

2007 DEC -6 PM 3:48

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: December 18, 2007

RE: **Public Hearing On An Emergency Ordinance, Pursuant to Charter Section 213, Establishing Interim Controls Requiring Design Review for all New Auto Related Construction and a Conditional Use Permit for Automotive-Related Uses in the Community Thoroughfare Commercial Zone (C-40), to Take Effect Immediately Upon Introduction and Adoption**

SUMMARY

At the November 27, 2007 meeting of the Community and Economic Development Committee of the Oakland City Council, staff was asked to prepare an emergency ordinance that would add interim regulations for auto-related businesses in C-40 zones (see Attachment A) because potential developments expanding auto-related activities on major thoroughfares could be permitted before new controls are prepared and adopted.

This proposal adopts an interim control for the C-40 Community Thoroughfare Commercial Zone (C-40 zone) to require: 1) a conditional use permit for the establishment or expansion of automotive related activities on the City's corridors and near residential zones and 2) design review approval for all new auto related construction. The C-40 zone currently allows automobile related activities without discretionary planning approvals from the City and permits construction of nonresidential development without any design review approval. The automotive-related activities proposed for regulation include: Automobile Sales, Rental, and Delivery, Automotive Servicing Commercial Activities (gas stations, oil change specialists, etc), Automotive Repair and Cleaning (car dealerships and rental car businesses), and Auto Fee Parking Commercial Activities (for fee parking lots).

Staff proposes that the interim controls sunset after one year. This period allows the Planning Division to study more comprehensive solutions to the issues outlined above.

FISCAL IMPACT

This emergency ordinance has the potential to generate a relatively small increase in permit applications. Any increase in permit application revenue would be deposited into the Development Service Fund (2415). Any increased revenue generated would be small relative to permit application revenue currently budgeted. No new fees would need to be established.

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Existing staffing and appropriation levels should be sufficient to process any increase in permit applications; therefore no additional costs are expected to be incurred by the Development Service Fund.

ENVIRONMENTAL DETERMINATION

The proposal relies on the following two 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 Oakland General Plan (General Plan EIR), adopted 1998 (General Plan EIR) and the Broadway / Macarthur Redevelopment Plan Environmental Impact Report, adopted 2000. Furthermore, the proposal is exempt under CEQA Guidelines section 15061(b)(3), known as the "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 regulations would have no change in the development intensity of the area, as 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 regulations are more stringent, with regards to permitted activities, than the current zoning and regulatory controls.

KEY ISSUES AND IMPACTS

Staff understands that there are pending proposals to establish auto-related activities on parcels which are important to protect for the City's retail strategy. The proposal would create, for a period of one year, an interim level of discretionary review of auto-related activities on major thoroughfares, while staff researches and prepares permanent controls.

The C-40 zone is designated at many locations throughout the City, particularly along the City's transportation corridors such as International Boulevard and Telegraph Avenue. This zone is also zoned on Broadway from 23rd to 51st Street. The City Council is considering an S-5 combining zone on Upper Broadway from 23rd Street to Hawthorne Avenue. The current proposal would not affect the combining zone because the regulations in the combining zone would take precedence over the regulations in the C-40 base zone.

The C-40 zone is commonly located adjacent to residentially zoned neighborhoods that often suffer noise and parking impacts from automobile related activities. Residential neighborhoods are also impacted by the open storage of cars and toxic fluids that often accompany auto-related activities. Further, automobile related activities risk displacing land that should remain available to implement the City's retail enhancement strategy, particularly on Upper Broadway. The interim controls provide the City an opportunity to evaluate whether a proposal is appropriate for a particular area and mitigate its impacts to neighboring residential properties.

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Staff recommends requiring a conditional use permit for auto related activities only on lots that either abut a residential zone or are within 100 feet from the right-of-way of any of the following streets: San Pablo Avenue, International Boulevard, Broadway, Piedmont Avenue, Telegraph Avenue or Martin Luther King Jr. Way (see Attachment B). These corridors are recommended because they are where the General Plan directs the reuse of land to contain mixed use development projects and to preserve land to implement the City's retail strategy.

The ordinance also proposes that auto related, non-residential buildings in all C-40 zones be subject to the Design Review procedures currently in place for residential buildings in the C-40. This will give staff additional discretionary review over proposed auto-related developments on the major thoroughfares.

