



CITY OF OAKLAND

# AGENDA REPORT

**TO:** Elizabeth Lake  
Acting City Administrator

**FROM:** William Gilchrist  
Director Planning and  
Building Department

**SUBJECT:** 2026 Miscellaneous Planning Code  
Amendments

**DATE:** May 15, 2026

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City Administrator Approval

  
Betsy Lake (May 28, 2026 11:27:17 PDT)

Date: May 28, 2026

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## RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And, Upon Conclusion, Adopt An Ordinance, As Recommended By The Planning Commission, Amending Title 17 Of The Oakland Municipal Code (Oakland Planning Code):

1. Updating The Accessory Dwelling Unit Regulations For Consistency With State Law And Providing Written Findings Pursuant To Government Code 66326(b);
2. Revising Discontinuance Standards For Nonconforming Activities;
3. Removing Applicability Of S-10 Scenic Route Combining Zone Discretionary Standards To Ministerial Design Review;
4. Permitting Recreational Assembly Activities In The Wood Street D-WS-9 Zone;
5. Revising Minimum Front Setback In D-CO-2 Zone;
6. Removing A Review Deadline From Development Agreement Procedure in Section 17.138.030;
7. Revising Utility Screening Standards in Section 17.124.045;
8. Incorporating Conforming And Clerical Revisions; And
9. Making Appropriate California Environmental Quality Act Findings.

## EXECUTIVE SUMMARY

The proposed Planning Code amendments (see *Exhibit A to the Ordinance*) would amend Title 17 of the Oakland Municipal Code (Planning Code) to correct errors and inconsistencies, provide clarifications, and incorporate targeted substantive updates to address outstanding issues and keep the Planning Code current.

In addition, the California Department of Housing and Community Development (State HCD) reviewed Oakland's Accessory Dwelling Unit (ADU) regulations under State ADU Law (Gov. Code, §§ 66310–66342), and directed the City to amend the Planning Code or adopt required findings. The proposed ordinance responds by amending Planning Code Section 17.103.080 and both incorporating previously adopted findings and making a new finding pursuant to Government Code Section 66326(b).

CED Committee  
June 9, 2026

## **BACKGROUND / LEGISLATIVE HISTORY**

The City of Oakland (City) adopted its Accessory Dwelling Unit (ADU) Ordinance [No. 13677 C.M.S.](#) on January 18, 2022. Following the adoption, the ADU regulations have been further revised by City Council as follows:

- On June 18, 2024, the City adopted Ordinance [No. 13800 C.M.S.](#), that updated the Planning Code to align with changes in State law that occurred since the adoption of the City's ADU Ordinance in 2022, and to address written comments from the California Department of Housing and Community Development (State HCD) regarding the City's compliance with state ADU regulations; and
- On July 1, 2025, the City adopted Ordinance [No. 13856 C.M.S.](#), that updated the Planning Code to align with changes in State law that became effective in January 2025.

On December 10, 2025, the City received from the State HCD a follow-up (second) review of Oakland's Accessory Dwelling Unit Ordinance and Written Findings Letter Pursuant to State ADU Law (Gov. Code, No. 66310-66342), referenced in **Attachment A** to this report.

On January 8, 2026, the City provided State HCD with a timely written Response Letter (City Response Letter), referenced in **Attachment B** to this report. The City's Response Letter addressed each of the State HCD Findings provided in its December 10, 2025 Findings Letter.

Following the City Response Letter, Planning staff met and conferred with State HCD staff on April 20, 2026 to review State HCD's findings and clarify the City's responses. This meeting included discussion of Findings #2 and #5 for which Planning staff do not recommend any action. This report explains the basis for these determinations and identifies additional changes to the City's ADU regulations requested by State HCD.

In addition to proposed amendments to the City's ADU Ordinance, this report outlines several other proposed changes to the Planning Code, along with a number of related conforming amendments to Title 17 of the Oakland Municipal Code to correct errors and inconsistencies.

## **Planning Commission Recommendation**

On May 20, 2026, at a duly noticed public hearing, the Oakland Planning Commission recommended approval of the proposed changes to ADU regulations, other substantive Oakland Planning Code amendments, and other conforming clerical changes in various Chapters of the Oakland Planning Code as proposed by staff.

