

**Proposal:** Discussion of proposed zoning text amendments to Chapter 17.102 and various other parts of the Planning Code, including:

- 1) Non-Substantive Changes (reformatting, reorganizing and improving the consistency of the Code);
- 2) Minor-Substantive Changes (text changes to improve the interpretability, clarity, and flexibility of the Code); and
- 3) Substantive Changes (changes to the standards in the Code), including: truck weight classifications (17.10.485 and 17.10.585); reducing slightly the setback for building portions above 55 feet in the CBD-R zone; adding Design Review for residential facilities and historic properties in the CIX, IG, and IO Zones; eliminating the increased parking requirement for expansions of activities across zone boundaries; adding sidewalk cafes as a permitted facility in the M-Industrial Zones.

**Applicant:** Planning Commission

**Planning Permits Required:** Zoning Text Amendments (ZT13-065)

**General Plan:** Various

**Zoning:** Various

**Environmental Determination:** The proposed amendments to the Zoning Code rely on the previously certified Final Environmental Impact Reports for the Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan (1998); the West Oakland Central City East, Coliseum and Oakland Army Base Redevelopment Areas; the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, "EIRs"). No further environmental review is required under CEQA Guidelines sections 15162 and 15163. Each as a separate and independent basis, this proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment).

**Service Delivery District:** All

**City Council District:** All

**Status:** Hearing by the Planning Commission

**Action to be Taken:** Recommendation to the City Council

**Staff Recommendation:** Recommend adoption of the proposal to City Council

**For Further Information:** Contact **Ann Clevenger** at (510)238-6980 or email [aclevenger@oaklandnet.com](mailto:aclevenger@oaklandnet.com)

## **SUMMARY**

The subject proposal includes text amendments to the City's Planning Code (see **Attachment C** for summary table of proposed text amendments and **Attachment D** for complete Planning Code amendment text). This is the 3<sup>rd</sup> set of amendments brought forward since the adoption of the major Planning Code amendments and citywide rezoning effective in April 2011. These proposed text amendments primarily address Section 17.102 (General Regulations Applicable to

All or Several Zones), and include various changes in other Planning Code Chapters and sections. Many of the amendments are non-substantive, intended to improve consistency, reduce redundancy and simplify Code language. Staff is also proposing a few changes that are more substantive: (1) In Chapter 17.10 (Use Classifications) Change terminology and weight thresholds for vehicles for consistency with industry standards; (2) 17.58 (Central Business District Zone) – Change the building wall setback in CBD-R Zone to 1 foot of setback per 5 feet of height over 55, to 1 foot of setback per 4 feet; (3) 17.73 (CIX, IG and IO Zones) – Add Design Review for Residential facilities and historic properties. (Note: This does not apply to non-residential buildings that are not historic); (4) Section 17.102.110 – Delete subsection (F) requiring increased parking in certain cases because it seems too onerous and applies in corridors where development is encouraged, and (5) adding sidewalk cafes as a permitted facility type in the M-Industrial Zones.

This Zoning Update package was presented to the Zoning Update Committee (ZUC) on April 17, 2013 (see **Attachment A** for ZUC staff report). On Staff's recommendation, the Committee voted to:

- (1) eliminate the following two items that were originally proposed (see **Attachment B** for staff memo to the ZUC):
  - (a) a change limiting the time of review by advisory boards, and
  - (b) a minor change to the language in the definition of "Historic Properties", and,
- (2) refer the package as modified to the City Planning Commission.

Staff, as authorized by the ZUC, has included in this report further non-substantive, technical edits, e.g., adding language that further clarifies the method of calculating the maximum density and floor-area-ratio for mixed-use projects in the Central Business District and Jack London district, (Section 17.106.030), as well as other minor corrections and clean-ups, and has added a Summary Table (**Attachment C**) for ease of reference.

## **PROJECT DESCRIPTION**

The proposed changes to the zoning text fall into three basic categories:

- I. Non-substantive Changes
- II. Minor-substantive Changes
- III. Substantive Changes

Non-substantive changes include reformatting, reorganizing and improving the internal consistency of the Planning Code and the consistency of the Planning Code with the General Plan Land Use and Transportation Element (LUTE). Minor substantive changes include text changes to improve the interpretability, clarity, and flexibility of the Planning Code. Finally, staff proposes substantive changes to certain codes to improve the standards in the Planning Code. The content of these proposed changes is summarized in the following report sections. Please see **Attachment D** for the complete zoning amendment text.

