

CITY OF OAKLAND
AGENDA REPORT

2010 JUL -8 PM 2: 50

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: July 20, 2010

RE: Conduct A Public Hearing To Consider Adopting An Emergency Ordinance, Pursuant To Charter Section 213, To Take Effect Immediately Upon Introduction And Adoption (6 Votes Required For Passage), Which Extends Interim Controls Established Under Ordinance No. 12885 C.M.S. And No. 12852 C.M.S. For An Additional Two Years Or Until The City Council Adopts Permanent Regulations, Applying The S-4 Design Review Combining Zone Which Requires New Or Rehabilitated Building Facilities To Follow Established Design Review Procedures, To:

- A. Those C-10, C-30, C-35 And C-40 Zoned Areas Which Are Designated In The General Plan As Neighborhood Center Commercial, Community Commercial, Or Urban Residential; And**
- B. Upper Broadway – From Hawthorne Avenue To Interstate 580, And From 38th Street To College Avenue, And To The Community Commercial General Plan Areas Northeast Of The Intersection Of Broadway And Pleasant Valley To View Place**

SUMMARY

On January 15, 2008, the Oakland City Council adopted a one-year interim control lasting until January 15, 2009, which applied the S-4 Combining Zone on the zoning districts of Upper Broadway, from Hawthorne Avenue to Interstate 580; from 38th Street to College Avenue (excepting the area around Kaiser Hospital); and from the area northeast of the intersection of Broadway and Pleasant Valley, to View Place (including the Safeway shopping center at Broadway and Pleasant Valley).

Similarly, on July 15, 2008, the Oakland City Council adopted a two-year interim control lasting until July 15, 2010, which applied the S-4 Zone to those C-10, C-30, C-35 and C-40 zoned areas which are designated in the General Plan as 'Neighborhood Center Commercial', 'Community Commercial' or 'Urban Residential'.

These S-4 interim controls were applied to some of the city's major corridors, such as Broadway, International Boulevard, Foothill Boulevard, Grand Avenue, Telegraph Avenue, and San Pablo Avenue; and were intended to maintain the quality of commercial development on the corridors until permanent controls could be put in place as part of the citywide zoning update. This proposal seeks approval of an emergency ordinance to extend the above S-4 interim controls on the major corridors, including Upper Broadway, for two years or until the City Council adopts permanent regulations, whichever comes first. Staff recommends the proposal because it will

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July 20, 2010

maintain the quality of commercial development on the corridors until permanent controls could be put in place. The requested extension period for the S-4 interim controls will also allow sufficient time for the Planning Division to complete the citywide zoning update; continue implementation of the City's Retail Strategy for the sections of Broadway around "Auto Row" and the area to the north; and complete a plan for a major new retail shopping district as part of the Broadway Valdez Specific Plan.

FISCAL IMPACT

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

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

ENVIRONMENTAL DETERMINATION

Several past environmental documents discussed and evaluated the environmental impacts associated with this proposal and reliance on them satisfies any requirements under the California Environmental Quality Act (CEQA). These documents include the Final Environmental Impact Report (EIR) for the Land Use and Transportation Element (LUTE) of the Oakland General Plan, certified in 1998; the Initial Study/Mitigated Negative Declaration for the 2004 Housing Element Update, certified in 2004, and the EIR for Amendments to the Historic Preservation Element of the General Plan, certified in 1998. As a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning) and/or 15061(b)(3) (General Rule—no possibility of significant environmental impact).

BACKGROUND

Without the application of the S-4 Design Review Combining Zone, many zoning districts currently allow commercial facilities to be constructed, established, or altered in exterior appearance without any discretionary review from the City. This is due to the inconsistent mapping of the commercial zoning districts which do require the non-residential design review procedure in Chapter 17.136 of the Planning Code. For example, the C-31 zone (mapped in the Rockridge and Dimond districts), the C-28 zone (mapped in the Temescal district), and the C-27 zone (mapped in the Montclair district), have provisions that require new or expanded commercial facilities to be reviewed according to the design review procedures of Planning Code Chapter 17.136.

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The request for this emergency ordinance is intended to allow continuation of the requirement for commercial design review on the corridors - similar to the existing requirement for commercial design review in such neighborhoods as Rockridge, Dimond, Temescal, and Montclair. In contrast, commercial streets with the C-10, C-30, C-35 or C-40 zoning designation, *and without the S-4 zone overlay*, do not require any discretionary review for many new or expanded commercial facilities.

S-4 interim controls for the Upper Broadway area were previously adopted by the City Council on January 15, 2008, as a one-year interim control lasting until January 15, 2009 (Ordinance No. 12852 - see *Attachment A*). These interim S-4 controls were applied to the zoning districts of Upper Broadway, from Hawthorne Avenue to Interstate 580; from 38th Street to College Avenues; and from the area northeast of the intersection of Broadway and Pleasant Valley, to View Place. The interim S-4 Zone overlay along the upper Broadway corridor provided the City an important opportunity, *now expired*, to maintain the quality of commercial development on the corridors until permanent controls could be put in place.

Similarly, S-4 interim controls for many of the other major corridors were adopted by the City Council on July 15, 2008, as a two-year interim control lasting until July 15, 2010 (Ordinance No. 12885 – see *Attachment B*). These interim S-4 controls were applied to many of the city's other major corridors, such as International Boulevard, Foothill Boulevard, Grand Avenue, Telegraph Avenue, and San Pablo Avenue, with the intention of maintaining the quality of commercial development on the corridors until permanent controls could be put in place as part of the citywide zoning update.

KEY ISSUES AND IMPACTS

Because many underlying commercial zones do not currently require design review for non-residential (i.e., “commercial”) buildings, adopting this ordinance, and mapping the S-4 zone to the major corridors, including Upper Broadway, will maintain the quality of commercial development on the corridors and give staff additional discretionary review over proposed developments on these major thoroughfares, until permanent controls could be put in place.

This proposal will ensure that all new construction and rehabilitation along the city's major corridors go through the City's established design review process. The interim S-4 controls will also allow the City to continue to evaluate whether a proposal is appropriate for a particular area, and to minimize its impacts to neighboring residential properties. The request for this emergency ordinance is intended to allow the City to maintain the quality of new commercial development until permanent controls can be put in place on the corridors as part of the citywide zoning update.

