

**CITY OF OAKLAND**  
**AGENDA REPORT**

2009 OCT 29 PM 3: 50

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Community and Economic Development Agency  
DATE: November 10, 2009

RE: **Ordinance Extending the Interim Controls for the Implementation of the Oakland General Plan (Oakland Planning Code Chapter 17.01 and the General Plan Conformity Guidelines) to June 30, 2011**

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**SUMMARY**

The Interim Land Use Controls of Oakland Planning Code Chapter 17.01 ("General Provisions of Planning Code and General Plan Conformity") and the General Plan Conformity Guidelines will expire on January 1, 2010, except for applications that were complete prior to that date. These controls are used to regulate parcels of land where the zoning designation is not in conformity with the General Plan Land Use classification. The controls were established to resolve zoning and General Plan conflicts for the period of time between the adoption of the General Plan (1998) and the updating of the zoning code (expected completion in 2011), to conform to the Land Use and Transportation Element of the General Plan. The Mayor's Office, the City Attorney's Office and staff have formulated a work plan to finish the task of updating the zoning code so that it conforms to the General Plan. Staff is requesting that the Council extend the interim land use controls until June 30, 2011 to correspond to the work plan schedule.

**FISCAL IMPACT**

The proposed ordinance, to extend the Interim Land Use Controls of the Planning Code, will not result in any direct fiscal or budgetary impacts.

**BACKGROUND**

In March of 1998, the City of Oakland adopted the Land Use and Transportation Element (LUTE) of the General Plan and an associated land use map. These documents lay out the City's vision for future development and represent the land use "constitution" for the City. However, Oakland, as a charter city, is only required to have its zoning code conform to its General Plan if it imposes that requirement on itself through its charter or Planning Code. Oakland has imposed this requirement on itself through Chapter 17.01 of the Oakland Planning Code and the General Plan Conformity Guidelines. The Ordinance imposing that condition will expire on January 1, 2010, along with the other code sections and General Plan Conformity Guidelines.

The development standards contained in the City's Planning Code and zoning maps should directly implement the intent of the General Plan. However, revision of these zoning regulations

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was not made at the time of the passage of the General Plan in 1998, creating several conflicts between the General Plan, the Planning Code, and the Zoning Map. For instance, there are several areas of the City where the LUTE encourages retail shopping districts, but the existing zoning does not allow commercial uses.

In May 1998, the City Council adopted Ordinance No. 12054 C.M.S. to bridge this gap. Ordinance No. 12054 C.M.S. created Interim Controls in the Planning Code (Chapter 17.01) that provided a process for evaluating projects where the LUTE and the Planning Code are inconsistent. For instance, the interim controls provide a process to approve a project that is encouraged by the LUTE, but is not allowed by the Planning Code. The specific procedures required for a development to gain approval when this conflict occurs is contained in Chapter 17.01 of the Planning Code, which also authorized the Planning Commission to adopt detailed implementing regulations -- the "Guidelines For Determining Project Conformity with the General Plan and Zoning Regulations." These General Plan Conformity Guidelines also provide the procedure to determine whether a project conforms to the General Plan in terms of development intensity and activity.

Section 5 of Ordinance No. 12054 C.M.S. states that these Interim Controls shall expire after a three year period, but may be extended for an additional two years. The Interim Controls were subsequently twice extended for two years by the City Council in 2001 and 2003. In 2006 the Council extended the controls until June 30, 2007, and in December 2007, with Ordinance No. 12839 C.M.S., the Council extended the controls until January 1, 2010 (see *Attachment A*). This proposed ordinance would extend the Interim Controls for a further 18 months, until June 30, 2011.

Since the extension of the Interim Controls in December 2007, CEDA staff has made significant progress towards implementing the zoning changes envisioned by the LUTE. Since December 2007, the City Council has adopted: new zones for industrial areas ("CIX," "IG," and "IO"); new zones for the Central Business District, in downtown Oakland ("CBD" zones); and two sets of "General Plan map corrections," which refined the map and fixed mapping errors made in 1998. Also, the Citywide Zoning Update staff developing the new Residential and Commercial zones has, for the last year, met with the public and stakeholder groups to craft new regulations for the City's remaining commercial and residential areas. These new regulations are expected to begin their adoption through the public hearing process in late 2009. Upon the adoption of these new zones, the majority of the land use conflicts arising from the discrepancy between the 1965 zoning code and the 1998 LUTE will have been resolved. See *Attachment B* for a detailed report on the status of the Zoning Update (September 2, 2009 Director's Report to the City Planning Commission).

## KEY ISSUES AND IMPACTS

Staff requests approval of the ordinance to extend the Interim Controls and continue to implement their policies and procedures for 18 months.

Adoption of the ordinance will allow the City to continue its development permitting processes in areas where the LUTE and the Planning Code are in conflict. Several impacts could result if the City does not adopt the ordinance, and allows the current Interim Controls to expire on January 1, 2010:

- The City would have no procedure to evaluate whether a project's land use intensity and activity adheres to the LUTE, the City's most important land use plan (land use intensity is measured by residential density and floor area ratio. Examples of land use activities are retail, residential, and manufacturing).
- The City would have no standardized process to control incompatible land uses in many parts of the City. For instance, the City would not have a standardized process to evaluate an application for a retail use in a residential neighborhood with a residential LUTE designation but a commercial zoning designation. This situation occurs frequently because zoning designations have been modified over time in an inconsistent manner and thus several areas have an inappropriate zoning designation.
- There would be no standardized process to evaluate projects that implement the intensities encouraged by the General Plan along the City's corridors and downtown. This would create confusion and uncertainty among the community, developers, city staff and land use decision-makers (Planning Commission and City Council) as there would be different expectations for how to evaluate projects.
- An application for a zone change would not allow for the use of the Infill Exemption under the California Environmental Quality Act (CEQA); instead, without the Interim Controls, such an application would necessitate a Negative Declaration, Mitigated Negative Declaration or an Environmental Impact Report.

Not adopting the extension may place the City in a difficult situation. For instance, if a development is denied because it is inconsistent with the General Plan, a developer could argue in court that the project should have been approved because it is consistent with the zoning designation. Conversely, an approved development consistent with the LUTE could be subject to a lawsuit against the City because it is not consistent with the Zoning.

Not adopting the ordinance would create confusion and uncertainty among the community, developers, city staff and land use decision-makers (Planning Commission and City Council) as

there would not be a consistent set of procedures and expectations for how to evaluate projects and this could result in the City having to defend more lawsuits challenging land use decisions.

## **POLICY DESCRIPTION**

Staff recommends the City Council extend the Interim Land Use Controls, known as the "General Plan Conformity Guidelines." Planning Code Chapter 17.01 and the associated "General Plan Conformity Guidelines" are designed to encourage development in accordance with the General Plan. Without these code sections and guidelines, the zoning code would be primary land use document for development in the City of Oakland. The base zoning code was adopted in 1965, while the General Plan (the LUTE) was adopted in 1998. The General Plan is considered to be the vision document for the future development of the City and represent a substantially more current vision of the City than does the zoning code. In addition, "protective" measures would no longer be in place if the Interim Controls/General Plan Conformity Guidelines were not extended past January 1, 2010.

## **SUSTAINABLE OPPORTUNITIES**

***Economic:*** Extending the General Plan Conformity Guidelines would promote economic development in the City.

***Environmental:*** Extending the General Plan Conformity Guidelines would promote more transit-oriented development in Oakland.

***Social Equity:*** None identified.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

Approval of this proposed Ordinance will have no impact on access for the disabled or senior citizens.

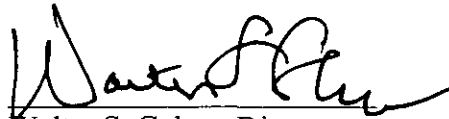
## **RECOMMENDATION AND RATIONALE**

Staff recommends the City Council extend Oakland Planning Code Chapter 17.01 and the General Plan Conformity Guidelines until June 30, 2011. These rules have been the existing condition since the adoption of the General Plan in 1998 and are designed to encourage transit-oriented development consistent with the General Plan. The Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations are included as ***Attachment C***.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff requests that City Council adopt the attached Ordinance extending Oakland Planning Code Chapter 17.01 and the General Plan Conformity Guidelines until June 30, 2011, unless the Citywide Zoning update is completed earlier.

Respectfully submitted,



Walter S. Cohen, Director  
Community and Economic Development Agency

Reviewed by:  
Eric Angstadt, Deputy Director

Neil Gray, Planner III  
Strategic Planning

Prepared by:  
Devan Reiff, AICP, Planner II  
Strategic Planning

APPROVED AND FORWARDED TO  
THE COMMUNITY AND ECONOMIC  
DEVELOPMENT COMMITTEE:



Office of the City Administrator

Attachment A: Ordinance No. 12839 C.M.S.  
Attachment B: September 2, 2009 Director's Report on Zoning Update  
Attachment C: General Plan Conformity Guidelines

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ATTACHMENT A

OFFICE OF THE CLERK  
CITY OF OAKLAND

2007 07 25 PM 3:22

Approved as to Form and Legality

*Mark P. Wald*  
Deputy City Attorney

OAKLAND CITY COUNCIL

Ordinance No. 12839 C.M.S.

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**ORDINANCE EXTENDING THE INTERIM CONTROLS FOR THE IMPLEMENTATION OF THE OAKLAND GENERAL PLAN (OAKLAND PLANNING CODE CHAPTER 17.01 AND THE GENERAL PLAN CONFORMITY GUIDELINES) TO JANUARY 1, 2010**

**WHEREAS**, on May 12, 1998, the City Council passed Ordinance No. 12054 C.M.S., which adopted Interim Controls for implementation of the Oakland General Plan prior to the comprehensive revision of the Oakland Planning Code, subdivision, environmental review, and related regulations; and

**WHEREAS**, Section 5 of Ordinance No. 12054 C.M.S. provides that the Interim Controls shall expire after a three-year period unless extended for an additional two year period; and

**WHEREAS**, on June 5, 2001, the City Council adopted Ordinance No. 12332 C.M.S., which extended the Interim Controls until June 30, 2003; and

**WHEREAS**, on July 15, 2003, the City Council adopted Ordinance No. 12514 C.M.S., which extended the Interim Controls until December 31, 2005; and

**WHEREAS**, on June 20, 2006, the City Council adopted Ordinance No. 12746 C.M.S., which extended the Interim Controls until June 30, 2007; and

**WHEREAS**, on May 6 1998, the Planning Commission adopted the "Guidelines for Determining Project Conformity with the General Plan Guidelines and Zoning Regulations (General Plan Conformity Guidelines), with the Planning Commission amending said General Plan Conformity Guidelines on November 3, 1999; August 8, 2001; December 5, 2001; July 15, 2003; May 28, 2004; and October 31, 2006; and

**WHEREAS**, the Community and Economic Development Agency is still in the process of updating the Oakland Planning Code to implement the General Plan and thus the Interim Controls are still necessary; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA) of 1970 are satisfied because the extension of the Interim Controls merely continues the policy and practice of the last nine years and, as a separate and independent basis, the Interim

Controls are covered by the Environmental Impact Report prepared for the Land Use and Transportation Element of the General Plan that was certified by the City Council on March 24, 1998, as well as the Mitigated Negative Declaration adopted for the Housing Element of the General Plan on June 15, 2004; and

**WHEREAS**, the Council finds and determines that the public safety, health, convenience, comfort, prosperity, and general welfare will be furthered by extending the Interim Controls; now, therefore,

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** Oakland Planning Code Chapter 17.01 and the General Plan Conformity Guidelines are hereby extended, in accordance with other sections of this ordinance.

**Section 2.** This ordinance shall be effective upon its adoption if it receives at least six affirmative votes; otherwise, it shall be effective upon the seventh day after final adoption, but shall be retroactively applied as of July 1, 2007 and shall remain in effect until January 1, 2010, or until the comprehensively updated Oakland Planning Code and Zoning Maps are completed and adopted, whichever comes first.

**Section 3.** The ordinance complies with CEQA as stated in the recitals section.

**Section 4.** If any provision of this ordinance or 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.

**Section 5.** The recitals are true and correct and an integral part of this ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, DEC 4 2007, 2007

**PASSED BY THE FOLLOWING VOTE:**

AYES - ~~BRUNNER~~, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, AND  
PRESIDENT DE LA FUENTE - 7

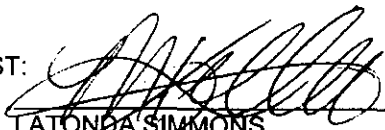
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Brunner - 1

ATTEST:

  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California

Introduction Date: NOV 6 2007

**SUMMARY**

Staff prepared this Director's Report to provide a progress update and timeline for the Citywide Zoning Update and future public hearings. This report presents information about the background, policy and regulatory framework, approach, key issues and schedule for the Zoning Update. Staff recommends that the Planning Commission become familiar with the project prior to the Zoning Update Committee and Planning Commission public hearings anticipated to occur in early 2010.

**BACKGROUND***A. Citywide Zoning Update*

Oakland adopted a new General Plan Land Use and Transportation Element (LUTE) in 1998. The LUTE included changes to the city's land use map, and new policies about how and where development should occur. Adoption of the LUTE established a new vision for Oakland, but also created inconsistencies between the General Plan and the zoning regulations (found in Title 17 "Planning Code" of the Oakland Municipal Code). Although piecemeal changes to the Planning Code have been made over time, it has not been comprehensively amended since 1965. The bulk of Oakland's zoning regulations remain outdated; they are not consistent with national best practices in zoning, include many obsolete terms, and are cumbersome for many users.

To address the inconsistency between the zoning and the General Plan, guidelines were adopted to provide a procedure for deciding whether a project is consistent with the Plan's intent.<sup>1</sup> The original intent was for the Guidelines to be in effect for a short, temporary period until new zoning that was up-to-date and consistent with the General Plan was adopted, and render them unnecessary. However, they remain in effect today.

An initial effort to comprehensively update the Code began in 1999, following adoption of the LUTE. A consultant was retained, stakeholder meetings were conducted, an ordinance was drafted, and maps were prepared. Agreement was reached on some components of the new draft Code, including regulations for zones to implement the open space (Resource and Conservation Area and Urban Open Space) and Housing Business Mix (HBX) General Plan land use designations. However, the overall effort was suspended in 2003 due to resource limitations and shifting priorities in the previous administration.

In 2007, the City resumed efforts to complete the Citywide Zoning Update. The City Council adopted new zoning for the city's industrial areas (areas designated as Business Mix or General Industrial/Transportation in the LUTE) in June 2008; new zoning for the Central Business District was just recently adopted in July 2009. In addition, substantial revisions to the use classifications (O.M.C. Ch. 17.10) were adopted in June 2009, in order to modernize and simplify language in the Planning Code, which allow the City to more flexibly and precisely regulate land uses.