## I. NON-SUBSTANTIVE CHANGES

The following section summarizes the proposed Non-Substantive changes to the Planning Code. The Code language is in **bold** type and explanations are in normal type.

- A. Staff proposes to modify the following chapters and sections to improve the clarity and internal consistency of the Code and/or its consistency with the General Plan:

**17.07.030 – Purposes of the zoning regulations.**

**Section 17.07.030(A). To promote the achievement of the proposals, policies and objectives of the Oakland General Plan**

By inserting the phrase “policies and objectives” to this Section, this amendment would bring more consistency between the objectives of the Planning Code with those of the General Plan LUTE.

**17.10.280 - Fast-food restaurant commercial activities.**

**B. Except as may otherwise be allowed in OMC Chapters 5.49, 5.51, 8.09 and 9.52, tThe sale of ready-to-consume prepared foods from trucks, pushcarts or other movable equipment located on public or private property on a semi-permanent basis during hours of operation. Vehicular food vending generally has the following characteristics:**

For the benefit of the public, Staff proposes to insert a reference to provisions related to food vending found in the Oakland Municipal Code (OMC).

**17.10.440 Transient Habitation Commercial Activities.**

**Transient Habitation Commercial Activities include the provision of lodging services to transient guests on a less-than-weekly basis, other than in the case of activities classified by Section 17.10.120 Semi-Transient Residential Activities or Section 17.10.125 Bed and Breakfast ~~Commercial Residential~~ Activities. Examples include hotels and motels. This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.**

Staff inserted “hotels and motels” as examples of types of Transient Habitation Commercial Facilities and corrected the designation of the Bed and Breakfast classification from Commercial to Residential to be consistent with the rest of the Code.

**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.**

Staff proposes to insert the words “rating of” for consistency with other related sections and with industry standards.

**~~17.10.500 – Transport and warehousing commercial activities (does not apply to the CIX-1, CIX-2, IG, or IO zones).~~**

Staff proposes to delete this section because it has been replaced by the new industrial Use Classification adopted in 2009. This classification had been kept in the Code because the classifications in the M-10 through M-40 Zones had not been updated to include the new classifications. This Zoning update includes updates to the M-10 through M-40 Zones such that the Transport and warehousing classification is obsolete.

**17.13.060 - Special regulations for ~~mini lot~~ and planned unit developments.**

A. ~~Mini-lot Developments. In mini-lot developments, certain regulations that otherwise apply to individual lots in the RH zones may be waived or modified when and as prescribed in Section 17.102.320~~

B. ~~Planned Unit Developments. Large integrated developments shall be subject to the Planned Unit Development regulations in Chapter 17.142 if they exceed the sizes specified therein. In developments which are approved pursuant to said regulations, certain uses may be permitted in addition to those otherwise allowed in the RH zones, and certain of the other regulations applying in said zone may be waived or modified.~~

Staff proposes to remove the reference to mini-lots from the RH (Hillside Residential) zones. This inclusion was an oversight in a previous zoning update and the change is consistent with the old R-1, R-10, and R-20 zones.

#### 17.58 Central Business District.

Table 17.58.04, note 2: For mixed use projects in the Central Business District (CBD) zones, the allowable intensity of development shall be measured according to both the maximum nonresidential Floor Area Ratio (FAR) allowed by the zone and the maximum residential density allowed by the zone. The total lot area shall be used as a basis for computing both the nonresidential FAR and the residential density. No portion of lot area used to meet the density requirements for a Residential Facility shall be used as a basis for computing, through the maximum floor area ratio, the maximum amount of floor area for any nonresidential facility on the same lot, and visa versa.

Staff proposes to delete the existing language regarding density calculations for mixed use projects located in the Central Business District, because the previous language regarding the method of measuring allowable intensity and density in the CBD was incorrect. This revision corrects the previous error and makes the language consistent with that used in Section 17.106.030(A).

#### 17.106.030 - Maximum density and floor-area ratio on lots containing both Residential and Nonresidential Facilities.

A. Portion of Lot Area Used in Computing Density in the Central Business District and Jack London District. For mixed use projects in the Central Business District CBD zones and Jack London district, the allowable intensity of development shall be measured according to both the maximum nonresidential Floor Area Ratio (FAR) allowed by the zone and the maximum residential density allowed by the zone. The total lot area shall be used as a basis for computing both the nonresidential FAR and the residential density. may be measured according to the maximum FAR allowed by the zone without a separate residential density calculation, provided the maximum number of units pursuant to the residential density allowed by the General Plan and Estuary Policy Plan is not exceeded. (The Central Business District is that area identified as part of the Land Use and Transportation Element Land Use Diagram of the General Plan. The Jack London district is that area identified as part of the Estuary Policy Plan and adopted as part of the General Plan.)