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Staff proposes that the interim controls remain in place for two years or until the City Council adopts permanent controls, whichever comes first. During that time, it is expected that the Strategic Planning Division would bring to the Council new zoning districts for the commercial corridors as part of the ongoing citywide zoning update, and that this new zoning would have some form of mandatory design review for commercial buildings.

SUSTAINABLE OPPORTUNITIES

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

DISABILITY AND SENIOR CITIZEN ACCESS

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

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the City Council approve the emergency ordinances, pursuant to Section 213¹ of the Oakland City Charter, which will provide interim zoning controls for up to two years while the City is completing the citywide zoning update and the Broadway Valdez Specific Plan. During that time, it is expected that the Strategic Planning Division, as part of the approved schedule for the zoning update, would bring to the Council new zoning districts for the commercial corridors, and that this new zoning would have some form of mandatory design review for commercial buildings.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the Emergency Ordinance, pursuant to Charter Section 213, to take effect immediately upon introduction and adoption (6 Votes Required for Passage), which extends interim controls established under Ordinance No. 12885 C.M.S. and No. 12852 C.M.S. for an additional two years or until the City Council adopts permanent regulations, applying the S-4 Design Review Combining Zone which requires new or rehabilitated Building Facilities to follow established design review procedures, to:

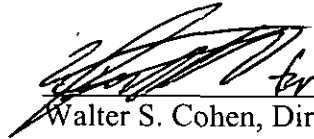
- 1) Those C-10, C-30, C-35 and C-40 zoned areas which are designated in the General Plan as Neighborhood Center Commercial, Community Commercial, or Urban Residential; and

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

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- 2) Upper Broadway – from Hawthorne Avenue to Interstate 580, and from 38th Street to College Avenue, and to the Community Commercial General Plan areas northeast of the intersection of Broadway and Pleasant Valley to View Place.

Respectfully submitted,

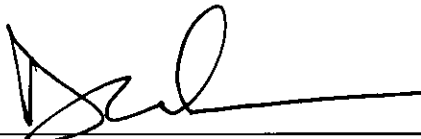


Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by Eric Angstadt, Deputy Director

Prepared by: Ed Manasse, Planner V
Planning and Zoning Division

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



Office of the City Administrator

Attachments:

- A. Ordinance No. 12852 C.M.S. (adopted by the City Council on 1/15/08)
- B. Ordinance No. 12885 C.M.S. (adopted by the City Council on 7/15/08)

Item: _____

City Council
July 20, 2010

ATTACHMENT A

FILED
OFFICE OF THE CITY CLERK
OAKLAND

08 JAN -3 PM 3:08

6 VOTES REQUIRED FOR PASSAGE

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER _____

Mark P. Wald

City Attorney

OAKLAND CITY COUNCIL
ORDINANCE No. 12852 C.M.S.

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, ESTABLISHING INTERIM CONTROLS APPLYING THE S-4 DESIGN REVIEW COMBINING ZONE WHICH REQUIRES ALL NEW CONSTRUCTION OR ALTERATIONS TO FOLLOW DESIGN REVIEW PROCEDURES, TO BROADWAY -- FROM HAWTHORNE AVENUE TO INTERSTATE 580, AND FROM 38TH STREET TO COLLEGE AVENUE, AND TO THE AREA NORTHEAST OF THE INTERSECTION OF BROADWAY AND PLEASANT VALLEY TO VIEW PLACE, TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION

WHEREAS, the S-4 Design Review Combining Zone ("S-4 Zone"), as codified in the Oakland Municipal Code and the Oakland Planning Code, is intended to create, preserve, and enhance the visual harmony and attractiveness of areas which require special treatment and the consideration of relationships between facilities, in areas which are of special community, historical, or visual significance; and

WHEREAS, the S-4 Zone requires that no Local Register Property, Building Facility, Mixed Use Development, Telecommunications Facility, Signs or other associated structures shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136; and

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

WHEREAS, Upper Broadway, the area approximately between Hawthorne and College Avenues including the parcels northeast of Broadway and Pleasant Valley, is a critical transportation and commercial corridor, containing sites crucial for the City's emerging retail strategy; and

WHEREAS, this section of Upper Broadway is currently mapped with C-40 and C-30 zones which do not require design review of non-residential or commercial development; and

WHEREAS, there is significant development interest on and near Broadway from Hawthorne to College Avenues; and

WHEREAS, the Land Use and Transportation Element of the Oakland General Plan places priority on the successful and attractive development of the transportation corridors; and

WHEREAS, the City on December 18, 2007, as part of a package of regulations which implement the retail strategy, heard the proposal to adopt a new S-5 Broadway Retail Frontage Interim Combining Zone requiring design review approval of all new buildings, and to map it on Broadway from 23rd Street to Hawthorne Avenue; and

WHEREAS, on that date, the City Council directed staff to map the S-4 zone, requiring the City's standard Design Review process for nonresidential development, to the areas of Upper Broadway which are adjacent and contiguous to the areas mapped with the new S-5 Zone, providing the City a tool to enhance the appearance of this critical corridor and better promote the public's health, safety and welfare, while permanent controls are being developed; and

WHEREAS, staff has identified the following three areas of Broadway which would be appropriate for the design review controls of the S-4 Zone: between Hawthorne Avenue and Interstate 580; between 38th Street and the intersection with College Avenue; the two lots northeast of the intersection of Broadway and Pleasant Valley, to View Place; and

WHEREAS, this proposed mapping of the S-4 Zone on Upper Broadway excludes the existing Kaiser Permanente zoning; and

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

WHEREAS, there is insufficient time to develop permanent controls regulating automotive uses in C-40 zones, and present them to the City Planning Commission and City Council for review, recommendation, and adoption; and

WHEREAS, the provisions of the California Environmental Quality Act (CEQA) have been satisfied and the proposal relies on the following environmental documents to satisfy any requirements under the California Environmental Quality Act (CEQA): the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the General Plan, adopted in 1998 (General Plan EIR) and the Broadway/MacArthur Redevelopment Plan Environmental Impact Report, adopted in 2000; and

WHEREAS, as a separate and independent basis, the proposal is also exempt from CEQA under several CEQA Guidelines: section 15061(b)(3), known as the "General Rule," that states a project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment; and

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

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

Section 1. The recitals above are true and correct and are an integral part of this Ordinance.