## **ANALYSIS AND POLICY ALTERNATIVES**

### **Proposed Title 17 (Planning Code) amendments related to the ADU Ordinance (Section 17.103.080):**

The City Response Letter to State HCD, referenced in **Attachment B**, included the following recommended policy actions and clarifications in response to each of the State HCD Findings:

1. **State HCD Finding: Statutory Numbering** – The Ordinance reflects outdated statute numbering (65852.2, etc.) and must be updated to reflect current statute (66310 – 66324).

*Policy Analysis and Recommendation:* City staff recommends that the Council update all instances of the statutory numbering to reflect the current Government Code sections (66310 – 66324) in the ADU Ordinance (Planning Code Section 17.130.080). To review all proposed amendments to the Planning Code, see **Exhibit A to the Ordinance**.

2. **State HCD Finding: Planning Code Section 17.103.080 A.7** – Fire Hazard Restrictions – The Ordinance restricts the number and types of ADUs within the S-9 Combining Zone by prohibiting new construction ADUs and limiting conversion units to one ADU or JADU per lot. In its July 5, 2023, Findings Letter (**Attachment C**), State HCD claims these restrictions are inconsistent with State ADU Law. The letter identifies two options for the City: (1) amend the Ordinance to comply with State law, or (2) adopt the Ordinance without changes and include findings explaining why the City believes the regulations comply with State law.

*Policy Analysis and Recommendation:* The City has already satisfied the second option by adopting findings supporting its Accessory Dwelling Unit (ADU) regulations in the S-9 Combining Zone. These findings were first adopted with the City’s ADU Ordinance [No. 13677 C.M.S.](#) on January 18, 2022, pursuant to Government Code section 66326(b)(2)(B). The City subsequently reaffirmed and expanded these findings in Ordinance [No. 13800 C.M.S.](#), adopted June 18, 2024 (see findings beginning on page 8). The supporting Agenda Report for that hearing further documents the basis for regulating ADUs in the S-9 Combining Zone. Additionally, the City’s August 4, 2023, response to State HCD (**Attachment D**) provides a detailed response to State HCD’s concerns regarding fire hazard restrictions, including the City’s Findings and supporting documentation in Attachments A–G to the City’s previous response letter. Finally, the previously adopted Findings can be found in the current Planning Code Section 17.88.020 Findings, also attached in **Exhibit A to the Ordinance**.

Based on these facts and actions, the City maintains that it has complied with State law as to HCD’s finding, by adopting findings pursuant to Government Code section 66326(b)(2)(B) demonstrating that the S-9 ADU regulations are consistent with State law and necessary to protect public safety. These findings and the supporting rationale remain unchanged.

City staff met and conferred with State HCD to further discuss this issue on April 20, 2026, during which Planning staff demonstrated that the required findings had been adopted.

3. **State HCD Finding: Planning Code Section 17.103.080 A.9 and A.12.c** – Visibility – The ADU Ordinance limits exterior staircases based on “visibility from the public right-of-way.” HCD finds this standard subjective and inconsistent with Government Code section 66314(b)(1), which requires objective standards. Additionally, these provisions may not be applied to units created under Government Code section 66323.

*Policy Analysis and Recommendation:* City staff recommends the City remove the “visibility” criteria in Planning Code Section 17.103.080 A.9 and likewise eliminate the staff consultation requirement in Section 17.103.080 A.12.c, which has not been used in practice over the last several years and cannot result in denial of an ADU or application of any additional requirements.

- 4. State HCD Finding: Planning Code Section 17.103.080 A.10.a and b** – Subjective Terminology – The Ordinance uses subjective terms such as “predominant” and “visually similar” in ADU design standards, which conflicts with Government Code section 66314(b) requiring objective standards.

*Policy Analysis and Recommendation:* City staff recommends removal of the term “predominant” from Planning Code Section 17.103.080 A.10.a and replacing “visually similar” with “visually matching” materials, which can be objectively measured against existing materials.

- 5. State HCD Finding: Planning Code Section 17.103.080 A.12 and Table 17.103.02** – Front Setbacks – The Ordinance requires that no other placement options exist before allowing an ADU in the front setback on lots with a California Register Property or multifamily dwellings. State HCD finds this inconsistent with Government Code section 66321(b)(3), which prohibits standards that would preclude an ADU of at least 800 square feet and does not allow such prerequisites.