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<sup>1</sup> General Plan Conformity Guidelines were first adopted in 1999; they have been amended several times subsequently, as new zoning has been adopted and/or as the need to extend the guidelines has arisen. The Guidelines are accessible online at: <http://oaklandnet.com/strategicplanning>



The remaining work to complete the Citywide Zoning Update is comprised of updating the zoning for areas with residential, commercial and institutional General Plan LUTE land use designations.<sup>2</sup> The effort to update residential and commercial zoning was initiated in fall 2008 and is on-going. Land designated with a residential or commercial General Plan land use designation, listed below, represents over half the land area of Oakland (53% and 5% respectively):

- **Residential General Plan Land Use Designations:** Hillside Residential, Detached Residential, Mixed Housing Type, Urban Residential
- **Commercial General Plan Land Use Designations:** Neighborhood Center Mixed Use Commercial, Community Commercial, Regional Commercial

### ***B. Related Efforts to the Citywide Zoning Update***

There are several separate but related efforts underway that are described below.

#### **1. General Plan Land Use Diagram – Corrections, Refinements and Clarifications**

The City is striving to achieve consistency between the General Plan and Zoning Maps through two parallel initiatives. The major initiative, and the one that is the focus of most staff effort, is the Zoning Update. This includes updating the zoning designation on each parcel in the city to reflect the uses depicted on the General Plan Map. A secondary initiative is to “fine tune” the General Plan Map to make it slightly more detailed (or “fine-grained”) than it was when it was adopted in 1998. This is necessary because literal interpretations of the General Plan Map in some locations could result in incorrect and unintended zoning changes.

The current General Plan Map was designed at a scale so that the entire city could fit on an 11”x17” sheet of paper, resulting in a very “broad-brush” approach to the way land uses were shown. Many areas were crudely mapped as “blobs” that did not conform to their actual shape and extent. Now that all City Planning maps have been digitized and exported into geographic information system (GIS) files, discrepancies between the General Plan and what is actually on the ground have been identified. These are being addressed through a series of General Plan Map “corrections” and “interpretations” (The Planning Commission is considering the bulk of these corrections at its September 2<sup>nd</sup> meeting).

#### **2. Design Guidelines**

Design guidelines are intended to complement zoning regulations by providing overarching design principles and more specific design guidance at a level of detail and length that would not be appropriate adopting as Code. Planning and Zoning staff have identified the need for updating its existing design guidelines for one- and two-unit dwellings, as well as creating new design guidelines for higher density buildings located along the City’s commercial corridors.

The City of Oakland currently has three adopted design manuals:

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<sup>2</sup> Mixed Waterfront General Plan land use designation was updated by the Estuary Policy Plan (EPP), which was adopted in 1999. Zoning to implement the EPP will be addressed separately from the Citywide Zoning Update effort by other planning processes including the Central Estuary Specific Plan currently underway (described below).

- *Interim Design Review Manual for One-and Two-Unit Residences* (adopted in 2005)
- *Design Review Criteria for High Density Housing* (adopted in 1982, amended in 1991)
- *Small Project Design Review Guidelines* (for storefront design and signage – adopted in 1995, updated in 1992)
- *Housing and Business Mix Design Review Manual* (adopted in 2006)

Staff is currently in the initial phase of conducting field research and researching best practices of cities with similar characteristics.

### 3. Specific Plans

There are a number of parallel efforts underway for specific neighborhoods and other areas of the city where major change is envisioned in the future such as the Central Estuary, the Broadway/Valdez District, and the Lake Merritt BART Station. While these areas will also be rezoned, the guiding document for land use and development standards in each area will be a specific plan (or equivalent) rather than the citywide zoning regulations.<sup>3</sup>

## REGULATORY AND POLICY FRAMEWORK

The policy framework for the Zoning Update is provided by the Oakland General Plan. The relevant elements include:

- **Land Use and Transportation Element (LUTE).** Adopted in 1998, the LUTE includes the City's key policies on Downtown, neighborhoods, the waterfront, transportation, and industry/commerce. The Element also provides specific direction regarding the zoning update. The LUTE was amended in 1999 to add Bicycle Master Plan, which was recently updated in 2007, and again in 2002 to add a Pedestrian Master Plan.
- **Historic Preservation Element.** In 1994, the City of Oakland adopted a Historic Preservation Element as part of its General Plan. The Element includes goals, policies and actions that govern how the City will treat historic properties and neighborhoods. The Element was amended in 1998.
- **Open Space, Conservation, and Recreation Element (OSCAR).** In 1996, the City of Oakland adopted an Open Space and Recreation Element as part of its General Plan. The OSCAR includes policies addressing hillside development; protection of creeks, wetlands, and other natural areas; parkland dedication; open space in private development; and other topics with zoning implications.
- **Safety Element.** The Safety Element, adopted in 2004, includes a policy framework to guide the public decision making process with regard to safety hazards including public safety, geologic hazards, fire, flooding and hazardous materials.
- **Noise Element.** The Noise Element was adopted in 2005 and analyzes and quantifies the existing and projected noise levels from noise sources such as traffic, commercial and

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<sup>3</sup> Project information is available online for the Central Estuary Plan ([www.oaklandnet.com/central\\_estuary\\_plan](http://www.oaklandnet.com/central_estuary_plan)) and for the Broadway/Valdez District Specific Plan (<http://www.business2oakland.com/brcp/>). The Lake Merritt BART Station Area planning process is currently in the contract negotiation phase.

aviation activities, and includes implementation measures to address any foreseeable noise problems.

- **Housing Element.** Provides an assessment of the need for housing and an inventory of housing; statement of the goals with regard to housing residents; and a program for providing the needed amount of housing throughout the City. Oakland's housing need is derived from the Association of Bay Area Governments' (ABAG) Regional Housing Needs Allocation (RHNA), the projected total number of new housing units that need to be built in the Bay Area to meet expected population demand for a specified five-year period. The State requires each region to produce an RHNA based on state policies to promote infill development, environmental and agricultural protection, and efficient development patterns. The RHNA requires Oakland to create capacity for approximately 15,000 units between 2009 and 2014. An update to the Housing Element is currently underway for this period.

Another important new State law that will effect planning and development in Oakland is SB375, which requires that ABAG and the Metropolitan Transportation Commission (MTC) adopt, as part of their regional transportation plan, a "sustainable community strategy" that will meet the region's target for reducing Greenhouse gas emissions (GHG). These strategies would help reduce automobile travel, a major contributor to GHG in Oakland, by promoting smart growth principles such as:

- Development near public transit;
- Construction of mixed use projects; and
- Creation of housing that is affordable in the inner Bay Area to help reduce new housing developments in outlying areas with cheaper land.

A more detailed briefing on SB375 to the Planning Commission will be forthcoming after ABAG and MTC provide cities with more direction on the protocols and potential draft GHG emissions targets. Currently, Regional Targets Advisory Committees (RTACs) – of which ABAG and MTC participate—are in the process of developing factors and methodologies to be considered in the determination of regional GHG emissions targets, which will then be used by the California Air Resources Board (CARB) to set regional emissions targets.

## **APPROACH TO ZONING UPDATE**

The focus of the Zoning Update process thus far is on **uses and development standards** (e.g. height setback, gross bulk/building envelope). Other standards, such as parking, landscaping, buffering, and possible overlay zones will be addressed after the base zones are updated. Updating the City's Zoning Maps will occur concurrently with development of the draft zoning text. Staff anticipates that there will be multiple iterations of mapping as the Zoning Update proceeds, beginning with test areas and continuing as new zones are mapped; the amount of time and effort for this task will depend on the degree that new zoning proposed results in consolidation, expansion or substantial reorganization of existing zones.

The current effort underway to update the zoning for commercial and residential areas in the City was initiated in September 2008. Staff's approach to updating the residential and

commercial zoning generally includes a combination of review and analysis of studies from the initial rezoning effort, best practice research of cities facing issues similar to Oakland, field work and collecting extensive stakeholder and public input.

Since September 2008, Planning and Zoning Division staff has held multiple community and stakeholder meetings to review the land use and development policies described in the City's General Plan for commercial and residential areas and to begin to formulate a zoning framework based on those policies. In addition to soliciting feedback from the public at-large, two Technical Advisory Groups (TAGs) have been formed to act as a sounding board for, and provide input to City staff. The two groups are comprised of volunteer community members representing balanced and varied interests (i.e., developers, advocates, property owners and renters) and different geographic areas that will meet on an ad-hoc, temporary basis throughout the Zoning Update process. The general public is welcome to attend TAG meetings as observers.

In general, the residential zoning TAG focuses on regulations for single-family flatland neighborhoods, hillside residential neighborhoods, mixed density neighborhoods, and multi-family areas (not located along the city's major corridors). The commercial zoning TAG focuses on development regulations for the major corridors of the city (i.e., San Pablo Avenue, International Boulevard, Macarthur Boulevard, etc) and commercial areas outside the corridors. Staff recognizes that there are issues that will concern both TAGs, such as regulations for areas designated in the LUTE as Urban Residential along major corridors, the interface between these areas and adjacent lower density residential areas, and how to address small amounts of commercial uses in primarily residential areas, among other issues.

## **KEY ISSUES IN THE ZONING UPDATE**

This section summarizes the key issues of the Zoning Update. A more detailed discussion of issues will be provided when draft proposals and mapping are developed, which staff tentatively expects to bring before the Zoning Update Committee of the Planning Commission in December of this year. (A schedule for the Zoning Update is presented below.)

### **1. Zoning Framework**

As noted above, the existing framework of 12 residential and 20 commercial zones is not consistent with the General Plan and has not been comprehensively updated since 1965. Overall, the updated residential and commercial zoning will be based on General Plan land use designations. All of the residential and commercial zoning districts will be renamed so that the connection between the zoning district and associated General Plan land use classification is more apparent. The name of the General Plan land use classification would be part of the name of the zoning district, followed by a number (corresponding to the number of zones that implemented a particular General Plan land use classification). For example, the zones that implemented the Hillside Residential General Plan land use designation would be named Residential Hillside-1 (RH-1), Residential Hillside-2 (RH-2), etc., and the zones that implemented the Community Commercial designation would be named Community Commercial-1 (CC-1), Community Commercial-2 (CC-2), etc. All of the zones that implemented a particular General Plan land use classification would be grouped together in the

same chapter of the Planning Code. In addition, all zoning district regulations will use a table format to show permitted and conditionally permitted uses (instead of long lists of uses), which will be easier to read and allow for comparisons across different zones in the same chapter.

- **Residential Zoning Framework.** Overall, staff does not anticipate major changes in residential zoning district hierarchy, which is consistent with policy guidance provided in the General Plan which designates most of the city's residential areas as "Maintain and Enhance" areas. New residential zones will have a rough correspondence to existing zones. The existing 12 residential zoning districts do not correspond with density ranges established in the General Plan. Staff is considering refining existing density ranges and potentially creating a new zone(s) to address these discrepancies. There are also a few cases where staff is considering consolidating zones whose standards are essentially the same, in order to eliminate redundancy (such as merging the R-36 and R-40 zoning districts).
- **Commercial Zoning Framework.** Proposals under consideration to update the commercial zoning districts would result in a substantially changed zoning district hierarchy, which is consistent with policy guidance provided in the General Plan which designates most of the city's commercial corridors and commercial areas as "Grow and Change" areas. The existing array of 20 commercial zoning districts and three residential zoning districts are mapped throughout the commercial General Plan land use classifications. As noted above, new commercial zoning districts would be based on the LUTE land use designations, thus requiring a more extensive reorganization of existing commercial zoning districts. In addition, the LUTE provides policy guidance directs much of the future growth of the city to the transportation corridors—particularly those that are close to BART and AC Transit service, such as San Pablo Avenue, International Boulevard and Bancroft Avenue.

## 2. Changes to Development Standards for All Residential Zoning Districts

Staff is considering the following changes that would apply to all residential zoning districts:

- New Floor Area Ratio (FAR) Standards for all residential zones for lots that have a footprint slope greater than 20%. FAR, when combined with lot coverage and height limits, is an effective way to control building bulk and scale.
- Sliding scale for setbacks for small lots (less than 4,000 square feet), which is based on the existing R-36 zone that would apply to all small lots with a footprint slope less than 20%. It seems reasonable to apply this standard to all existing small lots on relatively flat lots rather than only allow the sliding scale for certain zoning districts.

## 3. Changes to Hillside Development Standards

Staff is considering changing regulations for steep sloped lots in the Oakland hills, and in other areas of the city, in order to better prevent the construction of bulky buildings that are out-of-scale with their surrounding context, and have greater environmental impacts relating to increased impervious surfaces and grading. Staff is considering the following changes:

- Applying lot coverage requirements to *all* steeply sloped lots (greater than 20% slope) in the city, which would be based on lot size and not zoning district. Currently, lot coverage requirements only exist for lots in the city that have *less than* 20% slope.

- Introducing a new floor-area ratio (FAR) requirement that would be based on lot size (not zoning district).
- Changing the point of measurement for height for upslope lots from edge of pavement to at grade and revising maximum heights for downslope lots.

Another issue that has been raised during the Zoning Update process is the need to better control development intensity in the more environmentally sensitive hillside areas, potentially through methods such as a slope density formula. A slope density formula determines the total number of dwelling units, allowable on a property, based on the average slope. There are many different ways to calculate a slope density formula. Generally, the steeper the average slope, the fewer number of units will be permitted. Further discussion about slope density will not be part of this phase of the Zoning Update, which concentrates on getting base zones adopted as part of the Planning Code. Considering slope density proposals will require extensive public input and would involve changes to the city's subdivision regulations (O.M.C. Title 16: Subdivisions), which will need to be addressed at a later date, after the Zoning Update effort is completed.

#### **4. Using a Height and Intensity Map in Commercial Corridors**

Staff is proposing to regulate height, bulk and intensity regulations separately from other zoning regulations in the city's commercial corridors through the use of a "height and intensity map"—similar to the approach that was used for the recently adopted new zoning districts for the Central Business District. The reason that height, bulk, and intensity regulations would be mapped differently than the zoning districts is because the uses preferred at a particular location may not relate to the overall size and scale of a building. Appropriate size and scale of a building (regardless of use) is more closely related to the surrounding context (e.g. street width, neighborhood context). For instance, zoning districts which encourage pedestrian-oriented commercial activities are appropriate for both the Grand Avenue and Fruitvale neighborhoods, even though the appropriate bulk of buildings in these areas vary, due to factors such as street width and proximity to a BART station.

#### **5. New Design Regulations for Commercial Corridors**

Staff is proposing several types of new design regulations for areas located along the city's major corridors to enhance visual quality of the built environment, pedestrian-friendliness, safety, transitions between adjacent higher density and lower density neighborhoods, including the following:

- Minimum ground floor height for commercial spaces
- Ground floor transparency requirements for storefronts
- Parking, automobile access and active space location requirements;
- Maximum front setbacks in commercial neighborhoods;
- Minimum grade separation for ground floor residential units
- Minimum required rear setbacks and stepbacks for new higher density development to ensure appropriate transition to adjacent to low- to medium-density residential neighborhoods.

#### **6. Commercial Uses in Primarily Residential Areas**

The use regulations and development standards for Oakland's neighborhoods will need to recognize the presence of commercial uses in areas with Residential General Plan land use designations. These commercial uses consist of:

- Small neighborhood stores considered to be legal non-conforming uses in residential zones;
- Tiny "pockets" of C-5 or C-10 zoning in otherwise residential areas;
- Areas of continuous commercial use along arterial streets, or "secondary commercial corridors" such as High, Market and 98th Streets, Shattuck, Fruitvale and Seminary Avenues, among others; many of these arterials have bus lines running along them. Some of these areas are currently zoned as residential, and other areas are zoned as C-5 Neighborhood Commercial, C-10 Local Retail Commercial, or C-20 Shopping Center Commercial.