Section 2. This Ordinance complies with the California Environmental Quality Act.

Section 3. The zoning maps shall be amended to apply the S-4 Design Review Combining Zone to parcels on Broadway within: the C-40 zone between Hawthorne and Interstate 580; and the C-40 zone between 38th Street and College Avenue; and the C-30 zone northeast of the intersection of Broadway and Pleasant Valley; and the R-50 zone on Pleasant Valley to View Place, as generally shown in Exhibit A, attached hereto and incorporated by reference.

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

Section 5. The controls imposed by this ordinance shall remain in place and be effective for a continuous one year period from the effective date of this ordinance, or until the City Council adopts permanent controls for design review on Upper Broadway, whichever comes first.

Section 6. The Community and Economic Development Agency is directed, over the next one year, to conduct a study and develop a draft set of permanent amendments to the Planning Code and/or Municipal Code regarding the subject matter of this ordinance.

Section 7. For the term of this ordinance, as set for the in Section 5 above, the provisions of this ordinance shall govern, and to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

Section 8. This ordinance shall be effective immediately upon its adoption by the City Council, subject to the provisions of Section 213 of the Charter of the City of Oakland.

Section 9. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Sections 106 and 213 of the Charter of the City of Oakland, and Article XI of the California Constitution.

Section 10. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

IN COUNCIL, OAKLAND, CALIFORNIA, JAN 15 2008, 20

PASSED BY THE FOLLOWING VOTE:

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

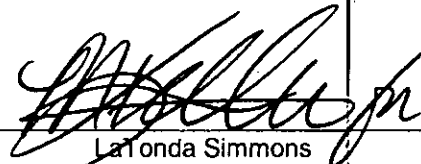
NOES- 0

ABSENT- 0

ABSTENTION- 0

Excused- De La Fuente - 1

ATTEST:



LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION:

1/24/08

Exhibit A: Existing & Proposed Upper Broadway Zoning

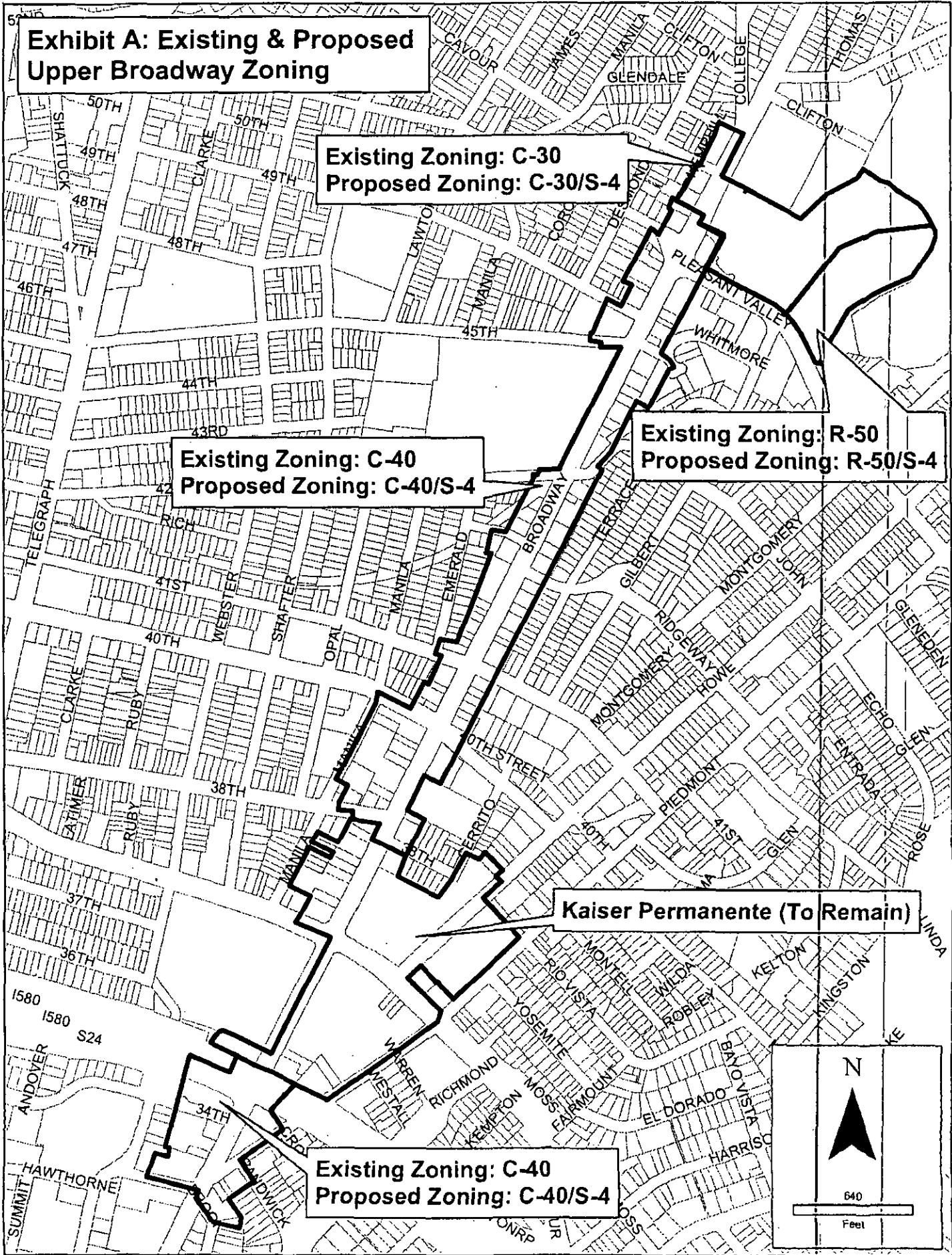
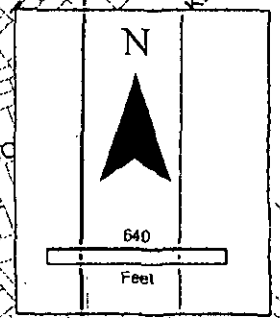
**Existing Zoning: C-30
Proposed Zoning: C-30/S-4**

**Existing Zoning: C-40
Proposed Zoning: C-40/S-4**

**Existing Zoning: R-50
Proposed Zoning: R-50/S-4**

Kaiser Permanente (To Remain)

**Existing Zoning: C-40
Proposed Zoning: C-40/S-4**



ATTACHMENT B

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 MAY 29 PM 3:13

APPROVED AS TO FORM AND LEGALITY

Monte F. Wald

City Attorney

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL
ORDINANCE No. 12885 C.M.S.

