

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

  
CITY ATTORNEY'S OFFICE

# OAKLAND CITY COUNCIL

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

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**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.**

**WHEREAS**, in March of 1998, the City adopted the Land Use and Transportation Element (LUTE) of the Oakland General Plan; and

**WHEREAS**, one of the objectives of the LUTE is to create a 'user friendly' Planning Code document that minimizes the complexity of regulations; and

**WHEREAS**, City staff has identified, and the Planning Commission has recommended, several proposed amendments to Title 17 of the Oakland Municipal Code ("Planning Code Amendments") that should be made pursuant to the City's police power to encourage orderly development, fair and efficient administrative processing of projects and appeals, and compatibility of land uses in the City; and

**WHEREAS**, the reasoning for the proposed Planning Code amendments are set forth in the following recitals and Staff Report, incorporated herein, with said Planning Code amendments set forth in **Exhibit A** attached hereto; and,

**WHEREAS**, there is an inconsistency between the appeal submission process outlined in the Planning Code and the actual practice of submitting the appeal at the Planning Counter; and

**WHEREAS**, the granting of variances for activities that do not expire after disuse can have a lasting negative impact on neighborhoods; and

**WHEREAS**, citywide expansion of activities allowed as home occupations will provide greater flexibility for citizens to open small businesses in their homes; and

**WHEREAS**, Group Assembly Commercial activities can provide valuable amenities to a neighborhood with high density residential development; and

**WHEREAS**, appeals of determinations regarding General Plan conformity should be heard by the Planning Commission, like other appeals of administrative decisions; and

**WHEREAS**, some tables in the Planning Code regarding front setbacks are inconsistent; and

**WHEREAS**, allowing commercial activities above residential facilities provides more flexibility in the location of businesses and will provide opportunities for business incubator spaces within mixed-use buildings; and

**WHEREAS**, considering Design Review and Conditional Use Permit applications with subdivisions will provide for a more orderly project review process; and

**WHEREAS**, sidewalk caf  s activate the streetscape; and

**WHEREAS**, construction sites are vulnerable to theft, vandalism, and arson; and

**WHEREAS**, tall fences and walls can be unsightly and remove “eyes on the street”;  
and

**WHEREAS**, there are no longer restricted areas where restaurants require a conditional use permit to sell alcohol; and

**WHEREAS**, carshare services reduce the need for vehicle ownership in Downtown; and

**WHEREAS**, one year is not a sufficient timeframe to require the approval of a Final Planned Unit Development Permit after approval of a Preliminary Planned Unit Development Permit; and

**WHEREAS**, Small Project Design Review is a discretionary entitlement process because it requires findings and includes conditions of approval; and

**WHEREAS**, one parking space per 100 square feet of floor area is too stringent of a requirement for gyms, fitness clubs, and similar activities; and

**WHEREAS**, this Ordinance will serve the public necessity, convenience and welfare for the reasons set forth in the accompanying staff report, and incorporates such reasons herein by reference; and

**WHEREAS**, after a duly noticed meeting on March 4, 2020, the Planning Commission recommended that the City Council adopt the proposed amendments by a vote of 6-0 (one abstention); and

**WHEREAS**, the City Council held a duly noticed public hearing on May 19, 2020 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 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, "Previous CEQA Documents"). No further environmental review is required under CEQA Guidelines Sections 15162 and 15163; 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,

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council (“Council”) finds and determines the foregoing recitals to be true and correct and an integral part of the Council’s decision, and hereby adopts such recitals as findings.

**SECTION 2. Planning Code Amendments.** Title 17 of the Oakland Municipal Code is hereby amended pursuant to **Exhibit A** attached hereto, which is incorporated by reference herein. Additions to Titles 17 of the Oakland Municipal Code are shown as underline and omissions are shown as ~~strikethrough~~ (Planning Code Amendments”).

**SECTION 3. California Environmental Quality Act.** The 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 4. Direction to Environmental Review Officer to File NOD.** 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 5. Effective Date.** The code amendments contained in Section 17.148.120 of the Planning Code shall be effective immediately. The remainder of the this Ordinance shall be effective 30 days from the date of final passage by the Council, 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 or approved 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. No Conflict with State and Federal Law.** 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. Severability.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

**SECTION 8. Preservation of Public, Health, Safety and Welfare.** 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. City Administrator Authorization to Make Non-Substantive Changes.** The 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,

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND  
PRESIDENT KAPLAN

NOES –

ABSENT –

ABSTENTION –

ATTEST: \_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of the City of  
Oakland, California

Date of Attestation: \_\_\_\_\_