

*Sam P. Mulvey*  
City Attorney

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

2018 JUN 14 PM 5:29

**OAKLAND CITY COUNCIL**

13501

ORDINANCE No. \_\_\_\_\_ C.M.S.

**ADOPT AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, AMENDING THE OAKLAND PLANNING CODE REGULATING TRANSIENT HABITATION COMMERCIAL ACTIVITIES (HOTELS) TO: 1) REQUIRE A MAJOR CONDITIONAL USE PERMIT FOR TRANSIENT HABITATION COMMERCIAL ACTIVITIES, 2) CHANGE THE CENTRAL BUSINESS DISTRICT - COMMERCIAL ZONE (CBD-C) AND WOOD STREET DISTRICT ZONE - 8 (D-WS-8) TO REQUIRE A CONDITIONAL USE PERMIT FOR TRANSIENT HABITATION COMMERCIAL ACTIVITIES; AND 3) REQUIRE THE ADDITIONAL FINDINGS IN PLANNING CODE SECTION 17.103.050 FOR SEVERAL ZONING DISTRICTS WHERE THIS WAS OMITTED FOR TRANSIENT HABITATION COMMERCIAL ACTIVITIES.**

**WHEREAS**, while hotels and other economic development activities have the potential to provide a large number of jobs with good wages and benefits, Oaklanders are facing widening income inequality; and

**WHEREAS**, on May 3, 2016, in response to an application for the construction of a hotel, the Oakland City Council passed Resolution 86163 C.M.S., which directed the Bureau of Planning to initiate actions amending the Planning Code to require that Transient Habitation Commercial Activities require a Major Conditional Use Permit (CUP), and draft additional Findings related to consideration of wages and benefits as well as compliance with labor laws, and the City's minimum wage and sick leave law; and

**WHEREAS**, the proposed Planning Code amendments will ensure that the regulations for Transient Habitation Commercial Activities are consistent and that the same Findings are applied across the City to these activities; and

**WHEREAS**, a public hearing before the Planning Commission, as opposed to a staff level decision, is the most appropriate forum for a discussion of the potential benefits and impacts of Transient Habitation Commercial Activities; and

**WHEREAS**, the City desires to further the public health, safety and/or welfare by temporarily changing the land use approval process for Transient Habitation Commercial Activities; and

**WHEREAS**, on May 16, 2018, the City Planning Commission conducted a public hearing to consider the proposed changes as follows: 1) Amending the definition of a Major CUP in Planning Code Section 17.134.020(A)(2)(a) to include Transient Habitation Commercial Activities, 2) Amend Table 17.58.01 in Planning Code Section 17.58.040 for Central Business District – Commercial Zone (CBD-C) from a permitted activity to a conditionally permitted activity for Transient Habitation Commercial Activities, 3). Amending Table 17.101A.01 in Planning Code Section 17.101A.020 for Wood Street District Zone – 8 (D-WS-8) from a permitted activity to a conditionally permitted activity for Transient Habitation Commercial Activities, and 4) Amend the Planning Code to require the additional Findings in Planning Code Section 17.103.050 for Transient Habitation Commercial Activities in the C-40 Community Thoroughfare Commercial Zone, C-45 Community Shopping Commercial Zone, and CIX-1A through CIX-1D Industrial Zones; and

**WHEREAS**, after a duly noticed public meeting on June 26, 2018, the Community and Economic Development Committee voted to recommend the proposal to the City Council; and

**WHEREAS**, the City Council held a duly noticed public hearing on July 3, 2018 to consider the proposal, and all interested parties were provided an ample opportunity to participate in said hearing and express their views; and

**WHEREAS**, the proposed amendments to the Planning Code rely on the previous set of applicable California Environmental Quality Act (CEQA) documents including: the Coliseum Area Specific Plan EIR (2015); Broadway Valdez Specific Plan EIR (2014); West Oakland Specific Plan EIR (2014); Central Estuary Area Plan EIR (2013); Wood Street EIR (2005), Transportation Element of the General Plan EIR (1998); the Oakland Estuary Policy Plan EIRs (1999, 2006) and Supplemental EIR (2013); The Redevelopment Area EIRs – West Oakland (2003), Central City East (2003), and Coliseum (1995); the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010) and Addendum (2014); and various Redevelopment Plan Final EIRs (collectively "Previous CEQA Documents"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, each as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment); and