INTERIM ORDINANCE, RECOMMENDED BY THE PLANNING COMMISSION, AMENDING THE ZONING MAPS FOR TWO YEARS, APPLYING THE S-4 DESIGN REVIEW COMBINING ZONE, WHICH REQUIRES NEW OR REHABILITATED NON-RESIDENTIAL FACILITIES TO FOLLOW ESTABLISHED DESIGN REVIEW PROCEDURES, TO THOSE C-10, C-30, C-35 AND C-40 ZONES WHICH ARE DESIGNATED IN THE GENERAL PLAN AS NEIGHBORHOOD CENTER COMMERCIAL, COMMUNITY COMMERCIAL AND URBAN RESIDENTIAL

WHEREAS, the S-4 Design Review Combining Zone ("S-4 Zone"), as codified in Chapter 17.80 of Oakland Planning Code (OPC), is intended to create, preserve, and enhance the visual harmony and attractiveness of areas which require special treatment and the consideration of relationships between facilities, in areas which are of special community, historical, or visual significance; and

WHEREAS, the S-4 Zone requires that no Local Register Property, Building Facility, Mixed Use Development, Telecommunications Facility, Signs or other associated structures shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in OPC Chapter 17.136; and

WHEREAS, Oakland's major commercial streets, such as International Boulevard, Foothill Boulevard, Grand Avenue, San Pablo Avenue and Telegraph Avenue, which are currently zoned C-10, C-30, C-35 and C-40, do not require design review of non-residential or commercial development; and

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

WHEREAS, the City is updating its zoning on the major commercial streets, and will likely include some form of commercial design review in its permanent zoning controls for the areas designated in the 1998 Land Use and Transportation Element of the Oakland General Plan as Neighborhood Center Commercial, Community Commercial and Urban Residential; and

WHEREAS, until such time as the City adopts new zoning for the major commercial streets which requires some form of commercial design review, this interim proposal will be in effect for two years from date of passage; and

WHEREAS, the Land Use and Transportation Element of the Oakland General Plan places priority on the successful and attractive development of the transportation corridors; and

WHEREAS, staff has identified the following areas where the S-4 Design Review Combining Zone should apply: parts of International Boulevard, Foothill Boulevard, Grand Avenue, San Pablo Avenue and Telegraph Avenue; and

WHEREAS, on May 7, 2008 the Planning Commission held a duly noticed public hearing and at its conclusion, forwarded, without change, the proposal to map the S-4 Design Review Combining Zone on the major streets to the Community and Economic Development Committee of the City Council and the City Council; and

WHEREAS, the provisions of the California Environmental Quality Act (CEQA) have been satisfied and the proposal relies on the following environmental document to satisfy any requirements under CEQA: the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the General Plan, adopted in 1998; and

WHEREAS, as a separate and independent basis, the proposal is also exempt under CEQA Guidelines section 15061(b)(3): "General Rule", which states a project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment; the proposed regulation would have no change in the development intensity of the area, and the proposed regulation is more stringent than the current zoning and regulatory controls, because it requires the planning staff to review the aesthetics of new and renovated commercial facilities, when no similar review is currently required; now therefore

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

Section 1. The recitals above are true and correct and are an integral part of this Ordinance.

Section 2. This Ordinance complies with the California Environmental Quality Act for the reasons stated above.

Section 3. The zoning maps shall be amended to apply the S-4 Design Review Combining Zone to those areas currently zoned C-10, C-30, C-35 and C-40 and designated in the 1998 Land Use and Transportation Element of the Oakland General Plan as Neighborhood Center Commercial, Community Commercial and Urban Residential; and as generally shown in Exhibit A, attached hereto and incorporated by reference, and shall remain in place and be effective for a continuous two-year period from the effective date of this ordinance, or until the City Council adopts permanent, citywide, commercial design review regulations, whichever comes first.

Section 4. This Ordinance shall be effective upon adoption, subject to the provisions of Section 216 of the Charter of the City of Oakland, but shall not apply to building/construction-related permits already issued and not yet expired, zoning applications approved by the City and not yet expired, or to zoning applications deemed complete by the City as of the effective date.

Section 5. If any provision of this ordinance or the application thereof to any person or

circumstances is held invalid, the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 15 2008, 20

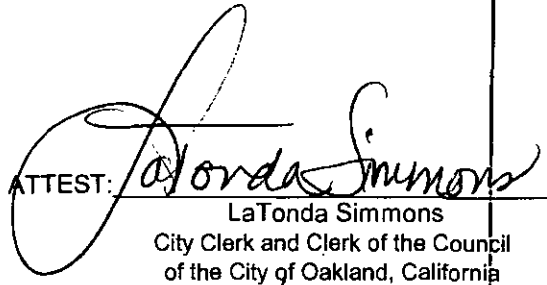
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE - 8

