

# Downtown Oakland Specific Plan (DOSP): Zoning Amendments FAQ 2

Updated: 10/12/2022

## 1.1 PROJECT SCHEDULE & INFORMATION REQUESTS

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### 1. When will the zoning amendments and final Plan go to the Planning Commission, Community Economic Development (CED) Committee, and City Council for adoption?

The tentative schedule for the adoption of the zoning amendments and final Plan is as follows:

- Draft Zoning Amendments
  - Zoning Update Committee (continuation), November 2022
  - Landmarks Preservation Advisory Board (continuation), January 2023
- Final Draft Plan and Final Draft Zoning Amendments
  - Planning Commission, January 2023
  - CED Committee, February 2023
  - City Council, February/March 2023

### 2. In the last few years, what percentage of downtown market-rate buildings utilized density bonuses?

Between 2018 and 2021, 11 out of 76 projects in the DOSP area utilized density bonuses, leading to a total of 389 very-low to moderate-income units entitled and 34 receiving permits.

	Very Low	Low	Moderate	Above Moderate	Total
<b>Density Bonus</b>					
Entitled	197	141	51	1,685	2,074
Building Permits	34	0	0	768	802
<b>Non-Density Bonus</b>					
Entitled	0	0	0	3,212	3,212
Building Permits	61	0	1	5,261	5,323

Source: City of Oakland, (updated November 2022)

### 3. Is there a recent inventory of vacant ground floor spaces in the Downtown Area, including the Arts + Garage District (AGD)?

According to CoStar data provided by the City’s Economic and Workforce Development Department on September 15, 2022, the retail vacancy rate in the DOSP area is 23.7%. Virtually all retail spaces are on the ground floor. There were 148 retail spaces for lease on that day in this geographic area. From 2015 Q3 thru 2020 Q3 (except for 2019 Q2 and Q3), the retail vacancy rate has ranged from 14% to 18%. This date range represents the performance of this asset class pre-COVID pandemic era.

**4. How will implementation plans be developed (per 2019 DRAFT) with funding and responsible parties / departments?**

The DOSP includes an Implementation Matrix that clearly identifies the responsible departments, as well as cost estimates and timeframes. The Zoning Amendments are one of the “Immediate” implementation actions identified in the Implementation Matrix.

**5. Is it possible to provide an interactive online map of the proposed zoning changes?**

Staff are working to develop an interactive online map of the proposed zoning changes. In the meantime, static maps are available on the [project website](#).

## **1.2 ZONING INCENTIVE PROGRAM (ZIP)**

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**1. Please provide a clear explanation of the Zoning Incentive Program (ZIP) and examples of how the ZIP program would work using different base zoning and sample projects.**

*What is the ZIP?*

The Zoning Incentive Program (ZIP) is designed to increase density downtown, where it is critical to achieve dense housing and employment near existing transit, while achieving community benefits beyond increases to the City’s tax base for services and additional housing units provided through the Impact Fee program (on site or via leveraged in-lieu fees). Under this program, developers may elect to provide one or more community benefits to provide or pay a fee to the City to fund such benefits, in exchange for increases in allowable building height and/or density. Benefits allowed under the ZIP were selected to increase housing affordability, provide affordable rent for small businesses, train Oakland’s workforce, and create resources that support public health. Benefits include:

- Affordable housing (amount dependent on affordability level)
- Below market-rate (50%), ground floor commercial space
- Streetscape, open space and other culturally-relevant neighborhood improvements
- Public restrooms in building lobby

In-lieu fees may also be used by the City for job training and other programs to support equitable employment.

*How does the ZIP work?*

A project not choosing to participate in the Zoning Incentive Program (ZIP) would be allowed by right to attain the maximum height, residential density and non-residential Floor Area Ratio (FAR) allowed according to its location on the Base Zoning Map.

A project within the ZIP boundaries that chooses to participate in the ZIP would be allowed to attain the maximum height, residential density and non-residential FAR allowed according to its location on the ZIP Zoning Map. The amount of increase in density and FAR varies, but at least one or both of these are higher than those allowed by the Base Zoning Map.

However, to achieve any height, density or FAR above that allowed by the Base Zoning Map, the project must provide a set amount of community benefits per additional market rate residential unit or 100 square feet of commercial space they add above the base. This can be provided on-site, for a 10% discount, or through in-lieu fees at the full cost.

The cost of those on-site or in-lieu fee benefits will vary by benefit area, because different parts of the ZIP boundaries have different market conditions (e.g. land values and rental prices).

See the [presentation](#) given at the September 13<sup>th</sup> public meeting about the Zoning Incentive Program (ZIP) for an example of how to locate a particular site's ZIP attributes. By locating a project on these maps, a developer or community member can understand the site's base maximum allowances, ZIP maximum allowances, and benefit area. The difference between the two allowances will show how many additional residential units or how much additional commercial square footage may be built. Knowing the benefit area will allow a developer or community member to look at Tables 17.101K.07-15 in the Planning Code and find out how much it will cost the project in community benefits to achieve that additional density (residential units and/or commercial space).

A project can build all of the allowed additional density, or only a portion of it.

Please see Hausrath Economics Group's [analysis](#) of 26 sites comparing what ZIP outcomes would result in for affordable housing, compared with the base and with the State Density Bonus program.

**2. Why do the proposed amendments not downzone (e.g., reduce the height, density and/or Floor Area Ratio (FAR) below what is currently allowed) to extract more benefits from developers?**

Both the City and the State of California have clear goals pertaining to the construction of housing and employment centers in areas that are well-served by transit, such as Downtown Oakland. The City's goals in these areas are demonstrated in the Draft Housing Element and Equitable Climate Action Plan (ECAP).