Staff proposes to delete the existing language and insert new language clarifying density calculations for mixed use projects in the CBD and Jack London District.

#### 17.130.060 - Obligation of applicant to defend, indemnify, and hold harmless the City of Oakland.

A. To the maximum extent permitted by law, the applicant shall defend (with counsel reasonably acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, City of Oakland Redevelopment Successor Agency, the Oakland City Planning Commission and its respective agents, officers, volunteers and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect), action, causes of action or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void

or annul, (1) an approval by the City relating to a development-related application or subdivision and/or a (Lease) Disposition and Development Agreement; or (2) implementation of such an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

Staff added clarifications to the above language.

**17.138.015– Projects eligible and special regulations for projects with development agreements**

Staff proposes to relocate Section 17.102.310 to a new Section 17.138.015(A) and (B), and modify the language to add “successor to the” Redevelopment Agency and delete “major” in reference to affected permit types.

**Chapter 17.142 – Mini Lot and Planned Unit Development Regulations.**

Staff added a Mini Lot section (Article II) to Chapter 17.142 to clarify applicability and basic provisions.

**17.142.030 – Developments for which planned unit development permit approval is required or requested.**

**A. The following developments are permitted only upon the granting of a planned unit development permit pursuant to the planned unit development procedure in Chapter 17.140: Other large, integrated developments are permitted without such a permit, but shall be subject to all regulations generally applying in the zone in which they are located.**

**1A. Any planned unit development incorporating any of the bonuses set forth in Section 17.142.100.**

**2B. Any integrated development which is primarily designed for or occupied by Commercial Activities, which is located in any commercial zone, and which is developed under unified control, in accordance with a comprehensive plan, on a single tract with sixty thousand (60,000) square feet or more of land area, or on two or more tracts which total such area and which are separated only by a street or other right-of-way.**

**B. Unless required by the Planning Director, other large, integrated developments involving the same minimum land area thresholds of a planned unit development, as defined in Section 17.142.020, are permitted without such a permit. However, an applicant of such a development may request a planned unit development permit pursuant to the planned unit development procedure in Chapter 17.140, but shall be subject to all regulations generally applying in the zone in which they are located.**

Staff added a new subsection B to clarify that the Planning Director may require other very large integrated developments to be reviewed under the planned unit development permit procedure, where it is deemed appropriate; otherwise, an applicant of such a development may request a PUD permit.

B. Staff proposes to move or combine the following code chapters and sections as noted:

~~Chapter 17.68 M-20 Industrial Zones Regulations~~

~~Chapter 17.70 M-30 Industrial Zones Regulations~~

~~Chapter 17.72 M-40 Industrial Zones Regulations~~

**Chapter 17.72 M-20, M-30, and M-40 Industrial Zones Regulations.**

Staff proposes to combine these three Industrial zones into one chapter that will be in the same format as the most recently adopted zones. Also, Staff added sidewalk cafés as a permitted facility type in the M- Zones to correct an oversight (see 17.72 under Substantive Changes section).

**17.102.070 - Application of zoning regulations to lots divided by zone boundaries**

Staff proposes to move this entire section to 17.154.060 Zoning maps.

~~17.102.080– Permitted and conditionally permitted uses~~

**17.07.065 – Permitted and conditionally permitted uses.**

**A. Other Uses Prohibited.** Except as otherwise provided in Sections ~~17.102.040~~ 17.114.030 and ~~17.102.070, 17.154.060,~~ the nonconforming use regulations in Chapter 17.114, and the planned unit development regulations in Chapter 17.142, or as authorized under Section ~~17.102.310,~~ 17.138.015, the development agreement procedure in Chapter 17.138, or the variance procedure in Chapter 17.148, no land shall be improved or used for any activity or facility which is not listed as permitted or conditionally permitted in the applicable individual zone regulations or development control maps.

**B. Relationship Between Activities and Facilities.** A use must qualify under the zoning regulations both as an activity and as a facility. A permitted or conditionally permitted activity may be accommodated or served only by a permitted facility or, upon the granting of a conditional use permit, by a conditionally permitted facility; and a permitted or conditionally permitted facility may accommodate or serve, or be designed to accommodate or serve, only a permitted activity or, upon the granting of a conditional use permit, a conditionally permitted activity.