NOES- ~~0~~

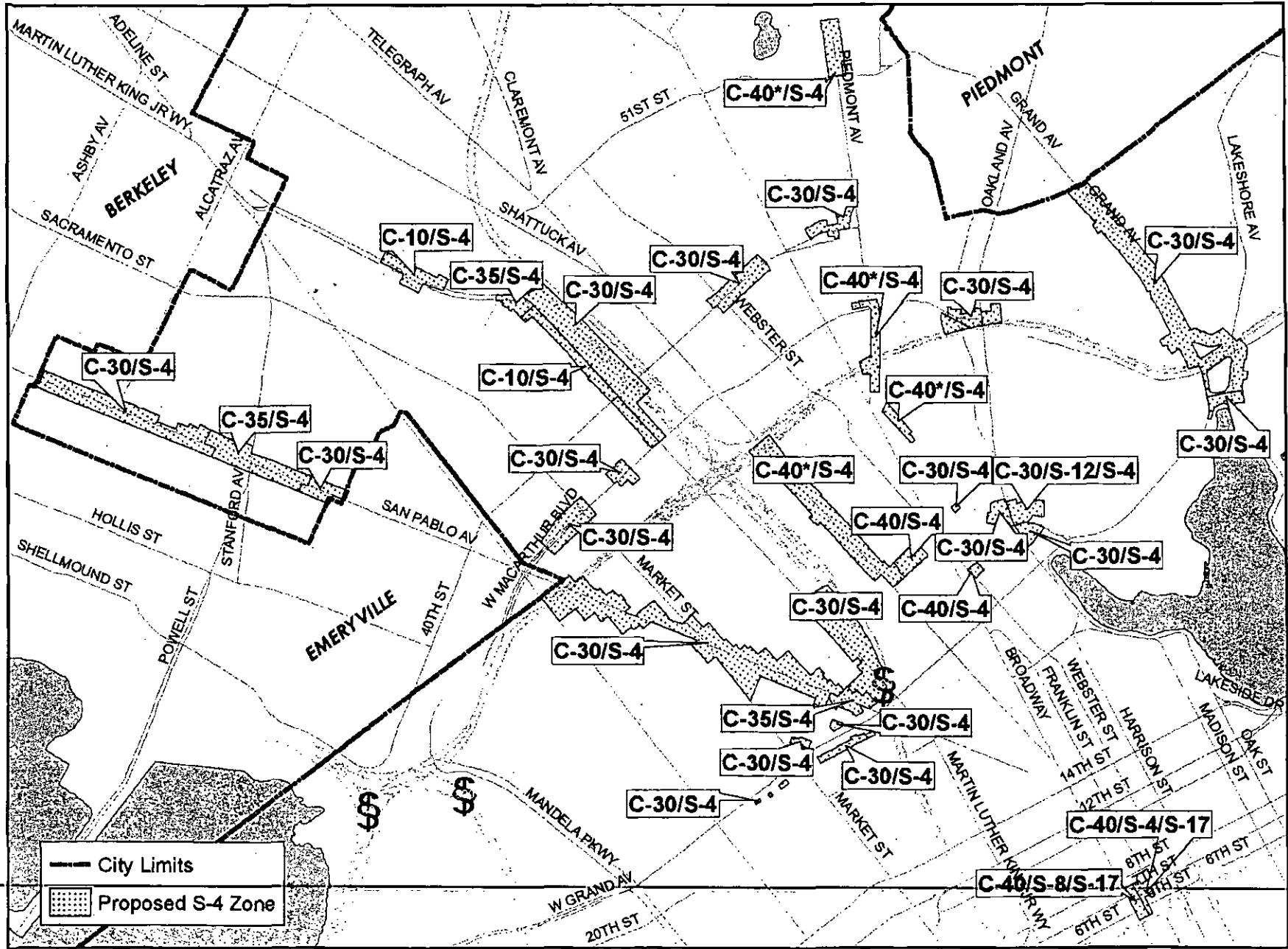
ABSENT- ~~0~~

ABSTENTION- ~~0~~

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

Introduction Date: **JUL 1 2008**

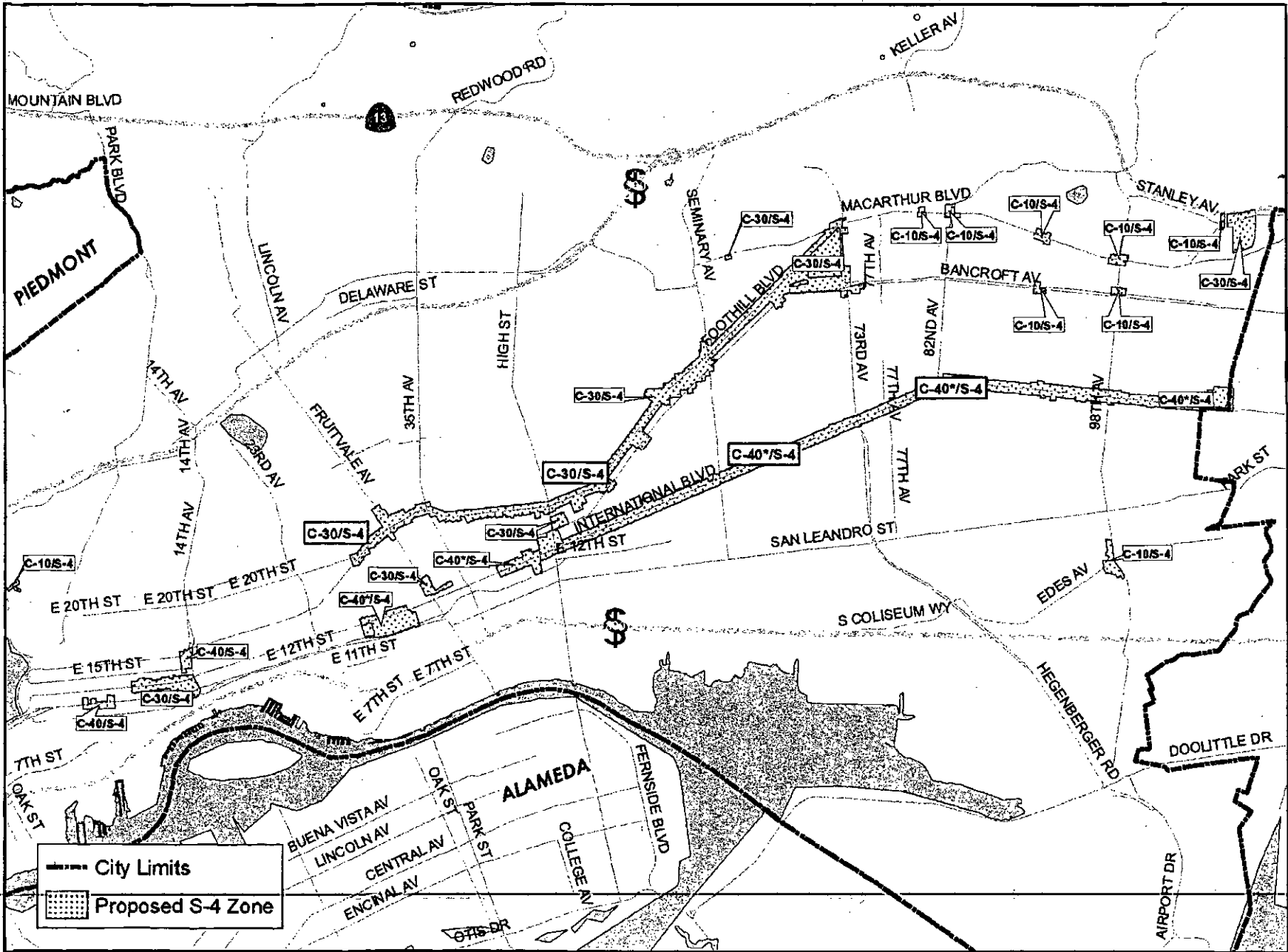
DATE OF ATTESTATION: 7/22/08



Commercial areas proposed for S-4 Design Review Combining Zone
 For Illustrative Purposes Only

2

City Council
 July 15, 2008



Commercial areas proposed for S-4 Design Review Combining Zone
For Illustrative Purposes Only



2

City Council
July 15, 2008

MPW

NOTICE AND DIGEST

AN INTERIM ORDINANCE, RECOMMENDED BY THE PLANNING COMMISSION, AMENDING THE ZONING MAPS FOR TWO YEARS, APPLYING THE S-4 DESIGN REVIEW COMBINING ZONE, WHICH REQUIRES NEW OR REHABILITATED NON-RESIDENTIAL FACILITIES TO FOLLOW ESTABLISHED DESIGN REVIEW PROCEDURES, TO THOSE C-10, C-30, C-35 AND C-40 ZONES WHICH ARE DESIGNATED IN THE GENERAL PLAN AS NEIGHBORHOOD CENTER COMMERCIAL, COMMUNITY COMMERCIAL AND URBAN RESIDENTIAL.

This interim ordinance amends the zoning maps, adding the S-4 Design Review Combining Zone (Oakland Planning Code, Chapter 17.80) to C-10, C-30, C-35 and C-40 Zones which are designated in the General Plan as Neighborhood Center Commercial, Community Commercial and Urban Residential. All new construction and rehabilitation of commercial and other non-residential buildings will require the design review procedures codified in Chapter 17.136. The ordinance will sunset in two years after adoption.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2010 JUL -8 PM 2: 50
INTRODUCED BY COUNCILMEMBER _____

6 VOTES REQUIRED FOR PASSAGE
APPROVED AS TO FORM AND LEGALITY

Mark P. Wood
City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION, WHICH EXTENDS INTERIM CONTROLS ESTABLISHED UNDER ORDINANCE NO. 12885 C.M.S. AND NO. 12852 C.M.S. FOR AN ADDITIONAL TWO YEARS OR UNTIL THE CITY COUNCIL ADOPTS PERMANENT REGULATIONS, APPLYING THE S-4 DESIGN REVIEW COMBINING ZONE WHICH REQUIRES NEW OR REHABILITATED BUILDING FACILITIES TO FOLLOW ESTABLISHED DESIGN REVIEW PROCEDURES, TO:

- A) THOSE C-10, C-30, C-35 AND C-40 ZONED AREAS WHICH ARE DESIGNATED IN THE GENERAL PLAN AS NEIGHBORHOOD CENTER COMMERCIAL, COMMUNITY COMMERCIAL, OR URBAN RESIDENTIAL; AND
- B) UPPER BROADWAY – FROM HAWTHORNE AVENUE TO INTERSTATE 580, AND FROM 38TH STREET TO COLLEGE AVENUE, AND TO THE COMMUNITY COMMERCIAL GENERAL PLAN AREAS NORTHEAST OF THE INTERSECTION OF BROADWAY AND PLEASANT VALLEY TO VIEW PLACE.

WHEREAS, on January 15, 2008, the Oakland City Council adopted Ordinance No. 12852 C.M.S. as a 1-year interim control lasting until January 15, 2009, which applied the S-4 Combining Zone on the zoning districts of Upper Broadway, from Hawthorne Avenue to Interstate 580; from 38th Street to College Avenue (excepting the area around Kaiser Hospital); and from the area northeast of the intersection of Broadway and Pleasant Valley, to View Place (including the Safeway shopping center at Broadway and Pleasant Valley); and

