

CITY OF OAKLAND
AGENDA REPORT

2009 APR 30 PM 6:42

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: May 12, 2009

RE: **A Report And Ordinance, Recommended by the City Planning Commission, Adopting An Interim Rule To Allow The Planning Director, Or Designee, Discretion To Approve Ground Floor Commercial Uses Of Less Than 10,000 Square Feet In The Central Business District Without A Conditional Use Permit**

SUMMARY

The proposal allows the Planning Director or designee discretion to allow ground floor uses of less than 10,000 square feet in size in the Central Business District General Plan designation without a Conditional Use Permit. The Central Business District zoning update process is underway and expected to be completed by the end of 2009. The matrix of allow ground floor uses is the least controversial part of that update. Some businesses are being delayed in starting operations because of the restrictive nature of the existing, outdated zoning code. Staff would administratively make the determination on conformity with the zoning code and General Plan in lieu of requiring a Conditional Use Permit to make the same findings. On April 15, 2009 the Planning Commission recommended adoption of the proposed rule.

FISCAL IMPACT

There would be no adverse fiscal impact on the General Fund. The actions in this report would yield a very small decrease in revenues to the Development Service Fund (2415).

BACKGROUND

This proposal is similar to other interim rules that allow for the implementation of aspects of the General Plan while the overall zoning code is being updated.

Exhibit A of the proposed Ordinance shows the specific areas affected by the proposal.

PROJECT DESCRIPTION

This proposal will allow an interim rule granting discretion to the Planning Director, or their designee, to allow the type of mixed use commercial activities on ground floors throughout the

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Central Business District that the General Plan intended. The delay in updating the zoning code, especially the R-80 and R-90 high density residential zones has kept certain small commercial activities from starting operations and subjected them to an expensive and time consuming process. New activity charts are part of the zoning update currently underway in the Central Business District and have been the least controversial part of that process. This rule would allow the use of the new activity matrices, at the discretion of the Planning Director or designee, before their official adoption by the City Council. The proposed rule would also allow the Planning Director to impose reasonable conditions of approval, as required.

Two sets of existing regulations would be the basis for the discretionary decisions on the part of the Planning Director. The first is the Council adopted Guidelines for determining General Plan conformity. These guidelines allow a project that is in conformance with the General Plan, but not in conformance with the zoning code, to be approved with an interim conditional use permit (CUP). The proposed rule would allow the Planning Director to allow such uses without requiring an interim CUP. The Planning Director's decision would be appealable to the Planning Commission using the standard appeal provisions. The second set of regulations to be used as a basis for discretionary approvals is the proposed new Central Business District (CBD) zoning code, which the Planning Commission approved for forwarding to the City Council at its April 15, 2009 meeting. The new code allows more uses in the CBD by right than the current code. The Planning Director could use the discretion granted by the proposed interim rule to apply the new use standards before they are officially adopted. This decision would also be appealable to the Planning Commission under the standard provisions.

On April 15, 2009 the Planning Commission recommended adoption of the proposed rule.

ENVIRONMENTAL DETERMINATION

The proposal relies on the previously adopted 1998 LUTE Environmental Impact Report. The proposal is 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. In addition, the 10,000 square foot size for commercial activities fits the limits in Section 15303 for construction of new, small commercial structures in an urban area.

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SUSTAINABLE OPPORTUNITIES

Economic: None identified at present.

Environmental: None identified at present.

Social Equity: None identified at present.

DISABILITY AND SENIOR CITIZEN ACCESS

No changes to disability and/or senior citizen access are envisioned from this action.

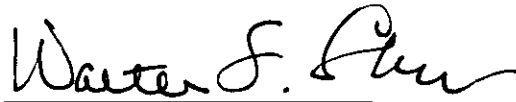
RECOMMENDATION AND RATIONALE

Staff and the Planning Commission recommend to the City Council the proposal to adopt the interim rule for a period of two years or until final action on new zoning code for the Central Business District, whichever comes first.

ACTION REQUESTED OF THE CITY COUNCIL

That the City Council adopt the interim rule.

