

Location:	3040 Broadway - See map on reverse
Assessor's Parcel Number:	(009-0704-007-00)
Proposal:	Appeal of the Zoning Manager's Determination.
Applicant:	Robert Selna representing Don Marshall / (510) 622-7608
Owner:	Don Marshall
Case File Number:	DET170039-A01
Original Case File Number:	DET170039
Planning Permits Required:	None
General Plan:	Community Commercial
Zoning:	D-BV-3
Environmental Determination:	Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15301, Minor alterations to an existing facility and Section 15306, Information collection
Historic Status:	Dc2+; Area of Secondary Importance (Upper Broadway Auto Row)
City Council District:	3
Status:	The Zoning Determination Letter was mailed on July 27, 2017; Project appealed on August 10, 2017 (Extended from the original appeal date of August 7, 2017).
Staff Recommendation:	Deny the Appeal and uphold the Zoning Manager's Determination.
Finality of Decision:	Final (not administratively Appealable pursuant to OMC Sec. 17.132.030)
For Further Information:	Contact case Planner Brittany Lenoir at (510) 238-4977 or blenoir@oaklandnet.com

SUMMARY

Mr. Robert Selna, representing the owners of 3040 Broadway, submitted a letter on April 20, 2017, requesting a Zoning Determination to define the land use activities at 3040 Broadway. The request was made largely to resolve a Notice of Violation that was created on September 08, 2016 and a lien on February 28, 2017 that was created against the property (1603481 and L17000065) regarding operation of an industrial use without permits in a residential zone. The applicant's letter stated that the site should be classified as an Automotive Fee Parking Commercial Activity (17.10.490) and an Automotive and Other Light Vehicle Repair and Cleaning Commercial Activity (17.10.480), as that was the previous activity on the site, and that the activities have been going on at the site independently since April 2011 when the current owners purchased the property (*Attachment A*).

After a review of the property, previous records, and evidence provided, a Determination was made by the Zoning Manager that the activity is more closely related to a Construction Operations Industrial Activity as opposed to the above mentioned Commercial Activities. The Determination was based on multiple factors including the business type, who it serves, and what activities had been and currently were taking place on the lot. The Zoning Manager's Determination Letter was mailed on July 27, 2017 (*Attachment B*).

The 10-day Appeal period ended on August 7, 2017 at 4:00 PM. However, Mr. Selna contacted the Bureau of Planning on July 31, 2017 noting that the document attachments were not included in the Determination Letter. Because of this, the Appeal filing date was extended from August 7, 2017 to August 10, 2017. The Appeal period ended on August 10, 2017 at 4:00 PM and a timely Appeal was filed by Robert Selna (Appellant) representing the owners.

Per Section 17.132.020 of the City of Oakland Planning Code, the Appellant must state where an error or abuse of discretion was made by the Zoning Manager or where the Zoning Manager's decision is not supported by evidence in the record. The arguments raised by the Appellant (*Attachment C*) are summarized below in the *Basis for the Appeal* portion of this report, along with City staff's response to each argument.

For the reasons stated in this report and attachments, including the Appellant's failure to assert error, abuse of discretion or lack of evidence in the Zoning Manager's decision, staff recommends the Planning Commission deny the Appeal, thereby, upholding the Zoning Manager's Determination.

BACKGROUND

- July 16, 2009: The definition of Construction Sales and Services is changed from a permitted Commercial Activity to Construction Operation Industrial Activity, which is no longer permitted in the C-40 Zone.
- October 2009: Harry Clark Plumbing begins renting a portion of this property from Broadway Smog to store and service their own vehicles. Broadway Smog was classified as Automotive Servicing, and later as an Automotive Service Station Commercial Activity, which was permitted in the C-40 Zoning Designation.
- March 2011: The area is rezoned to CC-2, which does not permit Construction Operation Industrial Activities. As such, the primary activity of an Automotive Service Station at the subject site, Broadway Smog, was no longer permitted and would have required a conditional use permit under the CC-2 Zone. Therefore, this activity would have been considered legal non-conforming.
- April 2011: New owners purchase the property and Harry Clark Plumbing rents the entire space, as opposed to sharing space with the previous tenants, Broadway Smog. When Harry Clark Plumbing took over the site from Broadway Smog the primary activity changed from an Automotive Service Station Commercial Activities to a Construction Operation Industrial Activity, and therefore, the legal non-conforming status would not apply to Harry Clark Plumbing because the scope of work and type of activity was modified.
- June 25, 2013: A Zoning Complaint (1303333) was filed against the property for construction operations activities where such activity is not permitted.
- July 26, 2013: Harry Clark Plumbing applied for a Zoning Clearance at 3040 Broadway to resolve complaint 1303333. The resulting Zoning Clearance was to conduct a retail plumbing shop with related rear open small yard for storage of retail sales plumbing material.
- July 2014: The area is rezoned to D-BV-3.
- September 2016: A Notice of Violation is sent for conducting Industrial Activities in a Residential Zone (1603481).
- July 27, 2017: A Determination is made by the Zoning Manager that the current activities on-site are considered Construction Operation and are not permitted in the current Zoning designation.
- August 10, 2017: An Appeal of DET170039 is filed by the applicant.

PROPERTY DESCRIPTION

Subject Site

3040 Broadway is a 4,542-square foot through-lot, with street frontage on Broadway and Brook Street. The existing building was constructed in 1915, has a rating of Dc2+, and is in an Area of Secondary Importance (Upper Broadway Auto Row) per the Oakland Cultural Heritage Survey.

Surrounding Area

The surrounding area has a large amount of automobile-oriented commercial activities; however, much of the area is also residential, which can be seen on Brook Street. This area is also characterized by active commercial spaces, an example being the Sprouts Farmers Market across from the subject property, as well as the CVS Pharmacy on the corner of Broadway and 30th Street. When looking to the North of the subject site there is a strong presence of automobile related commercial activities, such as a smog and repair shop, vehicle servicing, upholstery services, and window tinting services. To the East of the subject site is Brook Street, which has a mix of single-family, two-family, and multi-family residential dwellings. Across Broadway to the East there is a strong presence of retail space with an existing Sprouts Farmers Market at 3001 Broadway, and a project with CityView at 3073 Broadway that is currently under construction for 432 residential units and 22,000 square feet of retail space. To the South, there are a number of restaurants and retail space, such as Chipotle, Starbucks, Mattress Firm, as well as an extension of Harry Clark Plumbing located at 3026 Broadway. The Harry Clark Plumbing establishment located at 3026 Broadway is separated from the subject site, 3040 Broadway, by an Enterprise Rent-a-Car.

GENERAL PLAN AND SPECIFIC PLAN ANALYSIS

Land Use and Transportation Element (LUTE) of the General Plan

The subject site is in the Community Commercial land use classification per the Land Use and Transportation Element (LUTE) of the General Plan. The intent of the Community Commercial classification is to enhance areas suitable for a wide variety of commercial and institutional operations along the City of Oakland's major corridors and in shopping districts or centers. The desired character in the Community Commercial classification may include neighborhood center uses and larger retail and commercial uses, such as auto-related businesses, business and personal services, health services and medical uses, educational facilities, and entertainment uses. Pedestrian-oriented design is encouraged, but these areas may also accommodate larger scale auto-oriented development. Some objectives and policies of the Community Commercial area include:

Objective N1

Provide for healthy, vital, and accessible commercial areas that help meet local consumer needs in the neighborhoods.

Objective N10

Support and create social, informational, cultural, and active economic centers in the neighborhoods.

Objective I/C3

Ensure that Oakland is adequately served by a wide variety of commercial uses, appropriately sited to provide for competitive retail merchandising and diversified office uses, as well as personal and professional services.

Broadway/Valdez District Specific Plan

The site is also within the northern boundary of the Broadway/Valdez District Specific Plan (BVSP), which was adopted by the Oakland City Council on June 17, 2014 to create destination retail and mixed-use development along Broadway, between Grand Avenue and Interstate 580. While the BVSP does recognize the importance of maintaining and retaining auto-related businesses, much of the focus is on promoting an active pedestrian environment (*Attachment D*), which can be seen in many of the policies and goals of the Specific Plan including:

Policy LU-10.69 (page 113)

In order to promote a more vibrant and pedestrian-oriented environment, active ground floor uses will be required along Broadway and other designated street. In order to establish the Triangle as a retail destination, ground level uses will be restricted to retail, dining, entertainment, and cultural uses along designation street. In the North End, active ground level uses will be required, but can include office and professional service type uses in addition to retail, dining, and entertainment.

Planning Goals (page 4)

- *A well-designed neighborhood that integrates high quality design of the public and private realms to establish a socially and economically vibrant, and visually and aesthetically distinctive identity for the Broadway Valdez District.*
- *Quality pedestrian facilities and amenities that create a safe and aesthetically pleasing environment that supports increased pedestrian activity.*

ZONING ANALYSIS

Land Use Activities Background

The Oakland Planning Code in Section 17.10.010 Title, purpose, and applicability states “The provisions of this Chapter shall be known as the Use Classifications. The purpose of these provisions is to classify uses into a number of specially defined types on the basis of common functional characteristics and similar compatibility with other uses, thereby providing a basis for regulation of uses in accordance with criteria which are directly relevant to the public interest.”

The Planning Code further defines Residential, Civic, Commercial, and Industrial Activities. Specifically, the activities most relevant to the Determination include:

Section 17.10.260 General description of Commercial Activities states “Commercial Activities include the distribution and sale or rental of goods; the provision of services other than those classified as Civic Activities; and the administrative and research operations of private, profit-oriented firms, other than public utility firms.”

Section 17.10.540 General description of Industrial Activities states “Industrial Activities include the on-site production of goods by methods other than agricultural and extractive in nature the provisions of warehousing and storage, freight handling, shipping, and trucking services; and the storage, transportation, and processing of recyclable or waste materials, and hazardous materials. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.”

Land Use Activities Analysis

When reviewing a new activity for a parcel, staff must make a determination regarding the Activity classification the use best resembles. In this instance, staff evaluated the following Commercial and Industrial Activities as part of the Zoning Determination with key important characteristics underlined.

- 17.10.340 General Retail Sales Commercial Activities.
General Retail Sales Commercial Activities include the sales of items generally for personal or household use, but excludes activities more specifically described in other classifications. This activity does not include establishment where more than five percent (5%) of net retail floor area is devoted to food products.

- 17.10.450 Building Material Sales Commercial Activities.
Building Material Sales Commercial Activities include the sale of bulk building and landscaping supplies. This classification includes, but is not limited to, sales of heating, air conditioning, electrical and plumbing equipment, soil, soil amendments, lumber, gravel, or other similar building materials. Landscaping and building materials are commonly stored outside. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.
- 17.10.480 Automobile and Other Light Vehicle Repair and Cleaning Commercial Activities.
Automobile and Other Light Vehicle Repair and Cleaning Commercial Activities include the major repair or painting of motor vehicles that have a gross vehicle weight rating of less than fourteen thousand (14,000) pounds, including body work and installation of major accessories, as well as the washing and polishing of motor vehicles. This classification does not include vehicle dismantling or salvage and tire re-treading or recapping. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040
- 17.10.490 Automotive Fee Parking Commercial Activities.
Automotive Fee Parking Commercial Activities include the parking and storage of motor vehicles on a fee basis, including, but not limited to, for-fee parking lots and parking for car share vehicles, other than the operation of parking facilities by a Civic Activity. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.
- 17.10.582 Construction Operations Industrial Activities.
Construction Operations Industrial Activities include enclosed and unenclosed facilities and accessory yards for construction and incidental storage activities and/or fabrication activities performed by construction contractors on lots other than construction sites. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. This classification includes, but is not limited to, the storage and custom cutting of stone for interior applications, roofing and plumbing component storage, and equipment storage for environmental contractors.
- 17.10.583 Warehousing, Storage, and Distribution Industrial Activities. (excerpted)
Warehousing, Storage, and Distribution Industrial Activities include five (5) subclassifications as described below. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040:
 - A. General Warehousing, Storage, and Distribution. General Warehousing, Storage, and Distribution Activities include the warehousing and storage, primarily within enclosed buildings, of commercial goods (other than primary storage of hazardous materials), and the associated distribution activities that occur on-site prior to delivery of goods to wholesale and retail outlets or direct shipment to customers. These activities may also include ancillary truck parking and dispatching; and accessory outdoor storage areas where outdoor storage, not including parking and loading areas, does not occupy more than thirty percent (30%) of the total site area.
 - B. General Outdoor Storage. General Outdoor Storage Activities include principal outdoor storage of items for more than 24 hours where such storage activities occupy more than thirty percent (30%) of the site area. The principal storage of goods and materials, equipment or vehicles; as well as the storage of operating equipment for warehouses, such as forklifts, pallets, and racks. This classification excludes outdoor storage uses that are more specifically described in this Chapter, including but not limited to, container storage, salvage and junk yards and oil and gas storage. This classification includes, but is not limited to, construction trailers, outdoor sheds or accessory portable structures, secondary sites for storage of building materials that are not for resale onsite.

- 17.10.585 Trucking and Truck-Related Industrial Activities. (excerpted)
Trucking and Truck-Related Industrial Activities include the provision of freight handling and shipping services by trucks as well as parking, maintenance, and services for trucks and other heavy vehicles and equipment. Each classification involves the use of trucks and other heavy vehicles that have a gross vehicle weight rating greater than or equal to fourteen thousand (14,000) pounds. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.
 - B. Truck Yard. Parking, dispatch, refueling, and incidental repair of trucks, buses, or other fleets of heavy vehicles, where there is no on-site freight storage or transfer. This classification includes corporation yards operated by public and private towing operations. This classification does not include local courier and delivery services; towing operations as an accessory activity to Automotive and Other Light Vehicle Repair and Cleaning (see Section 17.10.480).
 - D. Truck and Other Heavy Vehicle Sales, Rental, and Leasing. Sales, rental, and leasing of medium and heavy trucks, truck tractors, construction or agricultural equipment, buses, commercial boats, heavy equipment, and other commercial vehicles. This classification includes the sale, installation, accessory repair and servicing of related equipment and parts. This classification does not include vehicle dismantling or salvage and tire re-treading or recapping (see Salvage/Junk Yards, Section 17.10.583).
 - E. Truck and Other Heavy Vehicle Service, Repair, and Refueling. Repair, fueling, and other servicing of medium and heavy trucks, truck tractors, construction or agricultural equipment, buses, boats, heavy equipment, and similar vehicles. This classification includes the sale, installation, and servicing of related equipment and parts. This classification includes fueling stations, repair shops, body and fender shops, wheel and brake shops, engine repair and rebuilding, welding, major painting service, tire sales and installation, and upholstery shops for trucks and other heavy vehicles. This classification does not include vehicle dismantling or salvage (see Salvage/Junk Yards, Subsection 17.10.583.E).

Staff Analysis

The subject site is in Broadway Valdez District Mixed Use Boulevard- 3 Commercial Zone (D-BV-3 Zone). The D-BV-3 Zone is intended to create, maintain, and enhance areas with direct frontage and access along Broadway, 27th Street, Piedmont Avenue, and Harrison Street. A wider range of ground-floor office and other commercial activities are allowed than permitted in the D-BV-2 Zone with upper-story spaces intended to be available for a broad range of Residential, Office, or other Commercial Activities. Mixed uses can either be vertical and/or horizontal.

Staff concluded, based upon the evidence submitted by the Appellant and collected by the Zoning Inspection Division, the Planning Code, and staff's classification of similar activities on other lots that:

- The use was not General Retail Sales Commercial or Building Material Sales Commercial as the business does not offer plumbing components for sale to the general public. This conclusion is based on available photographs as well as personal site visits by Inspectors in Code Enforcement.
- The use was not Automobile and Other Light Vehicle Repair and Cleaning Commercial because the general public is not being served and instead the owner is servicing their own vehicles. Furthermore, staff has never applied the servicing of one's own vehicles as Automobile and Other Light Vehicle Repair and Cleaning Commercial as the servicing would be an Accessory Activity to a primary use.
- The use is not Automotive Fee Parking Commercial because the general public is not being served, and the lot is only used as storage for its own vehicles. Furthermore, staff has never applied the

leasing of a parking lot to another business as Auto Fee Parking as the parking would be an Accessory Activity to a primary use.

- The use was not General Warehousing, Storage and Distribution Activities. While this classification includes truck parking and storage, the storage is not primarily within enclosed buildings of commercial goods. Again, nothing is being offered for sale and other classifications are more appropriate.
- The use was not General Outdoor Storage Activities. Although, this classification includes the principal outdoor storage of goods and materials, equipment or vehicles as well as secondary sites for storage of building materials, the Construction Operations Industrial Activity was more appropriate given the accessory yard and specificity in the classification regarding plumbing component storage.
- The use was not Trucking and Truck-Related Industrial Activities. Although this activity includes the parking and servicing of vehicles, the business does not involve the use or servicing of trucks and other heavy vehicles that have a gross vehicle weight rating greater than or equal to fourteen thousand (14,000) pounds.
- That only parking, and not servicing of vehicles, is an accessory use per Section 17.10.040 which would be allowed on a different lot. Also, per this Section, storage must occur on the same lot as the principal activity.

While staff concurs with the Appellant that the activities at the site do not fit neatly into one Activity classification, staff found the most applicable classification as Construction Operations Industrial Activities.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines statutorily and categorically exempts specific types of projects from environmental review. Section 15301 categorically exempts activities in existing small buildings, and Section 15306 exempts basic data collection and research. The determination letter pursuant to the City's Planning Code conforms to this Section, and hence the action is exempt from Environmental Review.

BASIS FOR THE APPEAL

The Appellant, representing the owners of 3040 Broadway filed a timely Appeal of the Zoning Manager's Determination on August 10, 2017. The Appellant requests that the Planning Commission overturn the Zoning Manager's Determination Letter which stated that Harry Clark Plumbing, located at 3040 Broadway, is conducting an unpermitted Construction Operations Activity and classify the activity as Automotive Fee Parking and Automobile and Other Light Vehicle Repair and Cleaning.

The Appeal alleges that:

- 1) The activities at the subject site do not meet the Construction Operations Industrial Activity definition.
- 2) The Commercial Activities of Automotive Fee Parking and Automobile and Other Light Vehicle Repair and Cleaning are an appropriate classification of the subject property's use.
- 3) The Plumbing Company has a right to continue use under OPC Section 17.114.040.
- 4) The Zoning Manager's determination is not supported by "substantial evidence."

The following is a summary of the specific issues raised in the Appeal along with staff's response to each point. The basis for the appeal is shown in **bold** text and the staff response follows each point in regular type.

1. **The Appellant alleges that the activities being done by Harry Clark Plumbing at 3040 Broadway do not meet the Construction Operations definition. The Appellant states:**

- **“The determination relies on the fact that the Operations are not ‘retail’ and on one occasion, the Plumbing Company performed some limited excavation work for a next-door neighbor’s construction job.”**
- **“A close read of the zoning determination shows that the evidence offered to support the conclusion that the Site’s use of Con-Ops, is limited to Plumbing Company’s admission that it has infrequently stored dirt at the Site.”**
- **“While there is limited storage at the Site, there are no ‘construction’ or ‘fabrication’ activities on Site. It appears that the ZA focused on the one Site use -- storage -- that is secondary in the Con-Ops definition, and minimal at the Site, and used it to define the entirety of the activities at the Site.”**

Staff’s Response

As noted above, staff reviewed numerous Activity Types in arriving at the conclusion that Construction Operations Industrial Activities was the most appropriate. Staff considered multiple factors including the business type, who it serves, and what activities had been and currently were taking place on the lot. Specifically, the business is a plumbing contractor who works off-site providing services to residences, no commercial activities such as the distribution and sale or rental of goods or the provision of services take place on the site itself, the lot is being used for storage of plumbing components and vehicles and the servicing of the business owner’s own vehicles.

The determination was made that 3040 Broadway is performing a Construction Operations Industrial activity because the classification includes:

- enclosed and unenclosed facilities,
- accessory yards,
- storage performed by construction contractors on non-construction sites,
- plumbing component storage specifically, and
- certain accessory activities specified in Section 17.10.040 such as off-street parking.

Unlike other Activity types, which only address one aspect of the business or use, the Construction Operation Industrial Activity classification addresses multiple components of the business and is specific to plumbing contractors.

Two other classifications closely relate to the activities being conducted at 3040 Broadway, Trucking and Truck-related Industrial Activities and General Outdoor Storage. However, Trucking and Truck-related Industrial Activities, only applies to vehicles greater than or equal to 14,000 pounds, and includes the service, repair, sale, rental, parking, and refueling of medium and heavy vehicles. Construction Operations was chosen over this option since Harry Clark Plumbing is a smaller operation than the intent of the Trucking and Truck-related Activity and does not include a substantial number of heavy vehicles and equipment. In the D-BV-3 Zone, Trucking and Truck-related Industrial Activities are prohibited.

General Outdoor Storage includes principal storage of goods, materials, equipment and vehicles all of which are uses on the project site. However, this classification notes that it excludes outdoor storage uses more specifically described elsewhere. In this case, Construction Operations is more

directly related to the plumbing business.

The Appellant mentions that it is believed Construction Operations was chosen because the activities are not retail and due to the history of excavation work and related storage. When looking at aerial images, there is major storage of both vehicles and equipment at this site (*Attachment E*). Again, the Construction Operations classification covers both storage, specifically noting plumbing component storage. The Appellant notes: "The ZA focused on the one Site use – storage—that is secondary to the Construction Operations definition and minimal at the site" In fact, the primary activity of Construction Operations is storage. In this case, the use is equipment and vehicle storage with accessory servicing for a plumbing business.

2. The Appellant asserts that the appropriate use at this site would fall under the Automobile Fee Parking and Other Light Vehicle Repair and Cleaning Commercial Uses, by stating:

"The ZA attempts to bolster the zoning determination by finding that the uses at the Site are not Auto Fee Parking or Automobile and Other Light Vehicle Repair and Cleaning. That finding is based on the interpretation that the two uses must be in the service of customers, as opposed to business leasing space for their own uses. The plain language of the use definitions does not support that conclusion, the ZA provides no proof to support his determination, and the Oakland Planning Code includes many commercial uses that do not serve the public."

Staff's Response

As noted above in the *Zoning Analysis* Section, Commercial Activities are characterized by the sale and rental of goods or provision of services, as well as some administrative and research operations. The intent of Commercial Activities is to serve the public, and this is demonstrated through the different types of activities proposed in this classification: food sales, retail sales, consultative service, and group assembly. These activities are directly involved with the public or other entities but do not necessarily serve customers "off the street." For example, General Wholesale Sales Commercial is not for the general public but for select customers, i.e. other businesses. These commercial uses vary greatly from what would be seen in a typical industrial activity, such as a Construction Operation Industrial Activity. On the other hand, Industrial Activities are more involved with warehousing and storage, as well as the transportation and processing and fabrication of materials. The Industrial Activity classification does not necessarily involve direct interaction with the public, as would be seen with a commercial activity.