**WHEREAS**, the Previous CEQA Documents provide analysis of the environmental impacts of the proposed amendments and support all levels of approval necessary to implement the Planning Code amendments; and

**WHEREAS**, the proposed amendments to the Planning Code would not result in any significant effect that has not already been analyzed in the Previous CEQA Documents, and there will be no significant environmental effects caused by the change that have not already been analyzed in the Previous CEQA Documents; and

**WHEREAS**, the City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163 are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the Previous CEQA Documents due to the involvement of new significant environmental effects or a

substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3); and

**WHEREAS**, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment); now, therefore,

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

**Section 1.** The City Council finds and determines the foregoing recitals to be true and correct and an integral part of the City Council's decision, and hereby adopts such recitals as findings.

**Section 2.** The City Council finds and determines the adoption of this Ordinance complies with CEQA, and relies on the Previous CEQA Documents. No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Further, the Council finds the adoption of this Ordinance is exempt, pursuant to CEQA Guidelines section 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment). Each of these provides a separate and independent basis for CEQA clearance and when viewed collectively provide an overall basis for CEQA clearance.

**Section 3.** The Environmental Review Officer shall file a Notice of Exemption/Notice of Determination, and an Environmental Declaration under the California Fish and Game Code (Section 711.4) with the County of Alameda.

**Section 4.** Titles 17 of the Oakland Municipal Code are hereby amended pursuant to *Exhibit A* attached hereto and incorporated by reference herein. Additions to Titles 17 of the Oakland Municipal Code are shown as underline and omissions are shown as ~~strikethrough~~.

**Section 5.** This Ordinance shall be effective 30 days from the date of final passage by the City Council, but shall not apply to (a) building/construction related permits already issued and not yet expired, (b) zoning applications approved by the City and not yet expired, or (c) zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code amendments if the applicant chooses to do so.

**Section 6.** Nothing in this Ordinance shall be interpreted or applied to create any requirement, power, or duty in conflict with any federal or state law.

**Section 7.** If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full effect.

**Section 8.** This Ordinance serves the public interest and is necessary to protect the health, safety and/or general welfare of the citizens of Oakland, and is enacted pursuant to the City of Oakland's general police powers, Section 106 of the Charter of the City of Oakland, and Article XI, Sections 5 and 7 of the California Constitution.

Section 9. The City Council hereby authorizes the City Administrator or designee to make non-substantive, technical conforming changes (essentially correction of typographical and clerical errors), prior to formal publication of the amendments in the Oakland Planning Code.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 24 2018

PASSED BY THE FOLLOWING VOTE:

AYES - *Braks, Campbell, Washington, Galls, McElkenny, Grillew*

NOES - *Kalb, Kaplan and President Reid - 3*

ABSENT - *0*

ABSTENTION - *0*

Introduction Date  
JUL 10 2018

ATTEST: *LaTonda Simmons*

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

DATE OF ATTESTATION: *July 27, 2018*

**Chapter 17.54 C-40 COMMUNITY THOROUGHFARE COMMERCIAL ZONE REGULATIONS**  
**Sections:**

**17.54.060 Conditionally permitted activities.**

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a Conditional Use Permit pursuant to the Conditional Use Permit procedure in Chapter 17.134:

A. Residential Activities:

Residential Care, except when occupying a One-Family Dwelling Residential Facility  
Emergency Shelter

B. Civic Activities:

Extensive Impact  
Utility and Vehicular (communications equipment installations and exchanges, only)  
Special Health Care Civic Activities