The proposed ordinance requires City review of auto-related businesses at locations which have historically allowed these activities by right. This additional discretionary review could discourage the owners of auto-related businesses to expand or locate in certain commercial corridors and thoroughfares, such as International Boulevard and Upper Broadway.

Staff recommends the proposal because it will preserve critical areas along the City's corridors for retail and mixed use activities. Further, the regulations will allow the City to prevent the visual blight that often accompanies auto related activities. Finally, the C-40 zone will allow the City to review these operations which frequently border residential areas that are impacted by noise, parking, traffic, storage, and visual impacts of auto related activities.

SUSTAINABLE OPPORTUNITIES

Staff foresees no economic, environmental or social equity opportunities, as a result of the enactment of interim controls.

DISABILITY AND SENIOR CITIZEN ACCESS

Staff does not anticipate any particular barriers or benefits resulting from the ordinance, regarding access issues for the disabled or for senior citizens.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the City Council approve the emergency ordinance, pursuant to Section 213¹ of the Oakland City Charter, which will provide the City an opportunity to further review auto-related activities and impacts in C-40 districts, for the next year. During that time, the Strategic Planning Division will undertake a study of the auto-related activities in C-40 zones and return to the Planning Commission and the City Council with recommendations for permanent controls.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt the Emergency Ordinance requiring, for the next year, a Conditional Use Permit for auto-related activities in C-40 zones along major thoroughfares, and Design Review for new auto related buildings in all C-40 zones.

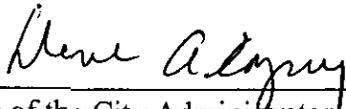
Respectfully submitted,



Claudia Cappio,
Director of Development

Prepared by: Devan Reiff, Planner II
Planning and Zoning Division, CEDA

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



Office of the City Administrator

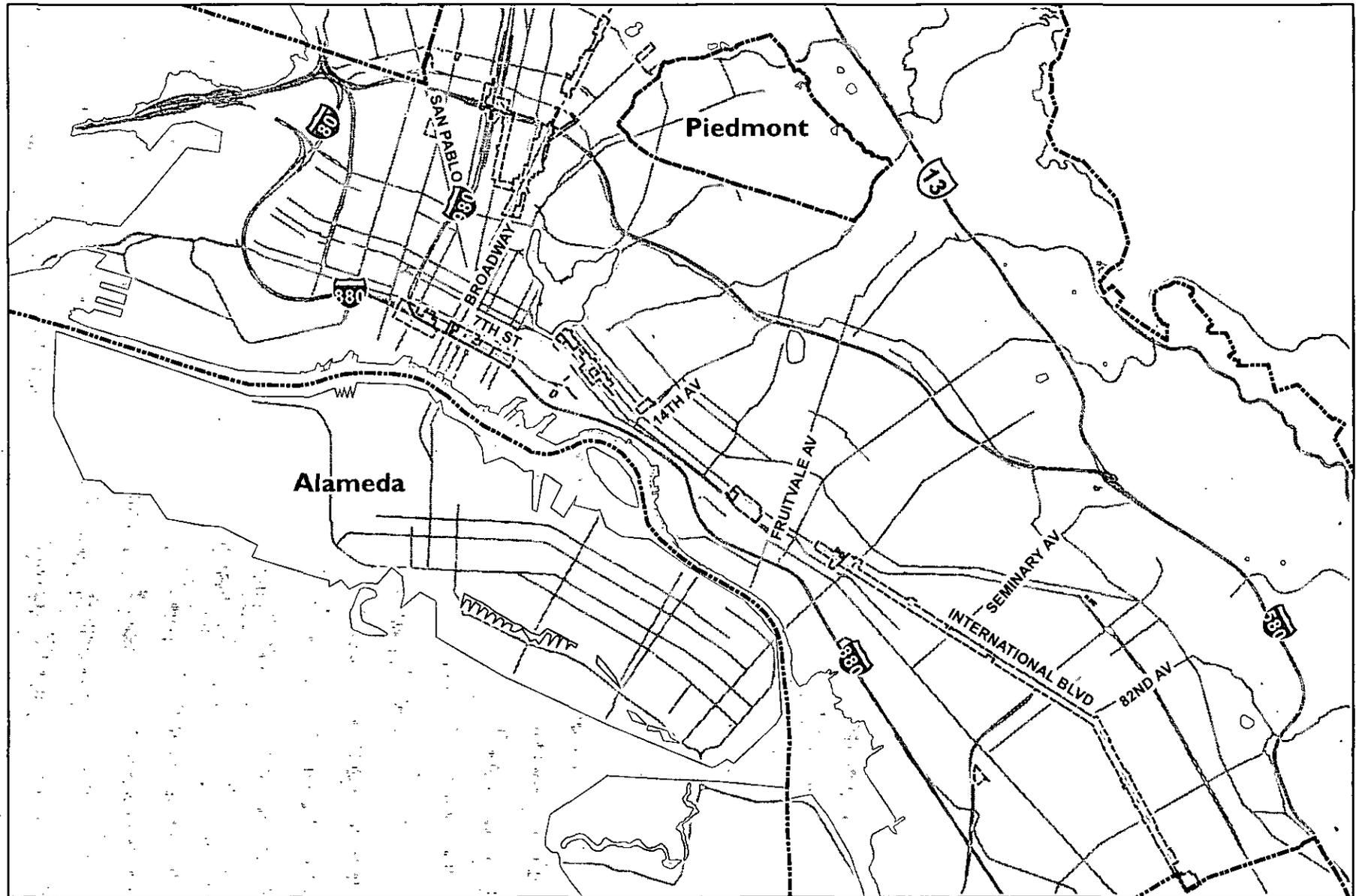
¹ Section 213. **Emergency Ordinances.** Any ordinance declared by the Council to be necessary for preserving the public peace, health, or safety in an emergency, and containing a statement of the reasons constituting such necessity, may be introduced and adopted at the same meeting if passed by the affirmative vote of at least six members. Appropriations to meet an urgent need for public expenditure, to protect the public health, safety, or welfare may be made as an emergency ordinance.