When looking at the definitions of Automobile Fee Parking and Other Light Vehicle Repair and Cleaning, while they do not explicitly state that they are intended for only public, neither do other activities that fall under Commercial Activity Types. However, they are all considered Commercial Activities per the Planning Code which includes "distribution and sale or rental of goods; the provision of services." The serving of one's own vehicles, the storage of one's own vehicles, and the storage of equipment for one's own business does not in any way involve the distribution, sale, rental or provision of a service.

Staff disagrees that some Commercial Activities do not involve the public. Per the Appellant's examples, an Administrative Activity does provide a service of some kind even if it's to other offices. Broadcasting and Recording Activities record music or provide a service broadcasting it to other patrons. Research Services is self-explanatory, i.e. the provision of research services for another person or business.

3. The Appellant also believes the activities at this site would be allowed to continue under OPC Section 17.114.040: “Given the longstanding parking and repair activities at the Site, the Plumbing Company’s right to continue those uses would seem to be protected under OPC Section 17.114.040, which allows non-conforming uses.”

Staff’s Response

The right to continue a nonconforming use is limited to uses that existed lawfully under the previous Zoning controls, continue to meet the same Activity classification as the previous use, and where the previous use had not been discontinued for more than one-year.

As noted above, staff has concluded that use is not Automobile Fee Parking and Other Light Vehicle Repair and Cleaning, and therefore, the use is not the same activity as the previous smog shop use. Prior to this area being under the D-BV-3 Zone, it was classified as C-40 Community Thoroughfare Commercial Zone (C-40 Zone) and then as CC-2 Community Commercial – 2 Zone (CC-2). Under the C-40 Zone, Construction Sales and Services Commercial represented what is now Construction Operations, and was permitted at the time. However, the Zoning changed in March 2011 to CC-2 making this an unpermitted activity. Since Harry Clark Plumbing did not file for a Permit or Zoning Clearance to be at this location independently until 2013 (ZC131651), the activity would not be protected under OPC Section 17.114.040 and would not be “grandfathered in” despite the assertion that they had been at the site since 2009. Furthermore, the records on file show that, on July 26, 2013, the current business at 3040 Broadway received a Zoning Clearance for a retail plumbing shop with a related rear open yard to store retail plumbing material. This record does not make note of either equipment vehicle storage or repair, which is currently associated with the business, and supposedly the main activity on the site.

Due to the activities at this site and the current Zoning designation, Harry Clark Plumbing, as it is today, would not be permitted under the current D-BV-3 Zone as Construction Operations is not permitted in this Zone.

4. The Appellant claims that the Determination was not based on “substantial evidence”. Specifically:
- “The ZA’s determination states that the Site is being used as Construction Operations Industrial Activity (“Con-Ops”), however, the determination is based on scant information and was not educated by a personal site visit.”
 - Also, “The evidence provided – the Plumbing Company’s admission that it has occasionally stored dirt at the site – does not qualify as substantial evidence sufficient to support the determination.”

Staff reviewed all evidence submitted by the Appellant, conducted extensive research regarding the land use classifications in the current and previous Planning Codes, and reviewed aerial photographs. Furthermore, staff was in close contact with the Zoning Inspector, Chris Candell. Mr. Candell has personally visited the subject site numerous times over the past four years and has taken substantial notes on the permit history, timeline, and activities at the property (*Attachment F*).

Additionally, the Zoning Manager’s Determination to classify the land use activity at the site was not solely based on the storage of dirt, but on the entire operations as described in detail above. The Determination was based on substantial evidence, and is consistent with other determinations made for similar activities.

CONCLUSION

The Appellant has not demonstrated an error or abuse in discretion by the Zoning Manager, thus City of Oakland Planning staff believes that the Determination is valid. Staff believes that activity's land use was appropriately identified based on the business operations and available evidence as described above. As a result, the Zoning Manager's Determination was issued correctly and the Appeal should be denied.

RECOMMENDATIONS:

- For approvals:
1. Affirm staff's environmental determination.
 2. Deny the Appeal, thereby upholding the Zoning Manager's Determination, and confirming the use at 3040 Broadway.

Prepared by:



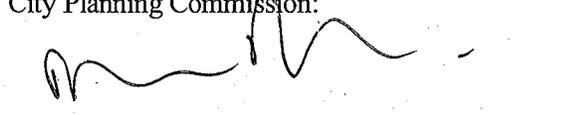
BRITTANY LENOIR
Planner I

Reviewed by:



ROBERT MERKAMP
Acting Zoning Manager

Approved for forwarding to the
City Planning Commission:



DARIN RANELLETTI
Deputy Director
Bureau of Planning

ATTACHMENTS:

- A. Request for Zoning Manager's Determination dated April 20, 2017
- B. Zoning Determination dated July 27, 2017
- C. Appeal filed by Robert Selna representing Don Marshall dated August 10, 2017
- D. Broadway Valdez District Specific Plan Map with project renderings, last updated November 07, 2017
- E. Site photographs
- F. Notes from Chris Candell, Zoning Inspection Division
- G. Letter from Appellant, Robert Selna, dated February 26, 2018
- H. Letter from Julian Borrill, dated February 27, 2018

LEGAL NOTICE:

ANY PARTY SEEKING TO CHALLENGE THIS DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE ANNOUNCEMENT OF A FINAL DECISION, PURSUANT TO THE CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1094.6, UNLESS A SHORTER PERIOD APPLIES.

MEMORANDUM

April 20, 2017

TO: Aubrey Rose,
Zoning Counter Supervisor
Oakland Planning and Building Dept.

FROM: Robert W. Selna

RE: Zoning Determination for 3040 Broadway

Introduction

On March 2, 2017, the City of Oakland recorded a lien against 3040 Broadway ("Property"), which is owned by Don Marshall and his family and is leased to Harry Clark Plumbing ("Plumbing Company"). The Plumbing Company has rented the Property for automotive parking and storage and vehicle repair since October 2009. The lien incorrectly states that the City noticed Mr. Marshall of a nuisance, or substandard or hazardous conditions. In actuality, the City notified Mr. Marshall that the Property's activities were not permitted in the zoning district that controls the Property. We are submitting this request for a Zoning Determination in order to define the longstanding activities at the Property and to receive City confirmation that, while the Property's zoning has changed slightly over the years, the on-going activities are nonetheless permitted, based on Oakland Planning Code sections allowing for continuous, nonconforming uses. Once the zoning matter is resolved, we also request that the Planning and Building Department provide assistance, within its powers, to have the lien removed and related penalties expunged.

History of Zoning and Uses at 3040 Broadway

The Property is located in the heart of Oakland's Auto Row. Consistent with that area moniker, since the early 1990s the Property's activities have been divided between Automotive Fee Parking Commercial Activities and Automobile and other Light Vehicle Repair and Cleaning Commercial, which were both permitted by right when the Plumbing Company began occupying the Property. These same uses are also generally permitted in the D-BV-4 zone, which today dictates the Property's activities. On a related note, the Property's adjacent neighbors are an Enterprise car rental, storage and cleaning operation and a Volvo automotive repair and service garage.

In October 2009, the Plumbing Company began renting the Property's parking lot from then-owner Sol Sulaiman, who ran the business "Broadway Smog," from the Property's lone

garage. The Plumbing Company parked employee and company vehicles in the lot. In October 2009, the Property was zoned C-40, which allowed auto fee parking and storage. Planning Code Section 17.10.490 defined Automotive Fee Parking Commercial Activities as follows: *Includes "the parking and storage of motor vehicles on a fee basis, other than the operation of parking facilities by Civic Activity."*

Mr. Sulaiman used the garage for automobile and other light vehicle repair, which he had been doing since the 1990s. This makes sense because prior to and in October 2009, C-40 zoning also allowed light automobile repair services. Planning Code Section 17.10.480 defined Automobile and Other Light Vehicle Repair and Cleaning as follows: *Activities include the major repair or painting of motor vehicles that have a gross vehicle weight of less than 14,000 pounds, including body work and installation of major accessories, as well as washing and polishing of motor vehicles. This classification does not include vehicle dismantling or salvaging and tire re-treading or recapping.*

In April 2011, Mr. Marshall purchased the Property from Mr. Sulaiman and leased the Property to the Plumbing Company. In turn, the Plumbing Company continued to use the parking lot for vehicle parking and storage and the garage for repairing and servicing the Plumbing Company vehicles, which mostly includes vans that weigh less than 14,000 pounds.

In March 2011, the Oakland City Council changed the Property's zoning from C-40 to CC-2, which, in turn, modified the Automotive Fee Parking and Automobile and Other Light Vehicle Repair classifications from activities permitted by right to those conditionally-permitted. However, that change did not affect the permitted activities at 3040 Broadway because they continued ceaselessly as they had prior to the new zoning. We can supply affidavits and records that document the history above if requested.

Today, the Plumbing Company continues to lease the Property from Don Marshall and his family. The primary activities in the 6,500 square-foot parking lot continue to be a Plumbing Company vehicle parking and storage and the primary activities in the 2,500 square-foot garage continue to be vehicle repair and servicing. Approximately 1,300 square feet of the garage are used specifically for vehicle repair. Related space is a work bench, auto repair tools and bathroom amounting to 200 square feet. An office for related paperwork and breaks, takes up approximately 250 square feet. The rest of the garage (approx. 750 square feet) is used for random storage. The Plumbing Company employs a full-time mechanic who repairs and services Plumbing Company vehicles in the garage. We would be happy to schedule a time for a representative of Planning Department to visit the Property and confirm the activities described.

The plain meaning of Oakland Planning Code Section 17.114.040 protects the Plumbing Company's right to continue vehicle parking/storage and vehicle repair at the Property. The section states as follows: *"A nonconforming use, which is in existence on the effective date of the zoning regulations or of any subsequent rezoning or other amendment thereto, which makes such use nonconforming, and which existed lawfully under the previous zoning controls, or which is subsequently developed or changed...may thereafter be continued and maintained indefinitely, and the rights to such use shall run with the land...."*

City Violation Notices and Pending Lien

Mr. Marshall began receiving violation notices from the City Planning and Building Department related to Plumbing Company activities in July 2013. The notices informed Mr. Marshall that the City believed the Plumbing Company was operating a Construction Activities Industrial activity (a contractor's yard). At the time, the Plumbing Company was occasionally storing dirt that resulted from plumbing jobs on the parking lot. When notified by the City, the Plumbing Company discontinued the limited and temporary dirt storage.

In 2016, the property next door, 3050 Broadway, was undergoing construction and hired the Plumbing Company to assist with related excavation work. As part of that work, the Plumbing Company again stored some dirt on the parking lot. The Plumbing Company believed it was permitted to do so because the construction project at 3050 Broadway had been issued valid City of Oakland building permits. The City issued Mr. Marshall a violation notice and the Plumbing Company ceased storing dirt on the parking lot related to the excavation job.

Shortly thereafter, Mr. Marshall met with City of Oakland Planner IV, Bill Quesada, who explained the Plumbing Company's activities were "grandfathered" if the activities began at the Property before March 2011.

However, as recently as recently as January 2017, the City Planning and Building Department notified Mr. Marshall that the Property was in violation of the relevant zoning. Mr. Marshall corresponded back and forth with the City, but was unable to resolve the matter. Mr. Marshall believed that the Plumbing Company activities were permitted, based on what Mr. Quesada told him, and because the Plumbing Company -- and before them, Mr. Sulaiman -- had engaged in the same activities going back well before 2009.

As stated above, at the City's request, Alameda County recorded a lien against the property, which includes a \$3,041.00 penalty, and issued Mr. Marshall an invoice for \$1,349.00 to cover the City's costs of recording the lien.

Conclusion

Mr. Marshall has applied for a zoning determination for 3040 Broadway in light of the stalemate that resulted from trying to resolve the issue with the City and the related lien and penalties. As stated above, this application is a request that the City confirm that the Property's activities are Automotive Fee Parking Commercial Activities and Automobile and other Light Vehicle Repair and Cleaning Commercial. Additionally, this application is a request that the City confirm -- in light of Planning Code Section 17.114.040 and the relevant history at 3040 Broadway -- the activities are permitted as they were in 2009 when the Plumbing Company began to pay Mr. Sulaiman for vehicle parking and storage and Mr. Sulaiman used the garage to service and repair light vehicles. Once the zoning matter is resolved, we also request that the Planning and Building Department provide assistance, within its powers, to have the lien removed and related penalties expunged.



CITY OF OAKLAND
BUREAU OF PLANNING - ZONING DIVISION
250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031
Phone: 510-238-3911 Fax: 510-238-4730

July 27, 2017

Mr. Robert W. Selna
1111 Broadway, 24th Floor
Oakland, CA 94607

RE: Case File: DET170039; 3040 Broadway; APN: 009-0704-007-00

Dear Mr. Selna, *Rob*

This letter is in response to your request dated April 20, 2017 for a Zoning Manager's Determination concerning the property located at 3040 Broadway. The request was made specifically to address issues surrounding the property's activities in regards to permitted use and its Zoning status. In your request, you noted that it is your belief that the activities at this site include Automotive Fee Parking Commercial Activities and Automobile and other Light Vehicle Repair and Cleaning Commercial Activities.

Staff reviewed your determination letter, the property records, previous Oakland Planning Codes (OPC) in effect during the timeframes noted in your letter, previous staff reports pertaining to changes in the Planning Code, and had further discussions with the Zoning Inspection Division.

Based on this evidence, staff has determined the following as further discussed below:

- **Broadway Smog was considered an Automotive and other Light Vehicle Repair and Cleaning Commercial Activity which was a permitted use in the C-40 Zoning, prior to July 16, 2009, and is conditionally permitted under the current Zoning of D-BV-3;**
- **The activity in question would not have been considered an Automotive Fee Parking Commercial Activity or an Automotive and other Light Vehicle Repair and Cleaning Commercial Activity;**
- **The activity in question would have been considered a Construction Sales and Services Commercial Activity which was a permitted use in the C-40 Zoning prior to July 16, 2009;**
- **On July 16, 2009, the City Council approved changes to the OPC (Ordinance 12875 C.M.S) including elimination of the Construction Sales and Services Commercial Activity and the establishment of the Construction Operations Industrial Activities. This became a prohibited use in the C-40 Zone;**
- **The activity in question was established, per your letter, in October of 2009 after the adopted changes to the OPC, and therefore, could not be considered a legal non-conforming activity; and**
- **The City has determined that Harry Clark Plumbing & Heating (Plumbing Company) and the resulting Construction Operations Industrial Activities as defined by OPC Section 17.10.582 are not permitted at 3040 Broadway.**

Discussion of Evidence

- Per the OPC Section 17.10.480, Automobile and Other Light Vehicle Repair and Cleaning Commercial Activities (prior 2004 OPC in effect until July 16, 2009; Oakland Planning Supplemental No 20, I-04) include the major repair or painting of motor vehicles that have a gross vehicle weight rating of less than fourteen thousand (14,000) pounds, including body work and installation of major accessories, as well as the washing and polishing of motor vehicles. This classification does not include vehicle dismantling or salvage and tire re-treading or recapping. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

This activity is meant as a primary commercial activity for vehicles off the street (businesses serving customers). Staff has not applied this activity to businesses serving their own vehicles as this would have been an accessory activity to a primary activity. Per Section 17.09.040 of the OPC, the definition of an accessory activity “means an activity which is incidental to, and customarily associated with, a specified principal activity, and which meets the applicable conditions set forth in Section 17.10.040.” Per Section 17.10.040 Accessory Activities include “Off-street parking and loading serving a principal activity, whether located on the same lot thereas or on a different lot, but only if the facilities involved are reserved for the residents, employees, patrons, or other persons participating in the principal activity.”

- Per the OPC Section 17.10.490, Automotive Fee Parking Commercial Activity (prior 2004 OPC in effect until July 16, 2009; Oakland Planning Supplemental No 20, I-04) includes the “parking and storage of motor vehicles on a fee basis, including, but not limited to, for-fee parking lots and parking for car share vehicles, other than the operation of parking facilities by a Civic Activity.”

This activity is meant, again, as a primary commercial activity for vehicles off the street (businesses serving customers). Staff has not applied this activity to businesses leasing their parking lots to other businesses which are classified under another primary use. The service of a business’ own vehicles would have been an accessory activity to a primary use.

- Per OPC Section 17.10.450, Construction Sales and Service Commercial Activities (prior 2004 OPC in effect until July 16, 2009; Oakland Planning Supplemental No 20, I-04) includes construction and incidental storage activities performed by construction contractors on lots other than construction sites, as well as the retail or wholesale sale, from the premises, of materials used in the construction of buildings or other structures, other than paint, fixtures, and hardware. They also include certain activities accessory to the above, as specified in Section 17.10.040. Construction Sales and Services was permitted in the C-40 Zone prior to July 16, 2009.
- Sol Sulaiman operated Broadway Smog which served the general public from the 1990’s until the fall of 2009 per your letter. This was a permitted Automobile and Other Light Vehicle Repair and Cleaning Commercial Activity in the C-40 Zone.
- Between 2002 and 2009, staff was considering changes to the OPC including Industrial uses. Specifically, the staff report to the Zoning Update Committee, dated September 25, 2003, noted that “the existing definitions [of Construction Sales and Service] includes two somewhat disparate uses: 1) construction and incidental storage activities performed by construction contractors on lots other than construction sites, and 2) the retail or wholesale sales of materials used in the construction of buildings, other than paint, fixtures, or hardware (sale of paint, fixtures, and hardware is classified as General Retail Sales)”. This reasoning was exhibited in the

proposed changes to the OPC which separated construction activities and retail or wholesale sales of materials and continued through the OPC changes eventually adopted by the City Council on July 16, 2009 (Ordinance 12875 C.M.S.).

- The changes to the OPC, noted above, went into effect on July 16, 2009. Per your letter, the Plumbing Company established a business at this location in October 2009, three months after the Code changes went into effect. The Plumbing Company did not apply for a Zoning Clearance to operate their business at the site. If the owners had applied for a Zoning Clearance, staff would have determined that the activity was not an Automotive Fee Parking Commercial Activity or an Automobile and Other Light Vehicle Repair and Cleaning Commercial Activity, as the general public was not served, only the businesses' own vehicles. Furthermore, staff would have informed the owners that the use was now considered a Construction Operations Industrial Activity which was prohibited.
- A Zoning Clearance (ZC131651) was created and approved on July 16, 2013 for a "Retail Plumbing Shop and related rear open small yard to store retail sales plumbing material." Per OPC Section 17.10.340 Retail Sales Commercial Activities include the sales of items generally for personal or household use, but excludes activities more specifically described in other classifications.
- This Zoning Clearance makes no mention of parking or vehicle repair/cleaning related uses; therefore, putting into question the use at this property. A note was made in our record stating this business was for retail sales, and would not be permitted for service to construction sites or other off-site contractors. Per discussions with the Zoning Inspections Division, the general public is not able to purchase plumbing equipment or services from this location and only a nominal desk is located on the site.

Furthermore, in support of the non-retail use of the site, the determination request notes: "In 2016, the property next door, 3050 Broadway, was undergoing construction and hired the Plumbing Company to assist with related excavation work. As part of that work, the Plumbing Company again stored some dirt on the parking lot. The Plumbing company believed it was permitted to do so because the construction project at 3050 Broadway had been issued valid City of Oakland building permits."

The preponderance of evidence indicates that this site is being used as a Construction Operations Industrial Activity which includes enclosed and unenclosed facilities and accessory yards for construction and incidental storage activities and/or fabrication activities performed by construction contractors on lots other than construction sites. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. This classification includes, but is not limited to, the storage and custom cutting of stone for interior applications, roofing and plumbing component storage, and equipment storage for environmental contractors.

- Per Section 17.114.040 Right to continue nonconforming use, subject to limitations, "a nonconforming use which is in existence on the effective date of the zoning regulations or of any subsequent rezoning or other amendment thereto which makes such use nonconforming, and which existed lawfully under the previous zoning controls, or which is subsequently developed or changed pursuant to Section 17.114.030, may thereafter be continued and maintained indefinitely, and the rights to such use shall run with the land, except as otherwise specified in the nonconforming use regulations. However, no substitution, extension, or other change in activities

and no alteration or other change in facilities is permitted except as otherwise provided in Section 17.114.030 and except as specifically provided hereinafter.”

This is not considered a non-conforming activity because, as noted above, the previous use was not a Construction Sales and Services Activity, and therefore, the use in question is not a continuation of that activity. Furthermore, the use in question was not permitted activity at time the business was established on the site. The use would have to have been established before June 2009 and, per the Determination letter, the Plumbing Company first started business at this location in October 2009.

SUMMARY

The Plumbing Company is not operating a Retail Sales Commercial Activity, Automotive Fee Parking Commercial Activity or an Automobile and Other Light Vehicle Repair and Cleaning Commercial Activity but rather a Construction Operations Industrial Activity which is a prohibited activity in this zone, and has been since the inception of business at this location

If you, or any interested party, seeks to challenge this decision, an appeal **must** be filed by no later than ten calendar (10) days from the date of this letter, by **4:00 pm on August 7, 2017**. An appeal shall be on a form provided by the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of **Brittany Lenoir, Planner I**. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Zoning Manager or wherein his/her decision is not supported by substantial evidence and must include payment of \$ **1622.57** in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you, or any interested party, from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so may preclude you, or any interested party, from raising such issues during the appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the Zoning Manager prior to the close of the previously noticed public comment period on the matter.

For any further questions, please feel free to contact **Brittany Lenoir** at (510) 238-4977 or blenoir@oaklandnet.com

Sincerely,



Scott Miller
Zoning Manager

Attachments

- A: Prior 2004 Zoning Code Classifications
- B: Zoning Update Staff Report Excerpt, dated September 25, 2003
- C: Ordinance 12875 C.M.S.
- D: Notes from Zoning Inspections Division, Planner III Chris Candell

CC: Heather Klein, Planner IV



CITY OF OAKLAND
BUREAU OF PLANNING - ZONING DIVISION
250 Frank H. Ogawa Plaza, Suite 2114, Oakland, CA 94612-2031
Phone: 510-238-3911 Fax: 510-238-4730

Mr. Robert W. Selna
1111 Broadway, 24th Floor
Oakland, CA 94607

RE: Case File: DET170039; 3040 Broadway; APN: 009-0704-007-00

Per our conversation on July 31, 2017, following are the attachments for the Decision Letter at 3040 Broadway (DET170039).