Staff proposes to move Section 17.102.080 to Chapter 17.07 Title purpose and scope of zoning regulations, and correct the references as shown.

**17.102.100 - Conditions for accessory parking serving activities which are not themselves allowed.**

Staff proposes to move this entire section to 17.116 Off-Street Parking and Loading Requirements.

**17.102.220 - Special regulations applying to mining and quarrying extractive activities.**

Staff proposes to move this entire section to its own new chapter (17.155), because it is so lengthy.

**17.102.265 – Occupancy of a One-Family Dwelling Residential Facility by a Residential Care Residential Activity.**

Deleted, and combined with Section 17.09.040, definition of “Dwelling unit”.

**17.102.280 - Rules for determining the number of habitable rooms in Residential Facilities.**

Staff proposes to move this entire section to Chapter 17.09 Definitions (“Habitable room” and “Habitable rooms, number of”).

**17.102.310 - Special regulations for certain projects with development agreements.**

Staff proposes to move this section to Chapter 17.138 Development Agreement Procedure.

**17.102.320 - Conditional use permit for waiver of certain requirements in mini-lot developments.**

Staff proposes to move this section to 17.142 Planned Unit Development Regulations so that both types of integrated developments, PUD’s and mini-lots, are in the same chapter.

**17.102.330 – Conditional use permit for waiver of certain requirements with parcel division between existing buildings.**

Deleted, because it already exists in Chapter 17.106, General Lot, Density and Area Regulations, Section 17.106.010(B).

**17.102.380 – Special regulations applying to truck-related activities in the West Oakland Community Development District.**

Deleted, and added as a footnote to any zone that allows trucking activities.

**17.102.400 - Special design requirements for lots that contain Residential Facilities and no Nonresidential Facilities.**

Staff proposes to move the paving restrictions portion of this section to a footnote in the zoning chapters that allow residential facilities; Screening of utility meters and trash containers moved to Section 17.124.045 Landscaping and Screening standards. Exterior security bars and grills regulations would stay in this Section, 17.102.400, and the section renamed to "Exterior security bars and related devices".

**17.102.420 – Special design requirements for lots located in residential and commercial zones and the OS, S-1, S-2, S-3 and S-15 zones.**

Deleted, because it is redundant with Section 17.108.140.

**17.102.260 "Occupancy of a dwelling unit"**

**17.09.040 Definitions.**

"Dwelling unit" means a room or suite of rooms including one and only one kitchen, except as otherwise provided in Section 17.102.270, and designed or occupied as separate living quarters ~~for one of the persons or groups specified in Section 17.102.260, one person or family; or, where the facility occupied is a One-Family Dwelling, such family and not more than three (3) boarders, roomers, or lodgers, where access to all rooms occupied by such boarders, roomers, or lodgers is had through the main entrance of the dwelling unit.~~

Section 17.102.260 "Occupancy of a dwelling unit" is essentially a definition of a dwelling unit; therefore, Staff proposes to delete Section 17.102.260 and combine its language with the definition of "Dwelling unit" in Section 17.09.040.

- C. Staff proposes to delete the following sections in their entirety because they no longer serve any purpose:

**17.10.760 Shopping Center Facility.**

~~A. Shopping Center Nonresidential Facility is a complex of one or more retail buildings and related facilities forming a central retail market within a given area and having a common parking area.~~

**17.102.020 Supplemental Zoning Provisions**

~~The definitions, special use classification rules, and other provisions set forth in Chapters 17.07, 17.09 and 17.10; the provisions of 17.108.130; the noneconforming use regulations in Chapter 17.114; the rezoning, variance, and other provisions set forth in Chapters 17.130 through 17.152; and the provisions of the zoning maps in Chapter 17.154 shall apply throughout the city. The planned unit development regulations in Chapter 17.1432 shall apply in the zones and situations specified in said chapters. The provisions of development control maps are in addition to, or supersede when so specified, the regulations applying in the zones covering the same area.~~

- D. Staff proposes to delete Section 17.102.130 in its entirety because there is already a regulation that addresses this issue in 17.10.040 Accessory Activities.