Staff is considering a range of possible ways to approach the regulation of commercial uses in residential areas. One approach would be to actually zone these areas for commercial use, using a district equivalent to the existing C-5 or C-10 district. Another approach being considered is to develop a zone that primarily allows residential uses but also allows a limited number of commercial uses, subject to strict limitations and/or be conditionally permitted with a specific set of locational criteria. *With any of these approaches, careful consideration of the degree to which changes increase legal nonconforming uses and potential impacts (e.g. noise, litter, traffic) from certain commercial uses in residential areas.*

## **7. Historic Preservation**

In residential neighborhoods, which the General Plan primarily designates as "Maintain and Enhance", staff is exploring measures to preserve neighborhood identity and context where there are substantial collections of buildings from a certain period or periods. Oakland's commercial corridors have a legacy of well-preserved, older buildings which are fundamental to the unique character of the City's "main streets". Some of these buildings are mapped in Areas of Primary or Secondary Importance, and some are buildings which stand alone with a high historic rating in the Oakland Cultural Heritage Survey.

## **CITYWIDE ZONING UPDATE SCHEDULE**

Additional residential and commercial Technical Advisory Group (TAG) meetings are planned for the end of September to flesh out proposed zoning concepts in preparation for another round of large public meetings in late October/early November. Consultation with the Landmarks Preservation Advisory Board (LPAB) is tentatively scheduled for October/November 2009. Staff expects to begin bringing draft zoning text and mapping proposals to the Zoning Update Committee in early 2010.

## **RECOMMENDATIONS**

Staff recommends that the Planning Commission become familiar with the background and key issues of the update to the residential and commercial zoning regulations. All documents related to the Zoning Update are located at the project website: [www.oaklandnet.com/zoningupdate](http://www.oaklandnet.com/zoningupdate). Staff

expects to begin bringing draft zoning text and mapping proposals to the Zoning Update Committee in early 2010 and then to the full Commission.

**CONCLUSION**

Formal public hearings are expected to be scheduled the Planning Commission to review the draft zoning and mapping proposals in mid 2010.

Prepared by:

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Approved for forwarding to the  
City Planning Commission:

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ERIC ANGSTADT  
Deputy Director of CEDA



*ATTACHMENT C*



**Guidelines for Determining Project Conformity  
With the General Plan and Zoning Regulations**

Adopted by the  
City of Oakland  
City Planning Commission

May 6, 1998

Amended November 3, 1999 (100-31)  
Amended August 8, 2001  
Amended December 5, 2001  
Amended July 15, 2003  
*(Minor typographical changes May 28, 2004)*  
Amended October 31, 2006  
*Amended July 21, 2009*

**Guidelines for Determining Project Conformity  
With the General Plan and Zoning Regulations  
Oakland City Planning Commission**

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## UNDERSTANDING THE GUIDELINES

### A. OVERVIEW

This document, Guidelines for Determining Project Conformity, describes the procedure for deciding whether a project is consistent with the General Plan. The document also describes the procedure to follow when the Zoning Regulations and General Plan conflict.

Because the General Plan was adopted more recently than Zoning Regulations, the General Plan and Zoning Regulations may conflict. As a result, some projects may be consistent with Zoning Regulations but inconsistent with the General Plan. When a conflict occurs between Zoning Regulations and the General Plan, the General Plan controls. There are three criteria used to determine whether a project is consistent with the General Plan. They are:

1. Is the proposed activity and facility type permitted under the General Plan? (Refer to Table 2 or 2A)
2. Is the proposed intensity (Floor Area Ratio for non-residential projects) or density (dwelling units per gross acre for residential projects) less than or equal to the maximum permitted by the General Plan? (Refer to Table 3 or 3A)
3. Is the project consistent with relevant General Plan policies? (Refer to Checklist 4)

If the answer to any of the foregoing questions is no, an application for the project will not be processed unless the Director of City Planning makes a determination that the project is consistent with the written goals and policies of the General Plan. The Director would need to make the finding that the land use map shows only the predominant use or average density for the area and that for an individual parcel or small area a different use or density may be appropriate. Additionally, the Director would have to find that the proposal conforms to all of the general use permit criteria, as well as to any and all other applicable use permit criteria pursuant to Section 17.134.050 of the Oakland Planning Code.

If the answer to each of the foregoing questions is yes or the General Plan does not address the issue (i.e., is silent), it must next be determined whether the project is permitted under the Zoning Regulations. Questions are:

1. Is the proposed activity and facility type permitted under the Zoning regulations?
2. Is the project consistent with other regulations of the zone?

If the answer to questions 1 and 2 is yes, the permitting procedure prescribed by the Zoning Regulations is followed (i.e., permitted outright or a conditional use permit required).

If the answer to question 1 is no, a "best fit zone" must be selected by reference to Table 5. There are two situations where Table 5 is used to select a "best fit zone": (1) where the General Plan allows the activity/facility type, but the Zoning Regulations prohibit it (known as "express conflict"); and (2) where the General Plan is silent on the issue, and the Zoning Regulations prohibit the activity/facility type. Where a "best fit zone" is required, the project proponent must apply for either an interim use permit or rezoning.

This is an overview of the procedure for determining consistency with the general Plan. It is not meant to replace the more detailed guidelines that follow. To determine whether a specific proposal is consistent with the General Plan, the Director of City Planning will apply the following Guidelines. The Director's decision is appealable to the City Planning Commission as described in the Planning Code.

# PROJECT CONSISTENCY WITH GENERAL PLAN AND ZONING/SUBDIVISION REGULATIONS

(Zoning/Subdivision Regulations prevail unless there is an express conflict)

## ZONING/SUBDIVISION REGULATIONS

		Permitted	Conditionally Permitted	Not Permitted
<b>GENERAL PLAN</b>	<b>Clearly Conforms</b>	Permitted Outright	Conditional Use Permit (normal process)	Allowed with interim Conditional Use Permit or Rezoning to "Best Fit" Zone <sup>1</sup>
	<b>General Plan is Silent or Not Clear on Conformity</b>	Permitted Outright	Conditional Use Permit (normal process)	Not Allowed  <u>Options</u> <sup>2</sup> : Modify project to conform to Zoning or Rezone to "Best Fit" Zone <sup>1</sup> or Variance
	<b>Clearly Does Not Conform</b>	Not Allowed  <u>Options</u> <sup>2</sup> : Modify project to conform to General Plan or Apply for General Plan Amendment or Request a General Plan conformity determination from the City Planning Director (an interim CUP is required)	Not Allowed  <u>Options</u> <sup>2</sup> : Modify project to conform to General Plan or Apply for General Plan Amendment or Request a General Plan conformity determination from the City Planning Director  (In all cases, a CUP is still required under Zoning)	Not Allowed  <u>Options</u> <sup>2</sup> : Modify project to conform to General Plan and Zoning or Apply for General Plan Amendment and Rezoning to "Best Fit" Zone <sup>1</sup>

= Express conflict between Zoning and General Plan; General Plan prevails.

<sup>1</sup> Where a rezoning occurs, the regulations of the new zone would apply, including any requirements for a Conditional Use Permit.

<sup>2</sup> Where none of the options are feasible, the project sponsor should be directed to the Business Retention and Attraction section for assistance in locating an appropriate alternate site.

## **B. BACKGROUND**

On March 24, 1998, the City Council passed Resolution No. 74129 C.M.S. approving the new Land Use and Transportation Element of the Oakland General Plan. That resolution stipulates that

"Until the City's zoning regulations are updated, the City shall apply land use designations, zoning controls and subdivision controls as specified by the planning code and subdivision regulations, except where such action would expressly conflict with the updated General Plan. Where an express conflict does arise, the City will apply the updated General Plan policies and land use designation."

On May 12, 1998, the City Council passed Ordinance No. 12054 C.M.S. adopting interim controls for implementing the General Plan prior to the adoption of revisions to the Oakland Planning Code. This ordinance adds Chapter 17.01 to the Planning Code entitled "General Provisions of Planning Code and General Plan Conformity".

Subsequently, other Elements of the Oakland General Plan have been prepared and adopted by the Oakland City Council. Each of these Elements is also to be implemented on the basis of interim controls until final zones, zoning controls, subdivision, and environmental controls are adopted through the Zoning update process. Recently adopted General Plan Elements are: the Estuary Policy Plan (June 8, 1999, City Council Resolution No. 75037 C.M.S.), the Historic Preservation Element (amended July 21, 1998, Resolution No. 74403 C.M.S.), and the Bicycle Master Plan, also an Element of the General Plan, (July 20, 1999, Resolution No. 75148 C.M.S.) The General Plan Guidelines for determining General Plan Conformity have been revised to reflect these recent adoptions.

Section 17.01.060 of the Planning Code directs the City Planning Commission to "adopt guidelines for determining the General Plan conformity of any specific proposal. Such guidelines shall address activity and facility types, density and intensity of development, and relevant General Plan policies. They shall also identify the 'best fit' zones of the Zoning Regulations, and other possible zones, corresponding to the Land Use Classifications of the General Plan."

Section 17.01.070 of the Planning Code stipulates that "the Director of City Planning shall determine whether any specific proposal conforms with the General Plan. The Director shall use the guidelines adopted pursuant to Section 17.01.060 in making this determination. Any interested party may request that this determination be made in writing, upon payment of a fee as prescribed in the City Master Fee Schedule."

Section 17.01.080 of the Planning Code provides that "within ten calendar days of a written determination by the Director of City Planning pursuant to Section 17.01.070, an appeal of said determination may be taken to the City Planning Commission by the applicant or any other interested party. Such appeal shall be accompanied by a fee as prescribed in the City Master Fee Schedule, and shall be processed in accordance with the Administrative Appeal Procedure."

These are the guidelines mandated by Section 17.01.060 of the Planning Code, to be used by staff in determining *Project Conformity with the General Plan for all projects.*

## **C. PROCEDURES**

The interim controls define an "express conflict" as "any situation where a proposal clearly conforms with the General Plan but is not permitted by the Zoning and/or Subdivision Regulations, or where a proposal clearly does not conform with the General Plan but is permitted or conditionally permitted by the Zoning and/or Subdivision Regulations." They also specify procedures to be followed in each case. These procedures, and, in some cases, project sponsor options, are summarized in Flow Chart 1.

There are three possibilities under the General Plan Elements: the project may be determined to "clearly conform", to "clearly not conform", or the General Plan may be silent or not clear as to conformity. In the Zoning and/or Subdivision Regulations, a project may be permitted outright, conditionally permitted, or not permitted. Therefore, nine possible combinations exist for evaluating for Zoning and/or Subdivision Regulations status and General Plan conformity.

### **1. Discussion of "Express Conflict" between the General Plan and Zoning**

An "express conflict" exists where the project clearly conforms to the General Plan, but is not permitted by the Zoning and/or Subdivision Regulations, or where the project clearly does not conform to the General Plan, but is permitted or conditionally permitted by the Zoning and/or Subdivision Regulations.

In the case where the project clearly conforms to the General Plan, but is not allowed by the Zoning and/or Subdivision Regulations, the project may be allowed upon the granting of a conditional use permit. Section 17.01.100B of the Planning Code stipulates that this shall be processed as either a minor or major conditional use permit, in accordance with the regular conditional use permit procedures of the Zoning Regulations. In addition to the general use permit criteria, the following three special findings must be made:

- That the proposal is clearly appropriate in consideration of the characteristics of the proposal and the surrounding area;
- That the proposal is clearly consistent with the intent and desired character of the relevant Land Use Classification or Classifications of the General Plan and any associated policies;
- That the proposal will clearly promote implementation of the General Plan.

Since the proposal is not permitted under the Zoning Regulations, there would be no set development standards for evaluating it (e.g. height limit, setback, density, parking requirements, etc.). Therefore, Section 17.01.100B stipulates that the proposal shall be subject to the provisions of the "best fit zone" corresponding to the General Plan Land Use Classification in which the site is located (see Section B.5. below). However, the project sponsor may alternatively elect to apply for a rezoning to the "best fit zone" or other possible zone instead of a conditional use permit.

The only exception to this procedure is for proposals within the Mixed Housing Type Residential General Plan Classification, where no project can have a higher density than allowed by its current zoning without a major variance or a rezoning. Under no situation, however, can a project exceed the maximum density permitted under the General Plan, even if the density allowed by the current zoning is greater than the General Plan.

### **2. Examples of "No Express Conflict" between the General Plan and Zoning**

In the case where the project clearly does not conform to the General Plan, *even if the Zoning and/or Subdivision Regulations permit it*, the project is not allowed and no application may be accepted. The project sponsor may modify the project to conform to the General Plan, or apply for a General Plan Amendment. In addition, the determination that the project does not conform to the General Plan may be appealed to the City Planning Commission pursuant to Section 17.01.080.

In some cases, the proposed project may be consistent with the surrounding land uses and appropriate for the area, but not be permitted by the General Plan. It is recognized that the General Plan land uses are broadly applied to areas and that its details are largely illustrative of the Plan's written goals and policies. It is quite possible that slightly different versions would service those goals and policies just as well, or even better. Because the map is generalized, and does not necessarily depict the accuracy of each parcel or very small land area, a determination of project consistency could be requested of the Director of City Planning. The applicant would need to demonstrate that a predominant use, or average density, different from that shown on the map would be appropriate for a relatively small area and that the project is in conformance with the written goals and policies of the General Plan. The project may be allowed upon the granting of an interim conditional use permit or a conditional use permit. Written notice of the Director's determination would be sent to all property owners within 300 feet of the property involved. The Director's determination may be appealed to the City Council pursuant to Section 17.01.080 B.

If the project clearly conforms with the General Plan or the General Plan is silent or not clear, and the project is permitted and/or conditionally permitted by the Zoning and/or Subdivision Regulations, there is no "express conflict" and the normal Zoning and/or Subdivision process applies.

Similarly, if the project clearly does not conform to the General Plan and is not allowed by the Zoning and/or Subdivision Regulations, there is no "express conflict". In this case, the project is not allowed, and no application

may be accepted, since General Plan variances are not an option. To continue, the project sponsor has two choices: elect to modify the project to conform to the General Plan and existing Zoning; or apply for a General Plan Amendment and rezoning to the "best fit zone" or other possible zone. If the Director of Planning and Zoning issues a determination that the proposed project does not conform to the General Plan and the project sponsor disagrees with that determination, the project sponsor may appeal the determination of nonconformity with the General Plan to the City Planning Commission.

There is also no "express conflict" if the General Plan is silent or not clear and the Zoning and/or Subdivision Regulations do not allow the project. In this case, the project sponsor may modify the project to fit the zone, apply for a rezoning to the "best fit zone" or other possible zone, or apply for a variance, (since no variance from the General Plan would be involved).





## APPLICATION OF GUIDELINES TO DETERMINE PROJECT CONFORMITY

In making a determination of Project Conformity with the General Plan, the following factors shall be evaluated:

- The General Plan Land Use Classification and Zoning District within which the proposed project is located
- The Zoning Land use classification of the project (activity and facility type)
- The Project intensity (residential density and/or nonresidential floor area ratio)
- Relevant General Plan policies from all adopted Elements.