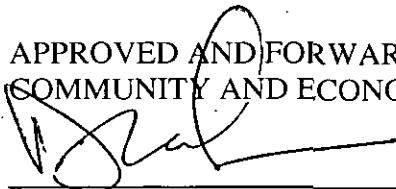
Respectfully submitted,



Walter S. Cohen, Director
Community and Economic Development Agency

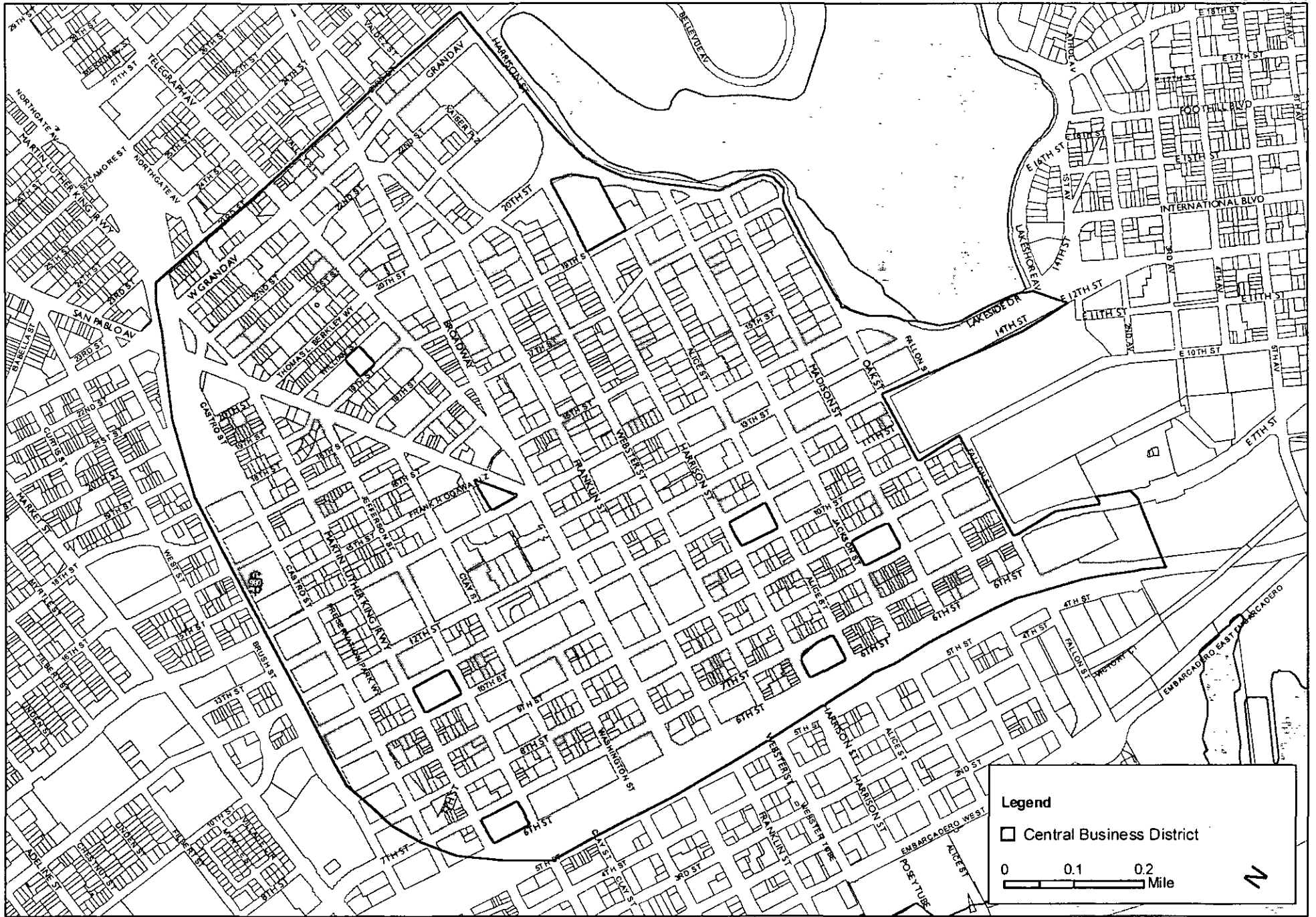
Prepared by:
Eric Angstadt, Deputy Director
Community and Economic Development Agency

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



Office of the City Administrator

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Legend

- Central Business District

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Proposed Interim Re-Zoning for Central Business District
Central Business District

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 APR 30 PM 6:43

INTRODUCED BY COUNCILMEMBER _____

APPROVED AS TO FORM AND LEGALITY

Mark P. Wald

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE, RECOMMENDED BY THE CITY PLANNING COMMISSION, ADOPTING AN INTERIM RULE TO ALLOW THE PLANNING DIRECTOR, OR DESIGNEE, DISCRETION TO APPROVE GROUND FLOOR COMMERCIAL USES OF LESS THAN 10,000 SQUARE FEET IN THE CENTRAL BUSINESS DISTRICT WITHOUT A CONDITIONAL USE PERMIT

WHEREAS, The City of Oakland has begun a process to amend and update the zoning code for the Central Business General Plan designation; and

WHEREAS, until such time as the City adopts new zoning 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 commercially viable downtown; and

WHEREAS, on April 15, 2009 the Planning Commission held a duly noticed public hearing and at its conclusion, forwarded, without change, the proposal to allow the interim rule in the Central Business District 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 (a) the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the General Plan, adopted in 1998; and (b) 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; and (c) CEQA Guidelines Section 15303 for construction of new, small commercial structures in an urban area; 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 and the Environmental Review Officer shall file a Notice of Determination/Exemption with the County.

Section 3. Notwithstanding anything else to the contrary, the Planning Director, or designee, shall have the authority to allow ground floor commercial uses of less than 10,000 square feet in the Central Business District without a conditional use permit in the area as generally shown in Exhibit A, attached hereto and incorporated by reference, and may impose reasonable conditions of approval. The Planning Director shall use the Guidelines for Determining General Plan Conformity and the proposed zoning text amendment to the Central Business District, as recommended by the Planning Commission on April 15, 2009, as the basis for exercise of the discretion granted by this interim rule.

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. This ordinance 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 zoning for the CBD, whichever comes first.

Section 6. 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, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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MPW

NOTICE AND DIGEST

AN ORDINANCE, RECOMMENDED BY THE CITY PLANNING COMMISSION, ADOPTING AN INTERIM RULE TO ALLOW THE PLANNING DIRECTOR, OR DESIGNEE, DISCRETION TO APPROVE GROUND FLOOR COMMERCIAL USES OF LESS THAN 10,000 SQUARE FEET IN THE CENTRAL BUSINESS DISTRICT WITHOUT A CONDITIONAL USE PERMIT

ADOPTION OF THIS ORDINANCE WILL RESULT IN THE PLANNING DIRECTOR USING THE GUIDELINES FOR DETERMINING GENERAL PLAN CONFORMITY AND THE PROPOSED TEXT AMENDMENTS TO THE CENTRAL BUSINESS DISTRICT ZONING CODE TO DETERMINE IF A CONDITIONAL USE PERMIT IS REQUIRED FOR SOME SMALL GROUND FLOOR COMMERCIAL USES.