**17.102.130 Time limit on operation of subdivision sales offices—Residential Zones.**

- E. Staff proposes to move all of the following sections to a new Chapter (Chapter 17.103 - Special regulations and findings for certain use classifications), that will contain special regulations that apply to particular use classifications that are listed in Chapter 17.10:

**17.102.210 - Special regulations applying to Convenience Markets, Fast-Food Restaurants, certain establishments selling alcoholic beverages, providing mechanical or, and electronic games.**

- 17.102.212 - Special Regulations Applying to Residential Care, Service-Enriched Permanent Housing, Transitional Housing, and Emergency Shelter Residential Activities.
- 17.102.290 - Special regulations for Drive-Through Nonresidential Facilities.
- 17.102.335 - Standards for Sidewalk Cafes.
- 17.102.360 - Secondary Units.
- 17.102.370 - Conditional use permit for hotels and motels.
- 17.102.390 - Regulations Applying to Special Health Care Civic Activities.
- 17.102.430 - Regulations applying to check cashier and/or check cashing activity.
- 17.102.440 - Special regulations for primary collection centers in all zones.

- F. The following new code section and related code changes are proposed to: (a) codify the long-standing practice of processing minor permits with major permits; and (b) clarify that this only applies to the procedural requirements, but that the substantive requirements of minor permits (i.e., findings) still apply:

**17.130.090 – Minor land use permits considered concurrently with Major permits.**

**A. Any Minor land use related permit and/or approval that is related to a development application that also includes any Major land use related permit and/or approval shall be considered concurrently with the Major land use related permit and/or approval, and shall follow all procedural requirements associated with City Planning Commission decisions. In this case, the entire application shall initially be considered by the City Planning Commission and may be appealed to the City Council, in accordance with the requirements for Major land use related permit and/or approval or discretionary actions.**

**B. Any Minor land use related permit referred to the City Planning Commission for initial decision in order to be considered concurrently with any Major land use related permit and/or approval shall still be considered a Minor land use related permit and/or approval, and the required findings for said Minor land use related permit and/or approval shall apply.**

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

Staff proposes to delete Subsection 17.134.020(3)(h) to clarify that a minor conditional use permit referred by the Planning Director to the Planning Commission for initial decision is still considered a minor permit.

**17.134.040(B) – Procedures for consideration – Minor Conditional Use Permits.**

Staff proposes to add language to clarify that a minor conditional use permit referred by the Planning Director to the Planning Commission for initial decision is still considered a minor permit, but shall simply be processed according to the Major CUP procedure.

**17.136.040(D) – Regular Design Review – Procedure for Consideration.**

Staff proposes to add language to clarify that a regular design review permit referred by the Planning Director to the Planning Commission for initial decision is still considered a minor permit, but shall simply be processed according to the Major Permit procedure.

**17.148.020 – Definition of major and minor variances.**

~~7. Any variance application that requires development of an Environmental Impact Report;~~

~~8. Any variance application referred by the Director of City Planning to the City Planning Commission for initial decision pursuant to Section 17.148.040(B)(1).~~

Staff proposes to delete Subsection 7 above to clarify that a minor variance that is simply accompanying a project that requires an EIR does not make the variance a Major permit.

Staff proposes to also delete Subsection 8 above to clarify that a minor variance referred by the Planning Director to the Planning Commission for initial decision is still considered a minor permit.



**17.148.040 – Procedure for consideration.**

Staff proposes to add language to subsection B, Minor Variances, to clarify that a minor variance referred by the Planning Director to the Planning Commission for initial decision is still considered a minor permit, but shall simply be processed according to the Major Variance procedure.

**G. Other general clean-up:**

- The word “Section” was inserted prior to the section number where appropriate (e.g., “17.105.010” changed to “Section 17.105.010”).
- Numbers were placed in parentheses and inserted after spelled-out numbers where appropriate (e.g., “35 feet” was changed to “thirty-five (35) feet”).
- When massage, adult entertainment; check cashing; special health care, fast food are permitted or conditionally permitted in a zone, new notes were added in the Activity Tables directing the reader to further regulations in Chapters 17.102 or 17.103.
- 17.65.030, Note L3 - Staff added a missing note for General Warehousing Activities in order to fix an error during the HBX Zones text amendment.
- Staff removed references in other parts of the Code that were related to previously-deleted sections of Chapter 17.108. (In the spring of 2012, the City Council adopted an ordinance that removed the following Code sections: 17.108.040; 17.108.050; 17.108.060; 17.108.070; 17.108.090; 17.108.100, and 17.108.110).
- Staff corrected references to the relocated sections of 17.102 in the new M-20, M-30, M-40 Chapter (17.72).
- Staff added applicable language regarding front yard paving restrictions into the code from the previous Section 17.102.400 to the new footnotes in the Zoning chapters that allow Residential facilities.
- Staff relocated Special Health Care Civic Activities from Section 17.134.020(2)(b)(iii) into a new Section 17.134.020(2)(a)(xiii), under Definition of major conditional use permits. This Activity triggering a Major CUP was inadvertently misplaced under the Facility types subsection rather than Activity types.