WHEREAS, on July 15, 2008, the Oakland City Council also adopted Ordinance No. 12885 C.M.S. as a 2-year interim control lasting until July 15, 2010, which applied the S-4 Zone to many of the city's other major commercial corridors- such as International Boulevard, Foothill Boulevard, Grand Avenue, Telegraph Avenue, and San Pablo Avenue; and

WHEREAS, the S-4 Zone, as codified in Chapter 17.80 of the Oakland Planning Code, requires design review for the construction or alteration of commercial development; and

WHEREAS, the portions of Upper Broadway, International Boulevard, Foothill Boulevard, MacArthur Boulevard, San Pablo Avenue and Telegraph Avenue which are currently zoned C-10, C-30, C-35, C-40, or R-50, would not require design review of commercial development without the continued application of the S-4 Design Review Combining Zone; and

WHEREAS, the interim S-4 controls on the major commercial corridors were established by the Council to provide temporary land use regulation pending the completion of the citywide zoning update, which will likely include some form of commercial design review in the permanent zoning controls for the major corridors, including upper Broadway; and

WHEREAS, this extension of interim S-4 controls is necessary to protect the public health, safety and welfare because many underlying commercial zones do not currently require design review for non-residential (i.e., "commercial") buildings and adopting this ordinance, and mapping the S-4 zone to the major corridors, including Upper Broadway, will give staff additional discretionary review over proposed developments on these major thoroughfares, and thus maintain the quality of commercial development on the corridors until permanent controls could be put in place; and

WHEREAS, certain findings were made to support adoption of Ordinance No. 12852 C.M.S. and No. 12885 C.M.S. and those findings are still true and correct; and

WHEREAS, several past environmental documents discussed and evaluated the environmental impacts associated with this proposal and reliance on them satisfies any requirements under the California Environmental Quality Act (CEQA). These documents include the Final Environmental Impact Report (EIR) for the Land Use and Transportation Element (LUTE) of the Oakland General Plan, certified in 1998; the Initial Study/Mitigated Negative Declaration for the 2004 Housing Element Update, certified in 2004, and the EIR for Amendments to the Historic Preservation Element of the General Plan, certified in 1998; and

WHEREAS, as a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning) and /or 15061(b)(3) (General Rule—no possibility of significant environmental impact); now, therefore

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

Section 1. The City Council finds and determines that the recitals above are true and correct and are an integral part of this Ordinance.

