

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, TO AMEND THE OAKLAND PLANNING CODE TO**

- A. INCORPORATE CHANGES TO RESIDENTIAL AND COMMERCIAL ZONES AND MAKE RELATED TEXT AMENDMENTS AND AMEND THE ZONING AND HEIGHT MAPS TO INCLUDE THE UPDATES TO THE RESIDENTIAL AND COMMERCIAL ZONES; AND**
- B. CREATE A NEW S-13 AFFORDABLE HOUSING COMBINING ZONE; AND**
- C. CREATE A NEW S-14 HOUSING SITES COMBINING ZONE; AND**
- D. AMEND CONDITIONAL USE PERMIT REQUIREMENTS FOR HOUSING AND BUSINESS MIX (HBX) COMMERCIAL ZONES, COMMERCIAL INDUSTRIAL MIX (CIX), GENERAL INDUSTRIAL (IG), AND INDUSTRIAL OFFICE (IO) ZONES; AND**
- E. AMEND EXPIRATION TIMELINES FOR NONCONFORMING USES AND CUP TERMINATION TIMELINES FOR TRUCK-INTENSIVE USES;**
- F. ADOPT AMENDMENTS TO FACILITATE THE PRODUCTION OF SPECIAL HOUSING TYPES SUCH AS ROOMING UNITS, EFFICIENCY UNITS, EMPLOYEE HOUSING, RESIDENTIAL CARE FACILITIES, TRANSITIONAL AND SUPPORTIVE HOUSING, LOW BARRIER NAVIGATION CENTERS, AND EMERGENCY SHELTERS;**
- G. ADOPT VARIOUS AMENDMENTS WHICH CODIFY ADMINISTRATIVE PRACTICES, UPDATE REFERENCES, CLARIFY LANGUAGE, AND OTHER CONFORMING CHANGES; AND**
- H. ADOPT APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS.**

**WHEREAS**, California Government Code Section 65300 requires each city and county to adopt a general plan; and

**WHEREAS**, California Government Code Section 65302 requires general plans to be updated “periodically”, which, according to the California Office of Planning Research’s General Plan Guidelines, has traditionally been at least every 15 to 20 years, and many portions of the City’s General Plan were adopted over 23 years ago; and

**WHEREAS**, the City of Oakland (City) is currently undertaking a comprehensive update in two phases to its General Plan through a community driven process, which started in 2021 and will

continue through 2025; and

**WHEREAS**, Phase 1 of the General Plan Update (GPU) includes updates to the 2023-2031 Housing Element, updates to the Safety Element, creation of a new Environmental Justice Element, Planning Code Text and Map Amendments, and Conforming Amendments to the Land Use and Transportation Element of the City’s General Plan, including General Plan Map Amendments; and

**WHEREAS**, on October 5, 2021, the City Council adopted Resolution No. 88847 C.M.S and Resolution No. 88848 C.M.S., which authorized the City Administrator to enter into a Professional Services contract with Dyett & Bhatia, and the Community Consultant, Urban Strategies Council as the contracting entity for the Deeply Rooted in Oakland consulting team (Deeply Rooted) for services related to the GPU, associated zoning code and map amendments, community engagement, and California Environmental Quality Act (CEQA) assessment; and

**WHEREAS**, On March 16, 2021, the City Council adopted Resolution No. 88554 C.M.S., directing staff to address the limited availability of housing options, reduced housing affordability, exclusionary zoning, and the racial and economic segregation impacts of single-family-only zoning in the city; and

**WHEREAS**, On July 19, 2022, the City Council adopted Resolution No. 89341 C.M.S., directing staff to eliminate parking requirements for affordable housing projects of ten (10) units or less; and

**WHEREAS**, on January 31, 2023, the City Council adopted Resolution No. 89565 C.M.S., adopting the 2023-2031 Housing Element as a General Plan Amendment to the Oakland General Plan and determining that said adoption was exempt from the CEQA; and

**WHEREAS**, the City has prepared an update to the Safety Element of the General Plan that substantively addresses all of the requirements provided under California Government Code Section 65302(g); and

**WHEREAS**, the City has prepared a new Environmental Justice Element of the General Plan that substantively addresses all of the requirements provided under California Government Code Section 65302(h); and