In order to "clearly conform" to the General Plan, a project must be found to clearly conform by all relevant factors. If the project is found to clearly not conform in any one factor, then the entire project is in nonconformance. Note that if none of the General Plan policies identified in Section B4 apply to the project, this factor should not be considered in the conformity determination; in this case, only land use and project intensity would be considered.

### A. General Plan Land Use Classification and Zoning District Determination

To determine the correct General Plan Land Use Classification and Zoning District for the project proposal, determine the proposed project's location on either the General Plan Land Use Diagram or Estuary Policy Plan Land Use Diagram and the City's official Zoning Map. The General Plan Land Use Classifications are broad and indicate the kinds of development expected in any given area of the city. The Zoning District will assist in determining if the intent of the District is similar to that of the General Plan. These two elements will give the reviewer an initial understanding of possible conformity. The flow chart on the next page is intended to assist in this effort, beginning with the General Plan Land Use Classification and Zoning District. However, each project must also be evaluated according to the next three factors below, for a complete understanding of the potential project's conformity status.

#### **FLOW CHART 1: Determining a Project's Conformity with the General Plan and Zoning Regulations**

<p style="text-align: center;"><b>FIRST:</b></p> <p>▪ Is the project located within the Port's jurisdiction?</p>	<p><b>If YES:</b> Send Applicant to Port Planning, 530 Water Street</p>
<p><b>If NO, follow steps 1 through 4</b></p>	
<p><i>IDENTIFY PROJECT</i> <b>Location:</b></p>	<p><b>Zoning:</b> <b>General Plan Designation:</b></p>
<p><i>ASSESS PROJECT ELEMENTS</i></p> <ol style="list-style-type: none"> <li>1. <b>Identify the project's activity and facility type.</b> See Section 2, and Table 2 or 2A.</li> <li>2. <b>Calculate the project's density or intensity.</b> See Section 3, and Table 3 or 3A.</li> <li>3. <b>Identify relevant General Plan Policies.</b> See Section 4 and Checklist 4. The actual text of many policies are located in the appendix, or you can consult the Elements themselves.</li> </ol>	
<p><i>SUMMARIZE FINDINGS</i></p> <p><b>Does the project conform to the General Plan Land Use Classification, density or intensity standards, and relevant Plan policies?</b></p> <p><b>Does the project conform to Zoning activities or facilities, density/intensity*, and other regulations of the zone?</b>      * The General Plan ultimately controls application of density/intensity.</p>	

Then choose A, B, or C below to determine the appropriate action:

<b>A. IF THE PROJECT CONFORMS TO THE GENERAL PLAN:</b>
And the project is permitted by zoning, Then the project is permitted outright
And the project would normally require a Conditional Use Permit (CUP), then it is permitted with approval of a CUP.
<b>But the project is not permitted by zoning; this is an express conflict with the General Plan.</b> The project can only be allowed with an Interim CUP or an approved application for a Rezoning. <i>See Table 5 for "Best Fit Zones" for the rezoning.</i>

<b>B. IF THE GENERAL PLAN IS SILENT:</b>
And the project is permitted by zoning. Then the project is permitted outright.
And the project would normally require a CUP, then it is permitted with approval of a CUP
<b>But the project is not permitted by zoning,</b> the project must be modified to conform to zoning, or apply for a rezoning. <i>See Table 5 for "Best Fit Zones"</i>

<b>C. IF THE PROJECT DOES NOT CONFORM TO THE GENERAL PLAN:</b>
<b>Even if the project is permitted by zoning, it is not allowed.</b> <b>This is an express conflict with the General Plan.</b> Options: Modify the project to conform to the General Plan, apply for a General Plan Amendment, or apply for a General Plan conformity determination from the Director of City Planning (an interim CUP is required).
<b>And even if the project would normally require a CUP, it is not allowed. This is an express conflict with the General Plan.</b> Options: Modify the project to conform to the General Plan, apply for a General Plan Amendment, or apply for a General Plan conformity determination from the Director of City Planning. In all cases a CUP is still required.
<b>And if the project is not permitted by zoning, it is not allowed.</b> Options: Modify the project to conform to both the General Plan and Zoning, or apply for a General Plan Amendment and a Rezoning. <i>See Table 5 for "Best Fit Zones"</i>

**B. Land Use Activity and Facility Types**

Determine the activity and facility type of the proposal, referring to Chapter 17.10 of the Zoning Regulations if necessary. Then determine the General Plan Land Use Classification of the site, referring to the Land Use Diagram of the Land Use and Transportation Element or the Land Use Diagram of the Estuary Policy Plan, as appropriate. Consult Table 2 or 2A to determine the status of this activity and facility type in this Land Use Classification.

For residential uses, both the activity type (usually Permanent Residential) and the facility type must be found to "clearly conform" for the project to clearly conform with respect to land use, since residential density and housing type are explicitly addressed in many of the Land Use Classifications. For nonresidential uses, the primary concern is the activity type, since the Land Use Classifications do not generally address the form of nonresidential structures. In other words, if the nonresidential activity type clearly conforms, and the General Plan is silent on the nonresidential facility type, the use may still be determined to clearly conform.

In the event that either the activity or facility type is found to clearly not conform to the General Plan according to Table 2 or 2A, the entire use does not conform and must be modified accordingly or rejected.

### **C. Density or Intensity**

Intensity of development is measured by floor area ratio (FAR) for nonresidential projects and dwelling unit density for residential projects, as explained in Zoning Code Bulletin No. C-002, issued April 20, 2000 by the Community and Economic Development Agency, Planning and Zoning. Tables 3 and 3A give the allowable FAR and density for each Land Use Classification.

#### **1. Nonresidential Floor Area Ratio**

The calculation of floor area ratio for nonresidential projects is explained in Zoning Code Bulletin No. C-002, issued April 20, 2000 by the Community and Economic Development Agency, Planning and Zoning. If the result exceeds the FAR allowed in the relevant Land Use Classification, the project clearly does not conform. If it is equal or less, the project clearly does conform.

Note, however, that the maximum FAR specified by the General Plan might not be allowed in particular cases. For example, in the Central Business District, an FAR of 20.0 is specified. However, the description of the Central Business District Land Use Classification states that "in some areas ... such as the Broadway spine, the highest FAR may be encouraged, while in other areas such as near Lake Merritt and Old Oakland, lower FARs may be appropriate." Thus, a project that was within the FAR limit of 20.0 in the CBD might still not be able to comply with the special use permit criteria of Section 17.01.100B, depending on its location within the downtown area. The policies for the downtown and its various sub-areas should also be consulted (see Section 4 below).

#### **2. Residential Density**

Residential density is somewhat more complicated, because the General Plan specifies density as "principal units per gross acre". Gross acreage includes all land in the neighborhood, including streets and parks. To calculate permitted density on a particular parcel, this gross density figure must be translated to net density. To complicate matters further, there is not a consistent net-to-gross ratio for the entire City. It ranges from more than 80% in some parts of the hills to less than 60% downtown. Overall, an average net-to-gross ratio of 75% is assumed, except downtown where 60% is assumed, and is used in Table 3 or 3A to determine net density limits.

However, if it appears in any given situation that the net-to-gross ratio is significantly different than indicated in Table 3 or 3A, an individual calculation should be made for the site in question. This is done as follows:

- a. Draw a 1,000-foot square centered on the site.
- b. Calculate the total area of all developable land, exclusive of streets or parkland, within that square.
- c. Divide the area determined in step 2 by 1,000,000 square feet (the total area of a 1,000-foot square). The result is the net-to-gross ratio for this area, expressed as a fraction. (Multiply by 100 to get a percent figure.)
- d. Divide the maximum "principal units per gross acre" of the relevant Land Use Classification by the net-to-gross ratio determined in step 3. The result is the maximum principal units per net acre.

- e. Divide 43,560 (the number of square feet in an acre) by the figure determined in step 4 to get the number of square feet of lot area per dwelling unit. This is the way density is calculated in the Zoning Regulations.
- f. Divide the site area by the number determined in step 5, rounding to the nearest whole number. This is the maximum number of principal units permitted on the site by the General Plan.

For example, suppose that the site is 10,000 square feet and is located in the Mixed Housing Type Residential Land Use Classification, which allows up to 30 principal units per gross acre. Here is a possible scenario:

- a. Draw the 1,000-foot square on a parcel map of the area, centered on the site.
- b. Calculate developable area. Suppose the result is 780,000 square feet.
- c. Divide 780,000 by 1,000,000. The result is 0.78, for a net-to-gross ratio of 78%. ( $780,000 / 1,000,000 = 0.78$ .  $0.78 \times 100 = 78$ )
- d. Divide 30 principal units per gross acre by 0.78. The result is 38.46. This is the allowable number of principal units per net acre. ( $30 / 0.78 = 38.46$ )
- e. Divide 43,560 square feet per acre by 38.46 units per acre. The result is 1,132.6 square feet of site area per unit. ( $43,560 / 38.46 = 1,132.6$ )
- f. Divide the site area of 10,000 square feet by 1,132.6 square feet of site area per unit. The result is 8.83, which rounds to 9. ( $10,000 / 1,132.6 = 8.83$  rounded to 9). Thus a maximum of 9 units is allowable on this site under the General Plan.

### 3. Subdivisions in the Hillside Residential Land Use Classification

In addition to maximum residential density, subdivision lot sizes are specified for the Hillside Residential Land Use Classification. The description of this classification states that "typical lot sizes range from approximately 8,000 square feet to one acre in size." Further, Policy N7.3, entitled "Hill Area Subdivision", reads:

"At least 8,000 square feet of lot area per dwelling unit should be required when land in the hill area is subdivided. Lots smaller than 8,000 square feet may be created only when this ratio is maintained for the parcel being divided."

This policy is interpreted to mean that the average lot size of any subdivision in the Hillside Residential Land Use Classification shall not be less than 8,000 square feet. However, this policy is only intended to apply to large, unsubdivided parcels. As a general rule, the policy would apply to subdivisions of five lots or more requiring a tract map, but not to subdivisions of four lots or fewer requiring a parcel map. In the latter case, the provisions of the Zoning and Subdivision Regulations regarding minimum lot size would prevail.

When a large parcel in the Hillside Residential area is subdivided, it must conform to the minimum lot size specified in the Zoning Regulations, the prevailing lot size specified in the Subdivision Regulations, and the 8,000 square foot minimum average lot size specified in Policy N7.3. If the average lot size of the proposed subdivision is less than 8,000 square feet, the project clearly does not conform to the General Plan and is not allowed. If the average lot size is 8,000 square feet or more, there is no General Plan problem and the Zoning and Subdivision Regulations prevail. The conditional use permit provided by Section 17.01.100B would not be allowed in this situation, since it is not the intent of the General Plan to permit subdivisions with lots smaller than would otherwise be allowed under current regulations.

### 4. Mixed Use Projects

The density for Mixed Use Projects in the Central Business District and Jack London District is calculated pursuant to Ordinance No. 12349 C.M.S. dated July 24, 2001 amending the Oakland Planning Code Section 17.106.030.

### D. General Plan Policy

Checklist 4 lists policies from various General Plan elements that have been identified for use in screening projects for General Plan conformity. The policies listed in Checklist 4 are written in full form in the Appendix, however

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Adopted May 6, 1998

*Oakland City Planning Commission*

many additional policies that exist in the City's General Plan Elements *are not* listed here. The Checklist and Appendix contain most policies that seem to be immediately relevant to land use decision-making, however it may be necessary to consult the Elements themselves for additional guidance or to resolve complex questions. For any given project, go through the checklist to determine whether any of these policies apply. If so, consult the policy to determine whether the project conforms. If none of these policies applies to the project, the conformity determination will be based solely on land use and intensity, as discussed above. However, if any of these policies do apply, the project must conform to them in order to conform to the General Plan.

For example, a hotel is proposed along upper Broadway in North Oakland in an area designated Community Commercial by the General Plan and zoned C-40. A hotel is a Transient Habitation Commercial Activity, which is conditionally permitted in the C-40 Zone. According to Table 2, the General Plan is silent on Transient Habitation Commercial Activities in the Community Commercial Land Use Classification. Suppose the calculated FAR of the hotel is 2.5; the Community Commercial designation allows an FAR up to 5.0. Thus, the hotel passes the land use and intensity tests, so it appears that the zoning would prevail and the hotel would be conditionally permitted. However, consulting the checklist in Table 4, we find the question "Does the project involve development of a hotel or motel? If yes, see policy N1.7." Policy N1.7 is entitled "Locating Hotel and Motels", and states:

"Hotels and motels should be encouraged to locate downtown, along the waterfront, near the airport, or along the I-880 corridor. *No new hotels or motels should be located elsewhere in the city*, however, the development of 'bed-and-breakfast' type lodgings should be allowed in the neighborhoods, provided that the use and activities of the establishment do not adversely impact nearby areas, and parking areas are screened." [emphasis added].

Thus, it can be clearly seen that the proposed hotel would conflict with this policy, and would therefore not conform to the General Plan. As stipulated in Planning Code Section 17.01.120, the project is not allowed and no application may be accepted. The project sponsor has four options: change the project to conform (e.g. change the project from a hotel to some other use), apply for a General Plan amendment (in this case it would be an amendment to the text of Policy N1.7), find another site where the General Plan allows hotels. If the project sponsor believes that staff's determination regarding General Plan conformity is in error, the sponsor may appeal the determination to the City Planning Commission.

#### **1. "Best Fit Zone" and Other Possible Zones**

Under the conditional use permit provided by Section 17.01.100B of the Planning Code the project in question is to be subject to the "best fit zone" from the Zoning Regulations. Such "best fit zones" (and "other possible zones") are identified in Table 5 or 5A for the various General Plan Land Use Classifications. Where more than one "best fit zone" is identified for a particular Land Use Classification, Section 17.100B stipulates that "the Director of City Planning shall determine which zone to apply, with consideration given to the characteristics of the proposal and the surrounding area and any relevant provisions of the General Plan." The Director's determination of "best fit zone" cannot be appealed to the City Planning Commission under Section 17.01.080, because it is made in conjunction with a conditional use permit, which allows appeals under the conditional use permit procedures.

In the case where the project sponsor opts for a rezoning, or for a General Plan amendment to match the current zoning, the "best fit zone" or "other possible zones" are allowed in determining which zone or General Plan Land Use Classification to use. The City Planning Commission and City Council make the ultimate determination of which zone to apply since a rezoning requires passage of an ordinance by the Council with a recommendation from the Commission. Specifically, Section 17.144.060 of the Rezoning and Law Change Procedure provides that the Commission "shall consider whether the existing zone ... [is] inadequate or otherwise contrary to the public interest and may approve, modify, or disapprove the application." "If the project sponsor requests one of these other possible zones, the application should fully explain why this other zone is considered preferable to the "best fit zone."

