



AGENDA REPORT

TO: Steven Falk
Interim City Administrator

FROM: William A. Gilchrist
Director, Planning and
Building

SUBJECT: Miscellaneous Planning Code
Amendments

DATE: April 27, 2020

City Administrator Approval

Date:

5-14-2020

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt An Ordinance, As Recommended By The Planning Commission, Amending Oakland Planning Code Regulations Related To: The Appeals Process; Expiration Of A Variance; Home Occupation Regulations; Group Assembly Commercial Activities In The D-BV Zone; Appeal Of Determinations Regarding General Plan Consistency; Front Setbacks On Small Lots In The RM Zones; Location Of Commercial Facilities Above Residential Facilities; Consideration Of Design Review And Conditional Use Permit Applications With Subdivisions; Sidewalk Width Required For Sidewalk Cafes; Use Of Barbed And Razor Wire At Construction Sites; Height And Distance Of Walls From Open Space Zones And The Right Of Way; Permit Requirements For A Change In Alcohol Licenses; Carshare Requirements In The Downtown Zones; Timeframe Required To Approve A Final Planned Unit Development Permit; Defining Small Project Design Review As A Discretionary Project Under The California Environmental Quality Act; And Parking Requirements For Group Assembly Commercial Activities; And Make Appropriate California Environmental Quality Act Determinations.

EXECUTIVE SUMMARY

On March 4, 2020, the Planning Commission recommended that the City Council adopt amendments to the Planning Code that relate to the following:

- 1) the appeals process;
- 2) accessory auto repair in the D-BV-4 Zone;
- 3) expiration of a Variance;
- 4) Home Occupation regulations;
- 5) Group Assembly Commercial Activities in the D-BV Zone;
- 6) appeal of determinations regarding General Plan consistency;
- 7) front setbacks on small lots in the RM Zones;
- 8) location of Commercial Facilities above Residential Facilities;

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- 9) consideration of Design Review and Conditional Use Permit (CUP) applications with subdivisions;
- 10) minimum sidewalk width required for sidewalk cafes;
- 11) use of barbed and razor wire at construction sites;
- 12) height and distance of walls from Open Space zones and the right-of-way;
- 13) permit requirements for a change in alcohol licenses;
- 14) carshare requirements in the Downtown zones;
- 15) timeframe required to approve a Final Planned Unit Development Permit;
- 16) defining Special Project Design Review as a discretionary project under the California Environmental Quality Act (CEQA); and
- 17) parking requirements for Group Assembly Commercial Activities.

With the exception of accessory auto repair in the D-BV-4 Zone, staff requests that the City Council consider and adopt the above changes. The code changes related to accessory auto repair in the D-BV-4 Zone will be considered as a separate item along with a CUP for auto repair at 401 27th Street.

BACKGROUND / LEGISLATIVE HISTORY

On March 4, 2020, the Planning Commission recommended that the City Council adopt the proposed amendments by a vote of 6-0 (one abstention). The Planning Commission staff report regarding this item is contained in **Attachment A**.

ANALYSIS AND POLICY ALTERNATIVES

The following is a summary of the proposed amendments grouped in characterization as Major Substantive Changes, Minor Substantive Changes, or Non-Substantive Changes. The actual amendments are contained in **Exhibit A** of the ordinance.

Major Substantive Changes

Activity Variance Expiration (New Section 17.148.120)

Background. For this report, an “activity Variance” is a Variance that permits an activity type that is otherwise prohibited in the underlying zone. An activity Variance is only permitted upon making required findings. These are considered Major Variances per Section 17.134.020 of the Planning Code and, therefore, require approval by the Planning Commission. Approval of an activity Variance is rare due to the difficulty in making the required findings. However, some have been approved in the past, including ones that allowed Industrial Activities in residential neighborhoods.

Existing Regulation. As currently written in the code, some have argued that approved activity Variances “run with the land”, meaning that owners of the land continue to enjoy alleged entitlement to the Variance in perpetuity regardless of whether the activity ceases for any period of time. For example, an Industrial Activity that received an activity Variance to operate in a residentially zoned neighborhood in 1965 and ceased operation in 1970 could arguably

reinstate the industrial activity in the present day even if intervening activities were less impactful.

Recommendation. Staff recommends that an Activity Variance follow the same extinguishment regulations as CUPs. CUPs extinguish if the activity has ceased for two or more years, with a possible one year extension to a total of three years.