**II. MINOR-SUBSTANTIVE CHANGES**

The following section summarizes the proposed Minor-Substantive changes to the Planning Code.

The Code language is in **bold type** and explanations are in normal type.

**17.09.040 Definitions.**

**“Gross vehicle weight rating” means the vehicle weight specified by the manufacturer as the maximum loaded weight (truck plus cargo) of a single vehicle.**

Staff proposes to add the above definition for “gross vehicle weight rating”. This is the industry standard and creates consistency in the truck activity classifications.

**Table 17.35.04 - Height, Floor Area Ratio (FAR), Density, and Open Space Regulations.**

Staff proposes to correct the density for rooming units in the 120- and 160-foot height areas from “one unit per 225 sf of lot area” to “one unit per 110 sf of lot area”, in order to fix a previous typographical error that reduces density for rooming units located in the tallest height areas.

**Table 17.58.03: Property Development Standards.**

Staff proposes to change the required percentage of façade transparency in the CBD zones to be consistent with standards in other zones.

17.54 – C-40 Community Thoroughfare Commercial Zone Regulations.

17.56 - C-45 Community Shopping Commercial Zone Regulations.

17.65 – HBX Housing and Business Mix Commercial Zones Regulations.

17.72 – M-20, M-30 and M-40 Industrial Zones Regulations.

The updated Industrial classifications, created in 2008, were not included in the activity tables for the C-40, C-45, HBX and M-Industrial zones. Staff proposes to integrate these activities into the chapters to correct this oversight.

~~17.102.250 Maximum density and floor area ratio during construction~~

Staff proposes to delete Section 17.102.250 because it has never been an issue and has proven difficult to enforce.

~~17.102.040-17.114.030 - Effect of prior permits.~~

~~A. Fundamental Vested Rights Not Abrogated By Code Adoption or Amendment. The adoption of, or amendment to, the Planning Code (Chapter 17), including without limitation, ordinances enacted pursuant to Oakland City Charter section 213 (Emergency Ordinances) and/or ordinances enacted pursuant to Government Code section 65858 (Urgency Measure/moratoria), shall not abrogate any fundamental vested rights established pursuant to State law, including, without limitation, those established pursuant to the prior valid adoption and execution of a development agreement under Section 17.138.015 and the development agreement procedure in Chapter 17.138. Absent the prior establishment of such vested rights, any Planning Code adoption or amendment shall apply. A. Building and Sign Permits and Development Agreements. Whenever any subsisting building permit or sign permit has been lawfully issued beforehand, or whenever a subsisting development agreement has been approved beforehand under Section 17.102.310 and the development agreement procedure in Chapter 17.138, neither the original adoption of the zoning regulations nor the adoption of any subsequent rezoning or other amendment thereto shall prohibit the construction, other development or change, or use authorized by said permit or agreement. The uses as they result shall be deemed nonconforming uses and subject to the nonconforming use regulations in Chapter 17.114, except to the extent that they are authorized by a subsisting conditional use permit, development agreement, variance, or other special zoning approval.~~

~~B. Alcoholic Beverage Control Licenses. On premises for which a valid state of California Alcoholic Beverage Control license had been issued, and which premises had been used in the exercise of the rights and privileges conferred by the license at a time immediately prior to the effective date of the applicable provisions of Section 17.102.210 17.103.030, the premises may hereafter be used in the exercise of the same rights and privileges without requiring a conditional use permit or having to meet the provisions of the aforesaid section. Such use~~The uses as they result that do not conform to the zoning regulations shall be deemed a nonconforming use and subject to the nonconforming use regulations, except as otherwise provided in Sections 17.114.020 and 17.114.030. For the purposes of this subsection, the word "premises" shall mean and include only the actual space within a building devoted to the sale of alcoholic beverages on said effective date.

Staff proposes to delete Section 17.102.040 above and move the text to Chapter 17.114 - Non-Conforming Uses. The resulting Section 17.114.030 above is proposed to include changes to subsection (A), Fundamental Vested Rights Not Abrogated By Code Adoption or Amendment, in order to be consistent with State law.

