

CITY OF OAKLAND
AGENDA REPORT

2010 JUL -8 PM 2: 57

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

RE: **Conduct A Public Hearing And Upon Conclusion Adopt One Of The Following Alternative Resolutions: A) A Resolution Approving A Conditional Use Permit And Variance For A Temporary Surface Parking Lot At 1331 Harrison Street; Or B) A Resolution Denying A Conditional Use Permit And Variance For A Temporary Surface Parking Lot At 1331 Harrison Street**

SUMMARY

Terra Linda Development Services, LLC., on behalf of Peter Iwate, has submitted an application for a minor conditional use permit and a minor variance to allow a surface auto-fee parking lot for up to 49 spaces at 1331 Harrison Street, in the Central Business District (CBD). The use is proposed on a temporary basis (four years) on a site that is currently entitled for highrise residential development. Surface parking lots are not permitted in the CBD and, as such, the use would be subject to a minor conditional use permit for an auto-fee parking lot with fewer than 50 spaces and a minor variance from zoning limitations and additional criteria. The Planning Commission considered this proposal on June 16, 2010 and came to a tie-vote. Pursuant to Planning Code 17.130.040.B, Planning Commission Chair Blake Huntsman determined that the Commission was deadlocked and forwarded the matter to the City Council.

FISCAL IMPACT

Denial of the Minor Conditional Use Permit and Minor Variance would not result in a fiscal impact to the City of Oakland. Approval would result in minimal short-term tax revenue.

BACKGROUND

Location and Site History

The 15,000 square foot or .34 acre site is located in downtown at the corner of 14th and Harrison Streets and is currently vacant. The site was most recently used as a surface parking lot for 60 spaces. The site was previously used as a gas station and a car wash until it was demolished in 1989. The historic Hotel Oakland (which is currently a senior housing facility) is located directly across Harrison Street. Additional surrounding land uses include small retail businesses, offices,

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and residential facilities that vary in height from 2 to 23 stories. Several recently approved residential projects are in the area, including an affordable housing project at 14th and Madison Streets, Jackson Center II at 12th and Alice Streets, and Jackson Courtyard Condominiums at 14th and Jackson Streets. The project is located within a few blocks of the 12th Street BART station and is served by multiple AC Transit lines. The General Plan designation for the site is "Central Business District" (as described in more detail in this staff report), which anticipates a mix of high-density, urban, residential uses with business-oriented development.

The subject property was previously used as a gas station and a car wash until the facilities were demolished in 1989. From 1989 until 2001, the site was occupied (without permits) by a surface parking lot. The site has since been vacant. In 2003, the property was entitled for a 19-story building with 14 levels of residential units located above 4 levels of parking and 1 level of ground floor commercial space. The entitlements are extended through December 31, 2011.

Planning Commission Discussion

The Planning Commission discussed the 1331 Harrison project at their regularly scheduled meetings on June 2 and June 16, 2010, respectively. The Planning Commission opinions were divided, with three Commissioners expressing general support for and three Commissioners expressing opposition to the proposal. Comments regarding the proposed project included:

- The proposed use is an improvement over a vacant and/or blighted parcel;
- Consideration of this proposal should occur only after consideration of policy that would authorize temporary uses;
- The CBD zoning regulations are appropriate, and surface auto-fee parking should not be approved in this location; if the CBD zoning regulations are not accommodating, then the City should consider a Planning Code amendment prior to consideration of this proposal.
- The allowed timeframe for any approval should be three, and not four, years, with an option for a one-time, one-year extension based on staff discretion.

Following extensive public comment and Planning Commission discussion, on June 16, 2010, the Planning Commission came to a tie-vote regarding the matter. Pursuant to Planning Code 17.130.040.B, Planning Commission Chair Blake Huntsman determined that the Commission was deadlocked and forwarded the matter to the City Council for consideration.

Temporary Conditional Use Permit Proposal

The application considered in this report is part of a growing interest in temporary activities in Oakland. This interest has triggered research into and development of a temporary use permit proposal that would provide a coordinated approach to addressing such proposed activities. The Citywide temporary use permit proposal already has been considered by the Zoning Update Committee of the Planning Commission (ZUC) and is discussed later in this report (and the ZUC

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reports are attached to this report as part of *Attachment C*). This applicant, however, is interested in pursuing a temporary permit in advance of any decision by the Planning Commission and/or City Council regarding the larger regulatory framework (a proposal may not be in front of the City Council for several months). The City of Oakland does not currently restrict temporary permits; however, until regulations for temporary permits are adopted, there is no consistent method for considering and regulating temporary uses on the whole, or for ensuring their removal after a specified period of time.

KEY ISSUES AND IMPACTS

Staff Recommendation

Staff recommends denial of the 1331 Harrison surface parking lot application. However, because the Planning Commission was divided in their opinions regarding the 1331 Harrison application, staff has included alternative findings for approval and conditions of approval, in addition to findings for denial. This alternative proposal now is being forwarded to the City Council pursuant to the Planning Commission's action on the item. This allows the City Council the option of either denying or approving the project at the present Council meeting.

Site Previously Used as Surface Auto-Fee Parking

The proposed project is the renewed use of the 1331 Harrison site as a surface parking lot. The parking lot has existed on the site since 1989 (although it has not been operational since 2001 and was never subject to a required conditional use permit for the auto-fee parking use). The site is paved and has existing curb cuts to provide site access and egress.

The project would be temporary, involve minimal improvements and would provide tax revenue for the City of Oakland. At the same time, a surface parking lot contributes to a blighted and under-utilized appearance in the Central Business District.

No Surface Auto-Fee Parking in CBD

The current Central Business District (CBD) zoning regulations allow auto-fee parking in the downtown subject to a conditional use permit; however, limitations and additional criteria require auto-fee parking to be enclosed in a structure of at least three stories or to be located below grade. In summary, *surface* auto-fee parking is not permitted without a variance. Although the conditional use permit and variance application is the appropriate tool for seeking an approval in this instance, the CBD regulations were adopted recently and were closely crafted and vetted by key decision makers and the community. The restriction on surface parking is a specific, contemporary objective of the current regulations.

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The proposed project requires a variance from the Planning Code. However, the use would be temporary and would not ultimately restrict development of a higher and better use for the site.

Proposed Planning Code Amendments to Provide for Temporary Uses

The Zoning Update Committee of the Planning Commission (ZUC) recently reviewed and discussed proposed Planning Code Amendments that would allow temporary use permits in Oakland (see *Attachment B*). Currently, temporary permits are processed on a case-by-case basis and conditions of approval are included in effort to control the timeframe. There currently is no consistent process to consider, approve and terminate temporary uses. In addition, the City Attorney's Office has advised staff that failure to diligently and timely enforce requirements to eliminate uses may result in the uses becoming permanent through a property owner's acquisition of vested rights. As a result, contrary to the Planning Commission's, and even a current applicant's intention, such uses could run with the land to future owners. Although the ZUC has reviewed proposed temporary use regulations, there is currently no consensus regarding support for such regulations among the ZUC. The full Planning Commission has not yet reviewed this proposal.

PROJECT DESCRIPTION

The proposed project is a temporary surface auto-fee parking lot at 1331 Harrison Street in the CBD. The project includes up to 49 marked parking spaces, bicycle parking, potential car-share parking, and a pay station along 14th Street. In addition, the proposal includes art panels facing Harrison Street that would reduce the potentially unpleasing appearance of the surface parking use. The proposal is to accommodate the surface parking lot for up to four years on the expectation that the economy will improve enough to allow investment into the entitled residential highrise project that the City approved for development on the site in 2003 (the approved project is a nineteen-story multi-family residential product with valid permits through 2011). The site is currently paved and fenced, and has three curb cuts providing site ingress and egress (two curb cuts on 14th Street and one curb cut on Harrison Street). The proposed new features would include the art panels described above, restriping (paint) and a pay station.

SUSTAINABLE OPPORTUNITIES

Economic: The project would contribute to the economic viability of the Central Business District by occupying a currently vacant lot with an active land use on a temporary basis.

Environmental: The project serves the compact, infill development in an already urbanized area thereby reducing the need for development in environmentally sensitive areas located at the edge

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of the city. The project is temporary and would not inhibit future development of the site with a higher and better use.

Social Equity: The project would occupy a currently vacant site, decreasing blight in an area with a high concentration of low-income families.