**WHEREAS**, the 2023-2031 Housing Element includes a program, referred to as the Housing Action Plan, that sets forth a schedule of action during the 2023-2031 planning period that the City is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the Housing Element, which addresses each requirement provided under California Government Code Section 65583, subsection (c); and

**WHEREAS**, to affirmatively further fair housing, with the intention of replacing segregated living patterns with truly integrated and balanced living patterns, the 2023-2031 Housing Element additionally includes proposed actions to rezone select areas, including areas identified by State Housing Community Development (State HCD) Department as “high resource areas,” to accommodate additional density, including parcels around BART stations, along transit corridors, and in existing residential neighborhoods to allow for “missing middle” housing; and

**WHEREAS**, to close the gap between affordable and market-rate housing production, the 2023-2031 Housing Element includes actions aimed at expanding affordable housing opportunities, including but not limited to a broadly applicable affordable housing overlay; and

**WHEREAS**, Planning Staff created Appendix J: Zoning Proposals of the 2023-2031 Housing Element to respond to feedback from State HCD; and

**WHEREAS**, the updated Safety Element and new Environmental Justice Element include actions to prioritize development in areas with existing adequate road networks, evacuation routes, and water infrastructure and reduce pollution impacts on sensitive receptors, such as residential areas, schools, and hospitals; and

**WHEREAS**, as part of community outreach, Planning staff conducted a wide range of community engagement including outreach to communities that have disproportionately been impacted by historic and continued patterns of housing discrimination, through pop-ups, cultural events, townhalls, interviews, focused discussions, neighborhood workshops and meetings, youth engagement, online engagement, presentations to community groups and Neighborhood Councils, a dedicated website for Phase 1 Planning Code Amendments with access to announcements, and project reports, a dedicated General Plan Update email and an e-mail distribution system to send updates to interested parties; and

**WHEREAS**, Planning staff convened a Technical Advisory Committee comprised of internal City department representatives as well as other Oakland-based, neighboring, and regional governmental agency representatives to solicit feedback; and

**WHEREAS**, the draft Phase 1 Planning Code Amendments were made available for a 68-day public review period between March 3, 2023, and May 9, 2023; and

**WHEREAS**, as part of the draft Phase 1 Planning Code Amendments, City Planning staff have proposed amendments in residential and commercial zones in the City to (a) create a new Detached Residential (RD) Zone to replace the existing Detached Unit Residential-1 (RD-1) Zone and Detached Unit Residential-2 (RD-2) Zone; (b) change densities in Mixed Housing Type Residential (RM) Zone, and Urban Residential (RU) Zones; (c) create a new two- to four-family residential facility type; (d) change Conditional Use Permit (CUP) requirements, including eliminating conditionally permitted densities; (e) create a new Regional Commercial-2 (CR-2) Zone; (f) change parking requirements; (g) height and density changes along transit corridors; and (g) related changes to the Zoning and Height Maps; and

**WHEREAS**, as part of the draft Phase 1 Planning Code Amendments, City Planning staff have proposed creating a new S-13 Affordable Housing Combining Zone as an optional local incentive program to create, preserve, and incentivize affordable housing restricted for extremely low-, very low-, low-, and/or moderate-income households; and

**WHEREAS**, as part of the draft Phase 1 Planning Code Amendments, City Planning staff have proposed creating a new S-14 Housing Sites Combining Zone to facilitate production of housing on sites identified by the City to meet its Regional Housing Needs Allocation (RHNA) pursuant to the 2023-2031 Housing Element to (a) ensure that sites within the proposed S-14 Zone are developed with residential uses; and (b) that projects that contribute toward meeting Oakland's needs for lower income housing receive ministerial or by-right approval; and

**WHEREAS**, as part of the draft Phase 1 Planning Code Amendments, City Planning staff have

proposed amending CUP requirements for Housing and Business Mix (HBX) Commercial Zones, Commercial Industrial Mix (CIX), General Industrial (IG), and Industrial Office (IO) Zones; and

**WHEREAS**, as part of the draft Phase 1 Planning Code Amendments, City Planning staff have proposed amending expiration timelines for nonconforming uses and CUP termination timelines for truck intensive uses; and