Brittany Lenoir
Planner I
blenoir@oaklandnet.com
(510) 238-4977

which involves periodic changes of copy. (Ord. 12606 Att. A (part), 2004)

17.54.050 Permitted activities.

The following activities, as described in the use classifications in Chapter 17.10, are permitted:

- A. Residential Activities:
 - Permanent Residential Care occupying a One-Family Dwelling Residential Facility
 - Semi-Transient
- B. Civic Activities:
 - Essential Service
 - Limited Child-Care
 - Community Assembly
 - Community Education
 - Nonassembly-Cultural
 - Administrative
 - Health Care
 - Utility and Vehicular, but excluding communications equipment installations and exchanges
 - Telecommunications
- C. Commercial Activities:
 - General Food Sales
 - Convenience Sales and Service
 - Medical Service
 - General Retail Sales
 - General Personal Service
 - Consultative and Financial Service
 - Consumer Laundry and Repair Service
 - Administrative
 - Business and Communication Service
 - Retail Business Supply
 - Research Service
 - General Wholesale Sales
 - Construction Sales and Service
 - Automotive Sales, Rental, and Delivery
 - Automotive Servicing
 - Automotive Repair and Cleaning
 - Automotive Fee Parking
- D. Manufacturing Activities:
 - Custom
- E. Off-street parking serving activities other than those listed above, subject to the conditions set forth in Section 17.102.100. (Ord. 12138 § 5 (part), 1999; Ord. 11904 § 5.31 (part), 1996; Ord. 11854 § 5, 1996; prior planning code § 4553)

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
 - Service-Enriched Permanent Housing
 - Transitional Housing
 - Emergency Shelter
- B. Civic Activities:
 - Extensive Impact
 - Utility and Vehicular (communications equipment installations and exchanges, only)
 - Special Health Care Civic Activities
- C. Commercial Activities:
 - Convenience Market
 - Fast-Food Restaurant
 - Alcoholic Beverage Sales
 - Mechanical or Electronic Games, subject to the provisions of Section 17.102.210C
 - Group Assembly
 - Transient Habitation
 - Animal Care
 - Undertaking Service
- D. Manufacturing Activities:
 - Light
- E. Agricultural and Extractive Activities:
 - Plant Nursery
 - Crop and Animal Raising

F. Additional activities which are permitted or conditionally permitted in an adjacent zone, on lots near the boundary thereof, subject to the conditions set forth in Section 17.102.110.

(Ord. 12450 § 9, 2002; Ord. 12138 § 5 (part), 1999; Ord. 11854 § 6, 1996; prior planning code § 4554)

17.54.070 Permitted facilities.

The following facilities, as described in the use classifications in Chapter 17.10, are permitted:

Therapeutic Massage

Existing code: The existing code contains a definition of "Massage Service Activity," but this is located in Chapter 17.09, the general definitions chapter, rather than in Chapter 17.10 with the other land use classifications are located. A conditional use permit is required for "Massage Service Activity" throughout the city.

Proposed revision: Staff proposes relocating massage services to Chapter 17.10 so that it becomes an official land use category and calling it "Therapeutic Massage Services." This change will also require determining which zones the use may be permitted or conditionally permitted in.

General Wholesale Sales

Existing code: The existing General Wholesale Sales definition includes the storage and on-site sale of goods to other firms for resale. The definition also includes "the storage of goods on the premises and their transfer therefrom to retail outlets of the same firm." There is overlap in the latter part of this definition and the existing category of Transportation and Warehousing (or the proposed category Warehousing, Storage and Distribution).

Proposed revision: Staff proposes to delete the phrase about storage and transfer of goods from this definition in order to avoid overlap with the proposed Warehousing, Storage and Distribution classification. If both storage/warehousing and wholesale sales occur on a site, there will need to be a determination of which use is primary. As recommended by the consultant, there will also be a new use category for a warehouse with accessory store, and if wholesale sales activities do not exceed a certain size threshold, they may be classified in this new category.

Construction Sales and Service

Existing code: The existing definition includes two somewhat disparate uses: 1) construction and incidental storage activities performed by construction contractors on lots other than construction sites, and 2) the retail or wholesale sales of materials used in the construction of buildings, other than paint, fixtures, or hardware (sale of paint, fixtures and hardware is classified as General Retail Sales). The first type of activity is not oriented to customer traffic, and may include outdoor storage of construction equipment and materials, and is more appropriate in industrial areas of the city. The second type may also involve some outdoor storage, as in the case of a lumber yard, but is oriented to customer sales and services, and could be appropriate in some commercial areas and lighter industrial areas.

Proposed revision: Staff proposes to move construction operations, including storage of equipment and materials, parking of fleets, and offices (except where office is the only use), into a new land use category called "Construction Operations" within the Industrial classifications. The title of the classification "Construction Sales and Service" is changed to "Building Materials Sales and Service" to reflect the fact that there is a change in meaning, as it no longer includes contractors' yards. The sale of hardware and building materials is classified in three categories:

- o The General Retail Sales classification would apply to small hardware stores. The list of building-related items that can be included in the Retail Sales definition is expanded from "paint, fixtures, and hardware," to include small hand and power tools, floor and wall coverings, plants and garden supplies, and other small home improvement items. The General Retail Sales classification will also include retail showrooms such as cabinetry and tile showrooms. (There may be a need to define the maximum floor area occupied by accessory storage for such showrooms, in order that they be truly retail instead of warehouse operations).

- The Building Materials Sales and Service classification would describe a large home improvement center, lumber yard, or other establishment that sells bulkier building materials such as lumber, sheetrock, stone, windows and solar panels, plumbing, heating, electrical, and mechanical equipment, and bagged soil amendments. This classification also includes the custom cutting of materials such as wood, stone, or glass for on-site sale. Where an establishment includes both hardware and other smaller items listed under General Retail Sales and the bulkier materials under Building Materials Sales and Service, it is classified as Building Materials Sales and Service. This category provides a place for a type of store that is becoming increasingly common, the large home improvement center, such as a Home Depot or Lowe's.
- The Bulk Building Materials Sales and Service category would be a new category created to describe the sale of bulk building or landscaping supplies primarily or exclusively to contractors or where the materials for sale are stored primarily outside. Examples include sales of loose soil and gravel, wholesale heating, air conditioning and mechanical equipment, and wholesale sheetrock sales. The addition of this category is based on a suggestion by WOCA members. Whereas general home improvement items are more oriented to customer traffic and could be appropriate in some commercial or mixed zones; the bulk building materials sales will be more appropriate only in industrial locations.

Automotive Sales, Rental, and Delivery

Existing code: The existing definition includes the sale and rental of motor vehicles. It also includes "the retail or wholesale sale or rental, from the premises, of any type of goods where orders are placed predominantly by telephone or mail order with delivery being provided by motor vehicle."

Proposed revision: This category is clarified to include the sale or rental of passenger-oriented motor vehicles and exclude the sale or rental of commercial trucks or heavy equipment. The passenger-oriented vehicles are generally those with gross vehicle weight ratings under 10,000 lbs., though they also include recreational vehicles, which may be heavier. Another exception to this general size threshold is the rental of consumer-oriented moving vans and trailers on a short-term basis. The title of this classification is revised to include leasing and exclude delivery services. Delivery services relying on a fleet of three or more vehicles are proposed to be moved to a new category called "Taxi and Light Fleet-Based Services."

Automotive Servicing and Automotive Repair and Cleaning

Existing code: These two categories both have to do with the servicing and repair of motor vehicles, but the Automotive Servicing classification involves refueling and minor services that can typically take place at a service station while a customer waits. Besides refueling, the existing definition lists oil changing and the sale and servicing of tires, batteries, accessories, and replacement items. Automotive Repair includes the major repair or painting of motor vehicles, as well as the car washing. It has sometimes been difficult to make determinations at the counter about which category a proposed auto repair activity should be in. The definition does not include a size threshold for the type of vehicle that can be serviced.

Proposed revision: The revised definitions exclude the repair and servicing of commercial trucks or heavy equipment from both Automotive Servicing and Automotive Repair and Cleaning, and move them to the category "Truck and Other Heavy Vehicle Repair, Refueling, and Service" located within the Industrial land uses.

The title of Automotive Servicing is changed to Automotive Service Station in order to emphasize that this category is intended to include only light repairs that are conducted at service stations, and can typically be performed while customers wait.

Mark P. Ward
City Attorney

City Attorney

INTRODUCED BY COUNCILMEMBER _____

OFFICE OF THE CITY CLERK
2008 JUN -5 AM 11:06

OAKLAND CITY COUNCIL
ORDINANCE NO. 12875 C.M.S.

AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO: (1) ADD CHAPTER 17.73 "CIX-1, CIX-2, IG AND IO INDUSTRIAL ZONES", WHICH WILL CREATE THE FOLLOWING FOUR NEW ZONES: COMMERCIAL INDUSTRIAL MIX-1, COMMERCIAL INDUSTRIAL MIX-2, GENERAL INDUSTRIAL AND INDUSTRIAL OFFICE; (2) AMEND THE CITY'S ZONING MAPS TO MAP THESE PROPOSED ZONES IN AREAS IN THE CITY THAT CURRENTLY HAVE THE GENERAL PLAN LAND USE DESIGNATIONS OF BUSINESS MIX AND GENERAL INDUSTRIAL / TRANSPORTATION; (3) AMEND CHAPTER 17.10 "USE CLASSIFICATIONS"; (4) ADD CHAPTER 17.100 "S-19 HEALTH AND SAFETY PROTECTION OVERLAY ZONE" AND AMEND ZONING MAP TO ADD OVERLAY; (5) AMEND CHAPTER 17.120 "PERFORMANCE STANDARDS"; AND (6) AMEND THE "GUIDELINES FOR DETERMINING PROJECT CONFORMITY WITH THE GENERAL PLAN AND ZONING REGULATIONS" TO REFLECT THE NEW ZONES.

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

WHEREAS, the development standards contained in a city's zoning code and zoning maps should directly implement the intent for each of these land use classifications contained in the LUTE; and

WHEREAS, Business Mix and General Industrial/Transportation are land use designations in the LUTE; and

WHEREAS, the existing industrial zoning districts and land use classification activity types have not been updated to implement the land use policies of the Business Mix and General Industrial/Transportation land use designations since the LUTE was adopted in 1998; and

WHEREAS, the intent of the Business Mix and General Industrial/Transportation LUTE designations is to create, preserve and enhance areas of the city that are appropriate for a wide variety of commercial and industrial uses, while also providing protections against potential nuisances where industrial and residential areas neighbor each other; and

WHEREAS, City Planning staff has proposed adding four new zones: CIX-1, CIX-2, IG and IO; updated associated industrial land use classification activity types; added a health and safety protection overlay zone; and amended performance standards to implement the Business Mix and General Industrial/Transportation LUTE designations; and

WHEREAS, the "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations" (hereafter "Guidelines") was adopted by the City Council on May 6, 1998 and subsequently amended November 3, 1999, August 8, 2001, December 5, 2001, July 15, 2003, January 4, 2006 and extended December 4, 2007; and

WHEREAS, the Guidelines describe the procedure for deciding whether a project is consistent with the LUTE and the procedure to follow when the Zoning Regulations and LUTE conflict; and

WHEREAS, various community meetings, and duly noticed meetings before the City Planning Commission's Zoning Update Committee and City Planning Commission were held; and

WHEREAS, after a duly noticed public hearing, the City Planning Commission voted unanimously on January 16, 2008 to recommend to the City Council it adopt the four new proposed industrial zoning designations, amendments to the industrial land use classification activity types, proposed new health and safety protection overlay zone, amendments to the performance standards, amendments to the "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations," and amendments to the zoning maps to reflect the new zones; now, therefore;

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

Section 1. The City Council finds and determines the forgoing recitals to be true and correct and hereby makes them a part of this Ordinance.

Section 2. Title 17 of the Oakland Planning Code is hereby amended to: 1) add a new Chapter 17.73 "CIX-1, CIX-2, IG And IO Industrial Zones", which will create the following four new industrial zones: Commercial Industrial Mix-1, Commercial Industrial Mix-2, General Industrial And Industrial Office; 2) amend Chapter 17.10 "Use Classifications"; 3) add a new Chapter 17.100 "S-19 Health And Safety Protection Overlay Zone"; and 4) amend Chapter 17.120 "Performance Standards", as detailed in **Exhibit A**, attached hereto and hereby incorporated herein by reference.

Section 3. The Oakland Zoning Map is hereby amended to map the four new industrial zones and new Health and Safety Protection Zoning overlay as indicated in **Exhibit B**, attached hereto and hereby incorporated herein by reference.

Section 4. The "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations" is hereby amended as reflected in **Exhibit C**, attached hereto and hereby incorporated herein by reference.

Section 5. Prior to adopting this Ordinance, the City Council independently finds and determines that this action complies with CEQA because the City is relying on previously certified EIRs and no further environmental review is required under CEQA Guidelines sections 15162 and 15163. As a separate and independent basis, this Ordinance is consistent with CEQA Guidelines section 15183. The Environmental Review Officer is directed to cause to be filed a Notice of Determination with

the appropriate agencies.

Section 6. This Ordinance shall be effective 30 days from the date of final passage by the City Council, but shall not apply to building/construction related permits already issued and not yet expired, or to zoning applications approved by the City and not yet expired, or to 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 7. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 8. 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 9. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the application, including all accompanying maps and papers;
2. all relevant plans and maps;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City;
4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application;
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations.

Section 10. 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, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; and be it

IN COUNCIL, OAKLAND, CALIFORNIA, JUN 17 2008

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, ~~Brunner~~, CHANG, KERNIGHAN, NADEL, QUAN, ~~Reid~~, and PRESIDENT DE LA FUENTE - 6

NOES- \emptyset

ABSENT- *Brunner and Reid - 2*

ABSTENTION- \emptyset

ATTEST: 
LaToya Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

Introduction Date: MAY 20 2008

DATE OF ATTESTATION: 6/20/08

7/11/13

NOTICE AND DIGEST

AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO: (1) ADD CHAPTER 17.73 "CIX-1, CIX-2, IG AND IO INDUSTRIAL ZONES", CREATING THE FOLLOWING FOUR NEW ZONES: COMMERCIAL INDUSTRIAL MIX-1, COMMERCIAL INDUSTRIAL MIX-2, GENERAL INDUSTRIAL AND INDUSTRIAL OFFICE; (2) AMEND THE CITY'S ZONING MAPS TO MAP THESE PROPOSED ZONES IN AREAS IN THE CITY THAT CURRENTLY HAVE THE GENERAL PLAN LAND USE DESIGNATIONS OF BUSINESS MIX AND GENERAL INDUSTRIAL/TRANSPORTATION; (3) AMEND CHAPTER 17.10 "USE CLASSIFICATIONS"; (4) ADD CHAPTER 17.100 "S-19 HEALTH AND SAFETY PROTECTION OVERLAY ZONE AND AMEND ZONING MAP TO ADD OVERLAY; (5) AMEND CHAPTER 17.120 "PERFORMANCE STANDARDS"; AND (6) AMEND THE "GUIDELINES FOR DETERMINING PROJECT CONFORMITY WITH THE GENERAL PLAN AND ZONING REGULATIONS" TO REFLECT THE NEW ZONES.

Adoption of this ordinance will result in the establishment of: four new industrial zones (CIX-1, CIX-2, IG and IO) that will implement the General Plan; revisions to related definitions of industrial land uses (e.g. "use classification activity types") that are more representative and descriptive of present-day industrial uses; a new health and safety overlay zone to reinforce oversight of activities that involve hazardous waste or materials; and amendments to the City's zoning maps to map the proposed four new zones and one overlay zone to areas in the City that currently have the General Plan Business Mix or General Industrial/Transportation land use designations. This ordinance also amends citywide performance standards to reflect the four new zones to be more specific with regards to where a referenced standard should be measured from; as well as adding a threshold when an existing business will need to comply with the stated regulations. Finally, this ordinance makes changes to the "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations to reflect that the new zones and not the contents of this document will regulate zones within areas with General Plan Business Mix and General Industrial/Transportation land use designations.

WFW

Title 17

PLANNING

Additions to Title 17 of the Oakland Planning Code are shown as underline and deletions are shown as ~~strike-through~~. Additional changes made prior to first read (introduction) by City Council on 5/20/08 are shown in gray on p.13 of this exhibit).

Planning Code Chapters Amended:

- 17.10 Use Classifications
- 17.73 CIX-1, CIX-2, IG and IO Industrial Zones
- 17.100 S-19 Health and Safety Protection Overlay Zone
- 17.120 Performance Standards

Chapter 17.10

USE CLASSIFICATIONS

Part 4 Manufacturing Activity Types

Sections:

- 17.10.540 General Description of ~~Manufacturing~~ Industrial Activities.
- 17.10.550 Custom Manufacturing Industrial Activities.
- 17.10.560 Light Manufacturing Industrial Activities.
- 17.10.570 General Manufacturing Industrial Activities.
- 17.10.580 Heavy/High Impact ~~Manufacturing~~ Industrial Activities.
- 17.10.585 ~~Small Scale Transfer and Storage Hazardous Waste Management Activities.~~
- 17.10.586 ~~Industrial Transfer/Storage Hazardous Waste Management Activities.~~
- 17.10.587 ~~Residuals Repositories Hazardous Waste Management Activities.~~
- 17.10.581 Research and Development Industrial Activities.
- 17.10.582 Construction Operations Industrial Activities.
- 17.10.583 Warehousing, Storage, and Distribution Industrial Activities.
- 17.10.584 Regional Freight Transportation Industrial Activities.
- 17.10.585 Trucking and Truck-Related Industrial Activities.
- 17.10.586 Recycling and Waste-Related Industrial Activities.
- 17.10.587 Hazardous Materials Production, Storage and Waste Management Industrial Activities.

Part 4

Manufacturing Activity Types

17.10.540 General Description of ~~Manufacturing~~ Industrial Activities.

~~Manufacturing~~ Industrial Activities include the on-site production of goods by methods other than agricultural and extractive in nature; the provisions of warehousing and storage, freight handling, shipping, and trucking services; and the storage, transportation, and processing of recyclable or waste materials, and hazardous materials. They also include certain activities accessory to the above, as specified in Section 17.10.040. (Prior planning code § 2400)

17.10.550 Custom Manufacturing Industrial Activities.

Custom Manufacturing Activities include the small-scale production of artisan and/or custom products following activities. This activity typically includes the production of finished parts or products by hand, involving the use of hand tools and small-scale equipment within enclosed buildings. Custom Manufacturing Industrial Activities do not produce noise, vibration, air pollution, fire hazard or noxious emission that will disturb or endanger neighboring properties. They also include certain activities accessory thereto, as specified in Section 17.10.040.

This classification includes, but is not limited to, the production of:

A. Manufacturing, compounding, processing, assembling, packaging, treatment, or fabrication of the following products:

Beverages (including alcoholic) and food (excluding the production of highly pungent, odor-causing items, such as vinegar and yeast) with ten thousand (10,000) square feet or less of floor area;

Cameras and photographic equipment, but excluding film;

Custom sign-making;

Custom clothing; and hair products

Custom furniture building and refinishing;

Sewing garments from precut pieces

Professional, scientific, measuring, and controlling instruments;

Musical instruments, but excluding pianos and organs;

Medical, dental, optical and orthopedic instruments and appliances, and similar items;

Handicraft, art objects, and jewelry

B. Printing, publishing, pattern making, and sign making.

(Prior planning code § 2410)

17.10.560 Light Manufacturing Industrial Activities.

Light Manufacturing Activities include the following activities: manufacturing, compounding, processing, assembling, packaging, or treatment of components or products, primarily from previously prepared materials, and typically within enclosed buildings. Light Manufacturing Industrial Activities do not produce noise, vibration, air pollution, fire hazard or noxious emission that will disturb or endanger neighboring properties. This classification also includes certain activities accessory thereto, as specified in Section 17.10.040.

A. Manufacturing, compounding, processing, assembling, packaging, treatment, or fabrication of articles of merchandise, other than the products listed in Sections 17.10.550, 17.10.570, or 17.10.580, from the following prepared materials:

Asbestos

Cellophane

Cork

Fabrics and fibers

Feathers

Fur

Hair

Leather

Paper

Plastics

Rubber

Straw

Textiles

Wood, but excluding operation of a planing mill

B. Photographic developing;

C. Manufacturing, compounding, processing, assembling, packaging, treatment, or fabrication of the following products:

This classification includes, but is not limited to, the production or assembly of:

- Production apparel manufacturing;
- Computer and electronic products;
- Pharmaceutical production;
- Beverages, but excluding (including alcoholic) and food (excluding the production of highly pungent, odor-causing items, such as vinegar and yeast) with ten thousand (10,000) square feet or more of floor area;
- Business machines
- Ceramics, other than handcraft
- Clothing and other textile products, other than custom clothing
- Cosmetics
- Electrical and electronic equipment, and appliances, and components, other than the products listed in Section 17.10.550;
- Furniture and fixtures and related products;
- Food, but excluding fish, meat, sauerkraut, vinegar, and yeast
- Ice
- Pens, pencils, and artists' materials
- Pharmaceuticals production
- Pianos and organs
- Small metal tools and products, other than those listed in Section 17.10.550;
- Sporting and athletic goods
- Tobacco
- Toiletries

(Prior planning code § 2411)

17.10.570 General Manufacturing Industrial Activities.

General Manufacturing Activities include the following activities: manufacturing, compounding, processing, assembling, packaging or treatment of products from extracted, raw, recycled or secondary materials; they may have some or all activities conducted outdoors. This classification excludes all activities under Intermediate Recycling Processing Facilities. The Zoning Administrator or his/her designee may place an activity that otherwise fits this description, but does not produce noise, vibration, air pollution, fire hazard, or noxious emission that will violate standard in Chapter 17.120, or an other federal, State or local standards into the Light Manufacturing Industrial Activities classification. They also include certain activities accessory thereto, as specified in Section 17.10.040.

The classification includes, but is not limited to:

A. — Manufacturing, compounding, processing, assembling, packaging, treatment, or fabrication of articles of merchandise, other than the products listed in Sections 17.10.550, 17.10.560, or 17.10.580, from the following materials:

- Chemicals manufacturing (except for the chemical products listed under Heavy Manufacturing);
- Clay
- Glass manufacturing;
- Graphite
- Metal foundries;
- Stone

B. — Cotton ginning;

C. — Shipbuilding;

D. — Sugar refining;

E. — Wood planing or sawing, product manufacturing;

F. — Wool pulling or scouring;

G. — Manufacturing, compounding, processing, assembling, packaging, treatment, or fabrication of the following products:

- Aircraft

Alcoholic beverages
Asphalt
Barrels and casks
Boilers
Concrete
Charcoal, lampblack, and fuel briquettes
Disinfectants
Dyestuff
Emery cloth and sandpaper
Excelsior and packing materials
Film
Fish, meat, sauerkraut, vinegar, and yeast
Heavy machinery and machine tools equipment and manufacturing
Insect poison
Matches
Monuments
Motor vehicles
Oil cloth and linoleum
Paint
Porcelain
Salt
Shoe polish and stove polish
Paper finishing
Pipe production facilities
Textile mills
Tire retreading and recapping
Wood product manufacturing

Prior planning code § 2414

17.10.580 Heavy/High Impact Manufacturing-Industrial Activities.

Heavy Manufacturing Activities include high impact or hazardous manufacturing processes the following activities. They also include certain activities accessory thereto, as specified in Section 17.10.040.