DISABILITY AND SENIOR CITIZEN ACCESS

The proposed development would be required to comply with all applicable regulations concerning accessibility.

RECOMMENDATION(S) AND RATIONALE

Staff believes that the proposed project is neutral in terms of appropriate design and benefit for the community, as noted throughout this staff report. The City Council has the option to approve or deny the application (and, as such, staff has provided findings for either approval or denial and conditions of approval for City Council consideration). Staff recommends that the City Council:

- 1) Hold a public hearing and receive public testimony regarding the proposed project;
- 2) Affirm staff's environmental determination that denial of the project is not subject to CEQA, pursuant to CEQA Guidelines Section 15270, Projects Which are Disapproved;
- 3) Consider denial of the Minor Conditional Use Permit and the Minor Variance, as per the attached Findings.

ALTERNATIVE RECOMMENDATION

Should the City Council consider approval of the Minor Conditional Use Permit and Minor Variance for 1331 Harrison Street, staff notes that a shorter operation period for the project can be considered (consistent with the Planning Commission suggestion).

- 1) Hold a public hearing and receive public testimony regarding the proposed project;
- 2) Affirm staff's environmental determination that approval of the project is subject to an exemption from CEQA, relying on sections: 15304, Minor Alterations to land; 15311, Accessory Structures, and 15332, Infill Development Projects.
- 3) Consider approval of the Minor Conditional Use Permit and the Minor Variance and adoption of Conditions of Approval, as per the attached findings.

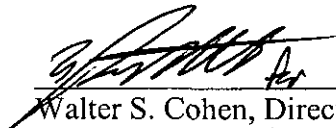
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ACTION REQUESTED OF THE CITY COUNCIL

Conduct a public hearing and upon conclusion adopt one of the following alternative resolutions:

A) A resolution approving a Conditional Use Permit and Variance for a temporary surface parking lot at 1331 Harrison Street; or B) A resolution denying a Conditional Use Permit and Variance for a temporary surface parking lot at 1331 Harrison Street.

Respectfully submitted,



Walter S. Cohen, Director

Community and Economic Development Agency

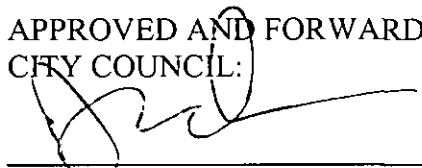
Reviewed by:

Eric Angstadt, Deputy Director
Planning and Zoning Division

Prepared by:

Catherine Payne, Planner III

APPROVED AND FORWARDED TO THE
CITY COUNCIL:



Office of the City Administrator

ATTACHMENTS:

- A. Findings for Denial for 1331 Harrison Street
- B. Findings for Approval and Conditions of Approval for 1331 Harrison Street
- C. Planning Commission Staff Report dated June 16, 2010, inclusive

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**1331 Harrison Street
City Council, July 20, 2010
Attachment A: Findings for Denial for 1331 Harrison Street**

Staff believes the 1331 Harrison temporary surface parking lot proposal does not meet the required findings for compliance with Oakland Planning Code Sections 16.136.050B (Regular Design Review Criteria for Non-Residential Facilities), 17.134.050 (Conditional Use Permit), and 17.148.050 (Variance Criteria), as set forth below. Required findings are shown in **bold type**; explanations as to why these findings can or cannot be made are in normal type. The project's conformance with the following findings is not limited to the discussion below, but is also included in all discussions in this report and elsewhere in the record.

Planning Code Section 17.136.050B (Regular Design Review Criteria for Non-Residential Facilities and Signs):

1. **That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;**

The proposed surface parking would potentially prolong the blighted appearance of the property. Although staff recommends the inclusion of design features to reduce blight and improve the aesthetic quality of the site, this corner site would continue to be vacant a building—an important massing tool for ensuring the presence and arrangement of buildings designed to promote and enhance the downtown area.

2. **That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;**

The proposed surface parking would potentially prolong the blighted appearance of the property. Surface parking, with no architectural mass, would not complement the surrounding buildings and investment in the downtown.

3. **That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.**

As demonstrated in the administrative record, this project does not conform to the General Plan, Planning Code and design objectives for the CBD zoning district. Although auto-fee parking is permitted, surface parking is not allowed in the CBD.

Planning Code Section 17.134.050 (Conditional Use Permit)

A CUP is required for auto-fee parking located in the CBD zoning districts.

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

Although the operating characteristics of the proposed auto-fee parking lot are compatible with the intensive development of the Central Business District, the design is not compatible. A surface parking lot results in an underutilized, potentially blighted appearance in an area that should appear densely and attractively developed.

B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

Although the proposed auto-fee parking lot is convenient and functional in the context of the intensive development of the Central Business District, the appearance of the use is not compatible. A surface parking lot results in an underutilized, potentially blighted appearance in an area that should appear densely and attractively developed.

D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.050.

The proposed project does not conform to all applicable design review criteria (see findings for Section 17.136.050.B above).

Section 17.148.050 (Minor Variance from Zoning Limitations and Additional Criteria):

1. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.

The CBD zoning regulations require new auto-fee parking activities to be enclosed in a three-story (minimum) structure or located below grade. Because the proposal is for

temporary auto-fee parking, it is unreasonable to expect structured parking. However, surface parking can contribute to blight, especially in the downtown area, and the CBD regulations are intended to limit blight. In summary, the proposed project could prolong a blighted condition, inconsistent with the intent of the zoning regulations and inconsistent with current Planning and Zoning Division practice of denying temporary permits, in part because there is no mechanism for ensuring their removal after a specified time period.

2. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.

The CBD zoning regulations require auto-fee parking to be enclosed in a three-story (minimum) structure or located below grade. Because the proposal is for temporary auto-fee parking, it is unreasonable to expect structured parking. However, surface parking can contribute to blight, especially in the downtown area, and the CBD regulations are intended to limit blight. In summary, the proposed project could prolong a blighted condition, inconsistent with the intent of the zoning regulations and inconsistent with current Planning and Zoning Division practice of denying temporary permits.

**1331 Harrison Street
City Council, July 20, 2010
Attachment B: (1) Findings for Approval and (2) Conditions of
Approval for 1331 Harrison Street**

(1) Findings for Approval for 1331 Harrison Street

The City Council finds that the 1331 Harrison temporary surface parking lot proposal meets the required findings for compliance with Oakland Planning Code Sections 16.136.050B (Regular Design Review Criteria for Non-Residential Facilities), 17.134.050 (Conditional Use Permit), and 17.148.050 (Variance Criteria), as set forth below. Required findings are shown in **bold type**; explanations as to why these findings can or cannot be made are in normal type. The project's conformance with the following findings is not limited to the discussion below, but is also included in all discussions in this report and elsewhere in the record.

Planning Code Section 17.136.050B (Regular Design Review Criteria for Non-Residential Facilities and Signs):

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

The proposed surface parking lot design includes art panels along Harrison Street that would soften the appearance of the surface parking and would provide an aesthetically appealing street frontage on a temporary basis for the duration of the project.

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

The proposed surface parking lot design includes art panels along Harrison Street that would soften the appearance of the surface parking and would provide an aesthetically appealing street frontage on a temporary basis for the duration of the project.

3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

The project includes auto-fee parking, a conditionally permitted use in the Planning Code and consistent with the Oakland General Plan. In addition, the proposal includes features intended to provide an aesthetically pleasing frontage along the public Right-of-Way, consistent with the objectives of the design review criteria.

Planning Code Section 17.134.050 (Conditional Use Permit)

A CUP is required for auto-fee parking located in the CBD zoning districts.

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;

The proposed surface auto-fee parking use is temporary and would not hinder future and long-term development compatible with the existing and desired neighborhood character.

B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant;

The proposed surface auto-fee parking use is temporary and would not hinder future and long-term development of convenient, functional and attractive development. In addition, the temporary parking use enhances convenient access to nearby shopping and work opportunities and includes attractive features (art panels along Harrison Street).

C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region;

The proposed surface auto-fee parking use is temporary and would not hinder future and long-term development that would enhance the surrounding area and provide community functions and essential services. In addition, the temporary parking use is a community function and essential service.

D. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.136.050;

Consistent with the findings of Section 17.136.050, the proposed surface auto-fee parking complies with the applicable design review criteria (see above).

i. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or development control map which has been adopted by the Planning

Commission or City Council. (Ord. 12376 § 3 (part), 2001: prior planning code § 9204)

The proposed surface auto-fee parking use is temporary and would not hinder future and long-term development consistent with the Oakland General Plan. In addition, the temporary parking use will serve essential services.

Section 17.148.050 (Minor Variance from Zoning Limitations and Additional Criteria):

A. With the exception of variances for adult entertainment activities or sign facilities, a variance may be granted only upon determination that all of the following conditions are present:

1. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.

The proposed surface auto-fee parking use is temporary. It is unrealistic to expect a temporary use to be enclosed in a three-story structure or to be located below grade. The surface parking design solution allows the site to be both useful to the community and retain value during difficult economic times. In addition, permanent improvements to the site would preclude development of the currently entitled project, a higher and better use of the site. Elements have been incorporated into the proposed plan to improve the appearance of the surface parking lot, including landscaping and ground-level artwork.

2. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation;

The proposed surface auto-fee parking use is temporary. It is unrealistic to expect a temporary use to be enclosed in a three-story structure or to be located below grade. The surface parking design solution allows temporary occupation of the currently vacant site by a permitted use, auto-fee parking. Elements have been incorporated into the proposed plan to improve the appearance of the surface parking lot.

3. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy;

The proposed surface auto-fee parking use is temporary. The surface parking design solution allows temporary occupation of the site by a conditionally permitted use, auto-fee parking. Elements have been incorporated into the proposed plan to improve the appearance of the surface parking lot, including landscape components and ground-level artwork. The design elements provide an aesthetically pleasing view appearance.

4. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations;

The proposed project, a temporary surface auto-fee parking lot, is fairly unique in Oakland. Because the proposed use would be temporary, the grant of any privilege is short-term and should not affect long-term satisfaction of the objectives of the Planning Code and zoning regulations for this site. The City of Oakland has allowed projects in the past to deviate from design standards where impracticable and when they are able to present a reasonable alternative. Permanent improvements are impracticable for this site currently entitled with a higher and better use.

5. That the elements of the proposal requiring the variance (e.g., elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050.

The proposed project conforms to the design review criteria, as demonstrated above. The project includes art panels facing Harrison Street that would both reduce any appearance of blight related to the surface parking, and would provide an aesthetically appealing street frontage.

(2) Conditions of Approval for 1331 Harrison Street (case file CV09197)

Approved Use

Ongoing

a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, **staff reports dated June 2 and June 16, 2010, respectively**, and the plans dated **June 2, 2010** and submitted on **June 2, 2010**, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

II.b) This action by the **City Planning Commission** ("this Approval") includes the approvals set forth below. This Approval includes: **Minor Conditional Use Permit and Minor Variance for 1331 Harrison, under Municipal Code Sections 17.134.050 and 17.148.050, respectively.**

1. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

Unless a different termination date is prescribed, this Approval shall expire **two years** from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

2. Scope of This Approval; Major and Minor Changes

Ongoing

The project is approved pursuant to the **Planning Code** only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

3. Conformance with other Requirements

Prior to issuance of a demolition, grading, P-job, or other construction related permit

b) The project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's

Fire Marshal, and the City's Public Works Agency. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition of Approval 3.

- c) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

4. Conformance to Approved Plans; Modification of Conditions or Revocation

Ongoing

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c) Violation of any term, **Conditions of Approval**, or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these **Conditions of Approval** if it is found that there is violation of any of the **Conditions of Approval** or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

5. Signed Copy of the Conditions of Approval

With submittal of a demolition, grading, and building permit

A copy of the approval letter and **Conditions of Approval** shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

6. Indemnification

Ongoing

- a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b) Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

7. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

8. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions, and if one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

9. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

10. **Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management**

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call third-party special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review or construction. The project applicant may also be required to cover the full costs of independent technical review and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees, including inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

11. **Compliance with Temporary Permit Timeframe**

Within 45 days of project approval, and final agreement approved by City and applicant required prior to commencement of any operation of approved land use

The project applicant shall provide the following to the City of Oakland: for its review and approval:

- a. Plans indicating the design and accommodation of a sign to be posted on the front property line throughout the life of the permit, with a minimum size of 3 feet wide by 3 feet tall, indicating the permit case file number and termination date of the permit.
- b. Revisions to plans dated June 2, 2010, to indicate the specific art feature(s) to be provided on the art panels facing Harrison Street.
- c. Plans for restoration of the affected site to its original condition and a cost estimate for such prepared by a qualified professional.
- d. An agreement, on a form prescribed by the City of Oakland and signed by the land owner and all project operators and to be binding upon all heirs successors and assigns of the foregoing as well as recorded against the property:
 1. Acknowledging the temporary nature of the permit for a four-year duration from the effective date of this permit;
 2. Agreeing to only improve the site with temporary furnishings and to limit investment into the property in accordance with the approved plans;
 3. Agreeing to immediate and unconditional removal of the approved land use and related improvements upon permit expiration;
 4. Agreeing that the permit, and the right to continue the uses authorized by the permit shall be extinguished immediately and automatically upon expiration of the permit and shall not be subject to any requirement for further notice, public hearing or appeal;
 5. Agreeing that the applicant, the property owner and any project operator(s) (including any heirs, successors or assigns) waives any right to such notice or hearing;

6. Agreeing that any violation of the terms and conditions of this permit shall be subject to assessment and penalties, as specified in OMC Chapter 1.12;
 7. Acknowledging that no permit extensions shall be allowed and, under no circumstances, shall the approved use continue beyond the termination date of this permit; and
 8. Agreeing not to contest any code enforcement actions taken if the land use is not immediately discontinued and/or related improvements are not immediately removed in accordance with the approved plan, or there is any other violation of terms and conditions relating to the limited duration of this permit.
- e. Provision of a bond or other financial security in a for and amount, acceptable to the City of Oakland, to ensure removal of the permitted use and improvements upon permit termination, which security shall be a minimum of \$40,000, but which may be increased as determined necessary by the City (e.g., to reflect engineer's estimates for removal or other increased costs) .

**1331 Harrison Street
City Council, July 20, 2010
Attachment C: Planning Commission Report dated June 16, 2010
(inclusive)**

Case File No. CV09197

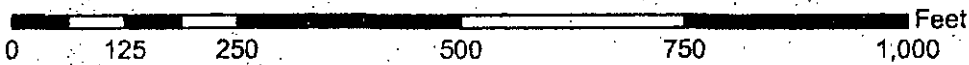
June 16, 2010

Location:	1331 Harrison Street;
Assessors Parcel Number:	APN 002 -0065-006-001
Proposal:	Temporary surface auto-fee parking (four years), with up to 49 parking spaces
Applicant:	Terra Linda Development Services, LLC
Owners:	Peter Iwate, Kansai Development, Inc.
Planning Permits Required:	Minor Conditional Use Permit for Auto-Fee Parking with fewer than 50 parking spaces; Minor Variance for a surface parking lot where the zoning provisions require auto-fee parking lots to be enclosed or in structured garages.
General Plan:	Central Business District
Zoning:	CBD-P, CBD-C
Environmental Determination:	Exempt, CEQA sections: 15304, Minor Alterations to land; 15311, Accessory Structures; 15332-Infill Development Projects; or alternatively, Section 15270, project which are disapproved.
Historic Status:	The property is not a PDHP, nor is it located within an Area of Primary or Secondary Importance. However, the project is directly across 14 th Street from the Coit Building Group Historic District; the district is an Area of Primary Importance and on the National Register of Historic Places. The rear property line abuts the Hotel Menlo Group District; this district is an Area of Secondary Importance. In addition, the project is directly across Harrison Street from the Hotel Oakland; this is a City Landmark with the Oakland Cultural Heritage Survey (OCHS). It is rated A3 and is a Designated Historical Property (DHP) of the highest importance. It is also listed on the National Register of Historical Places.
Service Delivery District:	Downtown Metro
City Council district:	2
Date Filed:	March 5, 2010
Staff Recommendation:	Decision based on staff report.
Finality of Decision:	Appealable to City Council within 10 days of final action on the project.
For further information:	Contact case planner Catherine Payne at (510) 238-6168 or cpayne@oaklandnet.com.