*Policy Analysis and Recommendation:* Government Code section 66321(b)(3) limits the City’s ability to apply development standards, including front setbacks, if they would prevent construction of a qualifying 800-square-foot ADU with minimum four-foot side and rear setbacks. Staff interpret this provision to allow the City to guide ADU siting when feasible alternatives on the lot exist. The Ordinance’s “order of preference” simply establishes preferred locations (e.g., rear or side yards) but does not prohibit front-yard ADUs if no other compliant location is available. If the only available location is in the front yard, then the City will permit an ADU in that location.

The intent is to avoid placing ADUs in front of California Register Properties and primary residences when other viable locations exist. If the front yard is the only feasible location, the Ordinance allows it. Staff has not encountered cases where a front-yard ADU was necessary on a qualifying historic property or where the primary residence is the prominent structure. Staff finds the current provisions consistent with State law and does not recommend any amendments.

During a meeting with State HCD on April 20, 2026, Planning staff clarified its interpretation of this provision. The State HCD staff acknowledged and verbally agreed that the City’s ADU Ordinance does not prohibit ADUs and therefore is consistent with State law. City staff notified the State HCD that staff will present to City Council a written finding in the Ordinance responsive to State HCD finding #5.

#### **Non-ADU-related proposed Title 17 (Planning Code) substantive amendments:**

- 1. Revising discontinuance standards for nonconforming activities in Planning Code Section 17.114.050.C.** Clarifies the standard when nonconforming Truck-Intensive Industrial Activities are considered discontinued by replacing ambiguous language with a clear, objective rule. This change is proposed because of a recent appeal case for 966 81st Avenue (Case File Number: DET250056-A01) which focused particular attention on an ambiguity in the existing Planning Code: the “purposeful abandonment” provision was determined to be subjective and open to interpretation. To address this issue, the amendment eliminates the undefined “purposeful abandonment” standard and establishes a clear 60-day timeframe for cessation of active operations. The proposed amendment will make the discontinuance determination process clear and unambiguous, providing greater regulatory certainty that is consistent with City’s other goals and policies.

Specifically, the change is consistent with the Environmental Justice (EJ) Element of the General Plan Action EJ-A.1. Amend the City's Zoning code to include the following changes: Amend the permit procedures for nonconforming Truck-Intensive Industrial Activities. The amendment also relies on the Racial Equity Impact Assessment (REIA) for the EJ Element. This amendment is still stricter than the previous nonconforming standard that was set forth prior to changes made in 2023.

2. **Removing applicability of S-10 Scenic Route Combining Zone discretionary standards to ministerial design review in Planning Code Section 17.90.050.** Removes application of discretionary standards to Ministerial Design Review to address the use of non-objective findings. Only objective standards would apply to ministerial projects; existing Criteria A and B in Planning Code Section 17.90.050 would continue to apply to Regular Design Review.
3. **Allowing Recreational Assembly Activities in the Wood Street D-WS-9 Zone by revising Planning Code Table 17.101A.020.** Allows Recreational Assembly Activities (e.g., plazas, community gardens) to support desirable community-serving development. Removes the Conditional Use Permit requirement to eliminate conflicts where such amenities may be either voluntarily proposed or required as part of project approvals.
4. **Revising Minimum Front Setback In D-CO-2 Zone in Planning Code Table 17.101H.03 and the footnote #2 to the table.** Establishes a consistent 10-foot minimum front setback along Hegenberger Road, aligning with all other zones along this gateway corridor that already require the 10-foot front setback. Revises Footnote #2 to clarify that this front setback requirement applies only to Hegenberger Road and Oakport Street.
5. **Removing a review deadline from Development Agreement Procedure in Planning Code Section 17.138.030 – Planning Commission Action.** Removes an arbitrary review deadline that is inconsistent with Development Agreement processes. The existing review deadline provision does not apply to Development Agreements due to their extended and phased negotiation timelines. Update outdated language for consistency with other Planning Code chapters.
6. **Revising utility screening standards in Section Planning Code 17.124.045.** Clarifies and strengthens requirements for screening and undergrounding electrical transformers in key areas, including BART station areas, the Central District, and Commercial Corridors. The amendment supports attractive and walkable streetscapes and aligns with adopted Objective Design Standards. The proposed amendment was coordinated with the Department of Transportation.