Analysis. Staff supports this amendment because allowing property owners to depend on Activity Variances granted long ago that were not exercised and relied upon for at least two or more years denies the City an opportunity to review a proposed activity based on current policies and a present-day evaluation of impacts on neighborhoods.

Changes to home occupation regulations (Chapter 17.112)

Existing Regulations. There are currently two sets of Home Occupation regulations: one for the West Oakland Specific Plan (WOSP) Area and the D-CE-3 Zone; and one for the rest of Oakland. The main difference between the two versions is that the WOSP and D-CE-3 version allows home occupations in detached accessory structures, an employee at the home, and customers by appointment. The WOSP and D-CE-3 version also contains text stating that activities involving hazardous materials may require additional City permits while the version applying to the rest of the City does not.

Recommendation. Staff proposes replacing the existing Citywide home occupations in Chapter 17.112 with the home occupation regulations that apply to the WOSP and the D-CE-3 Zone. This includes allowing home occupations in detached accessory structures, an employee at the home, and customers by appointment throughout the City. It also includes placing the text regarding hazardous materials in the Citywide version and requiring that the character defining features of a building be maintained in all home occupations. Finally, staff proposes to change the definition of “Home Occupation” in Chapter 17.09.040 to include “Limited Agricultural Activities and/or bee keeping, in an outdoor area” to match the definition of Home Occupations in Chapter 17.112.

Analysis. These changes will bring Citywide consistency to the home occupation regulations. Allowing businesses to operate in accessory structures, customers by appointment, and one employee at home have not generated complaints in West Oakland or the Central Estuary area. These changes will provide flexibility to entrepreneurs working out of their home. Providing text regarding hazardous materials is an important notice to all Oakland residents with home occupations to get proper permitting. Providing a business description and materials to Building Services of the Planning & Building Department (PBD) and the Fire Department will provide a window for review, and allow the departments to provide guidelines to the business owner to ensure safety and compliance. Finally, requiring the preservation of character defining features provides important design criteria for homes containing occupations.

Minor Substantive Changes

Appeals of determinations of a project's conformance to the General Plan to Planning Commission (Section 17.01.120(C))

Existing Regulation. This subsection allows an applicant to request that the PBD Director determine whether a project is consistent with the Land Use and Transportation Element of the General Plan (LUTE) after a notice to the neighborhood. This determination can be appealed to the City Council.

Recommendation. Staff proposes to have this determination appealable to the Planning Commission instead of the City Council.

Analysis. Staff makes this recommendation because all other staff-level determinations are appealable to the Planning Commission, not the City Council. Staff does not see a compelling reason why this determination should have a different process.

Setbacks for smaller lots (Table 17.17.04)

Existing Regulation. Lots smaller than 4,000 square feet are allowed reduced minimum setbacks in the Mixed Housing Type Residential Zones. There is currently no listing in Table 17.17.04 for front setbacks.

Proposed Regulation. Allow lots smaller than or equal to 4,000 square feet to have reduced minimum setbacks. Add in front yard setback regulations that match a prior table.

Analysis. This is a correction to a prior code update. Several lots in Oakland are 4,000 square feet or less and require reduced setbacks to feasibly construct new residential units. Adding front setback requirements in Table 17.17.04 to match a previous table is convenient for the reader.

Additional activities that create credit for dwelling units in the D-BV-1 Zone (Table 17.101C.01)

Existing Regulation. In the Broadway Valdez District– 1 (D-BV-1) Zone, commercial floor area must be constructed to establish a certain number of residential units. With the exception of a movie theater, these activities must be on the ground floor.

Proposed Change. Allow second floor fitness clubs, yoga studios, martial arts studios, bowling alleys, theaters, and night clubs to also count toward the minimum retail area to earn additional residential units.

Analysis. These are valuable amenities for a neighborhood that may not necessarily create an appropriate ground floor retail continuity, and traditional retail does not work as well on an upper floor.

Restriction on locating Nonresidential Activities over Residential Activities in commercial zones (Section 17.102.180)

Existing Regulation. This section only allows Commercial Activities to be conducted above Residential Activities in a commercial zone upon the granting of a CUP. HBX, CIX, and D-CE Work/Live Facilities are exempted from this limitation.