C. Commercial Activities:

Check Cashier and Check Cashing  
Fast-Food Restaurant  
Convenience Market  
Alcoholic Beverage Sales  
Mechanical or Electronic Games  
Group Assembly  
Personal Instruction and Improvement Services  
Transient Habitation (See Section 17.103.050)  
Animal Care  
Animal Boarding  
Undertaking Service

D. Industrial Activities:

Light

E. Agricultural and Extractive Activities:

Plant Nursery

Extensive Agriculture (see Section 17.54.090)

**Chapter 17.56 C-45 COMMUNITY SHOPPING COMMERCIAL ZONE REGULATIONS**

**Sections:**

**17.56.060 Conditionally permitted activities.**

The following activities, as described in the use classifications in Chapter 17.10, may be permitted upon the granting of a Conditional Use Permit pursuant to the Conditional Use Permit procedure in Chapter 17.134:

A. Residential Activities:

Residential Care, except when occupying a One-Family Dwelling Residential Facility

Emergency Shelter

B. Civic Activities:

Utility and Vehicular

Special Health Care Civic

Extensive Impact Civic

C. Commercial Activities:

Check Cashier and Check Cashing

Fast-Food Restaurant

Convenience Market

Alcoholic Beverage Sales

Mechanical or Electronic Games

Group Assembly

Personal Instruction and Improvement Services

General Wholesale Sales

Transient Habitation (See Section 17.103.050)

Automobile and Other Light Vehicle Sales and Rental

Automobile and Other Light Vehicle Gas Station and Servicing

Automotive and Other Light Vehicle Repair and Cleaning

Automotive Fee Parking

Animal Care

Animal Boarding

Undertaking Service

**Chapter 17.58 CBD CENTRAL BUSINESS DISTRICT ZONES REGULATIONS**

**Sections:**

17.58.040 Permitted and conditionally permitted activities.

**17.58.040 Permitted and conditionally permitted activities.**

**Table 17.58.01: Permitted and Conditionally Permitted Activities**

Activities	CBD-R	CBD-P	CBD-C	CBD-X	Additional Regulations
<b>Commercial Activities</b>					
Transient Habitation	C	C(L6)	CP	C	17.103.050

**Limitations:**

**L6.** These activities are only permitted upon the granting of a Conditional Use Permit (see Chapter 17.134 for the CUP procedure). In addition to the criteria contained in Section 17.134.050, when these activities are located within thirty (30) feet of the front of the ground floor of the principal building (with the exception of incidental pedestrian entrances that lead to one of these activities elsewhere in the building), the proposed activities must also meet the criteria contained in Note L5, above.

**Chapter 17.73 CIX, IG AND IO INDUSTRIAL ZONES REGULATIONS**

**Sections:**

17.73.020 Permitted and conditionally permitted activities and facilities.

**Table 17.73.020: Permitted and Conditionally Permitted Activities and Facilities**

Activity Types	Zones									Additional Regulations
	CIX-1A	CIX-1B	CIX-1C	CIX-1D	CIX-1	CIX-2	IG	IO	T	
<b>Commercial Activities</b>										

CITY OF OAKLAND

Activity Types	Zones									Additional Regulations
	CIX-1A	CIX-1B	CIX-1C	CIX-1D	CIX-1	CIX-2	IG	IO	T	
Transient Habitation	C	C	C	C	—	—	—	—		<u>17.103.050</u>

**Chapter 17.101A - D-WS WOOD STREET DISTRICT ZONES REGULATIONS**

**Sections:**

**17.101A.020 Permitted and conditionally permitted activities.**

**Table 17.101A.01: Permitted and Conditionally Permitted Activities**

Activities	Zones									Additional Regulations
	D-WS-1	D-WS-2	D-WS-3	D-WS-4	D-WS-5	D-WS-6	D-WS-7	D-WS-8	D-WS-9	
<b>Commercial Activities</b>										
Transient Habitation	—	—	—	—	—	—	—	CP	—	17.103.050