This classification includes, but is not limited to:

Any manufacturing use with large-scale facilities for outdoor oil and gas storage;
Any biotechnology research, development or production activities involving materials defined by the National Institute of Health as Risk Group 4 or Restricted Agents (commonly known as "bio-safety level 4");
Battery manufacturing and storage;
Lime and gypsum products manufacturing;
Non-ferrous metals production, processing, smelting and refining;
Painting, coating and adhesive manufacturing;
Synthetic dye and pigment manufacturing;
Urethane and other open-cell foam product manufacturing;
Petroleum and coal products manufacturing and refining;
Primary metal smelting;
Vinegar, yeast and other pungent, odor-causing items production;

A. Manufacturing, compounding, processing, assembling, packaging, treatment, or fabrication of articles of merchandise from the following raw materials:

Bones

Garbage, offal, and dead animals

B. Fat rendering.

C. Petroleum refining.

~~D. Radioactive material handling.~~

~~E. Stocking or slaughtering of animals.~~

~~F. Storage and distribution of natural and liquid gas and other petroleum derivatives in bulk.~~

~~G. Leather tanning.~~

~~H. Manufacturing, compounding, processing, assembling, packaging, treatment, or fabrication of the following products:~~

~~Acid~~

~~Cement, lime, gypsum, and plaster of paris and asphalt manufacturing;~~

~~Explosives manufacturing;~~

~~Fertilizer and other agricultural chemical manufacturing~~

~~Gas~~

~~Glue~~

~~(Prior planning code § 2415)~~

17.10.585 Small Scale Transfer and Storage Hazardous Waste Management Activities.

~~Small Scale Transfer and Storage Hazardous Waste Management Activities include treatment facilities with waste streams small enough to be exempt from manifest requirements as described in California Health and Safety Code, Division 20, Chapter 6.5, Article 6. Wastes from any given generator must not exceed a total volume of five gallons or a total weight of fifty (50) pounds. (Ord. 12072 § 5 (part), 1998)~~

17.10.586 Industrial Transfer/Storage Hazardous Waste Management Activities.

~~Industrial Transfer/Storage Hazardous Waste Management Activities include any treatment facility which is not a Small Scale Transfer and Storage Facility or Residual Repository. (Ord. 12072 § 5 (part), 1998)~~

17.10.587 Residuals Repositories Hazardous Waste Management Activities.

~~Residuals Repositories Hazardous Waste Management Activities include treatment facilities for collection of residual wastes defined as residues from other treatment facilities after treatment, and other irreducible stabilized or detoxified hazardous wastes. (Ord. 12072 § 5 (part), 1998)~~

17.10.581 Research and Development Industrial Activities.

~~Research and development activities include scientific research for the design, development, engineering, and testing of high technology electronic, industrial or scientific products in advance of full-scale manufacturing of final products. The only manufacturing uses in this classification consist of the creation of prototype products, plans, or designs for the primary purpose of research, development, or evaluation, rather than sale. They also include certain activities accessory thereto, as specified in Section 17.10.040. This classification excludes manufacturing uses, wholesale and storage uses, repair and retail sales, except as an accessory use as specified in Section 17.10.040; this classification also excludes the on-site production of products for sale, and biotechnology laboratories approved for National Institute of Health experiments using Risk Group 4 or Restricted Agents (commonly known as "bio-safety level 4") (Section 17.10.580 Heavy/High Impact Manufacturing Activities).~~

~~This classification includes, but is not limited to biotechnology firms, "clean-tech"/energy, environmental, electronic research firms, or pharmaceutical research laboratories.~~

17.10.582 Construction Operations Industrial Activities.

~~Construction Operations Activities include enclosed and unenclosed facilities and accessory yards for construction and incidental storage activities and/or fabrication activities performed by construction contractors on lots other than construction sites. They also include certain activities accessory thereto, as specified in Section 17.10.040.~~

~~This classification includes, but is not limited to, the storage and custom cutting of stone for interior applications, roofing and plumbing component storage and equipment storage for environmental contractors.~~

17.10.583 Warehousing, Storage, and Distribution Industrial Activities.

This classification includes five (5) sub-classifications as described below:

A. General Warehousing, Storage and Distribution The warehousing and storage, primarily within enclosed buildings, of commercial goods (other than primary storage of hazardous materials), and the associated distribution activities that occur on-site prior to delivery of goods to wholesale and retail outlets or direct shipment to customers. These activities may also include ancillary truck parking and dispatching; and accessory outdoor storage areas where outdoor storage, not including parking and loading areas, does not occupy more than 30% of the total site area. This classification may include on-site sale of goods and merchandise if the activity is accessory to the above, as specified in Section 17.10.040.

This classification includes, but is not limited to wholesale distributors of large furnishings, food products and auto parts.

B. General Outdoor Storage Outdoor Storage Activities includes principal outdoor storage of items for more than 24 hours where such storage activities occupy more than 30% of the site area. The principal storage of goods and materials, equipment or vehicles; as well as the storage of operating equipment for warehouses, such as forklifts, pallets, and racks. This classification excludes outdoor storage uses that are more specifically described in this chapter, including, but not limited to container storage, salvage and junk yards and oil and gas storage.

This classification includes, but is not limited to construction trailers, outdoor sheds or accessory portable structures, secondary sites for storage of building materials that are not for resale on-site.

C. Self- or Mini Storage Self- or mini storage consist of storage in small individual spaces, on average of 400 square feet or less that are exclusively and directly accessible to a specific tenant, offered on a monthly or other limited basis, and available to the general public.

D. Container Storage. Container Storage includes the storage, repair, and "pre-tripping" of shipping containers, including refrigerated shipping containers, on open lots. Includes minor repair and cleaning of containers, and may include the rehabilitation of containers for other uses.

E. Automotive Salvage/Junk Yards Storage and dismantling of vehicles and equipment for sale of parts.

17.10.584 Regional Freight Transportation Industrial Activities.

Regional Freight Transportation Activities include the provision of freight handling and shipping services by water and rail. They include the inter- and intra-regional transportation of goods. They also include certain activities accessory to the above, as specified in Section 17.10.040. (Prior planning code § 2387)

A. Seaport. The accommodation of freight service and operations by ship. This classification includes piers, wharves & docks, marine terminals, container and break-bulk storage areas (where container storage is an accessory, rather than principal activity), related inter-modal facilities, and support services such as port and harbor operations and navigational services.

B. Rail yard. Accommodation of freight service and operations by rail.

17.10.585 Trucking and Truck-Related Industrial Activities.

Trucking and Truck-Related Activities include the provision of freight handling and shipping services by trucks as well as parking, maintenance, and services for trucks and other heavy vehicles and equipment. They also include certain activities accessory to the above, as specified in Section 17.10.040. (Prior planning code § 2387)

A. Freight/Truck Terminal. The accommodation of local or worldwide freight by truck. This classification includes facilities used primarily for transfer, breaking-down, and/or consolidation of freight, as well as parking and dispatch of trucks.

B. Truck Yard. Parking, dispatch, refueling, and incidental repair of trucks, buses, or other fleets of heavy vehicles, where there is no on-site freight storage or transfer. This classification includes corporation yards operated by public and private towing operations. This classification does not include local courier and delivery services; towing operations as an accessory activity to Automotive Repair and Cleaning (Section 17.10.480).

C. Truck Weigh Stations. The weighing of commercial trucks in truck weighing facilities.

D. Truck and Other Heavy Vehicle Sales, Rental, and Leasing. Sales, rental, and leasing of medium and heavy trucks, truck tractors, construction or agricultural equipment, buses, commercial boats, heavy equipment, and other commercial vehicles that have gross vehicle weight ratings greater than 14,000 pounds, including the sale, installation, accessory repair and servicing of related equipment and parts. This classification does not include vehicle dismantling or salvage and tire re-treading or recapping (See Salvage/Junk Yards, Section 17.10.620).

E. Truck and Other Heavy Vehicle Service, Repair, and Refueling. Repair, fueling, and other servicing of medium and heavy trucks, truck tractors, construction or agricultural equipment, buses, boats, heavy equipment, and similar vehicles that generally have gross vehicle weights greater than 14,000 pounds, including the sale, installation, and servicing of related equipment and parts. This classification includes fueling stations, repair shops, body and fender shops, wheel and brake shops, engine repair and rebuilding, welding, major painting service, tire sales and installation, and upholstery shops for trucks and other heavy vehicles. This classification does not include vehicle dismantling or salvage (See Salvage/Junk Yards, Section 17.10.610E).

17.10.586 Recycling and Waste-Related Industrial Activities

Recycling and Waste-Related Activities include recycling collection, intermediate processing, and other activities related to the storage and processing of used and waste materials.

A. Satellite Recycling Collection Centers. An activity accepting recyclable non-hazardous materials directly from the public by donation, redemption, or purchase at facilities less than five hundred (500) square feet in area that generally do not use power-driven processing equipment.

Satellite collection centers may include mobile recycling units, bulk reverse vending machines, kiosk type units, and/or unattended containers placed for the donation of recyclable materials. These facilities are generally located in, or associated with supermarkets and shopping centers. Most, though not all, satellite collection centers are set up pursuant to requirements of the California Beverage Container Recycling and Litter Reduction Act of 1986, which requires establishment of such centers in all "Convenience Zones" (CZ) in California, defined as the area within ½ mile of all supermarkets, to collect beverage containers made from materials such as aluminum, glass, plastic, and bimetals for recycling.

B. Primary Recycling Collection Centers. An activity accepting recyclable non-hazardous materials by donation, redemption, or purchase at facilities occupying an area of more than five hundred (500) square feet that are not operated incidental to a host use and that may have a permanent building. Primary collection centers typically use power-driven equipment to sort and condense material for shipment to an intermediate processor or other user. Primary collection centers may have a combination of outdoor processing and storage.

C. Intermediate Recycling Processing Facility. An activity serving as a collection point for receiving, processing, storage, and distribution of large quantities of recyclable materials delivered from recycling collection centers or other sources. Processing of most or all material typically occurs inside a building, using mechanical and/or chemical processing equipment to alter the physical form of incoming material. Processed materials may be stored in outdoor areas prior to sale to manufacturers or other end users. Intermediate processing facilities do not accept materials from but may sell goods to the public. This

classification does not include facilities that handle or process hazardous materials and solid waste facilities and transfer stations.

17.10.587 Hazardous Materials Production, Storage, and Waste Management Industrial Activities.

A. Small Scale Transfer and Storage Hazardous Waste Management Activities. Small Scale Transfer and Storage Hazardous Waste Management Activities include treatment facilities with waste streams small enough to be exempt from manifest requirements as described in California Health and Safety Code, Division 20, Chapter 6.5, Article 6. Wastes from any given generator must not exceed a total volume of five gallons or a total weight of fifty (50) pounds. (Ord. 12072 § 5 (part), 1998)

B. Industrial Transfer/Storage Hazardous Waste Management Activities. Industrial Transfer/Storage Hazardous Waste Management Activities include any treatment facility which is not a Small Scale Transfer and Storage Facility or Residual Repository. (Ord. 12072 § 5 (part), 1998)

C. Residuals Repositories Hazardous Waste Management Activities. Residuals Repositories Hazardous Waste Management Activities include treatment facilities for collection of residual wastes defined as residues from other treatment facilities after treatment, and other irreducible stabilized or detoxified hazardous wastes. (Ord. 12072 § 5 (part), 1998)

D. Oil and Gas Storage. Oil and Gas Storage includes tank farms and outdoor facilities for the bulk storage and handling of fuel and lubricating oils, gasoline and natural gas.

Chapter 17.73

CIX-1, CIX-2, IG AND IO INDUSTRIAL ZONES

Sections:

<u>17.73.010</u>	<u>Title, Purpose, and Applicability</u>
<u>17.73.020</u>	<u>Permitted and Conditionally Permitted Uses and Facilities</u>
<u>17.73.030</u>	<u>Property Development Standards</u>
<u>17.73.040</u>	<u>Special Regulations for Work/Live Units in the Industrial Zones</u>
<u>17.73.050</u>	<u>Parking and Loading Dock Restrictions</u>
<u>17.73.060</u>	<u>Referral to Other Applicable Regulations</u>

17.73.010 Title, Purpose, and Applicability

The provisions of this chapter shall be known as the industrial zones regulations. This chapter establishes regulations for the (CIX-1) Commercial Industrial Mix-1, (CIX-2) Commercial Industrial Mix-2, (IG) General Industrial, (IO) and Industrial Office.

These industrial zoning districts are intended to create, preserve, and enhance areas for industrial uses, including manufacturing, scientific and product-related research and development, construction, transportation, warehousing/storage/distribution, recycling/waste-related activities, clean technology, and similar uses. The primary purposes of these areas are to support Oakland's economic base and to provide employment opportunities. The specific purposes of these industrial districts are to:

- A. Provide a diversified economic base and a wide range of employment opportunities;
- B. Maximize Oakland's regional role as a transportation, distribution, and communications hub;
- C. Support Port operations and expansion by providing land for Port services such as trucking, warehousing, and distribution;
- D. Preserve areas with good freeway, rail, seaport, and/or airport access for business and industrial uses;
- E. Prohibit residential uses and limit commercial uses in General Industrial (IG) areas so that a maximum amount of the City's land base is preserved for industrial uses, and so that industrial uses may operate without impacting those activities;
- F. Locate high impact industrial uses away from residential areas; and
- G. Allow heavy-impact or large scale commercial retail uses on sites with direct access to the regional transportation system.

- A. CIX-1 Commercial Industrial Mix 1 Zone. The CIX-1 zone is intended to create, preserve, and enhance the industrial areas of West Oakland that are appropriate for a wide variety of businesses and related commercial and industrial establishments. This zone is intended to accommodate existing older industries and provide flexibility in order to anticipate new technologies. Large-

scale commercial and retail uses will be limited to sites with direct access to the regional transportation system.

- B. CIX-2 Commercial Industrial Mix 2 Zone. The CIX-2 zone is intended to create, preserve, and enhance areas of the Central and Eastern portions of the City that are appropriate for a wide variety of heavy commercial and industrial establishments. Uses with greater off-site impacts may be permitted provided they meet specific performance standards and are buffered from residential areas.
- C. IG General Industrial Zone. The IG zone is intended to create, preserve and enhance areas of the City that are appropriate for a wide variety of businesses and related commercial and industrial establishments that may have the potential to generate off-site impacts such as noise, light/glare, odor, and traffic. This zone allows heavy industrial and manufacturing uses, transportation facilities, warehousing and distribution, and similar and related supporting uses. Uses that may inhibit such uses, or the expansion thereof, are prohibited. This district is applied to areas with good freeway, rail, seaport, and/or airport access.
- D. IO Industrial Office Zone. The IO zone is intended to create and support areas of the City that are appropriate for a wide variety of businesses and related commercial and industrial establishments in a campus-style setting. Development and performance standards in this district are more restrictive and accommodate large-parcel development in an attractive, well-landscaped setting. Future development shall reflect large-scale office, research and development, light industrial, wholesaling and distribution, and similar and related supporting uses.

17.73.020 Permitted and Conditionally Permitted Uses and Facilities

The following table lists the permitted, conditionally permitted, and prohibited uses and facilities in the CIX-1, CIX-2, IG and IO zones. The descriptions of these uses are contained in Chapter 17.10.

“P” designates permitted uses and facilities in the corresponding zone.

“C” designates uses and facilities that are permitted only upon the granting of a conditional use permit (see Chapter 17.134) in the corresponding zone.

“L” designates uses and facilities subject to certain limitations listed at the bottom of the Table.

“-” designates uses and facilities that are prohibited in the corresponding zone.

Table 17.73.020: Permitted and Conditionally Permitted Uses and Facilities

Uses	Zones				Additional Regulations
	CIX-1	CIX-2	IG	IO	
Residential Uses	All residential uses prohibited in each zone				
Civic Uses					
Essential Service	C	C	C	C	
Limited Child-Care	=	=	=	=	
Community Assembly	P	C	=	C	
Community Education	P	C	=	C	
Nonassembly Cultural	P	C	=	C	
Administrative	P	C	=	C	
Health Care	P	=	=	=	
Special Health Care	C	C	=	=	
Utility and Vehicular	P	C	C	C	
Extensive Impact	C	C	C	C	
Telecommunication	P	P	P	P	See Chapter 17.128
Commercial Uses					
General Food Sales	P	C (L1)	C (L1)	P (L1)	
Convenience Market	C	C	=	C	See Section 17.102.210
Fast Food Restaurant	C	C	=	C	
Alcoholic Beverage Sales	L2	C	=	=	
Convenience Sales and Service	P	P	=	P	
Mechanical or Electronic Games	L3	=	=	=	See Section 17.102.210
Medical Service	P	C	=	C	
General Retail Sales	P	=	=	=	Retail allowed as an accessory use only in CIX-2 and IO per Section 17.10.040
Large-Scale Combined Retail and Grocery Sales	=	=	=	=	
General Personal Service	P	=	=	=	
Consultative and Financial Services	P	=	=	=	
Check Cashier and Check Cashing	=	=	=	=	
Consumer Laundry and Repair Service	P	C	=	=	
Group Assembly	P (L7)	C (L8)	C (L8)	C (L8)	
Administrative	P	P	L9	P	
Business and Communication Service	P	P	P	P	
Retail Business Supply	P	P	P	C	
Research Service	P	P	C	P	
General Wholesale Sales	P	P	P	P	No retail ancillary activities allowed in IG or IO.
Transient Habitation	=	=	=	=	
Construction Sales and Service	L3	L3	=	=	
Automotive Sales, Rental, and Delivery	P	C	=	C	

EXHIBIT A - Underline/Strikeout Version
(Revised 5/20/08)

Table 17.73.020: Permitted and Conditionally Permitted Uses and Facilities

Uses		Zones				Additional Regulations
		CIX-1	CIX-2	IG	IO	
Automotive Servicing		P	P	P	=	If located within (150) feet of any residential zone boundary is pursuant to the design review procedure in Chapter 17.136.
Automotive Repair and Cleaning		L3	L3	P	=	
Automotive Fee Parking		L3	P	P	P	
Animal Care		L4	C	C	=	
Undertaking Service		P	C	C	=	
Industrial Uses:						
Custom Manufacturing		P	P	P	P	
Light Manufacturing		P	P	P	P	
General Manufacturing		L3	L3	P	=	
Heavy Manufacturing		=	=	C	=	
Research and Development		P	P	P	P	
Construction Operations		L3	L3	L3	C	
Warehousing, Storage and Distribution:						
A.	General Warehousing, Storage and Distribution	P	P	P	P	No retail component allowed in IG or IO. See Section 17.73.060
B.	General Outdoor Storage	C	L3	P	P	
C.	Self or Mini Storage	C	C	=	C	
D.	Container Storage	=	L3	P	=	
E.	Automotive Salvage and Junk Yards	=	=	L3	=	
Regional Freight & Transportation:						
A.	Seaport	=	=	P	C	
B.	Rail Yard	=	C	P	=	
Trucking & Trucking-related Activities:						
A.	Freight/Truck Terminal	L5	L3	P	=	If located within (150) feet of any residential zone boundary is pursuant to the design review procedure in Chapter 17.136.
B.	Truck Yard	L5	C	P	C	
C.	Truck Weigh Stations	=	P	P	=	
D.	Truck & Other Heavy Vehicle Sales, Rental & Leasing	L6	P	P	P	
E.	Truck & Other Heavy Vehicle Service, Repair, and Refueling	L5	P	P	=	

Table 17.73.020: Permitted and Conditionally Permitted Uses and Facilities

Uses		Zones				Additional Regulations
		CIX-1	CIX-2	IG	IO	
Recycling & Waste Related Activities						
A.	Satellite Recycling Collection Centers	C	C	C	C	
B.	Transfer Station	C	C	C	C	
C.	Transfer Station	C	C	C	C	
Hazardous Materials Production, Storage & Waste-Related Activities						L11 See also Health & Safety Protection Zone (S-19)
A.	Small Scale Transfer and Storage	=	C	C	=	
B.	Industrial Transfer/Storage	=	=	C	=	
C.	Residuals Repositories	=	=	C	=	
D.	Oil and Gas Storage	=	=	L2	=	
Agricultural and Extractive uses						
	Plant nursery	P	P	P	=	
	Crop and animal raising	=	=	C	=	See Section 17.102.220
	Mining and Quarrying Extractive	=	=	C	=	
Facility Types		Zones				Additional Regulations
		CIX-1	CIX-2	IG	IO	
Residential Facilities		All residential uses prohibited in each zone				
Nonresidential Facilities						
	Enclosed Nonresidential	P	P	P	P	
	Open Nonresidential	P	P	P	P	
	Sidewalk Cafe	C	C	=	=	See Section 17.102.335
	Drive-In Nonresidential	=	=	=	=	
	Drive-Through Nonresidential	C	C	C	C	See Section 17.102.290
	Shopping Center Facility	=	=	=	=	
Telecommunications						
	Micro Telecommunications	P	P	P	P	See Chapter 17.128
	Mini Telecommunications	P	P	P	P	
	Macro Telecommunications	C	C	P	P	
	Monopole Telecommunications	C	C	P	P	
	Tower Telecommunications	=	=	P	P	
Signs						
	Residential Signs	=	=	=	=	See Chapter 17.104
	Special Signs	P	P	P	P	
	Development Signs	P	P	=	=	
	Realty Signs	P	P	P	P	
	Civic Signs	P	P	P	P	
	Business Signs	P	P	P	P	
	Advertising Signs	=	=	=	=	

Limitations:

- L1. Limited to location on a ground floor in CIX-2, IG and IO. Over 5,000 sf floor area requires a conditional use permit in CIX-2, IG, and IO.
- L2. Prohibited within 300 feet of a residential zone and requires a conditional use permit elsewhere throughout the zone. (Conditional use permit is required in CIX-2).
- L3. A conditional use permit is required if within 300 feet of a residential zone; Permitted if beyond 300 feet of a residential zone.
- L4. A conditional use permit is required if the use involves any of the following: a) outdoor yard activities; or b) ancillary overnight boarding.
- L5. Prohibited within 600 feet of a residential zone. A conditional use permit is required elsewhere throughout the zone.
- L6. A conditional use permit is required a) if within 300 feet of a residential zone, and b) if located anywhere in the district when outdoor repair and service activity exceeds 50% of site area.
- L7. A conditional use permit is required for entertainment uses.
- L8. Entertainment, educational and athletic services are not permitted.
- L9. Administrative activities accessory to an existing industrial activity are limited to twenty (20) percent of floor area in IG.
- L10. Prohibited within 300 feet of a residential zone; a conditional use permit is required within 300 to 600 feet of a residential zone; permitted if beyond 600 feet of a residential zone boundary.
- L11. A conditional use permit is required for electroplating activities.