**CHARTS, TABLES AND CHECKLISTS**

<b>TABLE 2: LAND USE</b>	<b>GENERAL PLAN LAND USE CLASSIFICATIONS</b>														
<b>ZONING ACTIVITY AND FACILITY TYPES</b> ✓ Conforms w/ General Plan GP Silent or Unclear X Clearly Does not Conform	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix***	Gen. Industrial***	Institutional	Central Business District	Mixed-Use Water f (See Table 5A)	Housing Bus. Mix***	Open Space:RCA	Open Space (Other)
<b>Residential Activities:</b>															
Permanent	✓	✓	✓	✓	✓	✓	✓	NA	NA	✓	NA		NA		
Semi-Transient	X	X	X				X	NA	NA		NA		NA	X	X
<b>Civic Activities:</b>															
Essential Service								NA	NA		NA		NA		
Limited Child-Care								NA	NA		NA		NA		
Nursing Home								NA	NA	✓	NA		NA	X	X
Community Assembly	✓	✓	✓	✓	✓	✓	✓	NA	NA	✓	NA		NA		
Recreational Assembly	✓	✓	✓	✓	✓	✓	✓	NA	NA	✓	NA		NA		
Community Education	✓	✓	✓	✓	✓	✓		NA	NA	✓	NA		NA		
Non-Assembly Cult.	✓	✓	✓	✓	✓	✓	✓	NA	NA	✓	NA		NA		
Administrative					✓	✓	✓	NA	NA	✓	NA		NA		
Residential Care								NA	NA	✓	NA		NA	X	X
Health Care						✓		NA	NA	✓	NA		NA	X	X
Utility and Vehicular								NA	NA		NA		NA		
Extensive Impact								NA	NA		NA		NA		
<b>Commercial Activities:</b>															
General Food Sales	✓	✓	✓	✓	✓	✓	✓	NA	NA		NA		NA		
Full Service Restaurant	✓	✓	✓	✓	✓	✓	✓	NA	NA		NA		NA		
Limited Service Restaurant	✓	✓	✓	✓	✓	✓	✓	NA	NA		NA		NA		
Convenience Market						✓		NA	NA		NA		NA	X	X
Fast-Food Restaurant	X	X	X					NA	NA		NA		NA	X	X
Alcohol Bev. Sales								NA	NA		NA		NA		
Consumer Service				✓	✓	✓	✓	NA	NA		NA		NA	X	X
Mech. or Elect. Games								NA	NA		NA		NA	X	X
Medical Service						✓		NA	NA	✓	NA		NA	X	X
General Retail Sales	✓	✓	✓	✓	✓	✓	✓	NA	NA		NA		NA	X	X
Consult. Finan Svc.	X	X				✓	✓	NA	NA		NA		NA	X	X
Consmr Laundry/Rep.	X	X				✓	✓	NA	NA				NA	X	X
Group Assembly	X	X				✓	✓	NA	NA		NA		NA	X	X
Personal Instruction/Imprv	X	X				✓	✓	NA	NA		NA		NA	X	X

TABLE 2: LAND USE  ZONING ACTIVITY AND FACILITY TYPES ✓ Conforms w/ General Plan GP Silent or Unclear X Clearly Does not Conform	GENERAL PLAN LAND USE CLASSIFICATIONS														
	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix***	Gen. Industrial***	Institutional	Central Business District	Mixed-Use Water f (See Table 5A)	Housing Bus. Mix***	Open Space:RCA	Open Space (Other)
Administrative	X	X			✓	✓	✓	NA	NA		NA		NA	X	X
Business/Communic.	X	X			✓	✓	✓	NA	NA		NA		NA	X	X
Broadcasting & Recording	X	X			✓	✓	✓	NA	NA		NA		NA	X	X
Research Service	X	X						NA	NA		NA		NA	X	X
Gen. Wholesale Sales	X	X	X	X	X			NA	NA		NA		NA	X	X
Trans Habitation/B&B							✓	NA	NA		NA		NA	X	X
Building Material Sales	X	X	X	X	X			NA	NA	X	NA		NA	X	X
Auto Sale/Rent/Deliv.	X	X	X	X		✓	✓	NA	NA		NA		NA	X	X
Automobile/Gas/Service	X	X	X			✓	✓	NA	NA		NA		NA	X	X
Automobile Repair/Cleaning	X	X	X	X	X	✓		NA	NA		NA		NA	X	X
Auto Fee Parking	X	X	X					NA	NA		NA		NA	X	X
Taxi & Light Fleet	X	X	X	X	X			NA	NA		NA		NA	X	X
Transport/Warehouse	X	X	X	X	X			NA	NA		NA		NA	X	X
Animal Boarding								NA	NA		NA				
Animal Care								NA	NA		NA		NA		
Undertaking Service	X	X	X					NA	NA		NA		NA	X	X
Scrap Operation	X	X	X	X	X	X	X	NA	NA	X	NA		NA	X	X
<b>Manufacturing Activ.:</b>															
Custom	X	X	X	X	X			NA	NA	X	NA		NA	X	X
Light	X	X	X	X	X			NA	NA	X	NA		NA	X	X
General	X	X	X	X	X	X	X	NA	NA	X	NA		NA	X	X
Heavy	X	X	X	X	X	X	X	NA	NA	X	NA		NA	X	X
<b>Agricultural/Extract.:</b>															
Plant Nursery								NA	NA		NA		NA	X	X
Crop/Animal Raising								NA	NA		NA		NA		
Mining and Quarrying								NA	NA		NA		NA	X	X
<b>Residential Facilities:</b>															
One-Family Dwelling	✓	✓	✓					NA	NA		NA		NA		
One-Fam. /Secondary	✓	✓	✓					NA	NA		NA		NA	X	X
One-Fam. w/ Second	✓	✓	✓					NA	NA		NA		NA	X	X
Two-Family Dwelling	X	X	✓					NA	NA		NA		NA	X	X
Multi-Family Dwelling	X	X	✓	✓	✓	✓	✓	NA	NA	✓	NA		NA	X	X
Rooming House								NA	NA		NA		NA	X	X

Guidelines for Determining Project Conformity  
Adopted May 6, 1998

Oakland City Planning Commission

TABLE 2: LAND USE ZONING ACTIVITY AND FACILITY TYPES ✓ Conforms w/ General Plan GP Silent or Unclear X Clearly Does not Conform	GENERAL PLAN LAND USE CLASSIFICATIONS														
	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix***	Gen. Industrial***	Institutional	Central Business District	Mixed-Use Waterfront (See Table 5A)	Housing Bus. Mix***	Open Space:RCA	Open Space (Other)
Mobile Home								NA	NA		NA		NA	X	X
Downtown Live Work *	X	X	X	✓	✓	✓	X	NA	NA	✓	NA		NA	X	X
<b>Nonresidential Facil.:</b>															
Enclosed				✓	✓			NA	NA		NA		NA		
Open								NA	NA		NA		NA		
Drive-In	X	X	X					NA	NA		NA		NA	X	X
Sidewalk Café				✓	✓	✓	✓	NA	NA		NA		NA	X	X
Shopping Center**	X	X	X	X		✓	✓	NA	NA		NA		NA	X	X
Drive-Through	X	X	X		X	✓	✓	NA	NA		NA		NA	X	X
<b>Signs:</b>															
Residential								NA	NA		NA		NA	X	X
Special								NA	NA		NA		NA		
Development								NA	NA		NA		NA	X	X
Realty								NA	NA		NA		NA	X	X
Civic								NA	NA		NA		NA		
Business								NA	NA		NA		NA		
Advertising								NA	NA		NA		NA	X	X
<b>Telecommunications</b>															
Micro								NA	NA		NA		NA		
Mini								NA	NA		NA		NA		
Macro								NA	NA		NA		NA		
Monopole								NA	NA		NA		NA		
Tower								NA	NA		NA		NA	X	X
<b>Accessory Activ./Facil.</b>															
Live/work			✓					NA	NA	X	NA		NA	X	X

\* Downtown building conversions to Live/Work are governed by a June 1999 ordinance which regulates and designates a specific downtown area for this type of conversion, regardless of General Plan Land Use Classification. See "Residentially-Oriented Live Work" regulations.

\*\* "Shopping Center" is defined as a Non-residential facility type, but is not listed as permitted or conditionally permitted in any zone. This definition is used in conjunction with 1000' foot rule for Fast-Food Restaurants (Section 17.102.210(E)(1)).

\*\*\*The permitted, conditionally permitted, and prohibited activities for the Housing and Business Mix, Business Mix, General Industrial and Transportation, Business Mix, and Central Business District General Plan classifications are always determined by the underlying zoning designation. Zoning designations have been adopted by the City Council to implement these General Plan classifications.

The Mixed Use Waterfront Classification is superseded by the Estuary Policy Plan Land Use Classifications. See Table 2A.



**TABLE 2A: ESTUARY POLICY PLAN LAND USE CLASSIFICATIONS**

TABLE 2A: ESTUARY LAND USE ZONING REGULATIONS ACTIVITY AND FACILITY TYPES*	Jack London District										O-9	San Antonio/Fruitvale								
	Light Indust.1	Off Price Retail 1	Ret. Dine, Entert 1	Ret. Dine, Entert 2	Produce Market	W. Commrc. Rec. 1	Mixed Use Dist.	W. Mixed U. Dist.	W. Warehouse Dist.	Plan. W. Devel. -I	W. Commrc. Rec. 2	Light Indust 2	Plan. W. Devel. 2	Resid. Mixed U.	Heavy Ind.	Gen. Commerce. 1	Plan. W. Dist. 3	Gen. Commerce. 2	Light Indust. 3	
<b>Residential Activity</b>																				
<b>Permanent</b>		✓	X	✓	✓	X	✓	✓	✓	✓	X		✓	NA	X	X	X	X	X	X
<b>Semi-Transient</b>		✓	X	✓	✓	X	✓	✓	✓	✓	X		✓	NA	X	X	X	X	X	X
<b>All Residential Care categories</b>		✓	X	✓	✓	X	✓	✓	✓	✓	X		✓	NA	X	X	X	X	X	X
<b>Civic Activities:</b>																				
<b>Essential Service</b>														NA						
<b>Limited Child Care</b>											X		X	NA	X		X			X
<b>Community Assembly</b>						✓				✓			X	NA	X		X			X
<b>Recreational Assembly</b>						✓				✓			X	NA	X		X			X
<b>Community Education</b>			X	X	X					✓	X		X	NA	X	X	X	X	X	X
<b>Non-Assembly Cultural</b>			✓	✓	✓	✓				✓				NA						
<b>Administrative</b>														NA						
<b>Health Care</b>	X	X	X	X	X	X	X	X	X	X	X	X	X	NA	X	X	X	X	X	X
<b>Utility and Vehicular</b>			X	X	X	X		X	X	X	X		✓	NA	✓		✓			✓
<b>Extensive Impact</b>														NA						
<b>Telecommunications</b>														NA						
<b>Commercial Activities:</b>																				
<b>General Food Sales</b>		✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	NA		✓			✓	
<b>Full Service Restaurant</b>		✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	NA		✓			✓	
<b>Limited Service Restaurant</b>		✓	✓	✓	✓	✓	✓	✓	✓	✓			✓	NA		✓			✓	
<b>Convenience Market</b>													✓	NA						
<b>Fast-Food Restaurant</b>			*	*										NA						
<b>Alcoholic Beverage Sales</b>														NA						
<b>Consumer Service</b>														NA						
<b>Mechanical or Electronic Games</b>														NA						
<b>Medical Service</b>													X	NA	X	X	X	X	X	X
<b>Gen. Retail Sales</b>		✓	✓	✓	✓	✓	✓	✓	✓	✓				NA		✓			✓	
<b>Consult./Financial Service</b>				✓		✓								NA		✓	✓	✓		
<b>Consumer Cleaning/Repair Svc.</b>													✓	NA						✓

TABLE 2A: ESTUARY LAND USE ZONING REGULATIONS ACTIVITY AND FACILITY TYPES*	Jack London District								O-9	San Antonio/Fruitvale									
	Light Indust. 1	Off Price Retail 1	Ret. Dine, Entert 1	Ret. Dine, Entert 2	Produce Market	W. Commrc. Rec. 1	Mixed Use Dist.	W. Mixed U. Dist.	W. Warehouse Dist.	Plan. W. Devel. 1	W. Commrc. Rec. 2	Light Indust 2	Plan. W. Devel. 2	Resid. Mixed U.	Heavy Ind.	Gen. Commerce. 1	Plan. W. Dist. 3	Gen. Commerce. 2	Light Indust. 3
Dry Cleaning Plant														NA					
Group Assembly			✓	✓		✓				✓				NA		✓		✓	
Personal Instruction/Imprv			✓	✓		✓				✓				NA		✓		✓	
Administrative			✓	✓	✓	✓		✓		✓				NA		✓	✓	✓	
Business/Communications Svc.													✓	NA		✓	✓	✓	✓
Broadcasting & Recording													✓	NA		✓	✓	✓	✓
Research Service														NA			✓		✓
Gen. Wholesale Sales		✓	X	X	✓	X	✓	X	✓			✓	✓	NA	✓	✓	✓	✓	✓
Transient Habitation/B&B		✓	✓		✓					✓	✓		X	NA	X	✓			
Building Material Sales			X	X		X		X					✓	NA	✓	✓	✓	✓	✓
Auto (Boat) Sales/Rental/Delivery				X		X		X		✓			✓	NA		✓		✓	✓
Automobile Gas/Serviceing				X		X		X				✓	✓	NA	✓	✓		✓	✓
Automobile Repair/Cleaning						X	X	X	X			✓	✓	NA	✓	✓	X	✓	✓
Auto (Boat) Parking - Fee						X		X					✓	NA		✓		✓	✓
Taxi & Light Fleet	✓		X	X	✓	X		X				✓	✓	NA	✓	✓	✓	✓	✓
Transport/Warehousing	✓		X	X	✓	X		X				✓	✓	NA	✓	✓	✓	✓	✓
Animal Boarding														NA					
Animal Care														NA					
Undertaking Service														NA					
Scrap Operation	X	X	X	X	X	X	X	X	X	X	X	X	X	NA		X	X	X	X
Manufacturing Activ.:																			
Custom Manufacturing	✓				✓		✓		✓	✓		✓	✓	NA	✓	✓	✓	✓	✓
Light Manufacturing	✓		X	X	✓	X	✓	X	✓	✓		✓	✓	NA	✓	✓	✓	✓	✓
General Manufacturing		X	X	X	X	X	X	X	X		X		✓	NA	✓				
Heavy Manufacturing	X	X	X	X	X	X	X	X	X	X	X	X	✓	NA	✓	X	X	X	X
Agricultural/Extract.:																			
Plant Nursery														NA					
Crop and Animal Raising	X	X	X	X	X	X	X	X	X	X	X	X	X	NA	X	X	X	X	X
Mining/Quarrying	X	X	X	X	X	X	X	X	X	X	X	X		NA		X	X	X	X
Residential Facilities:																			
One Family Dwelling	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	NA	X	X	X	X	X
One Family Dwelling/Secondary	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	NA	X	X	X	X	X

TABLE 2A: ESTUARY LAND USE ZONING REGULATIONS ACTIVITY AND FACILITY TYPES*	Jack London District								O-9	San Antonio/Fruitvale									
	Light Indust. 1	Off Price Retail 1	Ret. Dine, Entert 1	Ret. Dine, Entert 2	Produce Market	W. Commrc. Rec. 1	Mixed Use Dist.	W. Mixed U. Dist.	W. Warehouse Dist.	Plan. W. Devel. -1	W. Commrc. Rec. 2	Light Indust 2	Plan. W. Devel. 2	Resid. Mixed U.	Heavy Ind. .	Gen. Commerce. 1	Plan. W. Dist. 3	Gen. Commerce. 2	Light Indust. 3
One Family Dwelling/Second	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	NA	X	X	X	X	X
Two Family Dwelling	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	NA	X	X	X	X	X
Multi-Family Dwelling	✓	✓	X	✓	✓	✓	✓	✓	✓		X	✓	X	NA	X	X	X	X	X
Rooming House											X		X	NA	X	X	X	X	X
Downtown Live/Work*	✓	✓	X	✓	✓	X	✓	X	✓	X	X	X	X	NA	X	X	X	X	X
Mobile Home	X	X	X	X	X	X	X	X	X	X	X	X	X	NA	X	X	X	X	X
NON-RESIDENTIAL FACILITIES																			
Enclosed														NA					
Open			✓	✓		✓				✓				NA					
Drive-in					X		X		X					NA					
Sidewalk Café		✓	✓	✓	✓	✓	✓	✓	✓	✓			X	NA	X				
Shopping Center/Fast Food					X		X							NA					
Drive Through					X		X		X					NA					
SIGNS																			
Residential			X			X					X			NA	X	X	X	X	X
Special														NA					
Development														NA					
Realty														NA					
Civic														NA					
Business														NA					
Advertising														NA					
TELECOMMUNICATIONS FAC.																			
Micro														NA					
Mini														NA					
Macro														NA					
Monopole														NA					
Tower														NA					
ACCESSORY ACTIV./FACILITY																			
Live/Work		✓	X	✓	✓	X	✓		✓	✓	X	✓		NA	X	X	X	X	X

\* See Estuary Policy Plan: Policy JL 1.2 for a description of allowable uses.