**WHEREAS**, as part of the draft Phase 1 Planning Code Amendments, City Planning staff have proposed amendments to facilitate the production of special housing types such as Rooming Units and Efficiency Units, employee housing, Residential Care facilities, Transitional and Supportive Housing, low barrier navigation centers, and Emergency Shelters to comply with State law; and

**WHEREAS**, as part of the draft Phase 1 Planning Code Amendments, City Planning staff have proposed various amendments that codify administrative practices, update references, clarify language, and other confirming changes; and

**WHEREAS**, the Phase 1 Planning Code Amendments include, under separate resolution, amendments to the 1998 General Plan Land Use and Transportation Element to (a) increase the allowable density/intensity (units per acre) for residential projects in most land use classifications throughout the City allowable Floor Area Ratios; and (b) facilitate the development of accessory units; and (c) allow twice the density for efficiency units and rooming units in areas designated as Urban Residential, Neighborhood Center Commercial, Community Commercial, Regional Commercial, Central Business District, and Housing and Business Mix; and (d) allow unlimited density for residential projects satisfying the affordability thresholds in an affordable housing overlay so long as they are otherwise consistent with zoning requirements; (e) change the General Plan designations in some areas near High Street and 66th Avenue from the heaviest industrial designation (General Industry and Transportation) to the less-intensive “Business Mix” industrial designation to minimize impacts on nearby Residential Zones; and (f) update the land use map to accommodate compatible uses; and

**WHEREAS**, Planning staff conducted public hearings and study sessions, encouraged public participation, and solicited feedback as part of the proposed Phase 1 Planning Code Amendment process at various public meetings and hearings before the Zoning Update Committee (March 15, 2023, and April 12, 2023), the Landmarks Preservation Advisory Board (May 1, 2023), and the Community and Economic Development (CED) Committee of the City Council (July 11, 2023); and

**WHEREAS**, the City received a total of thirty-nine (39) comments, comment letters, and emails during the comment period, including recommendations from the Equity Working Group on the Draft Planning Code Amendments; and

**WHEREAS**, Planning staff considered and incorporated community feedback where appropriate; and

**WHEREAS**, on March 30, 2022, a Notice of Preparation of a Draft Environmental Impact Report (EIR) was issued for Phase 1 of the GPU; and

**WHEREAS**, a duly noticed Draft EIR scoping hearing was held before the City Planning Commission on April 20, 2022, to receive comments on the scope and content of the Draft EIR

for Phase 1 GPU; and

**WHEREAS**, a Notice of Availability/Notice of Release of a Draft EIR was issued on March 24, 2023, along with publication of Draft EIR itself, both of which were made available to the public/governmental agencies for review and comment; and

**WHEREAS**, the Draft EIR was available for a 45-day public review period between March 24, 2023 and May 9, 2023; and

**WHEREAS**, a duly noticed public hearing on the Draft EIR was held before the City Planning Commission on April 19, 2023; and

**WHEREAS**, on July 26, 2023, a Notice of Availability/Release of a Final EIR and Hearing Drafts of the Safety Element and Environmental Justice Element was issued and the Final EIR and Public Hearing Drafts of the Safety Element and Environmental Justice Element with appendices identifying responses to public comment were published on July 26, 2023, on the City's GPU webpage, and an email notice was sent to all individuals and organizations that have requested project updates; and

**WHEREAS**, on August 2, 2023, the Planning Commission held a duly noticed public hearing to consider the proposed Phase 1 Planning Code Amendments, along with the updated Safety Element, the new Environmental Justice Element, General Plan Map and Text Amendments, and EIR; and

**WHEREAS**, the City Planning Commission, after conducting and closing the public hearing, unanimously recommended, with one absent commissioner, that the City Council (a) adopt the required California Environmental Quality Act (CEQA) findings, including certifying the EIR, rejection of two mitigation measures as infeasible and rejection of alternatives as infeasible, and adopting a Statement of Overriding Considerations; (b) adopt the Standard Conditions of Approval and Mitigation Monitoring Program (SCAMMRP); (c) adopt a resolution to certify the EIR and make related CEQA findings, adopt an amendment to the Safety Element of the City's General Plan, adopt the Environmental Justice Element as a New Element of the City's General Plan, and adopt conforming amendments to the Land Use and Transportation Element of the General Plan, including General Plan Map Amendments; and (d) adopt an ordinance adopting the proposed Phase 1 Planning Code Text and Map Amendments, with the following revisions recommended by the Planning Commission:

- a. That additional zoning standards such as lot coverage, lot frontage, and average lot width requirements be struck from the Missing Middle Code Package.
- b. To add to the General Planning Code Amendments, under Section 17.108.140C.2.a, the words "for safety and security" after "public safety hazard."

; and

**WHEREAS**, the City Planning Commission provided the additional recommendation passed on a 4-2 vote, with one absent commissioner, that the City Council adopt construction workforce standards as part of the General Plan Update under the guidance from staff; and

**WHEREAS**, on September 12, 2023, at a duly noticed public meeting, the CED Committee of the City Council voted to recommend the proposal to certify the EIR and adopt the proposed Phase 1 Planning Code Amendments; and

**WHEREAS**, the City Council held a duly noticed public hearing on September 19, 2023, to review and consider adoption of the Hearing Draft Safety Element, Hearing Draft Environmental Justice Element, and the General Plan and Planning Code Text and Map Amendments, including the proposed Phase 1 Planning Code Amendments, and EIR certification;

**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 decision-making body for the lead agency, has independently reviewed, considered, and analyzed the Phase 1 GPU EIR and the CEQA findings of the City Planning Commission contained in the approved August 2, 2023 City Planning Commission Report.

**SECTION 3.** The City Council, as the final decision-making body for the lead agency, hereby confirms, adopts and incorporates by reference into this Ordinance (as if fully set forth herein) all the CEQA findings contained as Attachment B to the September 12, 2023 City Council Community and Economic Development Committee Report prior to taking action in approving the amendments to Planning Code, Oakland Zoning Map and Height Area Map.

**SECTION 4.** The City Council adopts and incorporates by reference into this Ordinance (as if fully set forth herein), as conditions of approval of the Phase 1 EIR, the Standard Conditions of Approval and Mitigation Monitoring Program (SCAMMRP) contained as Attachment C to the September 12, 2023 City Council Community and Economic Development Committee Report.

**SECTION 5.** Title 17 of the Oakland Planning Code is hereby amended, as detailed in *Exhibits A through F*, attached hereto and which is incorporated by reference herein. Additions to Title 17 of the Oakland Municipal Code are shown as underline and omissions are shown as ~~strikethrough~~.

**SECTION 6.** The Oakland Zoning and Height Area Maps are hereby amended as indicated in *Exhibits G through O*, attached hereto and incorporated herein by reference.

**SECTION 7.** This Ordinance shall become effective on October 30, 2023 or upon the seventh day after final adoption, whichever is later, but shall not apply to (a) building/construction-related permits issued prior to the effective date and not yet expired; (b) zoning applications approved by the City prior to the effective date and not yet expired; or (c) zoning applications approved prior to the effective date and pending appeal before the City Planning Commission and/or City Council as of August 15, 2023.

**SECTION 8.** Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

**SECTION 9.** 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 10.** This Ordinance serves the public interest and is necessary to protect the health, safety and/or general welfare of the citizens of Oakland, and is enacted pursuant to the City of Oakland'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 11.** That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the Safety Element, Environmental Justice Element, Planning Code, and General Plan Amendments including all accompanying maps, papers and appendices;
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 Environmental Impact Report and supporting technical studies and appendices, and all related/supporting final materials, and all final notices relating to the Safety Element, Environmental Justice Element, Planning Code Amendments and attendant hearings;
3. all oral and written evidence received by the City Planning Commission and City Council during the public hearings; and all written evidence received by the relevant City Staff before and during the public hearings; and
4. all matters of common knowledge and all official enactments and acts of the City of Oakland, 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 12.** 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 13.** The Environmental Review Officer, or designee, is directed to cause to be filed a Notice of Determination with the appropriate agencies.

**SECTION 14.** 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: \_\_\_\_\_