Section 2. This Ordinance complies with the California Environmental Quality Act for the reasons stated above.

Section 3. The zoning maps shall be amended to apply the S-4 Design Review Combining Zone to parcels on Broadway within: (A) the C-40 zone between Hawthorne and Interstate 580; and the C-40 zone between 38th Street and College Avenue; and the C-30 zone northeast of the intersection of Broadway and Pleasant Valley; and the R-50 zone on Pleasant Valley to View Place, as generally shown in Exhibit A, attached hereto and incorporated by reference; and (B) to those areas currently zoned C-10, C-30, C-35 and C-40 and designated in the 1998 Land Use and Transportation Element of the Oakland General Plan as Neighborhood Center Commercial, Community Commercial and Urban Residential; and as generally shown in Exhibit B, attached

hereto and incorporated by reference.

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

Section 5. The controls imposed by this ordinance shall remain in place and be effective for a continuous two year period from the effective date of this ordinance, or until the City Council adopts permanent controls for design review on the commercial corridors, whichever comes first.

Section 6. For the term of this ordinance, as set for the in Section 5 above, the provisions of this ordinance shall govern, and to the extent there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

Section 7. This ordinance shall be effective immediately upon its adoption by the City Council, subject to the provisions of Section 213 of the Charter of the City of Oakland.

Section 8. This Ordinance is enacted pursuant to the City of Oakland's general police powers, Sections 106 and 213 of the Charter of the City of Oakland, and Article XI of the California Constitution.