**Proposed Title 17 (Planning Code) conforming and clerical revisions:**

7. **Planning Code Table 17.101K.05 – D-DT Base Height and Intensity Regulations (Height Areas 1–11).** To correct technical inconsistencies and align residential density and height standards:
  - Revise maximum residential density in D-DT Height Areas 5 and 6 to correct a clerical error that resulted in unintended lower densities. For example, the maximum density for

- Regular Dwelling Units in D-DT Height Area 5 is revised from 1,000 square feet per unit to 300 square feet per unit, consistent with similar typical requirements for other Base Height Areas. Also, previous earlier versions of the Planning Code list the correct (higher) density requirements (e.g. 300 sf. per dwelling unit instead of 1,000 sf).
- Update the maximum height in D-DT Height Area 9 from 75 feet to 95 feet to align with prior legislative changes in the D-DT and other zones, ensuring consistency across zones.
- 8. Planning Code Table 17.17.03 – Property Development Standards.** Add clarification identifying the living unit types to which permitted densities apply, consistent with formatting used in other zones.
  - 9. Planning Code Section 17.101K.130 – General Design Standards.** Clarify that these standards do not apply to projects subject to separately adopted Objective Design Standards.
  - 10. Planning Code Section 17.07.060.** Remove subsections B. and C. in Planning Code Section 17.07.060, which expired in 2023 and are no longer relevant.
  - 11. Planning Code Table 17.97.04 – S-15 Transit-Oriented Development Zone.** Revise the maximum number of stories in the 250-foot height zone from 24 to 25 stories to align with standard story-to-height relationships used in other zones, which typically assume 10 feet per story.
  - 12. Planning Code Section 17.100B.080.** Remove an obsolete reference to previously deleted Planning Code Section 17.100B.070.
  - 13. Planning Code Table 17.101A.02, Note #1.** Revise lot area requirements for Rooming Units to be half those required for Regular Dwelling Units, consistent with recent revisions in all other zones following the 2023 amendments to Land Use and Transportation Element (LUTE) of the General Plan (Resolution 89907 C.M.S). Rooming Units were inadvertently missed from this note previously.
  - 14. Planning Code Section 17.107.020 – Definitions (“Economically Feasible”).** Reintroduce and revise this definition solely to maintain an existing cross-reference with Oakland Municipal Code (OMC) Title 15, Section 15.78.030. This definition was removed as a part of 2022 Density Bonus Code Amendments Package Ord. No. 13684 C.M.S. because it is inconsistent with the State Density Bonus provisions. However, this definition does not apply to provisions in Title 17 (Planning Code).
  - 15. Planning Code Section 17.108.140 – Fences, Hedges, and Walls.** Make non-substantive edits to improve clarity and objectivity.
  - 16. Citywide Activity Classifications.** Remove outdated activity type “Massage Services” and rename the previously deleted “Scrap Operation Commercial Activities” classification to “Salvage/Junk Yard Industrial Activities” to reflect current classifications in various Sections of the Planning Code (e.g. Planning Code Chapter 17.114 Article II.)
  - 17. Planning Code Section 17.114.150 Nonconforming Sign Regulations.** Remove references to ephemeral signage (e.g., painted signs, posters) that do not require permits and are not regulated by the Planning Code.

- 18. Planning Code Table 17.65.120 – HBX Zone Open Space Standards.** Revise formatting and detail to align with other zones by specifying requirements by living unit type. No change is proposed to open space standards for Regular Dwelling Units.
- 19. Planning Code Section 17.96.050.C.** Add a conforming clarification to help specify the meaning of the provision 17.96.050.C.
- 20. Planning Code Section 17.138.100.** Clarify that subdivisions are not approved through Development Agreements and must be processed through the appropriate subdivision procedures.
- 21. Replace the term “Dwelling Unit” with “Living Unit”** throughout various sections of the Planning Code because the term “Living Unit” is broader and inclusive of Dwelling Units, Rooming Units and Efficiency Dwelling Units.

#### **RELATED PLANNING EFFORTS**

This agenda item is a routine reconciliation of Planning Code Changes and does not impact any Oakland Strategic Planning efforts.

#### **FISCAL IMPACT**

If adopted by the City Council, there will be no impact on costs to the City. Implementation of these Planning Code changes will be a routine component of project review and approval administered by the Department of Planning and Building, which collects fees for such review and approvals as established in the Master Fee Schedule. Staff will inform the public of the new regulations as part of all applicable inquiries and apply the new regulations as part of all applicable planning and building permit applications.