Proposed Regulation. Allow Commercial Activities to be conducted above Residential Activities by right in commercial zones.

Analysis. These changes allow more flexibility in the location of businesses and will provide opportunities for business incubator spaces within mixed-use buildings.

Space allowed for Sidewalk Café Nonresidential Facilities (Section 17.103.090)

Existing Regulation. Sidewalk cafés are required to leave at a minimum of five and one-half feet of unobstructed sidewalk wherever they are providing outdoor seating.

Proposed Regulation. The new regulation would require sidewalk cafés to leave five and one-half feet or 50 percent of the overall sidewalk width, whichever is greater. The update also adds utility poles, tree wells, and sidewalk planter strips to the list of obstacles that constitute obstruction.

Analysis. This change will assure that sufficient space is available for pedestrians, especially those in wheelchairs, while also allowing outdoor seating.

Razor and barbed wire around construction sites (Chapter 17.108.140(B))

Existing Regulations. Currently, neither barbed nor razor wire are allowed to be used in fences in residential or commercial zones.

Proposed Regulation. This change will allow the use of barbed and razor wire in fences in residential and commercial zones to enclose sites for the duration of construction, provided that the Deputy Director/City Planner determines that trespassing could be present and represent a public safety hazard. It will also add electrical wire to the list of prohibited materials in all fences.

Analysis. Barbed wire and razor wire are dangerous and unsightly, hence their current prohibition. However, arson, trespassing, and theft are constant issues for construction sites. Keeping trespassers out of construction sites is a public safety issue, and theft of construction materials adds to the cost of building in Oakland.

Fences and walls in nonresidential zones near residential and open space zones and the right-of-way (Section 17.108.140(C))

Existing Regulations. If within ten feet of a residential zone, fences and walls in a commercial or industrial zone can be a maximum eight feet tall “by right” and ten feet tall upon the granting of Small Project Design Review approval.

Proposed Regulation. Extend this limit to a wall within ten feet of the public right-of-way or open space zone. The proposal also requires fences between eight and ten feet tall to contain landscape screening.

Analysis. This proposal will soften the appearance of tall fences and walls visible to the public, park visitors, and residents.

Change of ABC license in restaurants mapped in a restricted area (Section 17.114.070)

Existing Regulation. Existing regulations incorrectly indicate that a CUP is required for any change in a nonconforming activity involving the sale of alcoholic beverages at a full-service restaurant in a “restricted area” that requires a new type of alcoholic beverage license from the State of California Department of Alcoholic Beverage Control (ABC). Restaurants are also incorrectly indicated as requiring a CUP to sell alcohol in “restricted areas”.

Proposed Regulation. This proposed change removes this erroneous CUP requirement.

Analysis. Ordinance No. 13527 C.M.S., adopted by the City Council on April 2nd, 2019, removed “restricted areas” from the City. Therefore, this regulation is no longer relevant.

Change in parking requirement for Group Assembly Commercial Activities (Section 17.116.080)

Existing Regulation. Group Assembly Commercial Activities has the following parking requirement outside of Downtown:

One (1) space for every fifteen (15) seats in indoor places of assembly with fixed seats, plus one space for every one hundred (100) square feet of floor area in indoor places of assembly without fixed seats, plus a number of spaces to be prescribed by planning staff, pursuant to Section 17.116.040, for outdoor assembly.

Section 17.10.380 of the Planning Code describes Group Assembly Commercial Activities as:

The provision of instructional, amusement, and other services of a similar nature to group assemblages of people. This classification does not include any activity classified in Section 17.10.160 Community Assembly Civic Activities, Section 17.10.170 Recreational Assembly Civic Activities, or Section 17.10.180 Community Education Civic Activities. Examples of activities in this classification include, but are not limited to, the following:

- Yoga, martial arts, driving school, job training, and other instructional classes in facilities with three thousand (3,000) square feet or more of classroom or instructional space;
- Drive-in theaters;
- Theaters or venues with three thousand (3,000) square feet or more of performance, lobby space, and audience floor area;
- Temporary carnivals, fairs, and circuses;
- Cabarets, night clubs, dance halls, adult entertainment, and pool halls;
- Banquet halls; and
- Fitness clubs with three thousand (3,000) square feet or more of floor area.