**Chapter 17.134 CONDITIONAL USE PERMIT PROCEDURE**

**Sections:**

17.134.020 Definition of major and minor conditional use permits.

**17.134.020 Definition of major and minor conditional use permits.**

A. **Major Conditional Use Permit.** A Conditional Use Permit (CUP) is considered a Major Conditional Use Permit if it involves any of the following:

2. **Uses.** Any project requiring a Conditional Use Permit that involves any of the following activity or facility types except where the proposal involves only accessory parking, the resumption of a discontinued nonconforming activity, or an addition to an existing activity which does not increase the existing floor area by more than twenty percent (20%):

a. Activities:

vii. Transient Habitation Commercial;

viii. Heavy/High Impact Industrial;

~~ix.~~ Small Scale Transfer and Storage Hazardous Waste Management;

ix. Industrial Transfer/Storage Hazardous Waste Management;

xi. Mining and Quarrying Extractive;

xii. Special Health Care Civic Activities.

3. **Special Situations.** Any project requiring a Conditional Use Permit that involves any of the following situations:

~~d. Transient Habitation Commercial Activities in the C-40 and C-45 Zones;~~

~~de. Monopole Telecommunications Facilities in, or within three hundred (300) feet of the boundary of, any Residential or HBX Zone;~~

~~ef. A project in the OS Zone listed as requiring a major conditional use permit in Chapter 17.11;~~

~~fg. An Electroplating Activity as defined in Section 17.09.040 subject to the provisions of Section 17.102.340;~~

~~gh. A Telecommunications Facility in or within one hundred (100) feet of the boundary of any Residential Zone, HBX Zone, or the D-CE-3 or D-CE-4 Zone;~~

~~hi. A Telecommunications Facility whose antennas and equipment are not fully concealed from view within three hundred (300) feet of the boundary of the RH, RD, RM, RU-1, or RU-2 Zones, HBX Zones, or the D-CE-3 or D-CE-4 Zone.~~

B. **Minor Conditional Use Permit.** A Minor Conditional Use Permit is a Conditional Use Permit which does not involve any of the purposes listed in Subsection A. of this Section.

## NOTICE & DIGEST

**AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, AMENDING THE OAKLAND PLANNING CODE REGULATING TRANSIENT HABITATION COMMERCIAL ACTIVITIES (HOTELS) TO: 1) REQUIRE A MAJOR CONDITIONAL USE PERMIT FOR TRANSIENT HABITATION COMMERCIAL ACTIVITIES, 2) CHANGE THE CENTRAL BUSINESS DISTRICT – COMMERCIAL ZONE (CBD-C) AND WOOD STREET DISTRICT ZONE – 8 (D-WS-8) TO REQUIRE A CONDITIONAL USE PERMIT FOR TRANSIENT HABITATION COMMERCIAL ACTIVITIES; AND 3) REQUIRE THE ADDITIONAL FINDINGS IN PLANNING CODE SECTION 17.103.050 FOR SEVERAL ZONING DISTRICTS WHERE THIS WAS OMITTED FOR TRANSIENT HABITATION COMMERCIAL ACTIVITIES.**

This Ordinance amends the Oakland Planning Code related to Transient Habitation Commercial Activities including the following:

1. *Amend the definition of a Major Conditional Use Permit in Planning Code Section 17.134.020(A)(2)(a) to include Transient Habitation Commercial Activities.*
2. *Amend Table 17.58.01 in Planning Code Section 17.58.040 for the Central Business District-Commercial Zone (CBD-C) from a permitted activity to a conditionally permitted activity for Transient Habitation Commercial Activities.*
3. *Amend Table 17.101A.01 in Planning Code Section 17.101A.020 for the Wood Street District Zone – 8 (D-WS-8) from a permitted activity to a conditionally permitted activity for Transient Habitation Commercial Activities.*
4. *Amend the Planning Code to require the additional Findings in Planning Code Section 17.103.050 for Transient Habitation Commercial Activities in the following Zones.*
  - *C-40 Community Thoroughfare Commercial Zone*
  - *C-45 Community Shopping Commercial Zone*
  - *CLX-1A through CLX-1D Industrial Zones*