#### **PUBLIC OUTREACH / INTEREST**

To adopt the original ADU Ordinance in 2022, Planning staff conducted significant engagement with community members, interested parties and stakeholders, as well as internal City Departments to review and discuss the ADU regulations. Given that these current changes proposed are in response to State HCD review of the local regulations for consistency with State law and are required to bring our Ordinance into compliance with state law, no additional public engagement was conducted.

The proposed amendments were presented at a public meeting of the Planning Commission on May 20, 2026. The meeting was noticed in the *Oakland Tribune*.

#### **COORDINATION**

This report and legislation have been reviewed by the Office of the City Attorney and the Budget Bureau. It was also coordinated with Department of Race and Equity (DRE), and within the Planning Bureau internally. The Department of Transportation was involved in revisions to Planning Code Section 17.124.045.

### **RACE AND EQUITY**

The amendments to ADU regulations will help maintain compliance of Oakland's local ADU Ordinance with State law. The City's ADU Ordinance has been successful at helping to add more units of housing throughout all areas of the City where residential development is allowed. This additional supply of housing, which is relatively inexpensive and fast to construct will diversify the current housing stock and provide more people across multiple socio-economic levels with access to housing. ADUs built in areas that are at greater risk of displacement and in transit-served corridors with access to services are particularly valuable for the most economically disadvantaged communities. ADUs may also help some homeowners facing economic challenges to continue living in their community because of the additional rental income these units bring.

Revisions to the discontinuance standards for nonconforming activities in Planning Code Section 17.114.050.C were developed in coordination with the Department of Race and Equity (DRE). Although the amendment extends the cessation period for active industrial operations from zero days to 60 days, The proposed amendments will improve clarity and enforceability by removing the subjective "purposeful abandonment" provision. This change establishes a clear and objective standard for discontinuance that will continue to protect communities disproportionately impacted by nearby industrial activities. The proposed amendment is consistent with the goals and policies of the Environmental Justice (EJ) Element of the General Plan, EJ-A.1. Amend the City's Zoning code to include the following changes: Amend the permit procedures for nonconforming Truck-Intensive Industrial Activities. This amendment is still reducing the number of days that this type of non-conforming use can reestablish compared to the previous standard of 90 days that were set forth prior to changes made in 2023. The amendment is informed by the Racial Equity Impact Assessment (REIA) prepared for the EJ Element.

### **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

The proposed amendments to the Oakland Planning Code rely on the previously certified Final Environmental Impact Reports for: the Oakland 2045 General Plan Update - Phase 1 (2023); the Coliseum Area Specific Plan (2105); Broadway Valdez Specific Plan (2014); West Oakland Specific Plan (2014); Central Estuary Area Plan (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; and various Redevelopment Plan Final EIRs (collectively, "EIRs"). No further environmental review is required under CEQA Guidelines Sections 15162, 15163, 15164, and 15183. 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), 15061(b)(3) (general rule, no significant effect on the environment), 15301 (existing facilities), 15302 (reconstruction and rehabilitation) and 15303

(small structures). Each finding represents, both individually and collectively, a basis for CEQA clearance.

**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 Title 17 Of The Oakland Municipal Code (Oakland Planning Code):

1. **Updating The Accessory Dwelling Unit Regulations For Consistency With State Law And Providing Written Findings Pursuant To Government Code 66326(b);**
2. **Revising Discontinuance Standards For Nonconforming Activities;**
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6. **Removing A Review Deadline From Development Agreement Procedure in Section 17.138.030;**
7. **Revising Utility Screening Standards in Section 17.124.045;**
8. **Incorporating Conforming And Clerical Revisions; And**
9. **Making Appropriate California Environmental Quality Act Findings.**

For questions regarding this report, please contact RUSLAN FILIPAU, PLANNER IV, at (510) 238-3491.

Respectfully submitted,



[William Gilchrist \(May 26, 2026 16:05:49 PDT\)](#)

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WILLIAM GILCHRIST  
Director, Planning and Building

Reviewed by:  
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Prepared by:  
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Attachments (4):

**Attachment A:** California Department of Housing and Community Development (State HCD) December 10, 2025 Review of Oakland's Accessory Dwelling Unit Ordinance and Written Findings Letter Pursuant to State ADU Law (Gov. Code, No. 66310-66342).

**Attachment B:** City's January 8, 2026 Response Letter (City Response Letter) to State HCD's December 10, 2025, Findings Letter.

**Attachment C:** State HCD July 5, 2023 Findings Letter.

**Attachment D:** City's August 4, 2023 Response Letter to State HCD (with attachments A-G).