\*\*The permitted, conditionally permitted, and prohibited activities for the Residential Mixed Use classification are always determined by the underlying zoning designation. The HBX-3 zoning designation has been adopted by the City Council to implement the Residential Mixed Use Estuary Policy Plan classification.

NA = Not Applicable

TABLE 3

GENERAL PLAN LAND USE CLASSIFICATIONS	MAXIMUM INTENSITY ALLOWED				
	Nonresidential	Residential*			
	Maximum Floor Area Ratio	Maximum Density in Principal Units per Gross Acre	Assumed Net- to-Gross Ratio*	Maximum Density in Principal Units per Net Acre	Minimum Square Feet of Site Area per Principal Unit
Hillside Residential	NA	5	75%	6.67	6,530
Detached Unit Residential	NA	11	75%	14.67	2,969
Mixed Housing Type Residential**	NA	30**	75%	40.0**	1,089**
Urban Residential	NA	125	75%	166.67	261
Neighborhood Center Mixed Use	4.0	125	75%	166.67	261
Community Commercial	5.0	125	75%	166.67	261
Regional Commercial	4.0	125	75%	166.67	261
Business Mix	NA	NA	NA	NA	NA
General Industrial & Transportation	NA	NA	NA	NA	NA
Institutional	8.0	125	75%	166.67	261
Central Business District	NA	NA	NA	NA	NA
Mixed Use Waterfront District	See Table 3A	See Table 3A	See Table 3A	See Table 3A	See Table 3A
Housing & Business Mix***	NA	NA	NA	NA	NA
Resource Conservation	NA	NA	NA	NA	NA
Urban Park & Open Space	NA	NA	NA	NA	NA

\* If it appears in any given situation that the net-to-gross ratio is significantly different than given here, an individual calculation should be made for the site in question, following the procedure explained in the Density/Intensity Section (C2) of this report.

\*\* In the Mixed Housing Type Residential classification, no project can have a higher density than allowed by its current zoning without a major variance or a rezoning. Under no situation can a project exceed the maximum density permitted under the General Plan, even if the density allowed by the current zoning is greater than the General Plan.

\*\*\*The density and nonresidential floor area ratio for the Housing and Business Mix, General Industry & Transportation, Business Mix, and Central Business District classifications are always determined by the underlying zoning designation. Zoning designations have been adopted by the City Council to implement these General Plan classifications.

NA = Not Applicable

TABLE 3A: DENSITY/INTENSITY	MAXIMUM INTENSITY ALLOWED				
	Nonresidential	Residential*			
ESTUARY POLICY PLAN LAND USE CLASSIFICATIONS	Maximum Floor Area Ratio	Maximum Density in Principal Units per Gross Acre	Assumed Net-to-Gross Ratio*	Maximum Density in Principal Units per Net Acre	Minimum Square Feet of Site Area per Principal Unit
Light Industrial – 1	2.0	30	75%	40.0	1,089
Off Price Retail – 1	2.0	30	75%	40.0	1,089
Retail, Dining Entertainment (Phase 1)	Avg. 3.5 over area	NA	NA	NA	NA
Retail, Dining, Entertainment (Phase 2)	7.0 per parcel	125	75%	166.67	261
Produce Market	1.0 per parcel	30	75%	40.0	1,089
Waterfront Commercial Recreation – 1	Avg. 3.0 over area	NA	NA	NA	NA
Mixed Use District	5.0 per parcel	125	75%	166.67	261
Waterfront Mixed Use	2.0 per parcel	40	75%	53.33	817
Waterfront Warehouse District	5.0 per parcel	100	75%	133.33	327
Planned Waterfront Development – 1	1.0 per private parcel, Avg. 1.0 on remaining	30 per private, Avg. 30 on other	75%	40.0	1,089
W. Commercial Rec. 2	Avg. 1.0	NA	NA	NA	NA
Light Industrial – 2	2.0 per parcel	30	75%	40.0	1,089
Plan. Water Devel. – 2	2.0 per parcel	40	75%	53.33	817
Resid. Mixed Use – 1**	NA	NA	NA	NA	NA
Heavy Industrial – 1	0.75 per parcel	NA	NA	NA	NA
Gen. Commercial – 1	1.0 per parcel	NA	NA	NA	NA
Plan Water District 3	0.5 per parcel	NA	NA	NA	NA
General Commercial – 2	1.0 per parcel	NA	NA	NA	NA
Light Industrial – 3	0.5 per parcel	NA	NA	NA	NA

\* If it appears in any given situation that the net-to-gross ratio is significantly different than given here an individual calculation should be made for the site in question, following the procedure explained in the Density/Intensity Section (C2) of this report.

\*\*The density and nonresidential floor area ratio for the Residential Mixed Use classification are always determined by the underlying zoning designation. The HBX-3 zoning designation has been adopted by the City Council to implement the Residential Mixed Use Estuary Policy Plan classification.

NA = Not Applicable

## CHECKLIST 4: IDENTIFYING GENERAL PLAN POLICIES WITH SPECIFIC DEVELOPMENT IMPLICATIONS

*Note: Planning staff should become familiar with all General Plan goals, objectives, and policies. This checklist is intended to assist in quickly locating those with the most specific development implications. (LUT = Land Use and Transportation Element) The full text of the policies is included in the Appendix attached.*

Yes	No	Policy Directory
		Does the project have a transportation or parking component or affect street development? If yes, see Transportation and Transit-Oriented Development Policies: T2.1, T2.2, T3.3, T3.8, T4.7, T4.9, T6.2, and T6.4.
		Is the project in the downtown area? If yes, see LUT- Downtown policies D1.3, D1.4, D1.5, D1.7, D1.9, D1.10, D1.12, D2.1, D3.2, D6.2, D8.1, D8.2, D8.4, D9.1, D10.2, D10.3, D10.6, D11.2, D12.3, D12.4
		Does the project involve a 'regional-type' commercial business? If yes, see LUT-Industry and Commerce and Neighborhood policies I/C3.1, N1.4
		Does the project involve large-scale office or institutional development? If yes, see LUT-Downtown and Neighborhood policies D8.1, N1.9, N2.4
		Does the project involve development of a hotel or motel? If yes, see LUT-Neighborhood policy N1.7
		Does the project include residential development? If yes, see LUT-Neighborhood policies N3.9, N7.1, N7.2, N8.2, and Open Space, Conservation, and Recreation Element policy OS4.2
		Is the project in the hill area? If yes, see LUT-Neighborhood policy N7.3, and Open Space, Conservation, and Recreation Element policy OS1.3
		Does the project include a secondary unit? If yes, see LUT-Neighborhood policies N3.3, N7.2; <u>and</u> interim zoning regulations.
		Does the project involve an existing institution (college, university) or is it located on a golf course, cemetery, or EBMUD watershed? If yes, see Open Space, Conservation, and Recreation Element policies OS3.1, OS3.3, OS3.4
		Could the project affect a street or bicycle facility? If yes, see BMP policies: 1, 2, 2.3, 2.5, 3, 3.1, 4, 4.2, 4.3, 4.4, 5, 5.4, 6, 7, 7.8, 8, 8.1, 8.2, and 10.
		Is The Project in the Waterfront Area? If Yes, see Estuary Plan Policies: JL 1, 1.1, 3, 4, 4.3, 5, 6, 8.2, 12.3, 12.4, 12.5, 15.1, 15.2, OAK 1.2, 2.1, 2.2, 2.4, 3.1, 4.1, 4.2, 4.3, 4.4, 4.5, 6, 8, 9, SAF 1, 2, 2.1, 3, 3.2, 3.3, 4, 4.1, 5, 5.1, 6, 6.1, 7, 7.1, 7.3, 8, 8.2.
		Does the project involve a "Designated Historic Property" (DHP) or "Potential Designated Historic Property" (PDHP)?* If yes, see Historic Preservation Element policies 1.2, 1.3, 2.2, 2.4, 2.6, 3.1, 3.2, 3.3, 3.5, 3.8, 3.9

\* Consult the Oakland Cultural Heritage Survey or Screen 203 ("Update/Query Parcel Historic Data") for this property in the Permit Tracking System (PTS).

ZONES THAT CORRESPOND	R	e	T	T	y	s	i	e	C	O	m	m	s	I	n	d	s	B	h	a	c	c	
OS (RCA) OS (Rsrce Cons)														NA	NA		NA						
OS (*) Open Space (All other)														NA	NA		NA						
R-10 Estate	●	○	○	○										NA	NA		NA						
R-20 Low Density	●	○	○	○										NA	NA		NA						
R-30 One—Family		●	○	○	○									NA	NA		NA						
R-35 Special One Family			●	○	○									NA	NA		NA						
R-36 Small Lot			●	○	○									NA	NA		NA						
R-40 Garden Apartment			●	○	○									NA	NA		NA						
R-50 Medium Density			●	○	○									NA	NA		NA						
R-60 Medium High density				●	○	○								NA	NA		NA						
R-70 High Density				●	○	○								NA	NA		NA						
R-80 High—Rise Apartment				●	○	○								NA	NA		NA						
R-90 Downtown Apartment														NA	NA		NA						
C-5 Neighborhood			●	○	●									NA	NA		NA						
C-10 Local Retail			●	○	●									NA	NA		NA						
C-20 Shopping Center					○	○								NA	NA		NA						
C-25 Office				●	○	○								NA	NA		NA						
C-27 Village				○	●									NA	NA		NA						
C-28 Commercial Shopping				○	●									NA	NA		NA						
C-30 District Thoroughfare						○								NA	NA		NA						
C-31 Special Retail				○	●									NA	NA		NA						
C-35 District Shopping														NA	NA		NA						
C-36 Boulevard Service						●	●							NA	NA		NA						
C-40 Community Thorough						●	●							NA	NA		NA						
C-45 Community Shopping						●	●							NA	NA		NA						
C-51 Central Business Service														NA	NA		NA						
C-52 Old Oakland														NA	NA		NA						
C-55 Central Core														NA	NA		NA						
C-60 City Service														NA	NA		NA						
M-10 Special Industry														NA	NA		NA						
M-20 Light														NA	NA		NA						
M-30 General														NA	NA		NA						
M-40 Heavy														NA	NA		NA						
S-1 Medical Center						○								NA	NA	●	NA						
S-2 Civic Center														NA	NA	●	NA						
S-3 Research center														NA	NA		NA						
S-4 Design Review														NA	NA		NA						
S-13 Mixed Use														NA	NA		NA						
S-15 Transit Oriented Devel.					●	○	○							NA	NA		NA						

\*There are no best fit zones for the Housing and Business Mix, Business Mix, and General Industrial & Transportation LUTE classifications. Zoning designations have been adopted by the City Council to implement these General Plan classifications.

NA = Not Applicable

**General Plan Policies with Specific Development Implications**

This list is not exhaustive, and is not meant to summarize all of the policies in the General Plan Elements. Rather, this list contains policies that highlight clear implications for land use decision-making. Consult the General Plan Elements if necessary.

**A. LAND USE AND TRANSPORTATION ELEMENT**

**INDUSTRY AND COMMERCE (I/C)**

**Policy I/C2.2: Reusing Abandoned Buildings**

The reuse of abandoned buildings by non-traditional activities should be encouraged where the uses are consistent with, and will assist in the attainment of, the goals and objectives of the General Plan.

**Policy I/C3.1: Locating Commercial Businesses**

Commercial uses, which serve long term retail needs of regional consumers and which primarily offer durable goods, should be located in areas adjacent to the I-880 freeway or at locations visible or amenable to high volumes of vehicular traffic, and accessible by multiple modes of transportation.

**Policy I/C3.5 Promoting Culture, Recreation, and Entertainment**

Cultural, recreational, and entertainment uses should be promoted within the downtown, particularly in the vicinity of the Fox and Paramount Theaters, and within the Jack London Square area.

**Policy I/C4.1 Protecting Existing Activities**

Existing industrial, residential, and commercial activities and areas which are consistent with long term land use plans for the City should be protected from the intrusion of potentially incompatible land uses.

**Policy I/C4.2 Minimizing Nuisances**

The potential for new or existing industrial or commercial uses, including seaport and airport activities, to create nuisance impacts on surrounding residential land uses should be minimized through appropriate siting and efficient implementation and enforcement of environmental and development controls.

**TRANSPORTATION AND TRANSIT-ORIENTED DEVELOPMENT (T)**

**Policy T1.5: Locating Truck Services**

Truck services should be concentrated in areas adjacent to freeways and near the seaport and airport, while ensuring the attractiveness of the environment for visitors, local businesses and nearby neighborhoods.

**Policy T2.1 Encouraging Transit-Oriented Development**

Transit-oriented development should be encouraged at existing or proposed transit nodes, defined by the convergence of two or more modes of public transit such as BART, bus, shuttle service, light rail or electric trolley, ferry, and inter-city or commuter rail. (See the vision for each of Oakland's BART stations and Eastmont Town Center in the LUT Element).

**Policy T2.2 Guiding Transit-Oriented Development**

Transit-oriented developments should be pedestrian oriented, encourage night and day times use, provide the neighborhood with needed goods and services, contain a mix of land uses, and be designed to be compatible with the character of surrounding neighborhoods.

**Policy T3.3 Allowing Congestion Downtown**

For intersections within Downtown and for those that provide direct access to downtown locations, the City should accept a lower level of service and a higher level of traffic congestion than is accepted in other parts of Oakland. The desired pedestrian oriented nature of downtown activity and the positive effect of traffic congestion in promoting the use of transit or other methods of travel should be recognized.