Proposed Regulation. Outside of Downtown, reduce the parking space requirement to one space per 600 feet of floor area on the ground floor and 1,000 square feet of floor area above the ground floor area for all Group Assembly activities except theaters, cabarets, and nightclubs with performance and/or dance space.

Analysis. Requiring one space per 100 square feet of floor area for yoga studios, fitness clubs, martial arts studios and similar activities requires more parking than is feasible or needed for

these businesses. The new requirements would be equivalent to restaurants, retail stores, and most other businesses.

Downtown car share space requirement (Section 17.116.105)

Existing Regulation. New multifamily buildings of ten or more units in CBD and D-LM zones must provide car-share spaces.

Proposed Regulation. This update to the zoning code would require multifamily dwellings of five or more units in the CBD and D-LM zones to provide car-sharing spaces and transit passes.

Analysis. This change will result in the creation of more car-sharing spaces in Downtown Oakland. Minimal parking requirements and increased densification of development makes car-sharing an integral transportation option for downtown residents.

Conditional Use Permits related to Planned Unit Developments or subdivisions (Section 17.134.110)

Existing Regulation. CUP approval that is part of a Planned Unit Development (PUD) can be filed separately from the associated subdivision map.

Proposed Regulation. The proposal would require the CUP, PUD, and subdivision to be applied for simultaneously.

Analysis. These applications should be considered together so staff can fully evaluate the findings required to approve the CUP and subdivision. Bifurcating these processes runs the risk of approving a CUP for a project that may not meet the findings to approve the subdivision.

Subdivision and Design Review approval (Section 17.136.120)

Existing regulation. Projects that require both design review and subdivision approval to be constructed do not have to be considered together.

Proposed regulation. Require that projects that require both design review and subdivision approval be considered together.

Analysis. Occasionally, a subdivision evaluation requires changes in the design of a building. If the design and subdivision are evaluated during the same process, then these changes can be made during the design review process.

Timing of a final development plan after approval of a Planned Unit Development (Section 17.140.040)

Existing Regulation. Current planning code requires developers to submit a Final Development Plan (FDP) within one year of approval of a Preliminary Development Plan (PDP) as part of a PUD permit. A PDP shows the location and design of rights of way; use, location, and approximate dimensions of structures; and the location of parks and other public facilities. The

FDP shows the location of infrastructure; detailed architectural plans; detailed plans for street improvements; and grading or earth-moving plans.

Proposed Regulation. This proposal will allow developers two years to submit their FDP after their PUD has been approved.

Analysis. This change is consistent with timeframes in the Planning Code regarding the submission of building permit applications after Planning approval. Two years is also an appropriate timeframe to require FDP submission because they are complex submittals that require review from several different City departments.

Residential bonus in Planned Unit Developments (Section 17.142.100)

Existing Regulation. Through a PUD process, a project can incorporate certain activities that are not otherwise allowed in a zone. One currently allowed activity is Permanent Residential Activities.

Proposed Regulation. Do not allow Permanent Residential Activities as an allowed bonus through the PUD process.

Analysis. Allowing residential activities in areas that do not allow residential activities runs the risk of eroding the City's industrial zones and creating incompatible land uses in close proximity to each other.

Location to file an appeal (Sections 17.01.080B, 17.132.040, 17.134.070A/B, 17.136.090, 17.140.070, 17.144.070, 17.144.090, 17.148.070A/B, 17.152.070, 17.156.170, and 17.157.140)

Existing Regulations. These sections state that appeals need to be filed with the City Clerk using a form prescribed by the Planning Commission.

Proposed Regulation. The proposal will require that appeals be filed with the Bureau of Planning using a form prescribed by the PBD Director.

Analysis. This new text will accurately reflect current practice. The current code has created confusion among applicants that have attempted to file appeals with the City Clerk only to be referred to the Bureau of Planning.

Listing Special Project Design Review as a discretionary permit (Section 17.158.190)

Existing Regulations. Section 17.158.190 lists the Planning Code permits that are considered discretionary for the purposes of CEQA. This list is important because only discretionary projects can be considered under the California Environmental Quality Act (CEQA). The current list of discretionary permits includes the following:

1. CUPs;
2. Small project design review, as defined in Chapter 17.136 of the Oakland Planning Code;
3. Regular design review, as defined in Chapter 17.136 of the Oakland Planning Code;
4. Development agreements;

5. PUDs;
6. Rezoning; and
7. Variances.

Proposed Regulation. Staff recommends that Special Project Design Review, a process created in 2016 for the evaluation of some industrial developments, be added to this list. The Special Project Design Review process is similar to Small Project Design Review, which is also on the list. Special Project Design Review approvals are discretionary because they include subjective criteria and conditions of approval.