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List of Attachments:

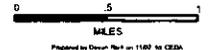
- A. Map of Citywide C-40 zones, where Design Review is proposed for all new construction
- B. Maps of parcels within C-40 zones affected by proposal: North Oakland; International Boulevard—North; International Boulevard—South (38th-82nd Avenues); International Boulevard – South (82nd – Durant Avenues)

Attachment A. Citywide C-40 zones Proposed Design Review for all new construction



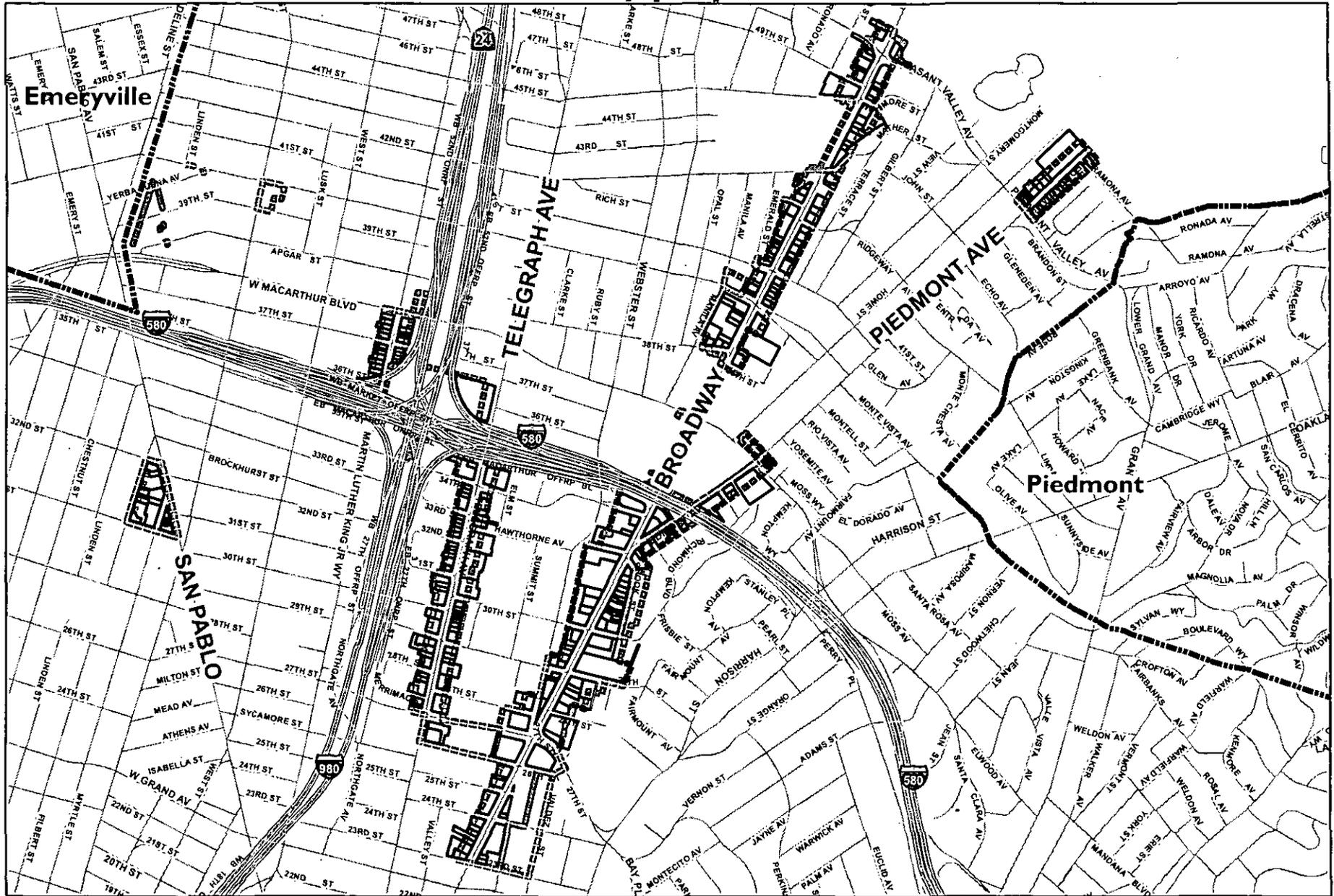
**For Illustrative Purposes Only;
affected parcels will be determined at time of application.**