SUMMARY

Terra Linda Development Services, LLC., on behalf of Peter Iwate, has submitted an application for a minor variance to allow a surface auto-fee parking lot for up to 49 spaces at 1331 Harrison Street, in the Central Business District (CBD). The use is proposed on a temporary basis (four years) on a site that is currently entitled for highrise residential development. Surface parking lots are not permitted in the CBD and, as such, the use would be subject to a minor conditional use permit for an auto-fee parking lot with fewer than 50 spaces and a minor variance from zoning limitations and additional criteria. This report incorporates the staff report from June 2, 2010 and includes new information and a new optional recommendation.

CITY OF OAKLAND PLANNING COMMISSION



Case File: CU09-197
Applicant: Terra Linda Development Services, LLC
Address: 1331 Harrison Street
Zone: CBD-P, CBD-C

PROJECT SITE AND SURROUNDING AREA

The 15,000 square foot or .34 acre site is located in downtown at the corner of 14th and Harrison Streets and is currently vacant. The site was most recently used as a surface parking lot for 60 spaces. The site was previously used as a gas station and a car wash until it was demolished in 1989. The historic Hotel Oakland (which is a senior housing facility) is directly across Harrison Street. Additional surrounding land uses include small retail businesses, offices, and residential facilities that vary in height from 2 to 23 stories. Several recently approved residential projects are in the area, including an affordable housing project at 14th and Madison Streets, Jackson Center II at 12th and Alice Streets, and Jackson Courtyard Condominiums at 14th and Jackson Streets. The project is located within a few blocks of the 12th Street BART station and is served by multiple AC Transit lines. The General Plan designation for the site is Central Business District (as described in more detail in this staff report), which anticipates a mix of high-density, urban, residential uses with business oriented development.

BACKGROUND

The 15,000 square foot site is located in downtown at the southwest corner of 14th and Harrison Streets. The site was previously used as a gas station and a car wash until the facilities were demolished in 1989. From 1989 until 2001, the site was occupied (without permits) by a surface parking lot. The site has since been vacant. In 2003, the property was entitled for a 19-story building with 14 levels of residential units located above 4 levels of parking and 1 level of ground floor commercial space. The entitlements are extended through December 31, 2011.

Planning Commission Discussion

The Planning Commission discussed the 1331 Harrison project at their regularly scheduled meeting on June 2, 2010. The Planning Commission opinions were divided, with some Commissioners expressing general support for, opposition to, and undecided views regarding the proposal. Comments regarding the proposed project included:

- The proposed use is an improvement over a vacant and/or blighted parcel;
- Consideration of this proposal should occur only after consideration of policy that would authorize temporary uses (TCUP proposal);
- The CBD zoning regulations are appropriate, and surface auto-fee parking should not be approved in this location; If the CBD zoning regulations are not accommodating, then the City should consider a Planning Code amendment prior to consideration of this proposal.

Temporary Conditional Use Permit Proposal

The application considered in this report is part of a growing interest in temporary activities in Oakland. This interest has triggered research into and development of a temporary use permit proposal already considered by the Zoning Update Committee of the Planning Commission (ZUC) and discussed later in this report (and ZUC reports attached to this report as Attachment C). This applicant, however, is interested in pursuing a temporary permit in advance of any decision by the Planning Commission and/or City Council regarding the larger regulatory framework (a proposal may not be in front of the City Council for several months). The City of Oakland does not currently restrict temporary permits; however, until regulations for temporary permits are adopted, there is no consistent method for considering and regulating temporary uses on the whole, and for ensuring their removal after a specified period of time.

PROJECT DESCRIPTION

The proposed project is a temporary surface auto-fee parking lot at 1331 Harrison Street in the CBD. The project includes up to 49 marked parking spaces and a pay station along 14th Street. The proposal is to accommodate the surface parking lot for up to four years on the expectation that the economy will improve enough to allow investment into the entitled residential highrise project that the City approved for development on the site in 2003 (the approved project is a nineteen-story multi-family residential product with valid permits through 2011). The site is currently paved and fenced, and has three curb cuts providing site ingress and egress (two curb cuts on 14th Street and one curb cut on Harrison Street). The proposed new features would include restriping (paint) and a pay station.

Revised Plans

The applicant submitted revised plans to the City of Oakland at the Planning Commission meeting on June 2, 2010. The revised plans indicate a new treatment for the property line along Harrison Street. The new treatment includes panels that can be treated with flat art (painted, for example) or to which flat art can be attached. Staff believes that this is an aesthetic improvement over the previous plans and is consistent with the recommendation staff provided to the Planning Commission to require an aesthetic treatment of the street facing edges should the Planning Commission consider approval of the project.

GENERAL PLAN ANALYSIS

Land Use and Transportation Element

The proposed project site is located within the Central Business District (CBD) land use designation of the Land Use and Transportation Element (LUTE). The intent of the CBD classification is "to encourage, support and enhance the downtown area as a high density mixed

use urban center of regional importance and a primary hub for business, communications, office, government, high technology, retail, entertainment, and transportation in Northern California." Although auto-fee parking is a necessary land use in a densely developed business district, the LUTE specifically discourages surface parking (see below). Specific policies that relate to the proposed project include the following (staff analysis of application to project is in indented, italicized text following each policy):

- **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.
 - *The project relies on existing curb cuts and ingress and egress points located on Harrison and 14th Streets.*
- **Policy D6.1: Developing Vacant Lots:** Construction on vacant land or to replace surface parking lots should be encouraged throughout downtown, where possible.
 - *The proposed project would be temporary and would not impede planned development of the site. The site is entitled for a high-rise residential condominium project; however, due to the poor economy, the applicant is not able to finance the planned project at this time. Although the proposed surface parking lot is antithetical to the goals of the LUTE, the use would be temporary and consistent with previous but unauthorized use of the site.*
- **Policy D9.1: Concentrating Commercial Development:** Concentrate region-serving or "destination" commercial development in the corridor around Broadway between 12th and 21st streets, in Chinatown, and along the Jack London Waterfront. Ground floor locations for commercial uses that encourage a pedestrian-friendly environment should be encouraged throughout the downtown.
 - *Extending use of the proposed project site as surface parking would not contribute to concentrating region-serving and destination commercial development in the Broadway corridor. However, the use would be temporary during an economic time when few other land use activities are actively supporting this goal.*

ZONING ANALYSIS

The proposed project is located in the CBD-P and CBD-C zoning districts. Auto fee parking is conditionally permitted in both districts and is required to be in a parking structure that is a minimum of three stories high or below grade. Accordingly, the proposed temporary *surface parking lot* requires both a minor conditional use permit (for auto-fee parking with fewer than 50 parking spaces) and a minor variance (from zoning limitations and additional criteria that require auto-fee parking to be enclosed or below grade).

ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) does not apply to denial of a project, pursuant to CEQA Guidelines Section 15270. Therefore, no environmental review is required should the Planning Commission deny the proposed 1331 Harrison surface auto-fee parking lot proposal.

However, based on the size and location of the project site, as well as the findings of a traffic report prepared for the currently entitled mixed-use residential project, staff has concluded that the auto-fee parking project also satisfies the infill exemption allowed under CEQA Section 15332. The infill exemption criteria follow with a brief summary of staff's analysis included in bold text:

- a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;
As demonstrated in the General Plan Analysis section of this report, the application is generally consistent with all applicable General Plan policies and the Central Business District designation. The Zoning Analysis and Required Findings sections demonstrate that, with approval of the Variance, the project would be consistent with the Planning Code.
- b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
The project occupies less than one-half acre (.34 acre). The site is located within a developed neighborhood in Oakland and is currently occupied by a vacant surface parking lot. The project is surrounded by commercial and urban residential land uses.
- c) The project site has no value as habitat for endangered, rare or threatened species;
The project site hosts no known endangered, rare, or threatened species and is currently occupied by a paved parking lot.
- d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality;
A traffic report was prepared for the currently entitled project (a high-density residential product with 125 parking spaces) and approved in 2003. The entitled project is anticipated to generate approximately 89 AM peak hour trips and 189 PM peak hour trips. Level of Service (LOS) was calculated for six intersections and the study concluded that "the project would change the calculated delay by only fractions of seconds and that none of the intersections would have its LOS degraded." The findings indicate that the additional trips associated with the development would not likely cause intersection impacts and the project would also fall below the level that the Bay Area Air Quality Management District (BAAQMD) considers the normal minimum traffic volume that should require a detailed air quality analysis. The proposed project is within the envelope of

parking studied in the earlier environmental review documents, and would likely generate fewer peak-hour trips (since there would be fewer parking spaces—49 spaces for the proposed project as compared to 125 spaces for the entitled project) and would not likely exceed the minimal impact projected for the entitled project. In addition, the proposed surface parking lot would serve on other, developed parcels.

e) The site can be adequately served by all required utilities and public services.