**Policy T3.8 Screening Downtown Parking**

Cars parked in downtown lots should be screened from public view through the use of ground floor storefronts, parks and landscaping, or other pedestrian friendly, safe, and other attractive means.

**Policy T4.1 Incorporating Design Features For Alternative Travel**

The City will require new development, rebuilding, or retrofit to incorporate design features in their projects that encourage the use of alternative modes of transportation such as transit, bicycling, and walking.

**Policy T4.7 Reusing Abandoned Rail Lines**

Where rail lines (including siding and spurs) are to be abandoned, first consideration should be given to acquiring the line for transportation and recreational uses, such as bikeways, footpaths, or public transit.

**Policy T4.9 "Gateway" Public Access Area**

The City, in concert with the East Bay Regional Park District, Port of Oakland, Oakland Base Reuse Authority, and the Bay Conservation and Development Commission, should support development of a "gateway" public park area at the terminus of the San Francisco/Oakland Bay Bridge east span that is reachable by auto, bicycle, or walking. (See also OSCAR).

**Policy T6.2 Improving Streetscapes**

The City should make major efforts to improve the visual quality of streetscapes. Design of the streetscape, particularly in neighborhoods and commercial centers, should be pedestrian oriented, include lighting, directional signs, trees, benches, and other support facilities.

**Policy T6.4 Rebuilding Freeways**

In the event of a major disaster, necessitating reconstruction of the I-880 freeway, the freeway should be rebuilt below ground in the downtown/Jack London square area.

**DOWNTOWN (D)**

**Policy D1.3: Planning for Chinatown**

The unique character of Chinatown, as a walkable center for Asian-American culture, a regional destination point, and a district with a mixed housing type residential component, should be supported and encouraged.

**Policy D1.4: Planning for Old Oakland**

Old Oakland should be respected and promoted as a significant historic resource and character-defining element, with Washington Street as its core. Residential development in Old Oakland should be of mixed housing type, with ground floor retail where feasible.

**Policy D1.5: Planning for the Gateway District**

New development and rehabilitation in the Gateway district should contribute to greater neighborhood cohesion and identity, emphasizing mixed housing type and urban density residential development.

**Policy D1.7: Planning for the Gold Coast**

The Gold Coast should be recognized and conserved as an established neighborhood providing urban density housing in a unique urban setting.

**Policy D1.9: Planning for the Channel Park Residential Area.**

The area between the Channel Park Arts, Educational, and Cultural Center and the waterfront should be developed as a walkable urban residential district, incorporating commercial development and open space as appropriate to take advantage of the cultural and recreational amenities provided by the center and the channel to the estuary, and easy transportation by BART.

**Policy D1.10: Planning for the Jack London District.**

Pedestrian-oriented entertainment, live-work enterprise, moderate-scale retail outlets, and office should be encouraged in the Jack London Waterfront area.

**Policy D1.12 Planning for the Produce Market Area** (see Estuary Plan Policy JL-4)

The Produce Market should be recognized as California's last example of an early twentieth century produce market. Should the wholesale distribution of produce be relocated to another site, the character and vitality of this unique district *should be encouraged in its reuse if economically viable*.

**Policy D2.1 Enhancing the Downtown**

Downtown development should be visually interesting, harmonize with its surroundings, respect and enhance important views in and out of the downtown, respect the character, history, and pedestrian orientation of the downtown, and contribute to an overall attractive skyline.

**Policy D3.2 Incorporating Parking Facilities**

New parking facilities for cars and bicycles should be incorporated into the design of any project in a manner that encourages and promotes safe pedestrian activity.

**Policy D6.2 Reusing Vacant or Underutilized Buildings**

Existing vacant or underutilized buildings should be reused. Repair and rehabilitation, particularly of historic or architecturally significant structures should be strongly encouraged. However, where reuse is not economically feasible, demolition and other measures should be considered. (Landmark and Preservation District properties must follow Policy 2.4 of the Historic Preservation Element).

**Policy D8.1: Locating Office Development**

New large-scale office development should primarily be located along the Broadway corridor south of Grand Avenue, with concentrations at the 12<sup>th</sup> Street and 19<sup>th</sup> Street BART stations. The height of office development should respect the Lake Merritt edge. Small-scale offices should be allowed throughout the downtown, including in the downtown neighborhoods, when compatible with the character of surrounding development.

**Policy D8.2: Respecting Public Parks**

Future office development on Harrison Street opposite Lakeside Park and Snow Park should provide ground level, landscaped, open space to soften the edge between Public Park land and the office core. This space should be clearly accessible to office workers and the public.

**Policy D8.4: Developing the Broadway Spine**

The Broadway spine, particularly near the 12<sup>th</sup> Street/City Center BART station, should be the primary location of new public office development.

**Policy D9.1: Concentrating Commercial Development**

Concentrate region-serving or "destination" commercial development in the corridor around Broadway between 12<sup>th</sup> and 21<sup>st</sup> Streets, in Chinatown, and in the Jack London District. Ground floor locations for commercial uses that encourage a pedestrian-friendly environment should be encouraged throughout the downtown.

**Policy D10.2: Locating Housing**

Housing in the downtown should be encouraged in identifiable districts, within walking distance of the 19<sup>th</sup> Street, 12<sup>th</sup> Street/City Center, and Lake Merritt BART stations to encourage transit use, and in other locations where compatible with surrounding uses.

**Policy D10.3: Framework for Housing Densities.**

Downtown residential areas should generally be within the Urban Density Residential and Central Business District density range, where not otherwise specified. The height and bulk should reflect existing and desired district character, the overall city skyline, and the existence of historic structures or areas.

**Policy D10.6 Creating Infill Housing**

Infill housing that respects surrounding development and the streetscape should be encouraged in the downtown to create or strengthen distinct districts.

**Policy D11.2: Locating Mixed-Use Development**

Mixed-use development should be allowed in commercial areas, where the residential component is compatible with the desired commercial function of the area.

**Policy D12.3: Locating Entertainment Activities**

Large-scale entertainment uses should be encouraged to concentrate in the Jack London Waterfront and within the Broadway corridor area. However, existing large-scale facilities in the Downtown should be utilized to the fullest extent possible.

**Policy D12.4: Locating Smaller Scale Entertainment Activities**

Small-scale entertainment uses, such as small clubs, should be allowed to locate in the Jack London Waterfront area and to be dispersed throughout downtown districts, provided the City works with area residents and businesses to manage the impacts of such uses.

**NEIGHBORHOODS (N)**

**Policy N1.4: Locating Large Scale Commercial Activities.**

Commercial uses, which serve long term retail needs of regional consumers and which primarily offer high volume goods, should be located in areas visible or amenable to high volumes of traffic. Traffic generated by large-scale commercial developments should be directed to arterial streets and freeways and not adversely affect nearby residential streets.

**Policy N1.7: Locating Hotels and Motels.**

Hotels and motels should be encouraged to locate downtown, along the waterfront, near the airport, or along the I-880 corridor. No new hotels or motels should be located elsewhere in the city, however, the development of "bed-and-breakfast" type lodgings should be allowed in the neighborhoods, provided that the use and activities of the establishment do not adversely impact nearby areas, and parking areas are screened.

**Policy N1.8: Making Compatible Development.**

The height and bulk of commercial development in the "Neighborhood Mixed Use Center" and "Community Commercial" areas should be compatible with that which is allowed for residential development.

**Policy N1.9: Locating Major Office Development**

While office development should be allowed in commercial areas in the neighborhoods, the City should encourage major office development to locate in the downtown.

**Policy N2.4: Locating Services along Major Streets**

New large-scale community, government, and institutional uses should be located outside of areas that are predominantly residential. Preferably, they should be located along major thoroughfares with easy access to freeways and public transit or in the Downtown.

**Policy N3.3: Facilitating Development of Second Units (see also N7.1 and N7.2)**

One accessory housing unit (also known as second or secondary unit) per property should be permitted outright in all residential zones, provided it meets the setback requirements for the primary structure, is clearly secondary to the primary structure, is compatible with other structures on the site and in the vicinity, and the property owner lives on-site. The permitting procedures and performance criteria applied to these units should facilitate construction of units, and not be prohibitive in their requirements. Accessory units should be allowed when a new primary residence is being constructed or may be added to properties with an existing residence.

**Policy N3.9: Orienting Residential Development.**

Residential developments should be encouraged to face the street, and orient their units to desirable sunlight and views, while avoiding unreasonably blocking sunlight and views for neighboring buildings, respecting the privacy needs of residents of the development and surrounding properties, providing for sufficient conveniently located on-site open space, and avoiding undue noise exposure.

**Policy N7.1: Ensuring Compatible Development**

New residential development in Detached Unit and Mixed Housing Type areas should be compatible with the density, scale, design, and existing or desired character of surrounding development.

**Policy N7.2: Defining Compatibility**

Infrastructure availability, environmental constraints and natural features, emergency response and evacuation times, street width and function, prevailing lot size, predominant development type and height, scenic values, distance to public transit, and desired neighborhood character are among the factors that could be taken into account when developing and mapping zoning designations or determining "compatibility". These factors should be balanced with the citywide need for additional housing.

**Policy N7.3: Hill Area Subdivision**

At least 8,000 square feet of lot area per dwelling unit should be required when land in the hill area is subdivided. Lots smaller than 8,000 square feet may be created only when this ratio is maintained for the parcel being divided.

**Policy N8.2: Making Compatible Interfaces Between Densities**

The height of development in Urban Residential and other higher density residential areas should step down as it nears lower density residential areas to minimize conflicts at the interface between the different types of development.

**B. BICYCLE MASTER PLAN (BMP)**

**BMP Policy 1: Create, enhance and maintain the recommended bikeway network.**

- Action 1.12: Diagonal Parking  
Discourage the installation of diagonal or 90-degree parking on streets included in the recommended bikeway network. Replace existing diagonal or 90-degree parking on streets included in the recommended bikeway network with parallel parking or off-street parking where feasible.

**BMP Policy 2: Establish design and maintenance standards for all streets that recognize the needs of bicyclists.**

- Action 2.3: Public Utilities  
When locating or relocating public utilities, design the placement of boxes, hydrants, curbs, poles and other objects so that they do not interfere with bicycle travel.
- Action 2.5: Automobile Parking  
Whenever new on-street automobile parking spaces are created, especially the conversion of parallel parking to diagonal parking, the potential detrimental effects on cyclists should be considered.

**BMP Policy 3: Make efforts to obtain, redevelop, or encourage private redevelopment of unused railroad, utility, and other right-of-ways as linked, multi-use Class I bicycle paths or trails.**

**BMP Policy 4: Include provisions for safe and direct bicycle access to special development areas and key corridors.**

- Action 4.2: Broadway Corridor  
Designate Broadway from Caldecott Field to Jack London Square as a transit/bicycle corridor promenade. Incorporate bicycle facilities in any development or redevelopment projects with ¼ mile of Broadway whenever feasible.

**BMP Policy 5: Promote secure and conveniently located bicycle parking at destinations throughout Oakland.**

**BMP Policy 6: Support improved bicycle access to public transportation.**

**BMP Policy 8: Insure that the needs of bicyclists are considered in the design of new development and redevelopment projects.**

- Action 8.2: Drive-up windows  
Drive-up windows, drive-in services and take-out services, excluding car washes, should provide full access to bicyclists.

**BMP Policy 10: Prior to the implementation of bikeway projects, affected residents, merchants and property owners shall be notified in writing of the potential impacts.**

## **C. ESTUARY POLICY PLAN ELEMENT**

Note: The Open Space designation applies to the shoreline of every waterfront property.

### **JACK LONDON DISTRICT (JL)**

**Retail, Dining, and Entertainment District Policy JL-1:** Reinforce retail, dining, and entertainment uses along the waterfront, and extend these uses along Broadway to create a regional entertainment destination.

**Retail, Dining, and Entertainment District Policy JL-1.1:** Expand commercial uses along the entire five-block frontage of lower Broadway.

**Retail, Dining, and Entertainment District Policy JL-1.2:** Intensify Phase I of Jack London Square.

Comment: Several more focused development directives are found with this policy. The following bullet point illustrates one particular directive regarding food carts and kiosks. Existing Zoning Regulations define this type of service as "fast food", for purposes of Zoning administration.

- Additional kiosks and retail extensions in the plaza adjacent to the existing Barnes and Noble bookstore. The kiosks, food carts, etc., should help to intensify activity on a daily basis, and provide patrons with high quality food service and an attractive environment for outdoor eating, with views to the water.

**Off Price Retail District Policy JL-3:** Encourage the expansion of off-price retail establishments west of Broadway.

**Produce District Policy JL- 4:** Preserve the historic character of the Produce District, and encourage activities that create a viable urban mixed-use district.

**Produce District Policy JL-4.3** Encourage the location of a farmers market along Franklin Street.

**Mixed Use District Policy JL-5:** Encourage the development of a mix of uses including housing within a context of commercial, and light industrial/manufacturing uses, and ancillary parking generally outside the existing boundaries of the historic district (API) and east to the Lake Merritt channel.

**Waterfront Warehouse District Policy JL-6:** Encourage the preservation and adaptive reuse of existing buildings and new infill development to provide joint living and working quarters, residential, light industrial, wholesale, office, and compatible uses that preserve and respect the District's unique character.

**Shoreline Access and Public Spaces Policy JL-8.2:** Create new open spaces that expand the opportunities to view, appreciate, and enjoy the water's edge.

**Regional Circulation, Local Street Improvements, and Parking Policy JL-12.3:** Reinforce a food and market orientation on Franklin Street.

**Regional Circulation, Local Street Improvements, and Parking Policy JL-12.4:** Develop significant pedestrian improvements along Webster Street that create a strong link to the waterfront.

**Regional Circulation, Local Street Improvements, and Parking Policy JL-12.5:** 2nd and 3rd Streets: Reinforce Second Street and Third Street as an east-west connector for pedestrian, vehicular and bicycle movement.

**Regional Circulation, Local Street Improvements, and Parking Policy Policy JL-15.1:** Provide Class II bike lanes on Second Street and portions of Third Street near Mandela Parkway.

**Regional Circulation, Local Street Improvements, and Parking Policy Bicycle Circulation Policy JL-15.2:** Establish bike lanes on Washington Street.

## **OAK TO NINTH AVENUE DISTRICT (OAK)**

**Shoreline Access and Public Spaces Policy OAK-1.2:** Provide for continuous pedestrian and bicycle movement along the water's edge.

**Shoreline Access and Public Spaces Policy OAK-2.1:** Expand Estuary Park. Encourage Aquatic Sports within the mouth of Lake Merritt Channel.

**Shoreline Access and Public Spaces Policy OAK-2.2:** Create a major new park on the east side of the mouth of the Lake Merritt Channel, at the Estuary.

**Shoreline Access and Public Spaces Policy OAK-2.4:** Establish a large park in the existing area of the Ninth Avenue Terminal. Establish a location for large civic events and cultural activities. A new park of significant size should be created in the area.

**Shoreline Access and Public Spaces Policy OAK-3.1:** Create a system of public open spaces that flanks both sides of Lake Merritt Channel.

**Land Use Policy OAK-4.1:** Preserve and expand the existing Fifth Avenue Point community as a neighborhood of artists and artisan studios, small businesses, and water-dependent activities.

**Land Use Policy OAK-4.2:** Promote the development of educational and cultural interpretive facilities (Oak to 9<sup>th</sup>).