Non-Substantive Changes

Adding missing note to development standards table for the RM Zones (Table 17.17.03)

Existing Regulation. There is no reference to note seven in the row stating the required front yard setback in the RM Zones. This note allows reduced front yard setbacks for commercial buildings in the “C” combining zone.

Proposed Regulation. Place reference to note seven in the row corresponding to the front yard setback.

Analysis. This is a correction to a prior code update. The “C” overlay is applied to small commercial nodes within the Mixed Housing Type Residential LUTE designation. A reduced front yard setback is appropriate for commercial buildings.

Rewording of a limitation on commercial activities in the Central Business District – Residential Zone (Table 17.58.01)

Existing Regulation. Commercial activities are generally limited to the ground floor in the residential zone of the Central Business District. There are two exceptions to this limitation. Upon the granting of a CUP, an activity of 2,000 square feet or less in a Local Register historic property may be above the ground floor, and a principal activity can extend to the second floor if there is an internal connection between the spaces.

Proposed Regulation. No change to the regulation, only a rewording for clarity.

Analysis. Staff and the public have complained regarding the wording of this regulation. The corrections in the proposed ordinance provide clarity.

FISCAL IMPACT

Staff does not anticipate any direct fiscal impact from the proposal.

PUBLIC OUTREACH / INTEREST

The proposed amendments were presented at the Planning Commission on March 4, 2020 and there were no speakers on the item. The Oakland Heritage Alliance had one issue regarding the size of projects that require Planning Commission review in a D-BV Zone. That change was removed from the proposal due to concerns raised regarding appropriate public input into larger projects.

COORDINATION

Planning staff has coordinated with the City Attorney's Office and Budget Bureau regarding these proposed Planning Code amendments.

SUSTAINABLE OPPORTUNITIES

Economic: Code changes that make the project approval process more orderly increases the feasibility of development and improves the economy. Liberalizing the City's home occupation regulations will facilitate the creation of new small businesses. Finally, relaxing parking regulations for certain Group Assembly Commercial Activities will increase the feasibility of these types of businesses.

Environmental: More home occupations reduce commuting, which reduces greenhouse gases. Code changes that make the project approval process more orderly increases housing development in the inner Bay Area, which allows residents to live near their jobs. Requiring more carsharing opportunities in Downtown will reduce the need for car ownership and, therefore, greenhouse gas emissions.

Race & Equity: Allowing more home occupations will encourage the creation of new small businesses that cannot afford to pay commercial rent.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The proposed amendments to the Planning Code rely on the previously certified Final Environmental Impact Reports (EIRs) for the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan EIR (2013); Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan (1998); the West Oakland, Central City East, Coliseum, and Oakland Army Base Redevelopment Areas; the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, "EIRs"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. Moreover, 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).

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion Adopt An Ordinance, As Recommended By The Planning Commission, Amending Oakland Planning Code Regulations Related To The Appeals Process; Expiration Of A Variance; Home Occupation Regulations; Group Assembly Commercial Activities In The D-BV Zone; Appeal Of Determinations Regarding General Plan Consistency; Front Setbacks On Small Lots In The RM Zones; Location Of Commercial Facilities Above Residential Facilities; Consideration Of Design Review And Conditional Use Permit Applications With Subdivisions; Sidewalk Width Required For Sidewalk Cafes; Use Of Barbed And Razor Wire At Construction Sites; Height And Distance Of Walls From Open Space Zones And The Right Of Way; Permit Requirements For A Change In Alcohol Licenses; Carshare Requirements In The Downtown Zones; Timeframe Required To Approve A Final Planned Unit Development Permit; Defining Small Project Design Review As A Discretionary Project Under The California Environmental Quality Act; And Parking Requirements For Group Assembly Commercial Activities; And Make Appropriate California Environmental Quality Act Determinations.

For questions regarding this report, please contact Neil Gray, Planner IV, at (510) 238-3878 or ngray@oaklandca.gov.

Respectfully submitted,



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Attachments (1):

A. March 4, 2020 Planning Commission Staff Report