental Justice \(EJ\) Elements](#) provides an equity impact assessment for the actions outlined in these elements, and includes an analysis of who stands to benefit or be burdened, outlines existing challenges and equity gaps. The REIA provides recommendations to strengthen each action or bolster implementation in ways that overcome existing barriers to achieving substantive equitable outcomes. The Planning Code

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cleanup items that include changes to Semi-Transient Activities are implementing actions from these Elements listed above.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The proposed Ordinance relies on the certified Oakland 2045 GPU Phase 1 Environmental Impact Report (EIR), [Resolution No. 89907 C.M.S.](#) This proposal is also categorically exempt from CEQA pursuant to Sections 15061(b)(3) (general rule, no significant effect on the environment) and 15183 (projects consistent with General Plan and Zoning) of the CEQA Guidelines.

The proposed Ordinance would not result in any significant effect that has not already been analyzed in the 2045 GPU Phase 1 EIR, and there will be no significant environmental effects caused by the change that have not already been analyzed in this EIR. As a result, none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 are present in that: (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3).

### **ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt An Ordinance (1) Amending Chapter 17.10 Of The Oakland Planning Code, As Recommended By The Planning Commission, To Revise The Definitions For Permanent Residential And Semi-Transient Residential Activity Types; (2) Amending The Planning Code, As Recommended By The Planning Commission, To Incorporate Various Clean-Up Items Related To The General Plan Update Phase I Planning Code Amendment Package; (3) Amending The Existing Exemption From Business Taxes For Family Daycares Under Section 5.04.263 Of The Oakland Municipal Code To Conform With The Keeping Kids Close To Home Act (Senate Bill 234); And (4) Making Related California Environmental Quality Act Findings.

For questions regarding this report, please contact Michelle Matranga, Planner III, at 510-238-3350.

Respectfully submitted,



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