17.73.030 Property Development Standards

Table 17.73.030 contains the property development standards for all zones within this Chapter.

Table 17.73.030: Property Development Standards

Development Standards	Zones				Additional Regulations
	CIX-1	CIX-2	IG	IO	
Minimum Lot Frontage	25 ft	25ft	25ft	100ft	1
Minimum Lot Width	25 ft	25ft	25ft	100ft	1
Minimum Lot Area (square feet)	5,000 sf	10,000 sf	10,000 sf	25,000 sf	1
Floor-Area Ratio (FAR)					
Greater than 300 feet of a residential zone boundary	4.0	4.0	2.0	4.0	
Within 300 feet of a residential zone boundary	2.0	2.0	1.0	2.0	2
Maximum Height	None	55 ft	None	55 ft	3, 4
Minimum Front Yard Setback	0 ft	0 ft	0 ft	20 ft	5
Minimum Rear Yard Setback			0 ft		5
Minimum Interior Side Yard Setback			0 ft		5
Minimum Street Side Yard Setback Of A Corner Lot	10 ft	10 ft	10 ft	20 ft	5

Table 17.73.030: Property Development Standards (cont'd)

Development Standards	Zones				Additional Regulations
	CIX-1	CIX-2	IG	IO	
Site Landscaping (% of lot area)	5%	5%	5%	15%	6, 7
Parking Lot Landscaping (% of lot area)	10%	10%	10%	10%	8
Street Trees	Required	Required	See also note 10	Required	9
Site and Driveway Access - Minimum Distance from any residential or open space boundary	50 ft	50 ft	50 ft	50 ft	11
Driveway Width Maximum	35 ft	35 ft	35 ft	35 ft	12
Pedestrian Walkway	Required	Required	Required	Required	13
Minimum Fence Height in Yards adjacent to Residential or Open Space Zones	8 ft	8 ft	8 ft	8 ft	14
Maximum Fence Height in Yards adjacent to Residential or Open Space Zones	15 ft	15 ft	15 ft	15 ft	14, 15

Additional Regulations Noted in Table 17.73.02:

1. See Sections 17.106.010 and 17.106.020 for exceptions to street frontage, lot width and lot area regulations.
2. A conditional use permit to exceed the permitted floor area ratio (FAR) may be allowed, as shown in parentheses above in Table 17.31.030, upon determination that the proposal conforms to the conditional use permit criteria set forth in the conditional use permit procedure in Chapter 17.134; and to all of the following additional criteria:
 - a. Additional intensity does not subject residentially zoned areas within 300 feet to significant adverse impacts related to: truck traffic; nighttime operations; noise; vehicular traffic; hazardous materials exposure and risk; air emissions; blockage of sunlight to private open space areas; or other such environmental impacts;
 - b. The site is located on a major arterial, freeway, rail line or other location that has adequate capacity to handle the intensity and type of traffic volume.
 - c. If adjacent to a residential or open space zone boundary the proposed development has a step back of one foot to every one foot of height, beginning with a maximum height of 30 feet at all required yard setbacks; and
 - d. All new development activities meet the Performance Standards in 17.120.
3. Except as otherwise provided in Section 17.108.030 (Allowed Projections above Height Limits), Chapter 17.128 (Telecommunications Regulations), and Subsection 17.108.010 on lots lying along a boundary of certain residential zones. See Section 17.104.020 for maximum height of signs.
4. The height of materials stored in any outdoor yards may be no higher than eight (8) feet within the required rear or side yard setback along the property line. However, materials may be stacked up to the height of the wall, and may be stacked within the required yard area if a solid masonry wall eight (8) to ten (10) feet in height and buffer planting is installed. The aisle width and mate-

- rial composition of all stored material, and the ultimate height of all outdoor materials stored beyond the 10 foot yard requirement, shall be according to the Fire Code regulations.
5. See 17.108.040, 17.108.070, 17.108.090, 17.108.100, 17.108.110, and 17.108.130 for minimum front, side, and rear yards in commercial and industrial zones which may be across from, abut or be adjacent to a residential zone or alley. Accessory structures or other facilities allowed within the yards and setbacks is in sections 17.108.130.
 6. All new projects which involve the construction of a new building, or the expansion or replacement of existing building footprint by more than twenty (20%) percent such that the floor area to site ratio exceeds 35%, shall comply with the landscape requirements. Landscaping shall consist of pervious surface with lawn, ground cover, shrubs, permeable paving materials, and/or trees and which is irrigated and maintained. See also 17.124 Landscaping and Screening Standards.
 7. In the IO district, the minimum front yard setback area required shall, except for driveways, walkways, and allowable signs, be developed as open landscaped areas with lawn, ground cover, shrubs, trees or decorative and permeable paving materials, subject to the standards for required landscaping and screening in Chapter 17.124.
 8. Parking Lot Landscaping applies only to lots associated with new construction with more than 25,000 sf floor area. Shade trees shall be provided at a ratio of 1 tree for every 10 spaces through the parking lot. A minimum of 10 percent of a surface parking lot shall be landscaped accompanied by an irrigation system that is permanent, below grade and activated by automatic timing controls which may be provided entirely in permeable surfacing in lieu of irrigated landscaping if approved through Design Review. Parking lots located adjacent to a public right-of-way shall include screening consisting of a minimum of five (5) foot deep planted area or a three (3) foot tall opaque, concrete, or masonry wall. Chain link, cyclone, and barbed wire fencing is prohibited in all cases.
 9. For all projects requiring a building permit, street trees are required. In addition to the general landscaping requirements set forth above, a minimum of one fifteen-gallon tree, or substantially equivalent landscaping consistent with city policy and as approved by the Director of City Planning, shall be provided for every twenty (20) feet of street frontage or portion thereof and, if a curbside planting strip exists, for every twenty-five (25) feet of street frontage. On streets with sidewalks where the distance from the face of the curb to the outer edge of the sidewalk is at least six and one-half feet, the trees to be provided shall include street trees to the satisfaction of the Tree Division.
 10. The street tree requirement noted above shall apply only to properties in the IG zone that have frontage on San Leandro Street, 98th Avenue, 66th Avenue, and Hegenberger Road.
 11. Applies to new development; or expansion of industrial or commercial buildings by more than 20 percent floor area; or b) addition or expansion of an existing building so that the building to land ratio exceeds 35 percent, whichever is greater; and all new driveway projects. This requirement may be waived administratively if such distance requirement will impede direct access to a rail line.
 12. Driveway shall not exceed 35 feet in width without obtaining approval from the Engineering Department of Building Services through the Driveway Appeal Process.
 13. A clearly defined and lighted walkway, at least four (4) feet wide, shall be provided between the main building entry and a public sidewalk for all new development. On-site walkways shall be separated from on-site automobile circulation and parking areas by landscaping, a change in paving material, or a change in elevation.
 14. Applies to all property lines in industrial zones, except those fronting a public street, which directly abut a residential or open space zone. All buffering Requirements apply to new development; or expansion of an industrial or commercial building by more than 20 percent floor area or b) addition or expansion of an existing building so that the building to land ratio exceeds 35 percent, whichever is greater.

15. A reduced buffer requirement may be permitted with the provision of a solid wood or articulated masonry wall of at least 8 feet in height in combination with a reduced buffer width as well as fewer trees and shrubs at a standard appropriate for minimizing the incompatibility between uses. The planting requirement may be eliminated if appropriate and approved by the Planning Director. The fence or wall design shall be approved by the Planning Director.

17.73.040 Special Regulations for Work/Live Units in the Industrial Zones

A. Applicability. A work/live unit in the industrial zones must meet all applicable regulations contained in this section. Regulations in this section supersede regulations contained in Section 17.102.190 relating to the conversion of buildings originally designed for commercial or industrial activities into joint living and working quarters for work/live units in the industrial zones only.

B. Definition. A "work/live unit" means a room or suite of rooms that are internally connected maintaining a common household that includes: (1) cooking space and sanitary facilities that satisfy the provisions of other applicable codes, and (2) adequate working space reserved for, and regularly used by, one or more persons residing therein. A work/live unit accommodates a primary nonresidential activity with an accessory residential component.

C. Conditional use permit required.

1. Establishment of a work/live unit for new construction is only permitted upon determination that the proposal conforms to the conditional use permit criteria set forth in the conditional use permit procedure in Chapter 17.134 on lots that are both: 1) in the CIX-1 or CIX-2 zones and 2) within three-hundred feet of a residential zone.
2. Establishment of a work/live unit through the conversion of an existing building originally designed for commercial or industrial activities is permitted in all industrial zones with the granting of a conditional use permit pursuant to the conditional use permit procedure in Chapter 17.134 provided there are existing artist and/or artisan residents who meet the requirements of Zoning Code Bulletin regarding "live/work" (issued August 29, 2001 and amended August 23, 2004).

D. Regular design review required. Establishment of a work/live unit shall only be permitted upon determination that the proposal conforms to the regular design review criteria set forth in the design review procedure in Chapter 17.136 and to all of the following additional criteria:

1. That the exterior of a new building containing primarily work/live units in the industrial zones has a commercial or industrial appearance. This includes, but is not necessarily limited to, the use of nonresidential building styles or other techniques;
2. That units on the ground floor or level of a building have a business presence on the street. This includes, but is not necessarily limited to, providing roll up doors at the street or storefront style windows that allow interior space to be visible from the street, a business door that is oriented towards the street, a sign or other means that identifies the business on the door and elsewhere, a prominent ground floor height, or other techniques;
3. That the layout of nonresidential floor areas within a unit provides a functional and bona fide open area for working activities;
4. That the floor and site plan for the project include an adequate provision for the delivery of items required for a variety of businesses. This may include, but is not necessarily limited to, the following:
 - a. Service elevators designed to carry and move oversized items,
 - b. Stairwells wide and/or straight enough to deliver large items,
 - c. Loading areas located near stairs and/or elevators and
 - d. Wide corridors for the movement of oversized items; and
5. That the floor and site plan for the project provide units that are easily identified as businesses and conveniently accessible by clients, employees and other business visitors.

E. Activity, parking, loading, open space, and unit size standards for work/live units. The following table contains the activities allowed in a work/live unit; the minimum size of an industrial work/live unit; and the parking, loading and open space required for each work/live unit:

Table 17.73.040.C Activity, parking, loading, open space, and unit size standards for work/live units.

Standard	Requirement	Notes
Activities allowed in a work/live unit	Same permitted and conditionally permitted activities as described in Section 17.73.020 for the applicable base zone.	
Required parking	One parking space per unit plus one additional unassigned visitor or employee parking space per five work/live units	1, 3
Required loading	Square feet of facility	Requirement
	Less than 10,000 square feet	No berth required
	10,000 - 69,999 square feet	One berth
	70,000 - 130,000 square feet	Two berths
	Each additional 200,000 square feet	One additional berth
Required usable open space	75 square feet of usable open space per unit	2, 3
Minimum size of unit	No individual unit shall be less than eight hundred (800) square feet of floor area	

Notes:

1. See Chapter 17.116 for other off-street parking standards.
2. All required usable open space shall meet the usable open standards contained in Chapter 17.126, except that all usable open space work/live units may be provided above ground. Further, each square foot of private usable open space equals two square feet towards the total usable open space requirement.
3. Parking and open space standards apply to new construction. For conversion of existing buildings, maintaining existing parking and open space is required.

F. A work/live unit shall consist of a maximum of one-third residential floor area with the remaining floor area to be used for the primary non-residential activity. All required plans for the creation of industrial work/live units shall: (1) delineate areas designated to contain residential activities and areas designated to contain nonresidential activities, and (2) contain a table showing the square footage of each unit devoted to residential and nonresidential activities.

G. Work/live space shall be considered Commercially/ Industrially Oriented Joint Living and Working Quarters under the Building Code. Any building permit plans for the construction or establishment of work/live units shall: (1) clearly state that the proposal includes Commercially/Industrially Joint Living and Working Quarters and (2) label the units intended to be these units as Commercially/ Industrially Joint Living and Working Quarters. This requirement is to assure the City applies building codes that allow industrial activities in work/live units in the industrial zones.

H. Each unit shall contain at least one tenant that operates a business within that unit. That tenant shall possess a valid and active City of Oakland Business Tax Certificate to operate a business out of the unit.

I. For any work/live unit, a statement of disclosure shall be: (1) provided to prospective owners or tenants before a unit or property is rented, leased, or sold, and (2) recorded with the County of

Alameda as a Notice of Limitation and in any other covenant, conditions and restrictions associated with a facility. This statement of disclosure shall contain the following acknowledgments:

1. The unit is in a nonresidential facility that allows commercial and/or industrial activities that may generate odors, truck traffic, vibrations, noise and other impacts at levels and during hours that residents may find disturbing.

2. Each unit shall contain at least one tenant that operates a business within that unit. This tenant must possess an active City of Oakland Business Tax Certificate for the operation out of the unit.

3. Each building with a work/live unit shall contain a sign that: (1) is permanently posted; (2) is at a common location where it can be frequently seen by all tenants such as a mailbox, lobby, or entrance area; (3) is made of durable material; (4) has a minimum dimension of nine by eleven inches and lettering at least one-half an inch tall. This sign shall contain the following language: "This development contains work/live units. As such, please anticipate the possibility of odors, truck traffic, noise or other impacts at levels and hours that residents may find disturbing."

K. The development of work/live units in the industrial zones shall not be considered adding housing units to the City's rental supply, nor does it create "conversion rights" under the City's condominium conversion ordinance, O.M.C. Chapter 16.36, nor are the development standards for work/live units intended to be a circumvention of the requirements of the City's condominium conversion ordinance, O.M.C. Chapter 16.36.

17.73.050 Parking and Loading Dock Restrictions

A. Off-street parking and loading shall be provided as prescribed in the off-street parking and loading requirements in Chapter 17.116.

B. Parking for new development shall be located at the rear of the site or at the side of the building in the CIX-1, CIX-2, and IO except for drop-off areas, which may be at the entry, except where access to existing loading docks and/or rail lines is required. New truck loading docks shall not be located closer than 50 feet from property line as measured from the subject dock to any property boundary if located within 300 feet of a residential zone, unless such a distance requirement will impede direct access to a rail line. Truck docks shall be located such that trucks do not encroach into the public right of way. All existing loading docks are not subject to this requirement.

17.73.060 Referral to Other Applicable Regulations

The following table contains referrals to other regulations that may apply:

Table 17.73.03: Referral to Other Regulations

<u>Subject</u>	<u>Section</u>
<u>Required number, dimensions, and location of parking spaces; maneuvering aisle dimensions, and related regulations</u>	<u>17.116</u>
<u>Sign regulations</u>	<u>17.104.20</u> <u>17.104.060</u>
<u>Buffering regulations, including the buffering of parking, loading, glare, and storage from other properties</u>	<u>17.110</u>
<u>Landscaping and screening, including street trees</u>	<u>17.66.140A</u> <u>17.108.040</u> <u>17.124</u> <u>17.68.130A</u>

EXHIBIT A - Underline/Strikeout Version
(Revised 5/20/08)

Subject	Sections
Recycling space requirements	17.118
Nonconforming uses and facilities	17.114
Joint living and working quarters	17.102.190
Performance standards regarding the control of noise, odor, smoke, and other objectionable impacts	17.120
The demolition of living units and the conversion of a living unit to a Nonresidential Use	17.102.230
Accessory Uses	17.10.040
Fence and retaining wall standards, including location, height, and materials	17.108.040
Expanding a use into adjacent zones	17.102.110
Application of zoning regulations to lots divided by zone boundaries	17.210.070
Landmarks	17.05
Special Restrictions on Establishments Selling Alcoholic Beverages (not low or medium residential zones)	17.102.210
Regulations applying to tobacco-oriented activities (not low or medium residential zones)	17.102.350
Microwave dishes and energy production facilities	17.102.240
Special regulations applying to adult entertainment activities (not low or medium residential zones)	17.102.160
Special regulations applying to massage service activities (not low or medium residential zones)	17.102.170
Buffering regulations for lots with three or more required parking space. This includes the screening of parking, loading, glare, and storage from residential properties and zones	17.110.030
Buffer Regulations for commercial and industrial uses next to residential and open space zones	17.110
Special regulations applying to electroplating activities	17.102.340
S-19 Health and Safety Protection Overlay Zone	17.100

Chapter 17.100

S-19 HEALTH AND SAFETY PROTECTION OVERLAY ZONE

SECTIONS

17.100.010 Title, Purpose and Applicability

17.100.020 Definitions

17.100.030 Zones with Which the S-19 May Be Combined

17.100.040 Prohibited Land Uses

17.100.050 General Standards

17.100.060 Regulations Required by Other Agencies

17.100.010 Title, Purpose and Applicability

The intent of the Health & Safety Protection Overlay Zone is to promote the public health, safety and welfare by ensuring that activities which use hazardous material substances or store hazardous materials, hazardous waste, or explosives locate in appropriate locations and develop in such a manner as not to be a serious threat to the environment, or to public health, particularly to residents living adjacent to industrial areas where these materials are commonly used, produced or found.

17.100.020 Definitions

For the purposes of this regulation, the following definitions apply:

- A. **Hazardous Material.** Hazardous material is defined as that which could exhibit one or more of the hazard characteristics defined in the California Fire Code (CFC), which generally means, any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace or the environment (H.S.C. §25503.5a).
- B. **Hazardous Waste.** Hazardous waste is defined as any hazardous material whose intended original purpose is no longer applicable for its use, or a waste that meets federal or state criteria for ignitability, corrosivity, reactivity or toxicity, or is specifically listed by the federal or state law or regulations (40 C.F.R., part 240 et. seq.).
- C. **Explosives.** Explosives are defined as chemicals that cause a sudden, almost instantaneous release of pressure, gas and heat when subjected to sudden shock, pressure, or high temperatures; or a material or chemical, other than a blasting agent, that is commonly used or intended to be used for the purpose of producing an explosive effect (29 C.F.R.).

17.100.030 Zones with Which the S-21 May Be Combined

A. The standards of this overlay zone shall apply to the following zoning districts:

1. Housing and Business Mix zones;
2. CIX-1 (Commercial Industrial Mix-1) zone;

3. CIX-2 (Commercial Industrial Mix-2) and IG (General Industrial) and IO (Industrial Office) zoning districts that are within three hundred (300) feet from any residential, open space, or institutional zone boundary.

B. The standards of this overlay zone shall apply to the following facility types:

1. All new nonresidential facilities or activities
2. Any nonresidential facility which has lost its legal non-conforming status
3. Any existing facility or activity where the usable floor area is expanded by more than twenty (20%) percent after the effective date of the adoption of this Ordinance.
4. Any alteration or expansion of a facility or activity, such that it requires a new Risk Management Plan or other Hazardous Materials Business Plan.

17.100.040 Prohibited Land Uses

The following land use activities are prohibited within the Health and Safety Protection Overlay Zone:

- A. Electroplating;
- B. Hazardous Waste Management, Industrial/Transfer Storage; and Residuals Repositories;
- C. Activities which involve manufacturing, storing or use of explosives

17.100.050 General Standards

The following additional regulations shall apply within the S-21 Health and Safety Protection Zone:

- A. Storage and use of all hazardous materials and hazardous waste shall be reviewed and approved by the Fire Department prior to commencement of operation or any alteration of activity. A risk management plan may also be required, per the Certified Program Uniform Assistance (CUPA) ordinance (O.M.C. 8.42).
- B. No storage or use of hazardous materials and waste can be located within 300 feet of a residential, institutional or open space zoning district without written approval or consent of the Fire Department.

17.100.060 Regulations Required by Other Agencies

A. The following regulations may be required by the Fire Department, City of Oakland:

1. Process Hazard Analysis
2. Risk Management Plan
3. Local Hazardous Materials Business Plan

B. In addition the Fire Department may establish any of the following limitations:

1. Limitations on the location for storage or use of hazardous material;
2. Containment measures for storage or use of hazardous materials;
3. Limitations or prohibitions on the storage or use of specific hazardous materials; or specific processes that use or combine hazardous materials.

C. The foregoing shall not prevent compliance with other requirements that may be imposed under other federal, state or local rules, statutes, codes or regulations.

Chapter 17.120

PERFORMANCE STANDARDS

SECTIONS

17.120.010	Title, Purpose, and Applicability
17.120.020	Existing Activities
17.120.030	Proof of Compliance
17.120.040	Measurements
17.120.050	Noise
17.120.060	Vibration
17.120.070	Smoke
17.120.080	Particulate Matter and Air Contaminants
17.120.090	Odor
17.120.110	Humidity, Heat, Cold and Glare
17.120.120	Electrical Disturbance

17.120.010 Title, Purpose, and Applicability

The provisions of this chapter shall be known as the performance standards. The purpose of these standards is to control dangerous or objectionable environmental effects of all activities. These standards shall apply to the indicated activities in the zones and situations specified herein. (Ord. 11895 & 6, 1996; prior planning code & 7700)

17.120.020 Existing Activities

Activities existing on the effective date of the Zoning regulations, or of a subsequent rezoning or other amendment thereto applying more restrictive performance standards to such activities, shall not be required to change their operations to comply with the performance standards. However, their operations shall not be so changed as to result in a greater degree of nonconformity with respect to such standards, except as otherwise authorized under Section 17.102.310 and the development agreement procedure in Chapter 17.138. (Prior planning code & 7701) For existing activities meeting the definition specified in Section 17.114.080C, an expansion greater than 20 percent of production (e.g. non-administrative) floor area is one example of a change in operations that shall be considered an increase in the degree of non-conformity.

17.120.030 Proof of Compliance

The Director of City Planning may require the applicant for a building permit or business license to submit such information with respect to proposed machinery, processes, products, or environmental effects as may be necessary to demonstrate the ability of the proposed activities to comply with applicable performance standards. Such required information may include reports to expert consultants. Any such requirement, and any determination by the Director as to sufficiency of proof, may be appealed pursuant to the administrative appeal procedure in Chapter 17.132 (Prior planning code & 7703).

17.120.040 Measurements

When measurements are necessary, levels of dangerous or objectionable environmental effects shall be measured in accordance with accepted engineering practice. (Prior planning code & 7704)

17.120.050 Noise

All activities shall be so operated that the noise level inherently and regularly generated by these activities across real property lines shall not exceed the applicable values indicated in subsections A, B, or C as modified where applicable by the adjustments indicated in subsection D, E, ~~or F~~. Further noise restrictions are outlined in Section 8.18.010 of the Oakland Municipal Code.