In addition, language was added to the following sections to codify and clarify the long-standing practice limiting evidence and testimony during appeals to evidence submitted in the appeal form itself and

presented: (1) prior to the close of the written public comment period for the underlying decision being appealed, in the case of appeals based on a decision by the Zoning Administrator or other administrative decisions, or (2) prior to the close of the City Planning Commission's public hearing for the underlying decision being appealed, in the case of appeals based on decisions made by the City Planning Commission, as applicable. The language added is also intended to eliminate the requirement that, if the City Council is unable to decide an appeal, the matter appear for a vote on each regular meeting of the Council thereafter until decided.

**17.130.050 - Presentation of written and documentary evidence.**

**17.134.040 - Procedures for consideration.**

**17.134.060 - Appeal to Planning Commission-Minor Conditional Use Permits.**

**17.134.070 -Appeal to Council-Major Conditional Use Permits.**

**17.136.040 - Regular Design Review.**

**17.136.080 - Appeal to Planning Commission—Regular design review.**

**17.136.090 - Appeal to City Council—Regular design review.**

**17.140.030 - Preliminary Planning Commission action.**

**17.140.060 - Final Planning Commission action.**

**17.140.070 - Appeal to Council.**

**17.144.090 - Council action.**

**17.148.040 - Procedure for consideration.**

**17.148.060 - Appeal to Planning Commission—Minor variances.**

**17.148.070 - Appeal to Council—Major variances.**

**17.156.140 - Procedure for consideration of violations to performance standards.**

**17.156.150 - Procedure for consideration of violations to conditions of approval.**

**17.156.160 - Appeal to Planning Commission.**

**17.156.170 - Appeal on the revocation of a Deemed Approved Status to the City Council.**

**17.157.110 - Procedure for consideration of violations to performance standards.**

**17.157.120 - Procedure for consideration of violations of conditions of approval.**

**17.157.130 - Appeal to City Planning Commission.**

**17.157.140 - Appeal on the revocation of a Deemed Approved Status to the City Council.**

### III. SUBSTANTIVE CHANGES

The following section summarizes the proposed substantive changes to the Planning Code.

The Code language is in **bold** type and explanations are in normal type.

#### **17.10.485 – Taxi and light fleet-based service commercial activities.**

Passenger transportation services, local delivery services, and other businesses that rely on fleets of three (3) or more vehicles with a gross vehicle weight rating ~~rated capacity of less than twelve thousand five hundred (12,500) fourteen thousand (14,000) pounds.~~ This classification includes parking, dispatching, and offices for taxicab and limousine operations, airport shuttles, medical transport, local messenger and document delivery services, janitorial services, and similar businesses. This classification ~~does not only~~ includes towing operations ~~when except for tow truck services where vehicles are taken to off-site locations and the tow trucks do not exceed the above gross vehicle weight rating.~~ This classification also includes certain activities accessory to the above, as specified in Section 17.10.040.

Staff proposes the above changes to this regulation to use measurements that are consistent with industry standards for Light Vehicles (e.g., pick-up trucks, ambulances and parcel delivery trucks).

#### **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. 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.

Staff proposes changes to the Truck Activities regulations and use measurements in Section 17.10.585 that are consistent with industry standards.

**Table 17.58.03, note 4 Property development standards.**

In the CBD-R zone, portions of a building over fifty-five (55) feet in height shall have a setback of at least one (1) foot from the required interior side yard for every five (5) ~~four (4)~~ feet that portion is above fifty-five (55) feet. This setback, however, need not exceed forty (40) feet. Also, see Section 17.108.080 for the required interior side and rear yard setbacks on a lot containing two or more living units and opposite a legally-required living room window. See Section 17.108.130 for allowed projections into required yards.

Staff proposes to change the step-back requirement in the CBD-R zone from 1 foot for every 4 feet of height above 55 feet to 1 foot for every 5 feet of height above 55 feet. This reduced amount of step-back is more appropriate in a downtown context.

**17.72 M-20, M-30, and M-40 Industrial Zones Regulations.**

Staff added sidewalk cafés as a permitted facility type in the M- Zones to correct an oversight in a previous zoning code change that added restaurants as an allowed activity type in the M- Zones, but overlooked including sidewalk cafes as a permitted facility type. (Note: The remaining M- Zones are all on the water, including Jack London Square).