-  City Limits
-  C-40 Zones



Published by Deane Hart on 11/07 by CEDA

Attachment B. North Oakland Parcels within C-40 zones affected by proposal

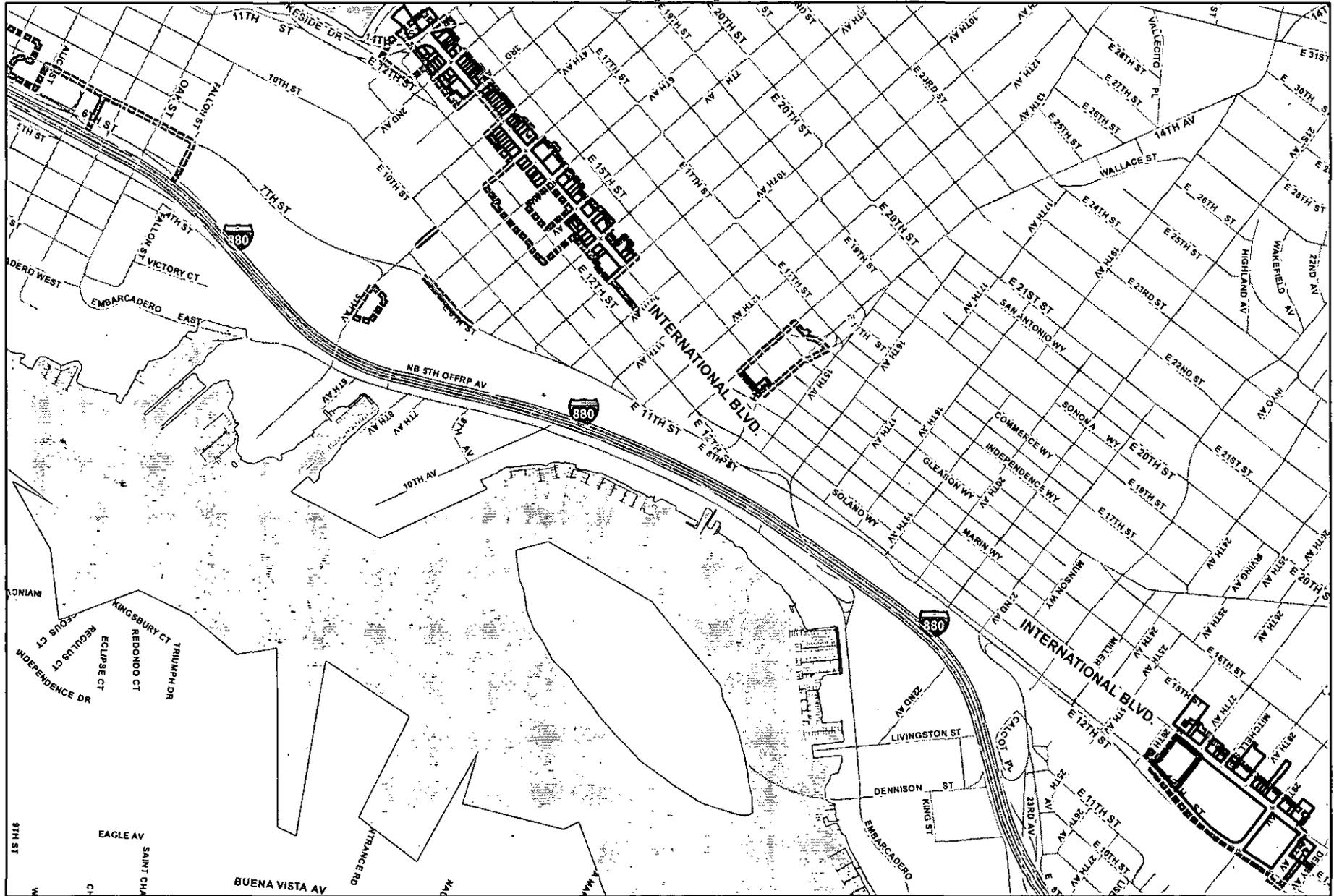


For Illustrative Purposes Only;
affected parcels will be determined at time of application.

- City Limits
- C-40 Zones
- Affected Parcels



Attachment B. International Boulevard--North Parcels within C-40 zones affected by proposal



For Illustrative Purposes Only;
affected parcels will be determined at time of application.

-  City Limits
-  C-40 Zones
-  Affected Parcels



Prepared by Council No. 8 on 11/07 by CDEP

Attachment B. International Boulevard--South (38th-82nd Aves) Parcels within C-40 zones affected by proposal



For Illustrative Purposes Only;
affected parcels will be determined at time of application.

-  City Limits
-  C-40 Zones
-  Affected Parcels



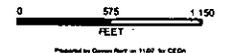
Prepared by Design North on 11/07 for CE DA

Attachment B. International Boulevard--South (82nd-Durant Aves.) Parcels within C-40 zones affected by proposal



**For Illustrative Purposes Only;
affected parcels will be determined at time of application.**

-  City Limits
-  C-40 Zones
-  Affected Parcels



Prepared by Denver Dept. of Public Works

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INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY

Mark P. Wald

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, ESTABLISHING INTERIM CONTROLS REQUIRING DESIGN REVIEW FOR ALL NEW AUTO RELATED CONSTRUCTION AND A CONDITIONAL USE PERMIT FOR AUTOMOTIVE-RELATED USES IN THE COMMUNITY THOROUGHFARE COMMERCIAL ZONE (C-40), TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION.

WHEREAS, the Oakland Municipal Code and the Oakland Planning Code ("OPC") regulate the distribution of uses and urban design in the Community Thoroughfare Commercial Zone (C-40 zone); and

WHEREAS, among other activities, the C-40 zone permits outright, without any discretionary planning review, four categories of automotive activities: Automotive Sales, Rental and Delivery; Automotive Servicing; Automotive Repair and Cleaning; and Automotive Fee Parking, all hereafter known as "auto-related activities"; and

WHEREAS, auto-related activities can have noise, open storage, parking and traffic impacts on adjacent residential neighborhoods; and

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

WHEREAS, interrupting pedestrian-oriented retail nodes with auto-related activities can detract from the success of these nodes; and

WHEREAS, the C-40 zone also does not require design review for auto related, non-residential development; 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, requiring a conditional use permit from the City for establishing or expanding auto-related activities on the transportation corridors and requiring Design Review approval for auto related, non-residential development in all C-40 zones will provide the City a tool to enhance the appearance of these corridors and better promote the public's health, safety and welfare, while permanent controls are being developed; and