A. **Residential and Civic Zone Noise Level Standards.** The maximum allowable noise levels received by any residential zone or by any legal residential activity, school, child care, health care or nursing home, public open space which is existing on or prior to the date of the adoption of these amendments, and similarly sensitive land use are described in Table 17.120.01

Table 17.120.01 establishes the maximum allowable receiving noise level standards:

Table 17.120.01: Maximum Allowable Receiving Noise Level Standards - Residential and Civic

Cumulative Number of Minutes in Either the Daytime or Night-time One Hour Time Period	Daytime 7 a.m. to 10 p.m.	Nighttime 10 p.m. to 7 a.m.
20	60	45
10	65	50
5	70	55
1	75	60
0	80	65

B. **Commercial Noise Level Standards.** The maximum allowable noise levels received by any commercial land use activity within any commercial zone (including the Housing and Business Mix (HBX) zone) land use are described in Table 17.120.02

Table 17.120.02 establishes the maximum allowable receiving noise level standards:

Table 17.120.02: Maximum Allowable Receiving Noise Level Standards

Cumulative Number of Minutes in Either the Daytime or Night-time One Hour Time Period	Anytime
20	65
10	70
5	75
1	80
0	85

C. **Manufacturing, Industrial, Agricultural and Extractive Noise Level Standards.** The maximum allowable noise levels received by any land use activity within any industrial, manufacturing or mining and quarrying land use zone are described in Table 17.120.03

Table 17.120.03 establishes the maximum allowable receiving noise level standards:

Table 17.120.03: Maximum Allowable Receiving Noise Level Standards

Cumulative Number of Minutes in Either the Daytime or Night-time One Hour Time Period	Anytime
20	70
10	75
5	80
1	85
0	90

- D. In the event the measured ambient or noise level exceeds the applicable noise level standard in any category above, the stated applicable noise level shall be adjusted so as to equal the ambient noise level.
- E. Each of the noise level standards specified above in subsections A, B, and C shall be reduced by five dBA for a simple tone noise such as a whine, screech, or hum, noise consisting primarily of speech or music, or for recurring impulse noise such as hammering or riveting.
- ~~F. Legal Nonconforming Residential Facilities. The applicable receiving noise level standard under subsection A of this section shall be increased by five dBA for legal nonconforming residential facilities located in the M-30, M-40, or any other zone as provided in Section 17.114.010.~~
- ~~G.F. Noise Measurement Procedures. Utilizing the "A" weighing scale of the sound level meter and the "slow" meter response (use "fast" response for impulsive type sounds), the noise level shall be measured at a position or positions at any point on the receiver's property. In general, the microphone shall be located four to five feet above the ground; ten feet or more from the nearest reflective surface, where possible. However, in those cases where another elevation is deemed appropriate, the latter shall be utilized. If the noise complaint is related to interior noise levels, interior noise measurements shall be made within the effected residential unit. The measurements shall be made at a point at least four feet from the wall, ceiling or floor nearest the noise source, with windows in the normal seasonal configuration.~~
- H.G. **Temporary Construction or Demolition Which Exceed the Following Noise Level Standards.**
- The daytime noise level received by any residential, commercial, or industrial land use which is produced by any nonscheduled, intermittent, short-term construction or demolition operation (less than ten days) or by any repetitively scheduled and relatively long-term construction or demolition operation (ten days or more) shall not exceed the maximum allowable receiving noise level standards described in Table 17.120.04

Table 17.120.04 establishes the maximum allowable receiving noise level standards:

Table 17.120.04: Maximum Allowable Receiving Noise Level Standards

Long-term or Short-term Operation	Daily	Weekends
	7 a.m. to 7 p.m.	9 a.m. to 8 p.m.
Short-Term Operation		
Residential	80	65
Commercial, Industrial	85	70
Long-term Operation		
Residential	65	55
Commercial, Industrial	70	60

2. The nighttime noise level received by any land use and produced by any construction or demolition activity between weekday hours of seven p.m. and seven a.m. or between eight p.m. and nine a.m. on weekends and federal holidays shall not exceed the applicable nighttime noise level standards outlined in this section.
- ~~H.H.~~ Residential Air Conditioning Units and Refrigeration Systems. The exterior noise level associated with a residential air conditioning unit or refrigeration systems shall not exceed fifty (50) dBA with the exception that systems installed prior to the effective date of this section shall not exceed fifty-five (55) dBA.
- ~~J.I.~~ Commercial Refrigeration Units, Stationary and mobile commercial refrigeration units shall not produce a noise level greater than the noise level standards set forth in this section. Between the hours of ten p.m. and seven a.m., a mobile refrigeration unit shall not be located within two hundred (200) feet of any ~~legally occupied residential facility~~ residential zone boundary unless such unit is within an enclosure which reduces the noise level outside the enclosure to no more than sixty (60) dBA and reduces vibration to a level below the vibration perception threshold set forth in Section 17.120.060.
- ~~K.J.~~ Commercial Exhaust Systems. Unnecessary noise caused by exhaust from ventilation units, or other air control device shall not produce a noise level greater than the noise level standards set forth in this section between the hours of ten p.m. and seven a.m. and shall not be located within two hundred (200) feet of any ~~legally occupied residential facility~~ residential zone boundary unless such unit is within an enclosure which reduces the noise level outside the enclosure to no more than sixty (60) dBA and reduces vibration to a level below the vibration perception threshold set forth in Section 17.120.060. (Ord. 11895 & 7, 1996: prior planning code & 7710)

17.120.060 Vibration

All activities, except those located within the IG or M-40 zone, or in the IG or M-30 zone more than four hundred (400) feet from any ~~legal residential occupied property~~ residential zone boundary shall be so operated as not to create a vibration which is perceptible without instruments by the average person at or beyond any lot line of the lot containing such activities. Ground vibration caused by motor vehicles, trains, and temporary construction or demolition work is exempted from this standard. (Ord. 11895 & 8, 1996: prior planning code & 7711)

17.120.070 Smoke

All Commercial, Manufacturing and Industrial Activities located in the M-10, S-3, or S-13 zone, or in any HBX or CIX zone shall be so operated as not to emit visible smoke as dark as Ringlemann number 2 or its equivalent opacity for more than three minutes in any one-hour period, and visible smoke as dark as Ringlemann number 1 or its equivalent opacity for more than an additional seven minutes in any one-hour period. Darker or more opaque smoke is prohibited at any time. (Prior planning code & 7712)

17.120.080 Particulate Matter and Air Contaminants

All Commercial and Manufacturing and Industrial Activities which are located in a residential zone or the M-10, M-20, S-3, ~~or~~ S-13 zone, or any HBX or CIX-1 zone, or which are located in the M-30, CIX-2, IG or IO zone within four hundred (400) feet of any boundary of a residential zone, shall be so operated as not to emit particulate matter or air contaminants which are readily detectable without instruments by the average person at or beyond any lot line of the lot containing such activities. (Prior planning code & 7713)

17.120.090 Odor

When located in the zones specified below, all Commercial, Industrial and Manufacturing Activities shall be so operated as not to emit matter causing unpleasant odors which are perceptible by the average person at the points of determination described in Table 17.120.05

Table 17.120.05 establishes the maximum allowable receiving noise level standards:

Table 17.120.05: Points of Determination for Odor

Zones in Which Activities are Located	Point of Determination
Any residential zone, M-10, M-20, S-3, or S-13, <u>HBX-1, HBX-2, HBX-3, or CIX-1</u>	At or beyond any lot line of the lot containing the activities of the lot containing the activities.
M-30, CIX-2, IG or IO zone if within 400 feet of any boundary of a residential zone	At or beyond any boundary of the nearest residential zone.

(Prior planning code & 7714)

17.120.110 Humidity, Heat, Cold and Glare

When located in the zones specified below, all Commercial, Industrial and Manufacturing Activities shall be so operated as not to produce humidity, heat, cold, or glare which is perceptible without instruments by the average person at the points of determination described in Table 17.120.06:

Table 17.120.06 establishes the maximum allowable receiving noise level standards:

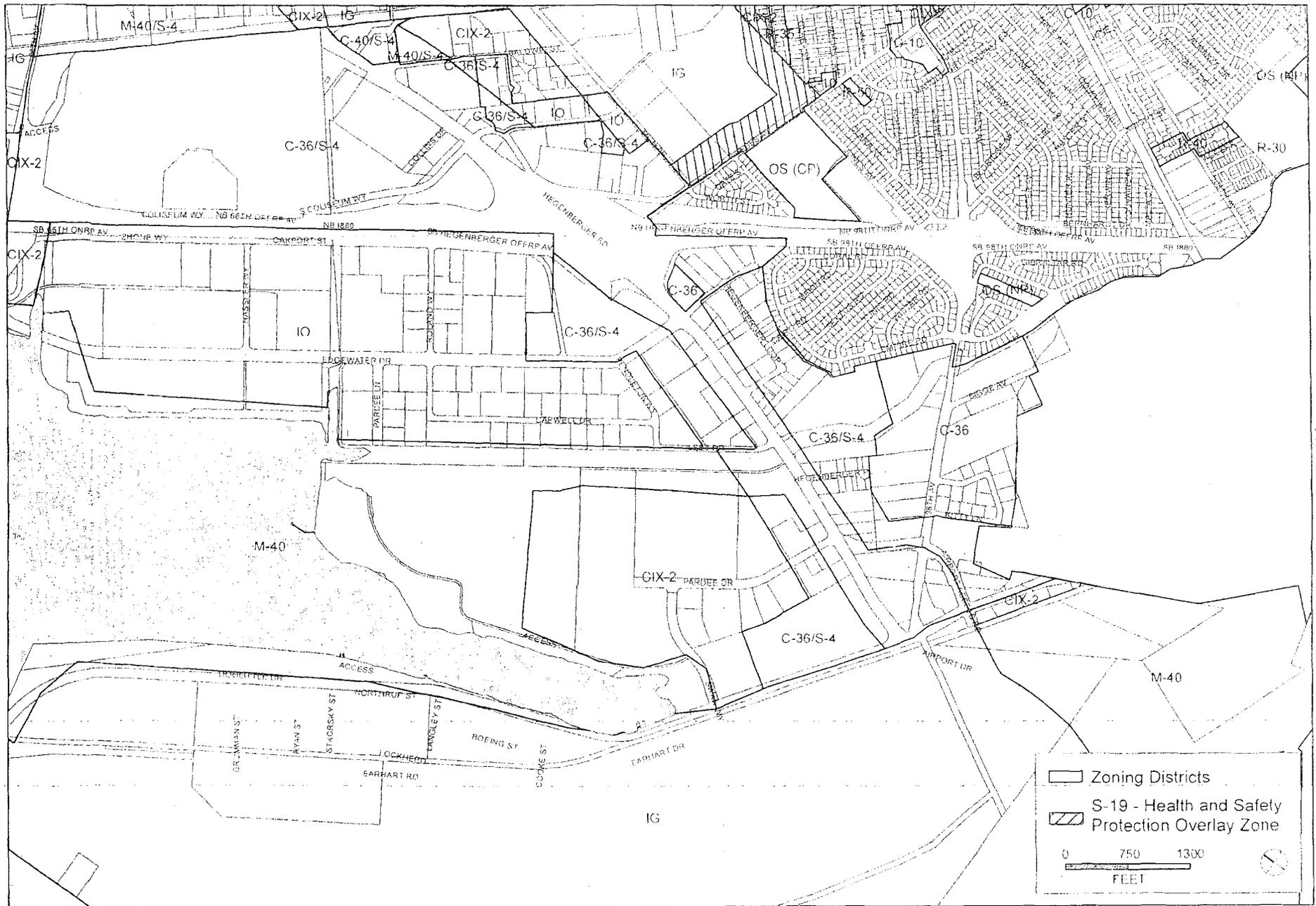
Table 17.120.06: Points of Determination for Humidity, Heat, Cold and Glare

Zones in Which Activities are Located	Point of Determination
Any residential zone, M-10, M-20, S-3, or S-13, <u>HBX-1, HBX-2, HBX-3, or CIX-1</u>	At or beyond any lot line of the lot containing the activities.
M-30, CIX-2, IG or IO zone if within 400 feet of any residential zone	At the nearest boundary of a residential zone.

(Prior planning code & 7715)

17.120.120 Electrical Disturbance

All Commercial, Industrial and Manufacturing Activities located in a residential zone or the M-10, M-20, S-3, S-13, HBX or CIX-1 zone, or located in the CIX-2, IG or M-30 or M-40 zone and within four hundred (400) feet of any boundary of a residential zone, shall be so operated as not to cause electrical disturbance adversely affecting the operation of any equipment on any other lot. (Prior planning code & 7716)



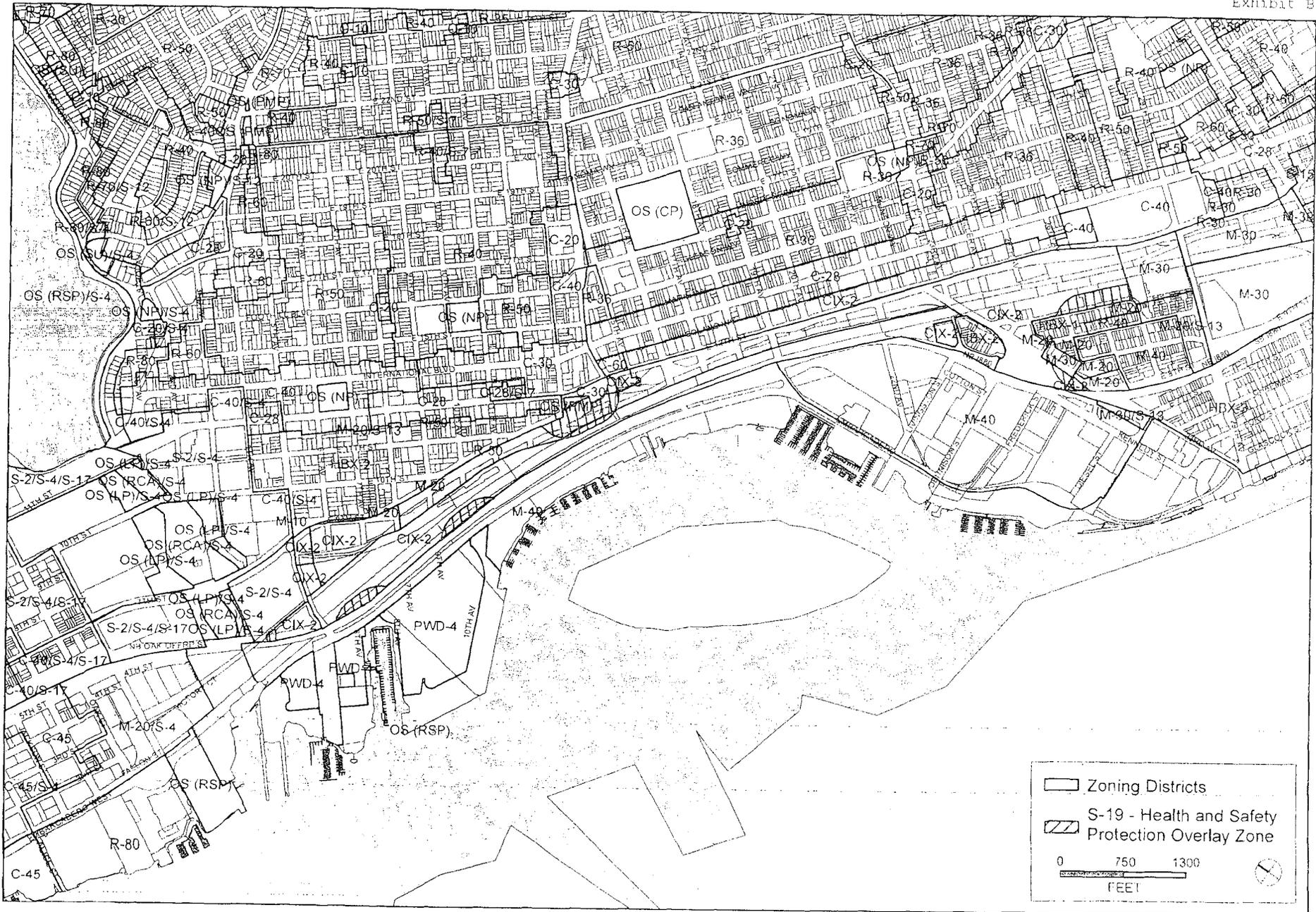
Proposed Industrial Re-Zoning (Map 1 of 5)

Note: Map formatting shows zoning districts if City Council adopts proposal. Previous maps show both existing and proposed zoning. Thus, no changes to proposed zoning districts have been made since originally presented at the April 15, 2008 City Council meeting.



Proposed Industrial Re-Zoning (Map 3 of 5)

Note: Map formatting shows zoning districts if City Council adopts proposal. Previous maps show both existing and proposed zoning. Thus, no changes to proposed zoning districts have been made since originally presented at the April 15, 2008 City Council meeting.



Proposed Industrial Re-Zoning (Map 4 of 5)

Note: Map formatting shows zoning districts if City Council adopts proposal. Previous maps show both existing and proposed zoning. Thus, no changes to proposed zoning districts have been made since originally presented at the April 15, 2008 City Council meeting.



**Guidelines for Determining Project Conformity
With the General Plan and Zoning Regulations**

Adopted by the
City of Oakland
City Planning Commission

May 6, 1998

Amended November 3, 1999 (100-31)

Amended August 8, 2001

Amended December 5, 2001

Amended July 15, 2003

(Minor typographical changes May 28, 2004)

Amended October 31, 2006

Amended

many additional policies that exist in the City's General Plan Elements *are not* listed here. The Checklist and Appendix contain most policies that seem to be immediately relevant to land use decision-making, however it may be necessary to consult the Elements themselves for additional guidance or to resolve complex questions. For any given project, go through the checklist to determine whether any of these policies apply. If so, consult the policy to determine whether the project conforms. If none of these policies applies to the project, the conformity determination will be based solely on land use and intensity, as discussed above. However, if any of these policies do apply, the project must conform to them in order to conform to the General Plan.

For example, a hotel is proposed along upper Broadway in North Oakland in an area designated Community Commercial by the General Plan and zoned C-40. A hotel is a Transient Habitation Commercial Activity, which is conditionally permitted in the C-40 Zone. According to Table 2, the General Plan is silent on Transient Habitation Commercial Activities in the Community Commercial Land Use Classification. Suppose the calculated FAR of the hotel is 2.5; the Community Commercial designation allows an FAR up to 5.0. Thus, the hotel passes the land use and intensity tests, so it appears that the zoning would prevail and the hotel would be conditionally permitted. However, consulting the checklist in Table 4, we find the question "Does the project involve development of a hotel or motel? If yes, see policy N1.7." Policy N1.7 is entitled "Locating Hotel and Motels", and states:

"Hotels and motels should be encouraged to locate downtown, along the waterfront, near the airport, or along the I-880 corridor. *No new hotels or motels should be located elsewhere in the city*, however, the development of 'bed-and-breakfast' type lodgings should be allowed in the neighborhoods, provided that the use and activities of the establishment do not adversely impact nearby areas, and parking areas are screened." [emphasis added].

Thus, it can be clearly seen that the proposed hotel would conflict with this policy, and would therefore not conform to the General Plan. As stipulated in Planning Code Section 17.01.120, the project is not allowed and no application may be accepted. The project sponsor has four options: change the project to conform (e.g. change the project from a hotel to some other use), apply for a General Plan amendment (in this case it would be an amendment to the text of Policy N1.7), find another site where the General Plan allows hotels. If the project sponsor believes that staff's determination regarding General Plan conformity is in error, the sponsor may appeal the determination to the City Planning Commission.

1. "Best Fit Zone" and Other Possible Zones

Under the conditional use permit provided by Section 17.01.100B of the Planning Code the project in question is to be subject to the "best fit zone" from the Zoning Regulations. Such "best fit zones" (and "other possible zones") are identified in Table 5 or 5A for the various General Plan Land Use Classifications. Where more than one "best fit zone" is identified for a particular Land Use Classification, Section 17.100B stipulates that "the Director of City Planning shall determine which zone to apply, with consideration given to the characteristics of the proposal and the surrounding area and any relevant provisions of the General Plan." The Director's determination of "best fit zone" cannot be appealed to the City Planning Commission under Section 17.01.080, because it is made in conjunction with a conditional use permit, which allows appeals under the conditional use permit procedures.

In the case where the project sponsor opts for a rezoning, or for a General Plan amendment to match the current zoning, the "best fit zone" or "other possible zones" are allowed in determining which zone or General Plan Land Use Classification to use. The City Planning Commission and City Council make the ultimate determination of which zone to apply since a rezoning requires passage of an ordinance by the Council with a recommendation from the Commission. Specifically, Section 17.144.060 of the Rezoning and Law Change Procedure provides that the Commission "shall consider whether the existing zone ... [is] inadequate or otherwise contrary to the public interest and may approve, modify, or disapprove the application." "If the project sponsor requests one of these other possible zones, the application should fully explain why this other zone is considered preferable to the "best fit zone."