The project site is located in a highly urbanized area within Oakland. The site can be served by utility and public services.

KEY ISSUES AND IMPACTS

Revised Recommendation

Staff continues to recommend denial of the 1331 Harrison surface parking lot application. However, because the Planning Commission has discretion to make findings for approval, and Commissioners were divided in their opinions regarding the 1331 Harrison application at the June 2 meeting staff has included alternative findings for approval and conditions of approval, in addition to the findings for denial provided in the June 2, 2010 Planning Commission report. This allows the Planning Commission the option of either denying or approving the project at the June 16, 2010 meeting.

Site Previously Used as Surface Auto-Fee Parking

The proposed project is the renewed use of the 1331 Harrison site as a surface parking lot. The parking lot has existed on the site since 1989 (although it has not been operational since 2001 and was never subject to a required conditional use permit for the auto-fee parking use). The site is paved and has existing curb cuts to provide site access and egress.

The project would be temporary, involve minimal improvements and would provide tax revenue for the City of Oakland. At the same time, a surface parking lot contributes to a blighted and under-utilized appearance in the Central Business District.

- *Staff recommendation: If the Planning Commission wishes to consider approval of the proposed project, staff recommends requiring a landscape buffer along the perimeter of the site adjacent to Harrison and 14th Streets, and temporary lighting of the site during the evening hours. The buffer should include taller plants (such as attractive vines on the existing chain link fencing) to reduce the appearance of the surface parking use. In addition, plant containers should be of high quality materials and construction and should be attractive. This would reduce the appearance of blight and enhance safety.*

- *Staff recommendation: Staff recommends including strict conditions of approval ensuring a limited, four year timeframe for the use, and guaranteeing removal of the use upon termination of the permit.*

No Surface Auto-Fee Parking in CBD

The current Central Business District (CBD) zoning regulations allow auto-fee parking in the downtown subject to a conditional use permit; however, limitations and additional criteria require auto-fee parking to be enclosed in a structure of at least three stories or to be located below grade. In summary, *surface* auto-fee parking is not permitted. Although the conditional use permit and variance application is the appropriate tool for seeking an approval in this instance, the CBD regulations were adopted recently and were closely crafted and vetted by key decision makers and the community. The restriction on surface parking is a specific, contemporary objective of the current regulations.

The proposed project is inconsistent with the Planning Code, and approval of the project would contradict the regulations contained in the Planning Code. However, the use would be temporary and would not ultimately restrict development of a higher and better use for the site.

- *Staff recommendation: If the Planning Commission wishes to consider approval of the proposed project, staff recommends including strict conditions of approval ensuring a limited, four year timeframe for the use, and guaranteeing removal of the use upon termination of the permit.*

Temporary Uses

The Zoning Update Committee of the Planning Commission (ZUC) recently reviewed and discussed a proposed Planning Code Amendment that would allow temporary use permits in Oakland (see Attachment B). Currently, temporary permits are processed on a case-by-case basis and conditions of approval are included to control the timeframe. There is no consistent process to consider, approve and terminate temporary uses. In addition, the City Attorney's Office has advised staff that failure to diligently and timely enforce requirements to eliminate uses may result in the uses becoming permanent through a property owner's acquisition of vested rights. As a result, contrary to the Commission's, and even a current applicant's intention, such uses could run with the land to future owners. Although the ZUC has reviewed proposed temporary use regulations, there is currently no consensus regarding support for such regulations among the ZUC. The full Commission has not yet reviewed this proposal.

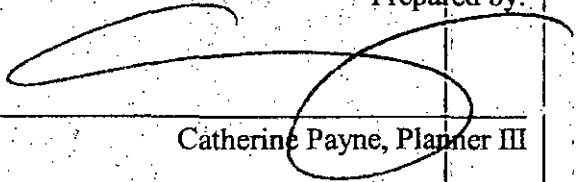
- *Staff recommendation: If the Planning Commission wishes to consider approval of the proposed project, staff recommends including strict conditions of approval ensuring a limited, four year timeframe for the use, and a method and means for guaranteeing removal of the use upon termination of the permit.*

RECOMMENDATION

Staff believes that the proposed project is neutral in terms of appropriate design and benefit for the community, as noted throughout this staff report. The Planning Commission has the option to approve or deny the application (and, as such, staff has provided findings for either approval or denial and conditions of approval for Planning Commission consideration). Staff recommends that the Planning Commission:


- 1) Hold a public hearing and receive public testimony regarding the proposed project;
- 2) Affirm staff's environmental determination that either:
 - i. Denial of the project is not subject to CEQA, pursuant to CEQA Guidelines Section 15270, Projects Which are Disapproved; or
 - ii. Approval of the project is subject to an exemption from CEQA, relying on sections: 15304, Minor Alterations to land; 15311, Accessory Structures, and 15332, Infill Development Projects.
- 3) Consider approval or denial of the Minor Conditional Use Permit and the Minor Variance, as per one (1) of the attached two (2) sets of Findings. The Commission shall adopt either Attachment B (for Denial) OR Attachment C (for Approval). If Findings for Approval are made, the Conditions of Approval (Attachment D) should also be adopted.

Prepared by:



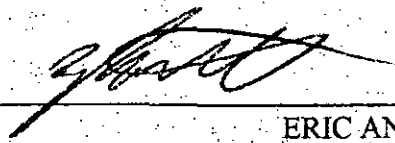
Catherine Payne, Planner III

Respectfully submitted:



SCOTT MILLER
Zoning Manager, Planning and Zoning Division

Approved for Forwarding to the
Planning Commission:



ERIC ANGSTADT
Deputy Director, Community and Economic Development Agency

Attachments:

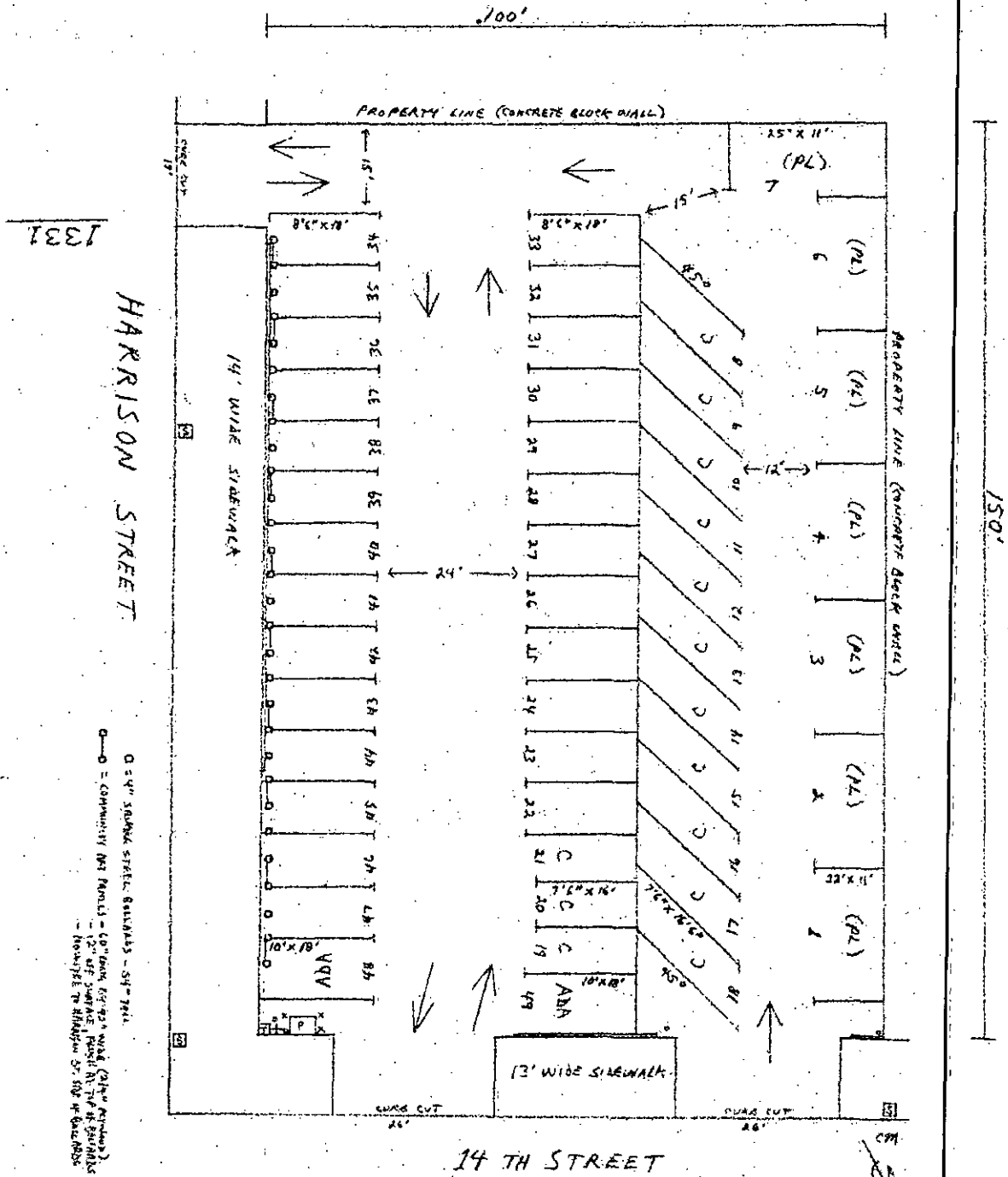
- A. Revised Project Plans (submitted on June 2, 2010)
- B. Findings for Denial
- C. Findings for Approval
- D. Conditions of Approval