WHEREAS, there are currently before the City, or there are anticipated to be, proposals to establish auto-related activities on lots critical to the City's retail strategy, as well as non-residential development not subject to design review or other discretionary review and

WHEREAS, there is insufficient time to develop permanent controls regulating automotive uses in C-40 zones, and present them to the City Planning Commission and City Council for review, recommendation, and adoption; 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 in 1998 (General Plan EIR) and the Broadway/MacArthur Redevelopment Plan Environmental Impact Report, adopted in 2000; and

WHEREAS, as a separate and independent basis, the proposal is also exempt from CEQA under several 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; and

WHEREAS, for the reasons set forth above, pursuant to City Charter section 213, the Council declares that this ordinance is necessary to preserve the public peace, health, welfare or safety and to avoid a direct threat to the health, safety, and welfare of the community, and the "Whereas" clauses above taken together constitute the City Council's statement of the reasons constituting such necessity and emergency; 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.

Section 3. At the locations defined in Section 4, (a) Automotive Sales, Rental and Delivery; (b) Automotive Servicing; (c) Automotive Repair; and (d) Cleaning, and Automotive Fee Parking, as defined in Chapter 17.10 of the Planning Code, shall only be permitted upon the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134 of the Planning Code.

Section 4. The requirement for a conditional use permit described in Section 3 shall apply to parcels within a C-40 zone that either abut a lot located in a residential zone or on any lot within 100 feet from the right of way of any of the following streets: San Pablo Avenue, International Boulevard, Broadway, Piedmont Avenue, Telegraph Avenue or Martin Luther King Jr. Way.

Section 5. In addition to the design review requirements of OPC section 17.54.040, no auto related Building Facility in the C-40 zone, except for projects that are exempt from design review as set forth in Section 17.136.025, 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 of the Planning Code.

Section 6. No building, zoning or other permit that has been issued for any building or structure for which rights to proceed with said building or structure have not vested pursuant to the provisions of State law shall proceed without complying with this ordinance. Further, no building, zoning or other permit for any building or structure shall be issued by any department, agency, employee or agent of the City of Oakland to allow for any building or structure, without complying with the requirements of Sections 3, 4, and 5, above. No use which has not vested prior to the date of this Ordinance shall commence in violation of the provisions of this Ordinance.

Section 7. The controls imposed by this ordinance shall remain in place and be effective for a continuous one year from the effective date of this ordinance, or until the City Council adopts permanent controls for auto-related activities and design review in the citywide C-40 zones, whichever comes first.

Section 8. The Community and Economic Development Agency is directed, over the next one year, to conduct a study and develop a draft set of permanent amendments to the Planning Code and/or Municipal Code regarding the subject matter of this ordinance.

Section 9. For the term of this ordinance, as set for the in Section 7 above, the provisions of this ordinance shall govern, and to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

Section 10. This ordinance shall be effective immediately upon its adoption by the City Council, subject to the provisions of Section 213 of the Charter of the City of Oakland.

Section 11. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Sections 106 and 213 of the Charter of the City of Oakland, and Article XI of the California Constitution.

Section 12. 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

MPS

NOTICE AND DIGEST

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, ESTABLISHING INTERIM CONTROLS REQUIRING DESIGN REVIEW FOR ALL NEW AUTO RELATED CONSTRUCTION AND A CONDITIONAL USE PERMIT FOR AUTOMOTIVE-RELATED USES IN THE COMMUNITY THOROUGHFARE COMMERCIAL ZONE (C-40), TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION.

This interim ordinance requires, for one year, that automotive-related businesses which locate or expand in C-40 zones apply for a conditional use permit if they are on lots that either abut a residential zone, or are within 100 feet from the right of way of any of the following streets: San Pablo Avenue, International Boulevard, Broadway, Piedmont Avenue, Telegraph Avenue or Martin Luther King Jr. Way. The ordinance also requires Design Review for any new auto related construction in all C-40 zones. The automotive-related activities proposed for regulation include: Automobile Sales, Rental, and Delivery, Automotive Servicing (gas stations, oil change specialists, etc), Automotive Repair and Cleaning (car dealerships and rental car businesses), and Auto Fee Parking (for fee parking lots).