TABLE 2: LAND USE

GENERAL PLAN LAND USE CLASSIFICATIONS

ZONING ACTIVITY AND FACILITY TYPES ✓ Conforms w/ General Plan GP Silent or Unclear X Clearly Does not Conform	GENERAL PLAN LAND USE CLASSIFICATIONS												Mixed-Use Water f (See Table 5A)	Housing Bus. Mix***	Open Space:RCA	Open Space (Other)	
	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix***	Gen. Industrial***	Institutional	Central Business District						
Residential Activities																	
Permanent	✓	✓	✓	✓	✓	✓	✓	XNA	X	✓	✓					NA	
Semi-Transient	X	X	X				X	XNA	XNA							NA	X
Civic Activities																	
Essential Service								-NA	-NA							NA	
Limited Child-Care								XNA	XNA							NA	
Nursing Home								XNA	XNA	✓						NA	X
Community Assembly	✓	✓	✓	✓	✓	✓	✓	XNA	XNA	✓	✓					NA	
Community Education	✓	✓	✓	✓	✓	✓		XNA	XNA	✓	✓					NA	
Non-Assembly Cult.	✓	✓	✓	✓	✓	✓	✓	-NA	XNA	✓	✓					NA	
Administrative					✓	✓	✓	-NA	-NA	✓	✓					NA	
Residential Care								XNA	XNA	✓						NA	X
Health Care							✓	XNA	XNA	✓						NA	X
Utility and Vehicular								-NA	-NA							NA	
Extensive Impact								-NA	-NA							NA	
Commercial Activities																	
General Food Sales	✓	✓	✓	✓	✓	✓	✓	-NA	-NA		✓					NA	
Convenience Market							✓	-NA	XNA							NA	X
Fast-Food Restaurant	X	X	X					-NA	-NA							NA	X
Alcohol Bev. Sales								-NA	-NA							NA	
Convenience Sale/Sv.				✓	✓	✓		-NA	XNA		✓					NA	X
Mech. or Elect. Games								-NA	-NA							NA	X
Medical Service						✓		XNA	XNA	✓						NA	X
General Retail Sales	✓	✓	✓	✓	✓	✓	✓	-NA	XNA		✓					NA	X
General Personal Svc.					✓	✓	✓	-NA	XNA							NA	X
Consult. Finan Svc.	X	X				✓	✓	-NA	XNA		✓					NA	X
Constr Laundry/Rep.	X	X				✓	✓	XNA	-NA							NA	X
Group Assembly	X	X				✓	✓	-NA	-NA		✓					NA	X
Administrative	X	X			✓	✓	✓	-NA	XNA		✓					NA	X
Business/Communic.	X	X			✓	✓	✓	XNA	XNA							NA	X
Retail Business Sup.	X	X				✓	✓	XNA	XNA							NA	X

Guidelines for Determining Project Conformity
Adopted May 6, 1998

TABLE 2: LAND USE	GENERAL PLAN LAND USE CLASSIFICATIONS														
ZONING ACTIVITY AND FACILITY TYPES ✓ Conforms w/ General Plan GP Silent or Unclear X Clearly Does not Conform	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix***	Gen. Industrial***	Institutional	Central Business District	Mixed-Use Water f (Sec Table 5A)	Housing Bus. Mix***	Open Space: RCA	Open Space (Other)
Research Service	X	X						✓NA	✓NA				NA	X	X
Gen. Wholesale Sales	X	X	X	X	X			✓NA	✓NA				NA	X	X
Trans Habitation/B&B							✓	NA	XNA		✓		NA	X	X
Construct Sale/Serv.	X	X	X	X	X			NA	NA	X			NA	X	X
Auto Sale/Rent/Deliv.	X	X	X	X		✓	✓	✓NA	NA				NA	X	X
Automotive Servicing	X	X	X			✓	✓	NA	NA				NA	X	X
Auto Repair/Cleaning	X	X	X	X	X	✓		NA	✓NA		X		NA	X	X
Auto Fee Parking	X	X	X					NA	NA		✓		NA	X	X
Transport/Warehouse	X	X	X	X	X			✓NA	✓NA		X		NA	X	X
Animal Care								NA	NA				NA		
Undertaking Service	X	X	X					NA	NA				NA	X	X
Scrap Operation	X	X	X	X	X	X	X	✓NA	✓NA	X	X		NA	X	X
Manufacturing Activity															
Custom	X	X	X	X	X			✓NA	✓NA	X			NA	X	X
Light	X	X	X	X	X			✓NA	✓NA	X			NA	X	X
General	X	X	X	X	X	X	X	✓NA	✓NA	X	X		NA	X	X
Heavy	X	X	X	X	X	X	X	NA	✓NA	X	X		NA	X	X
Agricultural/Extract.															
Plant Nursery								NA	NA				NA	X	X
Crop/Animal Raising								NA	NA				NA		
Mining and Quarrying								NA	NA				NA	X	X
Residential Facilities															
One-Family Dwelling	✓	✓	✓					XNA	XNA				NA		
One-Fam. /Secondary	✓	✓	✓					XNA	XNA				NA	X	X
One-Fam. w/ Second	✓	✓	✓					XNA	XNA				NA	X	X
Two-Family Dwelling	X	X	✓					XNA	XNA				NA	X	X
Multi-Family Dwelling	X	X	✓	✓	✓	✓	✓	XNA	XNA	✓	✓		NA	X	X
Rooming House								XNA	XNA				NA	X	X
Mobile Home								XNA	XNA				NA	X	X
Downtown Live Work *	X	X	X	✓	✓	✓	X	XNA	XNA	✓	✓		NA	X	X
Non-Residential Facility															
Enclosed				✓	✓			NA	NA				NA		
Open								NA	NA				NA		

TABLE 2: LAND USE	GENERAL PLAN LAND USE CLASSIFICATIONS														
ZONING ACTIVITY AND FACILITY TYPES ✓ Conforms w/ General Plan GP Silent or Unclear X Clearly Does not Conform	Hillside Residential	Detached Unit Residential	Mixed Housing Type Residential	Urban Residential	Neighb. Center Mixed Use	Community Commercial	Regional Commercial	Business Mix***	Gen. Industrial***	Institutional	Central Business District	Mixed-Use Waterfront (See Table 5A)	Housing Bus. Mix***	Open Space RCA	Open Space (Other)
Drive-In	X	X	X					-NA	-NA				NA	X	X
Sidewalk Cafe				✓	✓	✓	✓	-NA	-NA		✓		NA	X	X
Shopping Center**	X	X	X	X		✓	✓	-NA	-NA				NA	X	X
Drive-Through	X	X	X		X	✓	✓	-NA	-NA				NA	X	X
Signs															
Residential								-NA	-NA				NA	X	X
Special								-NA	-NA				NA		
Development								-NA	-NA				NA	X	X
Realty								-NA	-NA				NA	X	X
Civic								-NA	-NA				NA		
Business								-NA	-NA				NA		
Advertising								-NA	-NA				NA	X	X
Telecommunications															
Micro								-NA	-NA				NA		
Mini								-NA	-NA				NA		
Macro								-NA	-NA				NA		
Monopole								-NA	-NA				NA		
Tower								-NA	-NA				NA	X	X
Accessory Art/Install															
Live/work			✓					NA	-NA	X	✓*		NA	X	X

* Downtown building conversions to Live/Work are governed by a June 1999 ordinance which regulates and designates a specific downtown area for this type of conversion, regardless of General Plan Land Use Classification. See "Residentially-Oriented Live Work" regulations.

** "Shopping Center" is defined as a Non-residential facility type, but is not listed as permitted or conditionally permitted in any zone. This definition is used in conjunction with 1000' foot rule for Fast-Food Restaurants (Section 17.102.210(E)(1)).

***The permitted, conditionally permitted, and prohibited activities for the Housing and Business Mix, Business Mix, and General Industry and Transportation General Plan classifications are always determined by the underlying zoning designation. The HBX-1 and HBX-2 zoning designations have been adopted by the City Council to implement these Housing and Business Mix LUTE General Plan classifications.

The Mixed Use Waterfront Classification is superseded by the Estuary Policy Plan Land Use Classifications. See Table 2A.

TABLE 3

GENERAL PLAN LAND USE CLASSIFICATIONS	MAXIMUM INTENSITY ALLOWED				
	Nonresidential	Residential*			
	Maximum Floor Area Ratio	Maximum Density in Principal Units per Gross Acre	Assumed Net- to-Gross Ratio*	Maximum Density in Principal Units per Net Acre	Minimum Square Feet of Site Area per Principal Unit
Hillside Residential	NA	5	75%	6.67	6,530
Detached Unit Residential	NA	11	75%	14.67	2,969
Mixed Housing Type Residential**	NA	30**	75%	40.0**	1,089**
Urban Residential	NA	125	75%	166.67	261
Neighborhood Center Mixed Use	4.0	125	75%	166.67	261
Community Commercial	5.0	125	75%	166.67	261
Regional Commercial	4.0	125	75%	166.67	261
Business Mix	4.0NA***	NA	NA	NA	NA
General Industrial & Transportation	2.0NA***	NA	NA	NA	NA
Institutional	8.0	125	75%	166.67	261
Central Business District	20.0	300	60%	500.0	87
Mixed Use Waterfront District	See Table 3A	See Table 3A	See Table 3A	See Table 3A	See Table 3A
Housing & Business Mix***	NA	NA	NA	NA	NA
Resource Conservation	NA	NA	NA	NA	NA
Urban Park & Open Space	NA	NA	NA	NA	NA

* If it appears in any given situation that the net-to-gross ratio is significantly different than given here, an individual calculation should be made for the site in question, following the procedure explained in the Density/Intensity Section (C2) of this report.

** In the Mixed Housing Type Residential classification, no project can have a higher density than allowed by its current zoning without a major variance or a rezoning. Under no situation can a project exceed the maximum density permitted under the General Plan, even if the density allowed by the current zoning is greater than the General Plan.

***The density and nonresidential floor area ratio for the Housing and Business Mix, Business Mix, and General Industry and Transportation General Plan classifications are always determined by the underlying zoning designation. The HBX-1 and HBX-2 zoning designations have been adopted by the City Council to implement these Housing and Business Mix LUTE General Plan classifications.

NA = Not Applicable

Summary of codes and timeline & activities at 3040-3044 Broadway, Harry Clark
Plumbing expansion

Timeline:

Properties zoned C-40, activity allowed by right. Activity was considered a Commercial Activity.

6/16/09, Definition of contracting yard changed and is now considered an Industrial Activity located in 17.10.582 Construction Operations Industrial Activities.

Records show last activity before current owner was auto repair then vacant.

10/1/09, Current property owner presented evidence that they began rental of back half of property at 3040 Broadway. He does not establish activity through a Zoning Clearance. His long term legal nonconforming activity at 3026 Broadway is separated by an intervening parcel (auto rental place).

3/15/11, Area re-zoned to CC-2 which does not permit, or conditionally permit Construction Operations Industrial Activities.

June 2011, Owner purchased 3040 Broadway,

11/1/12, Owner purchases second property at 3044 Broadway

2014, 1/21/14 Owner transfers title of properties

Rezoned to D-VB-3 7/1/14 Current zone also does not allow activity

Summary:

The newly created activity classification moved the activity class from a Commercial activity allowed in the C-40 zone to an Industrial activity in 6/16/09. The activity commenced after this occurred on 10/1/09, then expanded activity at some point but certainly by purchase date 6/11 and expanded again 11/1/12 when the second parcel was purchased both of which occurred after re-zoned to CC-2 and all without benefit of any zoning approval process. Subsequently area was re-zoned again to a zone which also does not allow the activity. The activity appears to be illegal since the activity commenced after the change of the definition of the activity and the owner did not obtain any approvals for the activity.

Question: Is the activity considered illegal or legal non-conforming?



APPEAL FORM

FOR DECISION TO PLANNING COMMISSION, CITY COUNCIL OR HEARING OFFICER

PROJECT INFORMATION

Case No. of Appealed Project: DET 170039

Project Address of Appealed Project: 3040 Broadway

Assigned Case Planner/City Staff: Brittany Lenoir / Scott Miller

APPELLANT INFORMATION:

Printed Name: Robert Selna

Phone Number: 510-622-7608

Mailing Address: 1111 Broadway

Alternate Contact Number: 415-601-5305

City/Zip Code: Oakland, CA 94607

Representing: Don Marshall

Email: r-selna@wendel.com

An appeal is hereby submitted on:

AN ADMINISTRATIVE DECISION (APPEALABLE TO THE CITY PLANNING COMMISSION OR HEARING OFFICER)

YOU MUST INDICATE ALL THAT APPLY:

- Approving an application on an Administrative Decision
- Denying an application for an Administrative Decision
- Administrative Determination or Interpretation by the Zoning Administrator
- Other (please specify) _____

Please identify the specific Administrative Decision/Determination Upon Which Your Appeal is Based Pursuant to the Oakland Municipal and Planning Codes listed below:

- Administrative Determination or Interpretation (OPC Sec. 17.132.020)
- Determination of General Plan Conformity (OPC Sec. 17.01.080)
- Design Review (OPC Sec. 17.136.080)
- Small Project Design Review (OPC Sec. 17.136.130)
- Minor Conditional Use Permit (OPC Sec. 17.134.060)
- Minor Variance (OPC Sec. 17.148.060)
- Tentative Parcel Map (OMC Section 15.304.100)
- Certain Environmental Determinations (OPC Sec. 17.158.220)
- Creek Protection Permit (OMC Sec. 13.16.450)
- Creek Determination (OMC Sec. 13.16.460)
- City Planner's determination regarding a revocation hearing (OPC Sec. 17.152.080)
- Hearing Officer's revocation/impose or amend conditions (OPC Secs. 17.152.150 &/or 17.156.160)
- Other (please specify) Zoning Determination

(continued on reverse)

(Continued)

- A DECISION OF THE CITY PLANNING COMMISSION (APPEALABLE TO THE CITY COUNCIL)** Granting an application to: **OR** Denying an application to:

YOU MUST INDICATE ALL THAT APPLY:

Pursuant to the Oakland Municipal and Planning Codes listed below:

- Major Conditional Use Permit (OPC Sec. 17.134.070)
- Major Variance (OPC Sec. 17.148.070)
- Design Review (OPC Sec. 17.136.090)
- Tentative Map (OMC Sec. 16.32.090)
- Planned Unit Development (OPC Sec. 17.140.070)
- Environmental Impact Report Certification (OPC Sec. 17.158.220F)
- Rezoning, Landmark Designation, Development Control Map, Law Change (OPC Sec. 17.144.070)
- Revocation/impose or amend conditions (OPC Sec. 17.152.160)
- Revocation of Deemed Approved Status (OPC Sec. 17.156.170)
- Other (please specify) _____

FOR ANY APPEAL: An appeal in accordance with the sections of the Oakland Municipal and Planning Codes listed above shall state specifically wherein it is claimed there was an error or abuse of discretion by the Zoning Administrator, other administrative decisionmaker or Commission (Advisory Agency) or wherein their/its decision is not supported by substantial evidence in the record, or in the case of Rezoning, Landmark Designation, Development Control Map, or Law Change by the Commission, shall state specifically wherein it is claimed the Commission erred in its decision.

You must raise each and every issue you wish to appeal on this Appeal Form (or attached additional sheets). Failure to raise each and every issue you wish to challenge/appeal on this Appeal Form (or attached additional sheets), and provide supporting documentation along with this Appeal Form, may preclude you from raising such issues during your appeal and/or in court. However, the appeal will be limited to issues and/or evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.

The appeal is based on the following: *(Attach additional sheets as needed.)*

Please see attached letters and related documents.

Supporting Evidence or Documents Attached. *(The appellant must submit all supporting evidence along with this Appeal Form; however, the appeal will be limited evidence presented to the decision-maker prior to the close of the public hearing/comment period on the matter.)*

(Continued on reverse)

(Continued)

Randy L. Smith

Signature of Appellant or Representative of
Appealing Organization

8/10/2017

Date

.....
Date/Time Received Stamp Below:

Below For Staff Use Only

Cashier's Receipt Stamp Below:
.....



1111 Broadway, 24th Floor
Oakland, CA 94607-4036

T: 510-834-6600
F: 510-808-4745

www.wendel.com
rselna@wendel.com

August 10, 2017

VIA HAND DELIVERY

City of Oakland Planning Commission
C/O Brittany Lenoir, Planner I
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612-2031

Re: Case File: DET170039; 3040 Broadway; APN 009-0704-007-00

Dear Planning Commissioners:

This letter provides the grounds for an appeal of a July 27, 2017 zoning determination that the Harry Clark Plumbing and Heating Company (Plumbing Company) operations (“Operations”) at 3040 Broadway (“Site”) are *Construction Operations and Industrial Activities* as defined by Oakland Planning Code (OPC) Section 17.10.582, and therefore, not permitted. In sum, the basis for this appeal is that the Zoning Administrator’s determination is not supported by substantial evidence. As such, we request that the Planning Commission overturn the zoning determination.

Introduction

The Plumbing Company’s activities, which have been in place at the Site for many years, do not neatly fit into any one OPC definition. As a result, the Zoning Administrator (“ZA”) made a determination based on what he believed to be the closest land use definitions, and on his limited understanding of the Site’s Operations. In that vein, the ZA concluded that the preponderance of evidence indicates that this site is “being used as a Construction Operations Industrial Activity, which includes enclosed and unenclosed facilities and accessory yards for construction and incidental storage activities and/or fabrication activities performed by construction contractors on lots other than construction sites.”

The ZA also concluded that the Operations are not *Auto Fee Parking Commercial Activity* or *Automotive and other Light Vehicle Repair and Cleaning Commercial Activity*. These determinations rest on the ZA’s belief that City staff has not interpreted either activity definition to mean businesses serving their own vehicles, but rather businesses serving customers. In turn, The ZA found that the Plumbing Company’s parking and vehicle repair work on Site can only be defined as “accessory.”

The ZA’s determination states that the Site is being used as Construction Operations Industrial Activity (“Con-Ops”), however, the determination is based on scant information and

was not educated by a personal site visit. It is telling that the determination does not even attempt to apply the OPC Con-Ops definition to the current Plumbing Company activities at the Site, let alone prove that the activities meet that definition. Instead, the determination relies on the fact that the Operations are not "retail," and that on one occasion, the Plumbing Company performed some limited excavation work for a next-door neighbor's construction job.

As is demonstrated below, the Operations simply do not meet the Con-Ops definition. For example, while the OPC Con-Ops definition includes "incidental storage activities and/or fabrication activities performed by construction contractors on lots other than construction sites," it does *not* include automobile parking or storage, which has long been the predominant use at 3040 Broadway.

Furthermore, the ZA's determination that the *Auto Fee Parking* and *Automotive and other Light Vehicle Repair and Cleaning* must include the provision of such services to outside customers is not supported by substantial evidence. As I demonstrate below, the plain language of those use definitions do not require customer service, and several other OPC "commercial" uses similarly do not implicate serving the general public.

Background

My April 20, 2017 letter requesting a zoning determination on behalf of property owner Don Marshall is attached and the issues raised are incorporated into this appeal. As such, I provide only a brief history of the Site below.

Since 2009, the Plumbing Company has rented space at 3040 Broadway, which had been an automobile repair and smog check service since the 1990s. The Plumbing Company has used the Site's 2,500 square foot garage primarily to repair Harry Clark service vehicles, and the 6,500 square foot parking lot for company and employee vehicles.

In 2016, the property next door, 3050 Broadway, was undergoing construction and hired the Plumbing Company to assist in some excavation work. This work was not typical for the Plumbing Company, which mostly services residences with domestic, rather than industrial or commercial plumbing issues. However, as part of the excavation, the Plumbing Company stored dirt from the work on its parking lot. It has not stored dirt on the lot since.

Given the longstanding parking and repair activities at the Site, the Plumbing Company's right to continue those uses would seem to be protected under OPC Section 17.114.040, which allows non-conforming uses. Nonetheless, the City notified Mr. Marshall that the Site's activities were not permitted in the zoning district that controls the Site and, on March 2, 2017 recorded a lien against 3040 Broadway.

Given the City's enforcement action, Mr. Marshall believed that the best alternative was to seek a zoning determination.

Evidence - Construction Operations

A close read of the zoning determination shows that the evidence offered to support the conclusion that the Site's use is Con-Ops, is limited to Plumbing Company's admission that it has infrequently stored dirt at the Site. This detail does not amount to substantial evidence.

The Plumbing Company parks approximately 15 vehicles on the 3040 Broadway 6,500 square foot parking lot on any given day. Most of the vehicles are plumbing service vans and employees autos. From time-to-time the company parks large vehicles, such as dump trucks on the Site. In addition, a Plumbing Company full-time mechanic uses most of the Site's garage to repair company vehicles. The parking lot and the garage are also used for limited storage of plumbing tools and equipment.

While the Zoning Determination concludes that the Site's use is Con-Ops, parking, the Site's predominant use, is not mentioned in the OPC Con Ops definition, which is as follows:

Activities include enclosed and unenclosed facilities and accessory yards for construction and incidental storage activities and/or fabrication activities performed by construction contractors on lots other than construction sites. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. This classification includes, but is not limited to, the storage and custom cutting of stone for interior applications, roofing and plumbing component storage, and equipment storage for environmental contractors.

While there is limited storage at the Site, there are no "construction" or "fabrication" activities on Site. It appears that the ZA focused on the one Site use -- storage -- that is secondary in the Con-Ops definition, and minimal at the Site, and used it to define the entirety of the activities at the Site. This focus is clearly misplaced and does not provide an accurate depiction of the Site's activities.

The absence of a clear connection between the Site's activities and those listed in the Con-Ops definition, along with limited instances of dirt storage on the Site, do not constitute substantial evidence that the Site's use is Con-Ops.

Auto Fee Parking

As stated above, the ZA determined that the use at the Site was not Auto Fee Parking, primarily because, in his view, Auto Fee Parking entails serving customers "off the street," as opposed to a business renting parking spaces to park and/or store its own vehicles. The relevant OPC definition of Auto Fee Parking does not support that view, as follows:

Automotive Fee Parking Commercial Activities includes the parking and storage of motor vehicles on a fee basis, including, but not limited to, for-fee

parking lots and parking for car share vehicles, other than the operation of parking facilities by a Civic Activity.

The plain language of the Auto Fee Parking definition does not include a requirement that a business serve customers. It also notes that the activities are not limited to for-fee parking lots, which customarily offer parking to the general public. Finally, while car share companies serve the public by offering cars to customers on a temporary basis from their lots, such firms also rent those same lots to store their own vehicles. Similarly, the Plumbing Company pays fees to park employee automobiles and Plumbing Company Vehicles at 3040 Broadway.

Automobile and Other Light Vehicle Repair and Cleaning

The ZA determined that the use at the Site was not Automobile and Other Light Vehicle Repair and Cleaning because “this activity is meant as a primary commercial activity for vehicles off the street (businesses serving customers).”

The relevant definition is as follows:

Activities include the major repair or painting of motor vehicles that have a gross vehicle weight of less than 14,000 pounds, including body work and installation of major accessories, as well as washing and polishing of motor vehicles. This classification does not include vehicle dismantling or salvaging and tire re-treading or recapping.

Again, the definition includes no mention of serving customers and, for many years, the Plumbing Company has used a garage at the Site to repair its own vehicles, which weigh less than 14,000 pounds, reflecting the use definition.

Many OPC “Commercial” Uses Do Not Serve Customers

In addition to Auto Fee Parking and Automobile and Other Light Vehicle Repair and Cleaning, there are several uses defined in the OPC under the broad heading “commercial,” which do not necessarily serve customers. Those uses include, Software Design, Administrative Offices for Non-Profit Organizations, Broadcasting and Recording Services, and Research Services. This indicates that, while Auto Fee Parking and Auto Repair are broadly defined as commercial, it does not follow that they must be customer-serving.

Conclusion

The July 27, 2017 Zoning Determination for 3040 Broadway offers little evidence that the longstanding uses at the site are consistent with the definition of *Construction Operations and Industrial Activities*. The evidence provided -- the Plumbing Company’s admission that it has occasionally stored dirt at the site -- does not qualify as substantial evidence sufficient to support the determination.

The ZA attempts to bolster the zoning determination by finding that the uses at the Site are not Auto Fee Parking or Automobile and Other Light Vehicle Repair and Cleaning. That finding is based on the interpretation that the two uses must be in the service of customers, as opposed to businesses leasing space for their own uses. The plain language of the use definitions does not support that conclusion, the ZA provides no proof to support his determination, and the Oakland Planning Code includes many commercial uses that do not serve the public.