Case File No. CV09197

ATTACHMENT A: PROJECT PLANS

ATTACHMENT A

ALL OF ALABAMA COUNTY ASSESSOR'S PARCEL # 2-65-6-1 (150' X 100' = 15,000 SQ. FT.)
 - EXISTING SURFACE IS FLAT AND SMOOTH (25% CONCRETE / 75% ASPHALT)



1331





HARRISON STREET

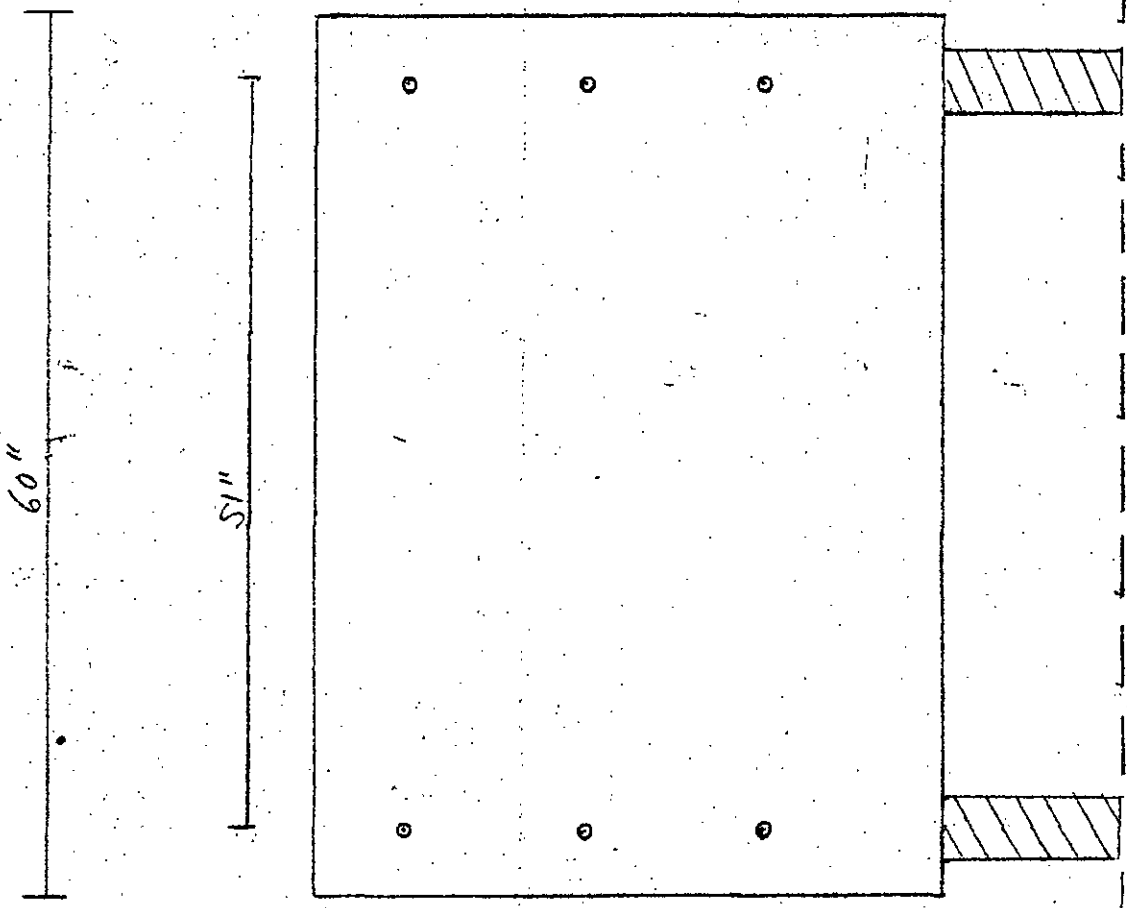
14 TH STREET

○ = 6" ROUND STEEL BALLARDS - 54" TALL
 ○ = COMMUNITY ART MONUMENTS - 60" TALL (54" TALL (OTHER ARTWORKS))
 - 12" OF SURFACE RADIUS AT TOP OF BALLARDS
 - HORIZONTAL TO ALIGNMENT OF TOP OF BALLARDS

- SCALE: 1/4" = 4'
- (PL) = PARALLEL PARKING SPACE (22' X 11' UNLESS SHOWN DIFFERENT) - PROPOSED
 - C = COMPACT PARKING SPACE (7 1/2' X 16' @ 90° / 7 1/2' X 16 1/2' @ 45°) - PROPOSED
 - ADA = 10' X 18' - PROPOSED
 - ALL OTHERS = 8 1/2' X 18' - PROPOSED
 - S = STREET LIGHT - EXISTING
 - T = PUBLIC PAY PHONE - EXISTING
 - P = PAY STATION - PROPOSED
 - = RAISED CURB (6" HIGH X 6" WIDE) - EXISTING
 - = ROUND STEEL BALLARD - EXISTING
 - X = SQUARE CONCRETE BALLARD - EXISTING
 - IMPROVEMENTS TO SURFACE = SLURRY SEALED, LINED & NUMBERED AS INDICATED - PROPOSED
- + = PROPOSED SIGN LOCATION
 ↻ = NORMAL DIRECTION OF TRAFFIC

6/2/10 Submitted for the record by the app
to the Planning Commission

-  = LOT SURFACE
-  = 4" SQUARE IRON BOLTS
-  = COUNTER SUNK BOLT HEAD
-  = 3/4" PLYWOOD
- SCALE = 1" = 1 FOOT



COMMUNITY ART PANELS - FRONT VIEW

20T SURFACE

4" SQUARE STEEL BOLTERS

LOCKING NUT

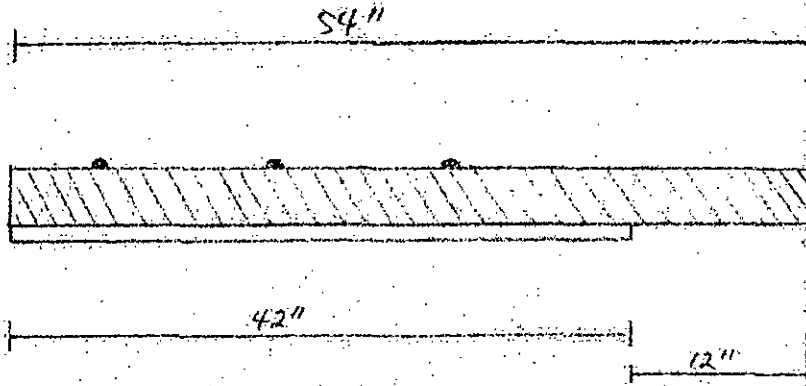
3/4" PLYWOOD

SPACE = 1" = 1 FOOT



PANEL

3/4" I



4"

COMMUNITY ART PANELS - PROFILE

Case File No. CV09197

ATTACHMENT B: FINDINGS FOR DENIAL

Staff believes the 1331 Harrison temporary surface parking lot proposal does not meet the required findings for compliance with Oakland Planning Code Sections 16.136.050B (Regular Design Review Criteria for Non-Residential Facilities), 17.134.050 (Conditional Use Permit), and 17.148.050 (Variance Criteria), as set forth below. Required findings are shown in **bold type**; explanations as to why these findings can or cannot be made are in normal type. The project's conformance with the following findings is not limited to the discussion below, but is also included in all discussions in this report and elsewhere in the record.