Section 9. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

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

DATE OF ATTESTATION: _____

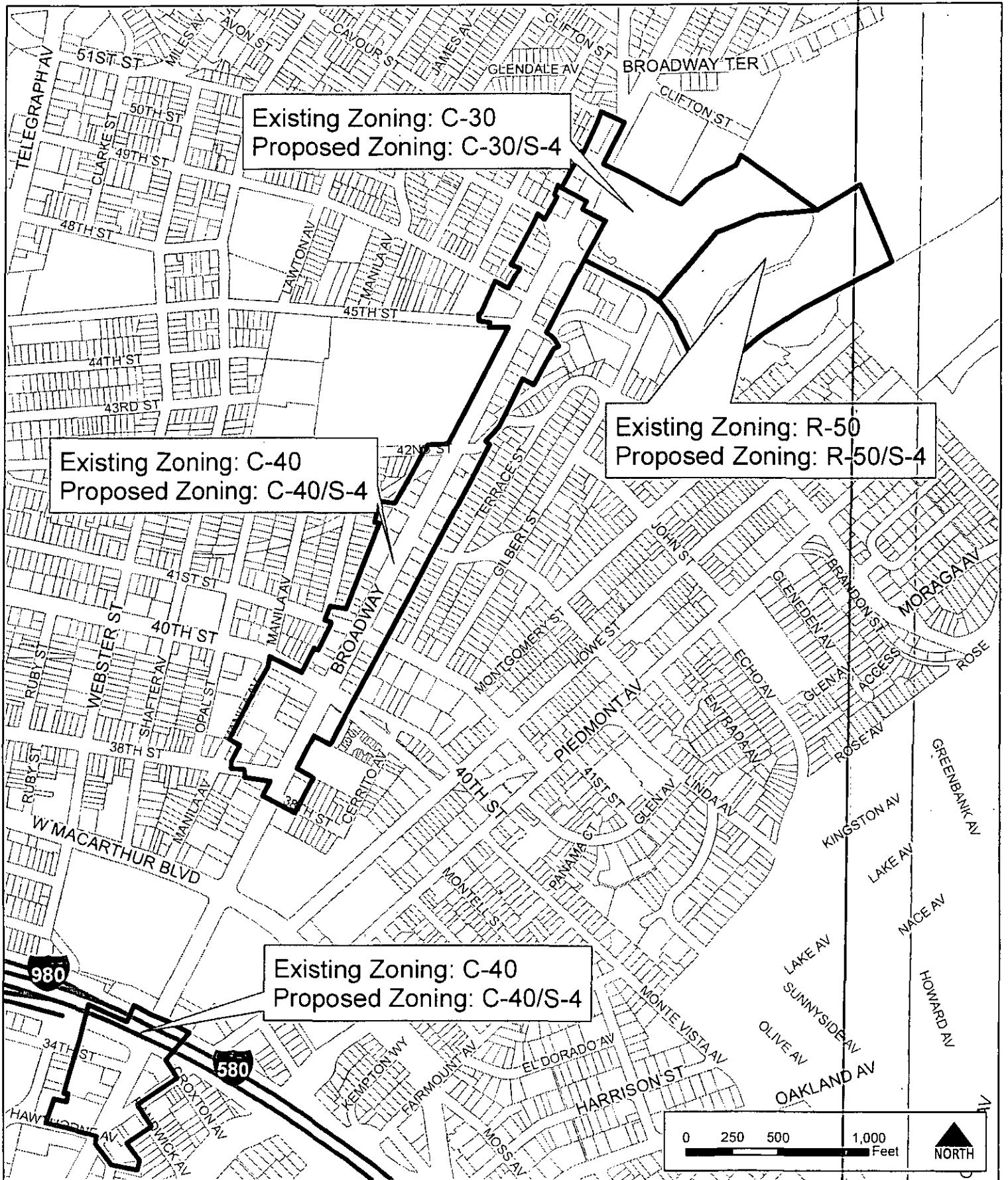


Exhibit A
S-4 Overlay Zone
Upper Broadway

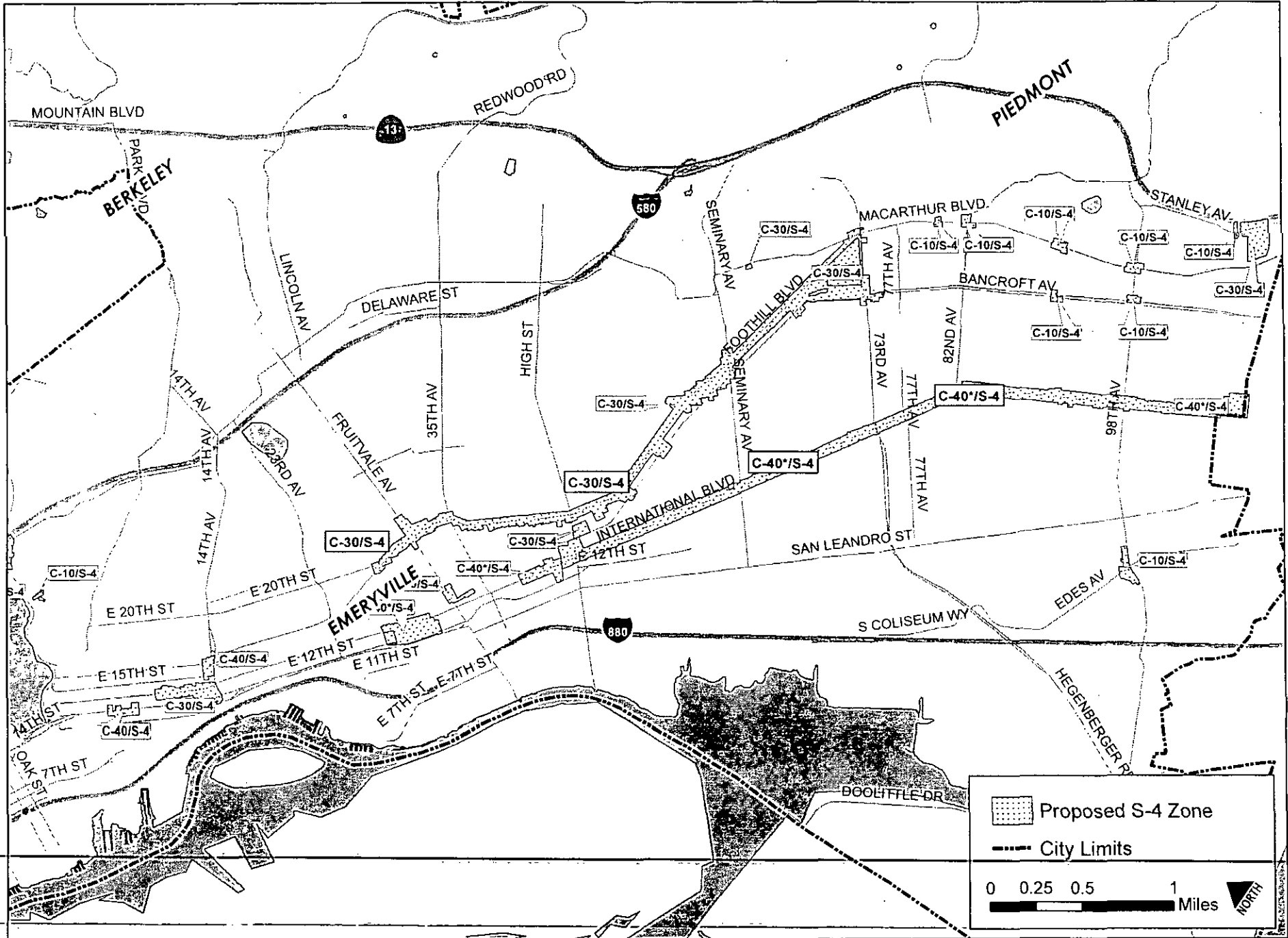


Exhibit B
 Commercial areas proposed for S-4 Design Review Combining Zone
 For Illustrative Purposes Only

City Council
 July 20, 2010

MPLW

NOTICE AND DIGEST

AN EMERGENCY ORDINANCE, PURSUANT TO CHARTER SECTION 213, TO TAKE EFFECT IMMEDIATELY UPON INTRODUCTION AND ADOPTION, WHICH EXTENDS INTERIM CONTROLS ESTABLISHED UNDER ORDINANCE NO. 12885 C.M.S. AND NO. 12852 C.M.S. FOR AN ADDITIONAL TWO YEARS OR UNTIL THE CITY COUNCIL ADOPTS PERMANENT REGULATIONS, APPLYING THE S-4 DESIGN REVIEW COMBINING ZONE WHICH REQUIRES NEW OR REHABILITATED BUILDING FACILITIES TO FOLLOW ESTABLISHED DESIGN REVIEW PROCEDURES, TO:

- A. THOSE C-10, C-30, C-35 AND C-40 ZONED AREAS WHICH ARE DESIGNATED IN THE GENERAL PLAN AS NEIGHBORHOOD CENTER COMMERCIAL, COMMUNITY COMMERCIAL, OR URBAN RESIDENTIAL; AND**
- B. UPPER BROADWAY – FROM HAWTHORNE AVENUE TO INTERSTATE 580, AND FROM 38TH STREET TO COLLEGE AVENUE, AND TO THE COMMUNITY COMMERCIAL GENERAL PLAN AREAS NORTHEAST OF THE INTERSECTION OF BROADWAY AND PLEASANT VALLEY TO VIEW PLACE.**

This interim ordinance amends the zoning maps to apply the S-4 Design Review Combining Zone (Chapter 17.80 in the Oakland Planning Code) to:

(A) upper Broadway – from Hawthorne Avenue to Interstate 580; and from 38th Street to College Avenue; and to the area designated in the 1998 Land Use and Transportation Element of the Oakland General Plan as Community Commercial northeast of the intersection of Broadway and Pleasant Valley, to View Place; and

(B) to those areas currently zoned C-10, C-30, C-35 and C-40 and designated in the 1998 Land Use and Transportation Element of the Oakland General Plan as Neighborhood Center Commercial, Community Commercial and Urban Residential.

All new construction and rehabilitation of commercial and other non-residential buildings will require the design review procedures codified in Chapter 17.136 of the Oakland Planning Code.