**17.73 - CIX-1, CIX-2, IG and IO Industrial Zone Regulations.**

The following new Design Review Section (17.73.015) was added:

A. Except for projects that are exempt from design review as set forth in Section 17.136.025, no Residential Facility, Designated Historic Property, Potentially Designated Historic Property, Telecommunications Facility, Sign, or other associated structure shall be constructed, established, or altered in exterior appearance, unless plans for the proposal have been approved pursuant to the design review procedure in Chapter 17.136, and when applicable, the Telecommunications regulations in Chapter 17.128, or the Sign regulations in Chapter 17.104.

B. No facility located within one hundred fifty (150) feet of any residential zone boundary and accommodating the following activities shall be constructed, established, or expanded in size unless plans for the proposal have been approved pursuant to the Regular Design Review procedure in Chapter 17.136:

1. Automobile and Other Light Vehicle Gas Station and Servicing Activity.
2. Automobile and Other Light Vehicle Repair and Cleaning Activity.
3. Freight/Truck Terminal.
4. Truck Yard.
5. Truck Weigh Stations.
6. Truck and Other Heavy Vehicle Sales, Rental, and Leasing.
7. Truck and Other Heavy Vehicle Service, Repair, and Refueling.

C. 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 Regular Design Review procedure in Chapter 17.136 and to all of the additional criteria set forth in Section 17.73.040(D).

Staff proposes to add this language to provide for Design Review for Residential facilities and historic properties that are located in the CIX, IG and IO zones and to consolidate references to activities requiring Design Review that are already included in this Chapter as part of the Activities Table. This is considered a minor change because it does not apply to non-residential buildings that are not historic.

~~17.102.110(F). Increased Off-Street Parking. Off-street parking shall be provided for the proposed development in an amount at least one hundred fifty percent (150%) of that required by the off-street parking requirements in Chapter 17.116.~~

Staff proposes to delete Section 17.102.110(F) because it seems too onerous and will generally apply in the corridors where development is encouraged.

#### **IV. OTHER RELATED CHANGES**

Various changes were made to the code that relate and correspond to the amendments described above.

#### **ENVIRONMENTAL DETERMINATION**

The proposed amendments to the Zoning Code rely on the previously certified Final Environmental Impact Reports for the Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan (1998); the West Oakland Central City East, Coliseum and Oakland Army Base Redevelopment Areas; the 1998 Amendment to the Historic Preservation Element of the General Plan; the 2007-2014 Housing Element Final EIR (2010); and various Redevelopment Plan Final EIRs (collectively, "EIRs"). The EIRs provide analysis of the environmental impacts of the proposed amendments and support all levels of approval necessary to implement the Zoning Code amendments. The proposed amendments to the Zoning Code would not result in any significant effect that has not already been analyzed in the EIRs, and there will be no significant environmental effects caused by the change that have not already been analyzed in the EIRs. As a result, none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163 are present in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3). In addition, each as a separate and independent basis, this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (no significant effect on the environment).

#### **KEY ISSUES AND IMPACTS**

The proposed Code amendments described in this staff report are intended to clean up and better organize the Planning Code by combining related sections where appropriate, deleting redundant and obsolete sections, making edits that clarify sections that are currently unclear, and making more substantive changes to make the Code more consistent with industry standards and good development practices.

Completing this code clean-up is a staff priority since other Code amendment initiatives that will come before the Commission and City Council this fall, such as those related to the adoption of Specific Plans, will need to incorporate and build upon these clean-up items.

#### **RECOMMENDATIONS**

1. Affirm staff's environmental determination;
2. Recommend that City Council approves the proposed text amendments; and
3. Find that existing regulations being amended or deleted are inadequate and otherwise contrary to the public interest.

Prepared by:



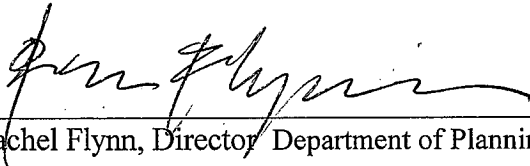
Ann Clevenger, Planner III

Approved by:



Scott Miller, Zoning Manager

Approved for forwarding to the  
City Planning Commission by:



Rachel Flynn, Director Department of Planning and Building

**LEGAL NOTICE:** The decision of the City Planning Commission is final and not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days of the date the decision is announced (Code of Civil Procedure Section 1094.6).

**ATTACHMENTS:**

- A. April 17, 2013 ZUC Staff Report
- B. April 17, 2013 Staff Memo to the Zoning Update Committee
- C. Summary Table of Code Changes
- D. Proposed Zoning Text Amendments