Planning Code Section 17.136.050B (Regular Design Review Criteria for Non-Residential Facilities and Signs):

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

The proposed surface parking would potentially prolong the blighted appearance of the property. Although staff recommends the inclusion of design features to reduce blight and improve the aesthetic quality of the site, this corner site would continue to be vacant a building—an important massing tool for ensuring the presence and arrangement of buildings designed to promote and enhance the downtown area.

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

The proposed surface parking would potentially prolong the blighted appearance of the property. Surface parking, with no architectural mass, would not complement the surrounding buildings and investment in the downtown.

3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

As demonstrated in the administrative record, this project does not conform to the General Plan, Planning Code and design objectives for the CBD zoning district. Although auto-fee parking is permitted, surface parking is not allowed in the CBD.

Case File No. CV09197

Planning Code Section 17.134.050 (Conditional Use Permit)

A CUP is required for auto-fee parking located in the CBD zoning districts.

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

Although the operating characteristics of the proposed auto-fee parking lot are compatible with the intensive development of the Central Business District, the design is not compatible. A surface parking lot results in an underutilized, potentially blighted appearance in an area that should appear densely and attractively developed.

B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

Although the proposed auto-fee parking lot is convenient and functional in the context of the intensive development of the Central Business District, the appearance of the use is not compatible. A surface parking lot results in an underutilized, potentially blighted appearance in an area that should appear densely and attractively developed.

D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.050.

The proposed project does not conform to all applicable design review criteria (see findings for Section 17.136.050.B above).

Section 17.148.050 (Minor Variance from Zoning Limitations and Additional Criteria):

1. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.

Case File No. CV09197

The CBD zoning regulations require new auto-fee parking activities to be enclosed in a three-story (minimum) structure or located below grade. Because the proposal is for temporary auto-fee parking, it is unreasonable to expect structured parking. However, surface parking can contribute to blight, especially in the downtown area, and the CBD regulations are intended to limit blight. In summary, the proposed project could prolong a blighted condition, inconsistent with the intent of the zoning regulations and inconsistent with current Planning and Zoning Division practice of denying temporary permits, in part because there is no mechanism for ensuring their removal after a specified time period.

2. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.

The CBD zoning regulations require auto-fee parking to be enclosed in a three-story (minimum) structure or located below grade. Because the proposal is for temporary auto-fee parking, it is unreasonable to expect structured parking. However, surface parking can contribute to blight, especially in the downtown area, and the CBD regulations are intended to limit blight. In summary, the proposed project could prolong a blighted condition, inconsistent with the intent of the zoning regulations and inconsistent with current Planning and Zoning Division practice of denying temporary permits.

Case File No. CV09197

**ATTACHMENT C:
ALTERNATIVE: OPTIONAL FINDINGS FOR APPROVAL**

The Planning Commission finds that the 1331 Harrison temporary surface parking lot proposal meets the required findings for compliance with Oakland Planning Code Sections 16.136.050B (Regular Design Review Criteria for Non-Residential Facilities), 17.134.050 (Conditional Use Permit), and 17.148.050 (Variance Criteria), as set forth below. Required findings are shown in **bold type**; explanations as to why these findings can or cannot be made are in normal type. The project's conformance with the following findings is not limited to the discussion below; but is also included in all discussions in this report and elsewhere in the record.

Planning Code Section 17.136.050B (Regular Design Review Criteria for Non-Residential Facilities and Signs):

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

The proposed surface parking lot design includes art panels along Harrison Street that would soften the appearance of the surface parking and would provide an aesthetically appealing street frontage on a temporary basis for the duration of the project.

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

The proposed surface parking lot design includes art panels along Harrison Street that would soften the appearance of the surface parking and would provide an aesthetically appealing street frontage on a temporary basis for the duration of the project.

3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

The project includes auto-fee parking, a conditionally permitted use in the Planning Code and consistent with the Oakland General Plan. In addition, the proposal includes features intended to provide an aesthetically pleasing frontage along the public Right-of-Way, consistent with the objectives of the design review criteria.

ATTACHMENT C

Case File No. CV09197

Planning Code Section 17.134.050 (Conditional Use Permit)

A CUP is required for auto-fee parking located in the CBD zoning districts.

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;

The proposed surface auto-fee parking use is temporary and would not hinder future and long-term development compatible with the existing and desired neighborhood character.

B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant;

The proposed surface auto-fee parking use is temporary and would not hinder future and long-term development of convenient, functional and attractive development. In addition, the temporary parking use enhances convenient access to nearby shopping and work opportunities and includes attractive features (art panels along Harrison Street).

C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region;

The proposed surface auto-fee parking use is temporary and would not hinder future and long-term development that would enhance the surrounding area and provide community functions and essential services. In addition, the temporary parking use is a community function and essential service.

D. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.136.050;

Consistent with the findings of Section 17.136.050, the proposed surface auto-fee parking complies with the applicable design review criteria (see above).

i. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or

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development control map which has been adopted by the Planning Commission or City Council. (Ord. 12376 § 3 (part), 2001: prior planning code § 9204)

The proposed surface auto-fee parking use is temporary and would not hinder future and long-term development consistent with the Oakland General Plan. In addition, the temporary parking use will serve essential services.

Section 17.148.050 (Minor Variance from Zoning Limitations and Additional Criteria):

A. With the exception of variances for adult entertainment activities or sign facilities, a variance may be granted only upon determination that all of the following conditions are present:

1. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.

The proposed surface auto-fee parking use is temporary. It is unrealistic to expect a temporary use to be enclosed in a three-story structure or to be located below grade. The surface parking design solution allows the site to be both useful to the community and retain value during difficult economic times. Elements have been incorporated into the proposed plan to improve the appearance of the surface parking lot.

2. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation;

The proposed surface auto-fee parking use is temporary. It is unrealistic to expect a temporary use to be enclosed in a three-story structure or to be located below grade. The surface parking design solution allows temporary occupation of the site by a permitted use, auto-fee parking. Elements have been incorporated into the proposed plan to improve the appearance of the surface parking lot.

3. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy;

The proposed surface auto-fee parking use is temporary. The surface parking design solution allows temporary occupation of the site by a conditionally permitted use, auto-fee parking.

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Elements have been incorporated into the proposed plan to improve the appearance of the surface parking lot.

4. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations;

The proposed project, a temporary surface auto-fee parking lot, is fairly unique in Oakland. Because the proposed use would be temporary, the grant of any privilege is short-term and should not affect long-term satisfaction of the objectives of the Planning Code and zoning regulations for this site.

5. That the elements of the proposal requiring the variance (e.g., elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050.

The proposed project conforms to the design review criteria, as demonstrated above. The project includes art panels facing Harrison Street that would both reduce any appearance of blight related to the surface parking, and would provide an aesthetically appealing street frontage.