**Land Use Policy OAK-4.3:** Facilitate the relocation of break-bulk cargo operations from the Ninth Avenue Terminal.

**Land Use Policy OAK-4.4:** Promote development of commercial-recreational uses in the vicinity of the Crescent Park and Clinton Basin.

**Land Use Policy OAK-4.5:** North of the Embarcadero, encourage a mixed-use district while maintaining viable industrial uses.

**Regional Circulation and Local Street Improvements Policy OAK-6:** Explore the future potential for a major new BART Station and major parking facility on BART property at Fifth Avenue and East 8<sup>th</sup> Street.

**Regional Circulation and Local Street Improvements Policy OAK-8:** Enhance Fifth Avenue as the principal pedestrian and vehicular linkage to the public open space surrounding the mouth of the Lake Merritt Channel.

**Regional Circulation and Local Street Improvements Policy OAK-9:** Improve the Embarcadero east of Oak Street as a multi-modal landscaped parkway with bicycle, pedestrian and vehicular facilities.

## **SAN ANTONIO/FRUITVALE DISTRICT (SAF)**

**Embarcadero Cove Policy SAF-1:** Encourage the development of water-oriented commercial uses within Embarcadero Cove.

**Brooklyn Basin Policy SAF-2:** Maintain the industrial character and role of Brooklyn Basin as a place for food processing and manufacturing, and retain light industrial uses.

**Brooklyn Basin Policy SAF-2.1:** Encourage development of compatible office, support commercial and institutional uses.

**Con-Agra Policy SAF-3:** Encourage heavy industry in the vicinity of the Con-Agra plant to continue, while providing for the transition to a mix of new uses.

**Con-Agra Policy SAF-3.2:** Redevelop the area with a mixture of waterfront-oriented residential and/or commercial activities, which are compatible with the scale and character of surrounding areas.

**Con-Agra Policy SAF-3.3:** Provide for strong links to surrounding areas and orient new development to the water.

**Kennedy Tract Policy SAF-4:** Encourage the preservation and expansion of the affordable residential neighborhood in the Kennedy Tract.

**Kennedy Tract Policy SAF-4.1:** Provide for a mixture of compatible uses with emphasis on a variety of affordable housing types, while maintaining the area's character of small-scale buildings.

**Owens-Brockway Policy SAF-5:** Retain the existing industrial use of the Owens-Brockway site.

**Owens-Brockway Policy SAF-5.1:** Improve the compatibility between industrial and residential uses, and enhance the relationship of the plant with the waterfront.

**42<sup>nd</sup> and High Street Policy SAF-6:** Encourage the reuse of existing warehouse properties south of Alameda Avenue and west of High Street for high-quality retail uses that complement adjacent commercial uses.

**42<sup>nd</sup> and High Street Policy SAF-6.1:** Provide for new commercial activities adjacent to the 42<sup>nd</sup> Street interchange.

**East of High Street Policy SAF-7:** East of High Street, maintain existing viable industrial and service-oriented uses, and encourage the intensification of underutilized and vacant properties.

**East of High Street Policy SAF-7.1** South of Tidewater Avenue, provide for continued industrial use, but also encourage new research and development and light industrial activities which are compatible with the adjacent EMBUD Oakport Facility and EBRPD's Martin Luther King Jr. Regional Shoreline Park.

**East of High Street Policy SAF-7.3:** At the 66<sup>th</sup> Avenue interchanges, encourage development of commercial uses that can benefit from proximity to freeway interchanges and serve both regional and local markets.

**Shoreline Access and Public Space Policy SAF-8:** Develop a continuously accessible shoreline, extending from Ninth Avenue to Damon Slough.

**Shoreline Access and Public Space Policy SAF-8.2:** Develop a major new public park at Union Point.

## **D. OSCAR ELEMENT**

Note: The Open Space designation applies to the shoreline of every waterfront property.

### **Policy OS1.3: Relate New Development to Slope**

Limit intensive urban development to areas where the predominant slope is less than 15 percent. Design development on slopes between 15 and 30 percent to minimize alteration of natural landforms. Strongly discourage development on slopes greater than 30 percent. To the extent permitted by law, when land is subdivided into two or more lots, retain areas with slopes over 30 percent as private, public, or common open space.

### **Policy OS3.1: University, College, and Institutional Open Space**

Retain open space at Oakland's universities, colleges, and other institutions where such open space provides recreational, aesthetic, conservation, or historic benefits. Where such spaces are publicly owned, as at the community colleges, support the permanent retention of athletic fields and other recreational areas as open space. Such areas should not be converted to development unless they are replaced in kind with comparable areas or facilities in the immediate vicinity.

### **Policy OS3.3: Golf Course and Cemetery Open Space**

Retain golf courses and cemeteries as open space areas.

### **Policy OS3.4: East Bay Municipal Utility District Open Space**

Retain EBMUD watershed land and reservoirs as open space and promote their joint use for recreation.

**Policy OS4.2: Protection of Residential Yards**

Recognize the value of residential yards as a component of the City's open space system and discourage excessive coverage of such areas by buildings or impervious surfaces.

**E. HISTORIC PRESERVATION ELEMENT**

**Policy 1.2: Potential Designated Historic Properties**

The City considers any property receiving an existing or contingency rating from the Reconnaissance or Intensive Surveys of "A" (highest importance), "B" (major importance), or "C" (secondary importance) and all properties determined by the Surveys to contribute or potentially contribute to an Area of Primary or Secondary Importance to warrant consideration for possible preservation. Unless already designated as Landmarks, Preservation Districts, or Heritage properties pursuant to Policy 1.3, such properties will be called "Potential Designated Historic Properties."

**Policy 1.3: Designated Historic Properties**

The City will designate significant older properties which definitively warrant preservation as Landmarks, Preservation Districts or Heritage Properties. The designations will be based on a combination of Historical and Architectural Inventory Ratings, National Register of Historical Places criteria, and special criteria for Landmarks and Preservation District eligibility. Landmarks, properties, which contribute or potentially contribute to Preservation Districts, and Heritage Properties, will be called "Designated Historic Properties".

**Policy 2.2: Landmark and Preservation District Eligibility Criteria**

Landmarks and Preservation Districts will be classified according to importance, with three classes of Landmarks and two classes of Preservation Districts. Properties eligible for each of these classifications will be as follows: (*see Historic Preservation Element Pg. 4-3*)

**Policy 2.4: Landmark and Preservation District Regulations**

- (a) Demolitions and removals involving Landmarks or Preservation Districts will generally not be permitted or be subject to postponement unless certain findings are made. Demolition or removal of more important Landmarks and of most Preservation District properties will normally not be permitted without the required findings, while demolition or removal of less important Landmarks will be subject only to postponement.
- (b) Alterations or New Construction involving Landmarks or Preservation Districts will normally be approved if they are found to meet the Secretary of the Interior's Standards for the Treatment of Historic Properties or if certain other findings are made.
- (c) Findings for approval of demolitions, removals, alterations or New Construction involving Landmarks or Preservation Districts will seek to balance preservation of these properties with other concerns.
- (d) Specific regulatory provisions are set forth in the tables entitled "Demolition and Removal Regulations for Landmarks and Preservation Districts" and "Alteration and New Construction Regulations for Landmarks and Preservation Districts".

(*See Historic Preservation Element Table 4-1, page 4-10 and Table 4-2, page 4-12*)

**Policy 2.6: Preservation Incentives**

Landmarks and all property contributing or potentially contributing to a Preservation District will be eligible for the following preservation incentives: (iv) Broader range of permitted or conditionally permitted uses; (*See Historic Preservation Element Action 2.6.5, page 4-27*)

**Policy 3.1: Avoid or Minimize Adverse Historic Preservation Impacts Related To Discretionary City Actions.**

The City will make all reasonable efforts to avoid or minimize adverse effects on the Character-Defining Elements of existing or Potential Designated Historic Properties which could result from private or public projects requiring discretionary City actions.



**Policy 3.2: Historic Preservation and City-Owned Properties**

To the extent consistent with other Oakland General Plan objectives, the City will ensure that all City-owned or controlled properties warranting preservation will, in fact, be preserved. All City-owned or controlled properties which may be eligible for Landmark or Heritage Property designation or as contributors or potential contributors to a Preservation District will be considered for such designation.

**Policy 3.3: Designated Historic Property Status For Certain City-Assisted Properties.**

To the extent consistent with other General Plan Goals, Policies and Objectives, as a condition for providing financial assistance to projects involving existing or Potential Designated Historic Properties, the City will require that complete application be made for such properties to receive the highest local designation for which they are eligible prior to issuance of a building permit for the project or transfer of title (for City-owned or controlled properties), whichever comes first. However, Landmark or Preservation District applications will not be required for projects which are small-scale or do not change exterior appearance.

**Policy 3.5: Historic Preservation and Discretionary Permit Approvals.**

For additions or alteration to Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City will make a finding that: (1) the design matches or is compatible with, but not necessarily identical to, the property's existing or historical design; or (2) the proposed design comprehensively modifies and is at least equal in quality to the existing design and is compatible with the character of the neighborhood; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

For any project involving complete demolition of Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City will make a finding that: (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.

**Policy 3.8: Definition Of "Local Register Of Historical Resources" And Historic Preservation "Significant Effects" For Environmental Review Purposes.**

For purposes of environmental review under the California Environmental Quality Act, the following properties will constitute the City of Oakland's Local Register of Historical Resources (Any property listed on the California Register of Historical Resources or officially determined to be eligible for listing on the California Register of Historical Resources is also considered a "Historical Resource" pursuant to Section 21084.1 of the California Environmental Quality Act):

- 1) All Designated Historic Properties, and
- 2) Those Potential Designated Historic Properties that have an existing rating of "A" or "B" or are located within an Area of Primary Importance.

Until complete implementation of Action 2.1.2 (Re-designation), the Local Register of Historical Resources will also include the following designated properties: Oakland Landmarks, S-7 Preservation Combining Zone properties, and Preservation Study List properties.

Complete demolition of a Historical Resource will normally be considered a significant effect that cannot be mitigated to a level less than significant and will, in most cases, require preparation of an Environmental Impact Report.

A proposed addition or alteration to a Historical Resource that has the potential to disqualify a property from Landmark or Preservation District eligibility or may have substantial adverse effects on the property's Character-Defining Elements will normally, unless adequately mitigated, be considered to have a significant effect.

**Policy 3.9: Consistency of Zoning with Existing or Eligible Preservation Districts**

(a) Unless necessary to achieve some other Oakland General Plan goal or policy which is of greater significance, the base zone of existing or eligible Preservation Districts shall not encourage demolition or removal of a district's contributing or potentially contributing properties nor encourage new construction that is incompatible with these properties.

(b) The City will always consider including a historic preservation component in area wide or specific plans. As part of any amendment to the Zoning Regulations, the impact on historic properties will be evaluated.

INTRODUCED BY COUNCIL MEMBER \_\_\_\_\_  
OFFICE OF THE CITY CLERK  
OAKLAND

*Mark P. Wald*  
City Attorney

2009 OCT 29 . PM 3:01 **OAKLAND CITY COUNCIL**

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

**ORDINANCE EXTENDING THE INTERIM CONTROLS FOR THE IMPLEMENTATION OF THE OAKLAND GENERAL PLAN (OAKLAND PLANNING CODE CHAPTER 17.01 AND THE GENERAL PLAN CONFORMITY GUIDELINES) TO JUNE 30, 2011**

**WHEREAS**, on May 12, 1998 the City Council passed Ordinance No. 12054 C.M.S. which adopted Interim Controls for implementation of the Oakland General Plan prior to the comprehensive revision of the Oakland Planning Code, subdivision, environmental review, and related regulations; and

**WHEREAS**, Section 5 of Ordinance No. 12054 C.M.S. provides that the Interim Controls shall expire after a three year period unless extended for an additional two year period; and

**WHEREAS**, on June 5, 2001, the City Council adopted Ordinance No. 12332 C.M.S. which extended the Interim Controls until June 30, 2003; and

**WHEREAS**, on July 15, 2003, the City Council adopted Ordinance No. 12514 C.M.S. which extended the Interim Controls until December 31, 2005;

**WHEREAS**, on June 20, 2006, the City Council adopted Ordinance No. 12746 C.M.S. which extended the Interim Controls until June 30, 2007; and

**WHEREAS**, on December 4, 2007, the City Council adopted Ordinance No. 12839 C.M.S. which extended the Interim Controls until January 1, 2010; and

**WHEREAS**, on May 6 1998, the Planning Commission adopted the "Guidelines for Determining Project Conformity with the General Plan Guidelines and Zoning Regulations" (General Plan Conformity Guidelines), with the Planning Commission amending said General Plan Conformity Guidelines on: November 3, 1999; August 8, 2001; December 5, 2001; July 15, 2003; May 28, 2004; October 31, 2006; and July 21, 2009; and

**WHEREAS**, the Community and Economic Development Agency is still in the process of updating the Oakland Planning Code to implement the General Plan and thus the Interim Controls are still necessary; and

**WHEREAS**, the requirements of the California Environmental Quality Act (CEQA) of 1970 are satisfied because the extension of the Interim Controls merely continues the policy and practice of the last eleven years and as a separate and independent basis, the Interim Controls are covered by the Environmental Impact Report prepared for the Land Use and Transportation Element of the General Plan that was certified by the City Council on March 24, 1998, as well as by the Mitigated Negative Declaration adopted for the Housing Element of the General Plan on June 15, 2004; and

**WHEREAS**, the Council finds and determines that the public safety, health, convenience, comfort, prosperity and general welfare will be furthered by extending the Interim Controls; now, therefore

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**Section 1.** Oakland Planning Code Chapter 17.01 and the General Plan Conformity Guidelines are hereby extended in accordance with other sections of this ordinance.

**Section 2.** This ordinance shall be effective upon its adoption if it receives at least six affirmative votes otherwise it shall be effective upon the seventh day after final adoption, and shall remain in effect until June 30, 2011, or until the comprehensively updated Oakland Planning Code and Zoning Maps are completed and adopted, whichever comes first.

**Section 3.** The ordinance complies with CEQA as stated in the recitals section.

**Section 4.** If any provision of this ordinance or 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.

**Section 5.** The recitals are true and correct and an integral part of this ordinance.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_

**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: \_\_\_\_\_

## NOTICE AND DIGEST

MPW

### **ORDINANCE EXTENDING THE INTERIM CONTROLS FOR THE IMPLEMENTATION OF THE OAKLAND GENERAL PLAN (OAKLAND PLANNING CODE CHAPTER 17.01 AND THE GENERAL PLAN CONFORMITY GUIDELINES) TO JUNE 30, 2011**

This ordinance extends until June 30, 2011, the Interim Land Use Controls of Oakland Planning Code Chapter 17.01 ("General Provisions of Planning Code and General Plan Conformity") and the General Plan Conformity Guidelines that will expire on January 1, 2010, except for applications which were complete prior to that date. These controls are used to regulate parcels of land where the zoning designation is not in conformity with the General Plan Land Use classification. These controls were established to resolve zoning and General Plan conflicts for the period of time between the adoption of the General Plan (1998) and the updating of the zoning code (expected completion in 2011), to conform to the Land Use and Transportation Element of the General Plan.