The grounds for this appeal are that the July 27, 2017 zoning determination that the Plumbing Company uses at 3040 Broadway are *Construction Operations and Industrial Activities* lacks substantial evidence. The Zoning Administrator's failure to support the determination with substantial evidence means that the Planning Commission must overturn the zoning determination.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP



Robert W. Selna

RWS

cc: Scott Miller, Zoning Manager
Heather Klein, Planner IV



1.) 3073 Broadway
432 Residential Units
22,000 sf Retail
CityView
Status: Under Construction



2.) 3300 Broadway
45 Residential Units
(4 affordable units)
2,891 sf Retail
California Capital Investment Group
Status: Approved Planning Permit



3.) 3001 Broadway
39,000 sf Retail
Portfolio Dev.
Status: Completed



4.) 3000 Broadway
127 Residential Units
8,000 sf Retail
Lowe Enterprises
Status: Under Construction



5.) 2964 Broadway
26,312 sf Retail
CVS Pharmacy
Status: Completed



6.) 2855 Broadway
68 Residential Units
9,200 sf Retail
Alliance Residential Co.
Status: Under Construction



8.) 2630 Broadway/325 27th St.
253 Residential Units
36,288 sf Retail
Hanover
Status: Under Construction



7a.) 2820 Broadway
103 Residential Units
2,228 sf Retail
Alliance Residential Co.
Status: Under Construction

7b.) 2800 Broadway
47 Residential Units
6,130 sf retail
Status: Approved Planning



10.) 2500 Webster St
30 Residential Units
6,425 sf Retail
Signature Devlp. Group
Status: Building Permit Filed



12.) 2400/2450 Valdez St
224 Residential Units
23,465 sf Retail
Hanover
Status: Under Construction



13.) 2401 Broadway
72 Residential Units
159 Hotel Rooms
17,439 sf Retail
Signature Devlp. Group
Status: Approved Planning Permit



14.) 277 27th St
450 Residential Units
59,000 sf Retail
Holland Partner Group
Status: Building Permit Filed



15.) 2301 Broadway
105 Residential Units
35,000 sf Retail
50,000 sf Office
Signature Devlp. Group
Status: Completed



16.) 2302 Valdez St
193 Residential Units
31,500 sf Retail
WOOD Partners
Status: Under Construction



17.) 2270 Broadway
223 Residential Units
8,000 sf Retail
Hines
Status: Approved Planning



18.) 2305 Webster St
130 Residential Units
3,000 sf Retail
Segula Investments
Status: Approved Planning

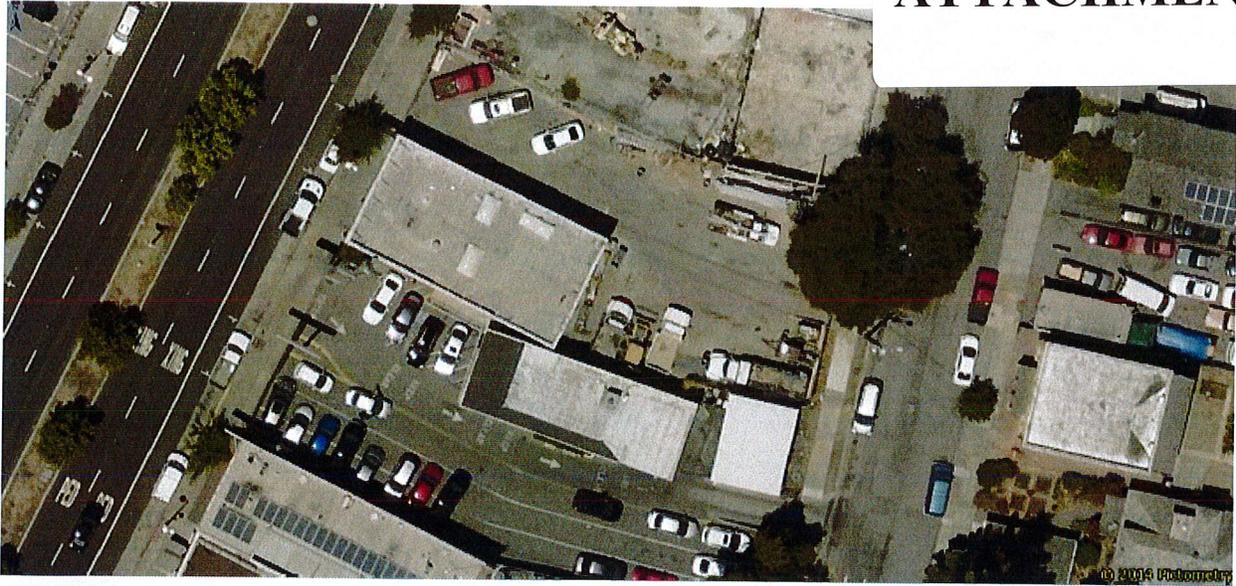


19.) 2315 Valdez St
235 Residential Units
(36 affordable units)
15,000 sf retail
Thompson Dorfman
Status: Under Construction

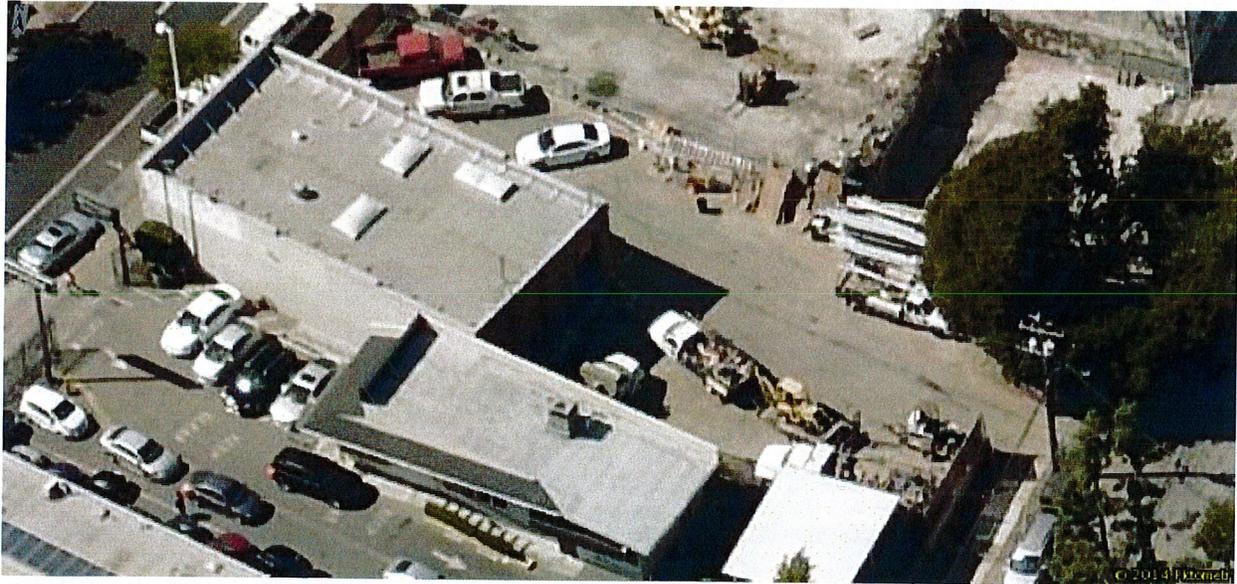


20.) 2425 Valdez St
71 Micro Living Quarters
1,024 sf Retail
Trestle Development
Status: Complete

ATTACHMENT E



06/19/2014



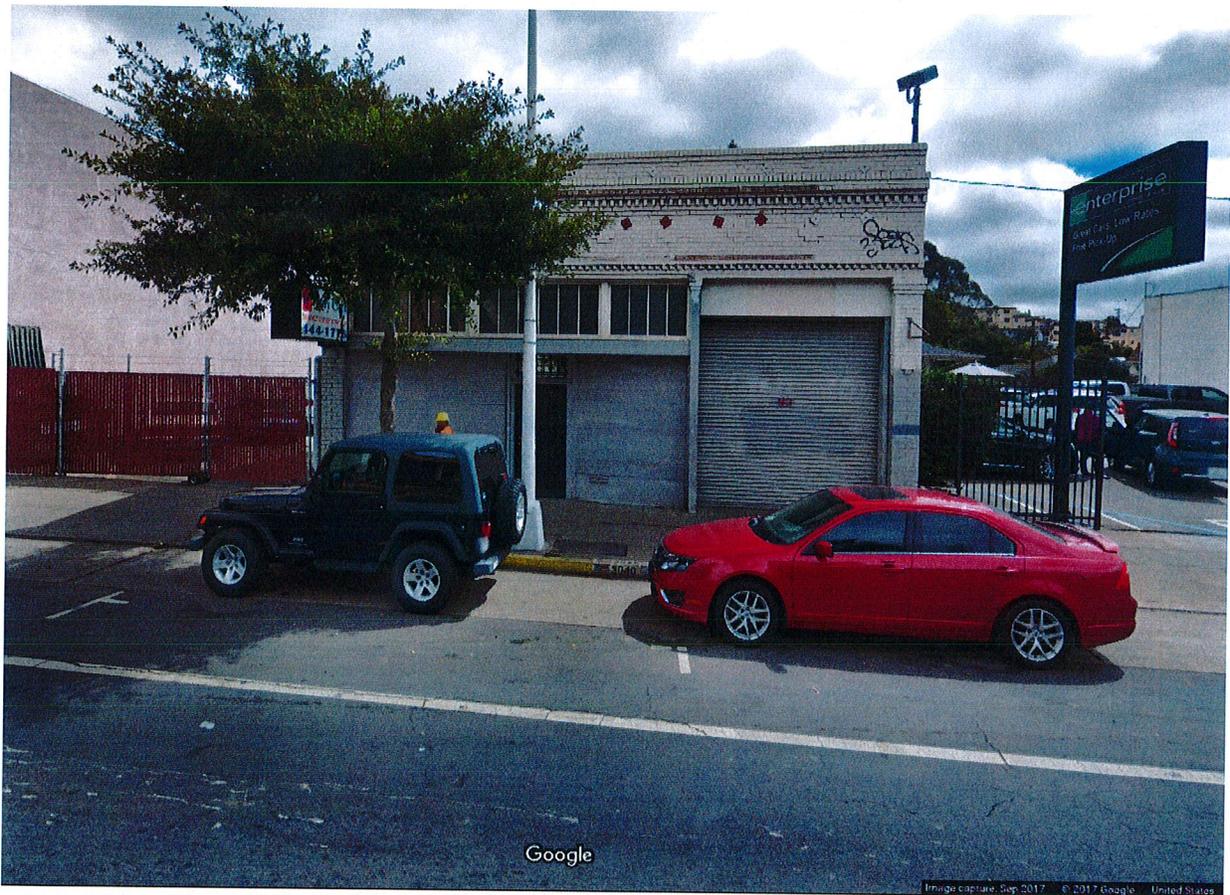
06/19/2014



07/20/2017



07/20/2017



Summary of codes and timeline & activities at 3040-3044 Broadway, Harry Clark Plumbing expansion

Timeline:

Properties zoned C-40, activity allowed by right. Activity was considered a Commercial Activity.

6/16/09, Definition of contracting yard changed and is now considered an Industrial Activity located in 17.10.582 Construction Operations Industrial Activities.

Records show last activity before current owner was auto repair then vacant.

10/1/09, Current property owner presented evidence that they began rental of back half of property at 3040 Broadway. He does not establish activity through a Zoning Clearance. His long term legal nonconforming activity at 3026 Broadway is separated by an intervening parcel (auto rental place).

3/15/11, Area re-zoned to CC-2 which does not permit, or conditionally permit Construction Operations Industrial Activities.

June 2011, Owner purchased 3040 Broadway,

11/1/12, Owner purchases second property at 3044 Broadway

2014, 1/21/14 Owner transfers title of properties

Rezoned to D-VB-3 7/1/14 Current zone also does not allow activity

Summary:

The newly created activity classification moved the activity class from a Commercial activity allowed in the C-40 zone to an Industrial activity in 6/16/09. The activity commenced after this occurred on 10/1/09, then expanded activity at some point but certainly by purchase date 6/11 and expanded again 11/1/12 when the second parcel was purchased both of which occurred after re-zoned to CC-2 and all without benefit of any zoning approval process. Subsequently area was re-zoned again to a zone which also does not allow the activity. The activity appears to be illegal since the activity commenced after the change of the definition of the activity and the owner did not obtain any approvals for the activity.

Question: Is the activity considered illegal or legal non-conforming?



CITY OF OAKLAND

250 FRANK H. OGAWA PLAZA • SUITE 2340 • OAKLAND, CALIFORNIA 94612-2031

Department of Planning and Building

www.oaklandnet.com

(510) 238-6402

FAX: (510) 238-2959

TDD: (510) 238-3254

NOTICE OF VIOLATION

Date: 7/17/13

Certified and Regular mail

To: Don A. & Kathleen D. Marshall TRS &
Marshall BR et al
3026 Broadway
Oakland, CA 94611-5713

Code Enforcement Case No.: 1303333&1303335
Property: 3040 & 3044 Broadway
Parcel Number: 009-0704-007-00 & 006
Correction Due Date: 8/16/13

The Code Enforcement Division inspected your property on 6/26/13 and confirmed that the violations of the Oakland Municipal Code (OMC) identified below are present and need to be addressed as specified under 'Required Actions'. Photographs of the violations are enclosed where applicable.

Description of Violation	OMC Section	Required Action
Property		
Building		
Zoning		
The establishment of an Construction Operations Industrial activity (a contractors yard) without Zoning approvals in a Zoning District that does not permit or conditionally permit such activity. See attached code sections.	17.35.030 permitted and conditionally permitted activities & 17.10.582 definitions	Cease all Construction Operations Industrial activities at the above locations or alter activity and obtain a zoning clearance.

At this point no fees or other charges have been assessed for these violations. To stop further code enforcement action, you are advised to correct the above violations before the first re-inspection date shown below. Your inspector is available by phone at 510-238-6986 and by email at Chris.Candell@oaklandnet.com.

If the re-inspection verifies that all violations have not been corrected, you may be charged for inspection and administrative costs, which can total \$2,045.00. In addition, Priority Lien fees in the amount of \$1,194.00 may be assessed if fees are not paid within 30 days from the date of the invoice. Charges may be collected by recording liens on your property and adding the charges to your property taxes or by filing in Small Claims or Superior Court. Furthermore, this Notice of Violation may be recorded on your property.

You have a right to appeal this Notice of Violation. To file an appeal, you must complete the enclosed Appeal form and return it with supporting documentation in the enclosed envelope. If the Code Enforcement Division does not receive your written Appeal within 30 days of the date of this notice, you will waive your right for administrative review.

Sincerely,



Chris Candell
Planner III
Department of Planning and Building

First Fee Charged Re-inspection Date: 8/16/13

Second Fee Charged Re-inspection Date: 8/30/13

cc: Don Marshall, Harry Clark Plumbing, 3026 Broadway, Oakland, CA 94611

Encl: Violation Appeal Form

Surface mold present on _____ See enclosed brochure for remediation guidelines. (Description required, e.g. bedroom walls)

City of Oakland



1111 Broadway, 24th Floor
Oakland, CA 94607-4036

T: 510-834-6600
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www.wendel.com
rselna@wendel.com

February 26, 2018

VIA EMAIL

City of Oakland Planning Commission
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612-2031

Re: Case File: DET170039; 3040 Broadway; APN 009-0704-007-00

Dear Planning Commissioners:

This letter summarizes the relevant issues for a March 7, 2018 appeal hearing of a zoning determination that the Harry Clark Plumbing Company (Harry Clark) operations (“Operations”) at 3040 Broadway (“Site”) are *Construction Operations and Industrial Activities* as defined by Oakland Planning Code (OPC) Section 17.10.582, and therefore, not permitted at the Site. Please see also see our April 20, 2017 and August 10, 2017 letters.

In sum, the basis for this appeal is that the Zoning Administrator’s determination is not supported by substantial evidence, is not consistent with the goals of the area’s Broadway-Valdez Specific Plan, and would needlessly result in the loss of part of a local business operation and 15 jobs. As such, we strongly urge the Planning Commission to overturn the zoning determination and allow Harry Clark to continue operating as a legal, non-conforming use.

This matter dates back to 2009 and includes several zoning changes and the addition of a new specific plan that are relevant Harry Clark’s uses and the Site, but for your decision on the appeal, the matter boils down to following: Harry Clark has been renting 3040 for the parking, storing and repairing vehicles since October 2009. Contrary to the conclusion of retired Zoning Administrator Scott Miller, Harry Clark has not been operating Construction Operations and Industrial activities out of 3040 Broadway.

While Harry Clark does not neatly fit into any one zoning category, a Planning Commission determination that Harry Clark can continue parking, storing and repairing vehicles is well within the code, the area’s new specific plan and will enable the city to retain good jobs and a critical residential service.

Background on Oakland-Based Harry Clark Plumbing and 3040 Broadway

Harry Clark Plumbing has been located in the City of Oakland since 1948 and is the longest-standing and most respected plumbing company in the city. The company does not provide major construction plumbing services, instead it specializes in “service calls” to

residents that encounter plumbing emergencies, including broken kitchen disposals, clogged bathtubs drains, and broken residential water mains that connect to EBMUD. In addition, Harry Clark rents space on Broadway to park, store and repair vehicles.

The company pays a better-than living wage to 15 individuals assigned to 3040 Broadway, most of whom are long-time Oakland residents. The employees take pride in providing a community service to their home town.

Were the city to force the closure of 3040 Broadway for vehicle parking, storage and repair, Harry Clark would be forced to scale its operations way back and to lay off employees. And, as the Planning Commission is aware, finding a new location to rent for parking, storage and vehicle repair in Oakland and adjacent cities has become increasingly challenging as new housing and cannabis businesses have displaced other uses.

Meanwhile, the vehicle parking and repair uses at 3040 Broadway are very consistent with the history of the 3000 section of Broadway as central to Oakland's Auto Row. Harry Clark's next-door neighbor at 3030 Broadway is Enterprise Rent a Car, which parks and stores vehicles. Just down the street at 2915 Broadway, is a Mercedes-Benz of Oakland showroom. Around the corner on Webster, Mercedes-Benz rents space to park and store cars.

In addition, displacing a local, small business from the Broadway corridor is inconsistent with many of the goals of the Broadway-Valdez Specific Plan ("BVSP), including its Section 1.1.1 Planning Goals, which include the goal of "a 'complete' mixed use neighborhood that is economically and socially sustainable – providing quality jobs, diverse housing opportunities...." And, the goal of "provid[ing] quality jobs for local residents...and neighborhood-serving uses." Moreover, the BVSP calls specifically for "living wage permanent jobs," and "contracting" jobs that provide pathways to apprenticeships for local residents.

Zoning Determination Not Supported by Substantial Evidence

Again, for its determination to stand, the City supply substantial evidence proving that Mr. Miller's July 27, 2017 determination was correct. Mr. Miller's determination was that Harry Clark is conducting *Construction Operations Industrial Activities*, as follows:

Activities include enclosed and unenclosed facilities and accessory yards for construction and incidental storage activities and/or fabrication activities performed by *construction contractors* on lots other than construction sites. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040. This classification includes, but is not limited to, the storage and custom cutting of stone for interior applications, roofing and plumbing component storage, and equipment storage for environmental contractors.

The only phrase in this description that remotely relates to Harry Clark's operations at 3040 Broadway is "plumbing component storage," which is what Mr. Miller seems to have

seized upon in making his determination. In fact, Harry Clark uses approximately two percent of the entire Site to store some plumbing tools. But, the substance of *Construction Operations Industrial Activities*, has nothing to do with Harry Clark's uses at 3040 Broadway. 3040 Broadway is *not* the following:

- 1) An accessory yard for construction
- 2) The site of incidental storage activities and/or fabrication activities performed by *construction contractors* on lots other than construction sites.

As stated above, Harry Clark is not a construction contractor. Harry Clark is essentially an on-call residential plumbing company that serves Oakland residents.

Parking, Storing and Repairing Vehicles Allowed at 3040 Broadway

Mr. Miller's zoning determination says that Harry Clark cannot rent space to park, store and repair its own vehicles at 3040 Broadway because "staff has not applied this (commercial) activity to businesses serving their own vehicles." Staff's customary application does not amount to substantial evidence. Meanwhile, the Planning Code includes a number of *commercial* uses that do not serve the general public, including software design, research and recording services. In addition, there is no provision in the *Auto Fee Parking* or *Light Vehicle Repair* zoning definitions requiring businesses to park or repair outside customers' vehicles.

Conclusion

While the uses at 3040 Broadway do not fall neatly into any one zoning category, they have helped to serve the Oakland community since 2009 for a company that has roots in the City dating back to 1948 and which continues to help fulfill the local business and employment goals of the Broadway Valdez Specific Plan.

Given that the zoning determination does not provide substantial evidence that Harry Clark's use at 3040 Broadway is an industrial construction use and the fact that parking, storing and repairing vehicles has occurred at 3040 Broadway since July 2009, we urge you to overturn the zoning determination that is the subject of this appeal.

Very truly yours,

WENDEL, ROSEN, BLACK & DEAN LLP



Robert W. Selna

3032 Brook Street
Oakland,
CA 94611

February 27th 2018

To whom it may concern,

re. Zoning determination for 3040 Broadway.

I am writing to request that the Planning Commission deny the appeal by Don Marshall against your staff's zoning determination for 3040 Broadway.

For the last 17 years, my family has lived on Brook Street, just across from the back of 3040 Broadway. In early 2013, Harry Clark Plumbing & Heating started to use the yard at 3040 Broadway as a staging area for soil spoils and construction waste, and to use Brook Street as a loading zone, with trucks being parked in the street to be filled by backhoe throughout the day (images 1), causing significant problems of noise- and air-pollution and congestion to the street's residents. In addition, vehicles were often simply left unattended, blocking the street and sidewalk for extended periods (images 2).

At that point I registered complaint with the Code Enforcement office, where it was taken up by Chris Candell. As I understand it, after investigation by Mr Candell the owners were issued with a Notice of Violation in July 2013, and at the follow-up inspection assured Mr Candell that this activity was now complete and that they would only be conducting retail plumbing and vehicle storage activities on that site. Despite this, these activities continued through 2014, 2015 and into 2016. We repeatedly reported the violations; they were again served with Notices of Violation; and again nothing changed. Indeed, at times it was significantly worse, as the employees seemed to be taking revenge on us for having issued the initial complaint (for example, by loading large pieces of concrete into a truck and jackhammering them there rather than breaking them up before loading, resulting in several hours of excruciating noise). Finally, in September 2016, some 3½ years after the illegal activity started, your staff were somehow able to make their zoning determination stick and the activity ceased.

The improvement in our quality of life since then has been marked, and I would earnestly ask that you not return us to the bad old days. In addition I would note that, should this appeal be successful, the use of this site would be entirely inconsistent with the vision laid out for the neighborhood in the Broadway/Valdez plan, which significantly increases the residential density and augments it with street-level retail businesses.

Sincerely,

A handwritten signature in black ink, appearing to read 'Julian Borrill', with a stylized, cursive script.

Julian Borrill

Supporting Images

Images 1: Trucks being loaded on Brook Street



Images 2: Street and sidewalk obstruction on Brook Street