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**ATTACHMENT D:
CONDITIONS OF APPROVAL**

1331 Harrison Street (case file CV09197)

Approved Use

Ongoing

a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, **staff reports dated June 2 and June 16, 2010, respectively**, and the plans dated **June 2, 2010** and submitted on **June 2, 2010**, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

II.b) This action by the **City Planning Commission** ("this Approval") includes the approvals set forth below. This Approval includes: **Minor Conditional Use Permit and Minor Variance for 1331 Harrison, under Municipal Code Sections 17.134.050 and 17.148.050, respectively.**

1. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

Unless a different termination date is prescribed, this Approval shall expire **two years** from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

2. Scope of This Approval; Major and Minor Changes

Ongoing

The project is approved pursuant to the **Planning Code** only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

3. Conformance with other Requirements

Prior to issuance of a demolition, grading, P-job, or other construction related permit

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- b) The project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition of Approval 3.
- c) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

4. Conformance to Approved Plans; Modification of Conditions or Revocation

Ongoing

- a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.
- c) Violation of any term, **Conditions of Approval**, or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these **Conditions of Approval** if it is found that there is violation of any of the **Conditions of Approval** or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

5. Signed Copy of the Conditions of Approval

With submittal of a demolition, grading, and building permit

A copy of the approval letter and **Conditions of Approval** shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

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6. Indemnification

Ongoing

- a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.
- b) Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

7. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

8. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions, and if one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

9. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

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10. Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call third-party special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review or construction. The project applicant may also be required to cover the full costs of independent technical review and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees, including inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

11. Compliance with Temporary Permit Timeframe

Within 45 days of project approval, and final agreement approved by City and applicanty required prior to commencement of any operation of approved land use

The project applicant shall provide the following to the City of Oakland: for its review and approval:

- a. Plans indicating the design and accommodation of a sign to be posted on the front property line throughout the life of the permit, with a minimum size of 3 feet wide by 3 feet tall, indicating the permit case file number and termination date of the permit.
- b. Revisions to plans dated June 2, 2010, to indicate the specific art feature(s) to be provided on the art panels facing Harrison Street.
- c. Plans for restoration of the affected site to its original condition, and a cost estimate for such prepared by a qualified professional.
- d. An agreement, on a form prescribed by the City of Oakland and signed by the land owner and all project operators and to be binding upon all heirs successors and assigns of the foregoing as well as recorded against the property;
 1. Acknowledging the temporary nature of the permit for a four-year duration from the effective date of this permit;
 2. Agreeing to only improve the site with temporary furnishings and to limit investment into the property in accordance with the approved plans;
 3. Agreeing to immediate and unconditional removal of the approved land use and related improvements upon permit expiration;
 4. Agreeing that the permit, and the right to continue the uses authorized by the permit shall be extinguished immediately and automatically upon expiration of the permit and shall not be subject to any requirement for further notice, public hearing or appeal;

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5. Agreeing that the applicant, the property owner and any project operator(s) (including any heirs, successors or assigns) waives any right to such notice or hearing;
 6. Agreeing that any violation of the terms and conditions of this permit shall be subject to assessment and penalties, as specified in OMC Chapter 1.12;
 7. Acknowledging that no permit extensions shall be allowed and, under no circumstances, shall the approved use continue beyond the termination date of this permit; and
 8. Agreeing not to contest any code enforcement actions taken if the land use is not immediately discontinued and/or related improvements are not immediately removed in accordance with the approved plan, or there is any other violation of terms and conditions relating to the limited duration of this permit.
- e. Provision of a bond or other financial security in a for and amount, acceptable to the City of Oakland, to ensure removal of the permitted use and improvements upon permit termination, which security shall be a minimum of \$40,000, but which may be increased as determined necessary by the City (e.g., to reflect engineer's estimates for removal or other increased costs).

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

Approved as to Form and Legality



City Attorney

2010 JUL -8 PM 2: 57 **RESOLUTION No. _____ C.M.S.**

Introduced by Councilmember _____

CONDUCT A PUBLIC HEARING AND UPON CONCLUSION ADOPT A RESOLUTION APPROVING A CONDITIONAL USE PERMIT AND VARIANCE FOR A TEMPORARY SURFACE PARKING LOT AT 1331 HARRISON STREET.

WHEREAS, Terra Linda Development Services, LLC., on behalf of Peter Iwate, has submitted an application for a minor variance and minor conditional use permit to allow a temporary surface auto-fee parking lot for up to 49 spaces at 1331 Harrison Street, in the Central Business District ; and

WHEREAS, the surface auto-fee parking use is proposed on a temporary basis (four years) on a site that is currently entitled for highrise residential development; and

WHEREAS, surface parking lots are not permitted in the Central Business District and, as such, the use would be subject to a minor conditional use permit for an auto-fee parking lot with fewer than 50 parking spaces and a minor variance from zoning limitations and additional criteria; and

WHEREAS, at the duly noticed June 16, 2010 Planning Commission meeting, the Planning Commission, after independently reviewing and considering the environmental findings and the proposed project, was unable to make a decision regarding the proposed project and forwarded the matter to the City Council for consideration; and

WHEREAS, all interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, approval of the project is exempt from the California Environmental Quality Act, under, without limitation, the following sections of the CEQA Guidelines: 15304, Minor Alterations to land; 15311, Accessory Structures, and 15332, Infill Development Projects; 15183, Projects Consistent with General Plan and Zoning, and

WHEREAS, the City Council independently reviewed and considered the findings for approval of the Minor Conditional Use Permit and Minor Variance; now, therefore be it

RESOLVED: that the City Council finds and determines that this Resolution complies with the California Environmental Quality Act; and be it

FURTHER RESOLVED: that the City Council, having heard, considered and weighed all of the evidence in the record presented on behalf of all parties and being fully informed of the Applications and the Planning Commission's consideration of the project, hereby adopts as its findings and determinations (a) the findings and conditions of approval (each of which is hereby

separately and independently adopted by this Council in full); and hereby approves the Minor Conditional Use Permit and Minor Variance; and be it

FURTHER RESOLVED: That the record before this Council relating to the Project Applications includes, without limitation, the following: 1) the Project Applications, including all accompanying maps and papers; 2) all plans submitted by the Applicant and their representatives; 3) all staff reports and other documentation and information produced by or on behalf of the city, including without limitations all related and/or supporting materials, and all notices relating to the Project Applications and attendant hearings; 4) all oral and written evidence received by the City staff, the Planning Commission, and the City Council before and during the public hearings on the Project Applications; and 5) all matters of common knowledge an all official enactments and acts of the City, such as (a) the General Plan; (b) Oakland Municipal Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively; (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2010

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

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL

Hlee

City Attorney

2010 JUL -8 PM 2:57 **RESOLUTION NO. _____ C.M.S.**

Introduced by Councilmember _____

CONDUCT A PUBLIC HEARING AND UPON CONCLUSION ADOPT A RESOLUTION DENYING A CONDITIONAL USE PERMIT AND VARIANCE FOR A TEMPORARY SURFACE PARKING LOT AT 1331 HARRISON STREET.

WHEREAS, Terra Linda Development Services, LLC., on behalf of Peter Iwate, has submitted an application for a minor variance and minor conditional use permit to allow a temporary surface auto-fee parking lot for up to 49 spaces at 1331 Harrison Street, in the Central Business District ; and

WHEREAS, the surface auto-fee parking use is proposed on a temporary basis (four years) on a site that is currently entitled for highrise residential development; and

WHEREAS, surface parking lots are not permitted in the Central Business District and as such, the use would be subject to a minor conditional use permit for an auto-fee parking lot with fewer than 50 parking spaces and a minor variance from zoning limitations and additional criteria; and

WHEREAS, at the duly noticed June 16, 2010 Planning Commission meeting, the Planning Commission, after independently reviewing and considering the environmental findings and the proposed project, was unable to make a decision regarding the proposed project and forwarded the matter to the City Council for consideration; and

WHEREAS, all interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, Denial of the project is not subject to CEQA, pursuant to CEQA Guidelines Section 15270, Projects Which are Disapproved; and

WHEREAS, the City Council independently reviewed and considered the findings for denial of the Minor Conditional Use Permit and Minor Variance; now, therefore be it

RESOLVED: that the City Council finds and determines that this Resolution complies with the California Environmental Quality Act; and be it

FURTHER RESOLVED: that the City Council, having heard, considered and weighed all of the evidence in the record presented on behalf of all parties and being fully informed of the Applications and the Planning Commission's consideration of the project, hereby adopts as its findings and determinations (a) the findings for denial (which is hereby adopted by this Council in full; and hereby denies the Minor Conditional Use Permit and Minor Variance; and be it

FURTHER RESOLVED: That the record before this Council relating to the Project Applications includes, without limitation, the following: 1) the Project Applications, including all accompanying maps and papers; 2) all plans submitted by the Applicant and their representatives; 3) all staff reports and other documentation and information produced by or on behalf of the city, including without limitations all related and/or supporting materials, and all notices relating to the Project Applications and attendant hearings; 4) all oral and written evidence received by the City staff, the Planning Commission, and the City Council before and during the public hearings on the Project Applications; and 5) all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) Oakland Municipal Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively; (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2010

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