The Draft Housing Element includes goals to increase housing production generally and provide a diversity of housing types, ownership opportunities, living arrangements, and features supportive of special needs. This includes, in line with State requirements, an

inventory of sites suitable for housing production at all income levels. The Draft Housing Element also recommends locating new housing to further access to opportunity, while simultaneously investing in and protecting tenants in disinvested communities.

The ECAP states:

“Transportation and land use policies are fundamental to how we live and move around in Oakland, and they directly influence each other. If housing is built far from jobs and basic services, residents are likely to drive more, increasing greenhouse gas emissions. If transit and active mobility options are inaccessible or unaffordable, cars will be the only option. Land use policy can contribute to inequities in Oakland, but it is also one of the City’s strongest tools for fighting climate change and supporting frontline communities... To reduce the carbon and pollution impacts of vehicles, the City must help as many Oaklanders as possible to move around Oakland without cars. Active transportation (walking and biking) and public transportation are the top priorities.”

Transportation supports dense housing and employment, which in turn supports more robust transportation options for the entire city, making transit a more viable option for people of all economic means. ECAP Policy TLU-1 requires all specific plans to be consistent with its goals.

Additionally, the City is a partner with BART, which funded the development of the DOSP with the goal of creating a transit-oriented development strategy to reduce pressure in the coming years on BART capacity. Without a dense selection of jobs, Oakland and the surrounding jurisdictions of the East Bay and Central Valley are acting as unsustainable bedroom suburbs to the jobs in San Francisco, causing longer commutes and strain on the regional transit system.

The State wants cities to build high-density projects. This is shown through the recent creation of an Accountability and Enforcement unit of the Department of Housing and Community Development (HCD) to ensure that jurisdictions are not burdening development with undue restrictions, fees or processes that limit housing development. This also includes the State Legislature’s recently enacted SB 8, which restricts cities’ ability to downzone. SB 8 amended Government Code Section 66300 to further clarify SB 330’s prohibition on the downzoning of parcels available for residential capacity.

Additionally, the legislature’s amendment to Government Code section 66300 requires that a City shall not enact a development policy, standard or condition that would have the effect of changing the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reducing the intensity of land use within an existing General Plan land use designation, Specific Plan land use designation, or zoning district in effect at the time of the proposed change. “Reducing the intensity of land use” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or any other action that would individually or cumulatively reduce the site’s residential development capacity. Thus, Oakland is prohibited under

State law from reducing the development intensity of residential sites within the Downtown Plan area.

**3. But isn't downzoning (reducing the intensity of development) allowed under SB 8 because the amendments propose upzoning (increasing the intensity of development) elsewhere in the ZIP?**

The proposed developments do not upzone elsewhere. Planning staff heard clearly from community members that the community did not want developers to be able to achieve additional density, despite density being a DOSP objective, without providing community benefits in return. In order to do this, staff have made the additional intensity contingent on participation in the ZIP and through it providing community benefits. That means that the additional intensity is not allowed by right. It is not considered upzoning for the purpose of State law, and therefore downzoning in some parts of the downtown and allowing more intensity conditioned upon providing community benefits in ZIP areas would NOT be considered "no net loss" of allowed intensity.

**4. How were the ZIP in-lieu fees calculated in the Hausrath report? Why are these not modeled after the way in-lieu fees are typically structured for inclusionary requirements, where the fee is calibrated to the cost to the City of providing the benefit that the developer is choosing not to provide? If the developer doesn't directly provide the benefit, and also doesn't provide enough funding for the City to do so instead, how can the City claim that the ZIP will actually produce meaningful community benefits?**

The ZIP is based on the idea that the City is creating additional value for a developer by allowing a project to build density beyond that allowed by right, and the community is entitled to a portion of that additional value. So the value of the community benefits or in-lieu fees a development project must provide in order to achieve a zoning incentive are a portion of the additional value to the project. That additional value is estimated based on the increase in residential units or non-residential floor area over what a project would be allowed to build by right according to existing or "Base" zoning. The methodology is described in the Economic Report.

This is a very different legal basis than an impact fee, which addresses the impact of development as determined, according to State law, by a nexus study. Without a nexus study, the City cannot leverage an impact fee. The City already has an Affordable Housing Impact Fee, supported by a nexus study, that addresses the impacts of development on affordable housing. It would not be legally supportable to leverage an impact fee on top of an impact fee for the same impact. That is not what the ZIP does.

The ZIP will only provide community benefits if it is priced to incentivize developers to use it. If it is, developers will either provide the benefit on-site, or will provide the same amount of funds as providing the benefit on site (minus the 10% on-site discount) to the City, which will leverage it to provide benefits prioritized under the DOSP.

**5. Is there any language indexing the in-lieu fees to inflation (building cost index?) in the same way that impact fees are indexed?**

That language has not been built into the Draft Planning Code amendments, but similar language to the Impact Fees will be included in the revisions.

**6. Will DOSP Community Benefit Agreements (CBAs) + ZIP guidelines supersede the General Plan?**

There are no CBAs associated with the DOSP. CBAs are private agreements negotiated between the community and individual development projects. The DOSP includes several measures intended to provide community benefits. One of the most significant and new measures is the Zoning Incentive Program (ZIP), which provides a set menu and value of benefits that a developer can provide in return for a set amount of additional development capacity above that allowed under the Base zoning. This is in addition to any impact fees required of the development.

Projects participating in the ZIP will not supersede the maximum intensities allowed by the General Plan.

**7. Can city-owned sites be removed from the ZIP program? The City can directly require benefits as a condition of sale or lease of those sites. Can such sites have a separate “civic” designation?**

The City will consider removing City-owned sites from the ZIP program. Oakland does not have a “Civic” zoning designation; City-owned sites occur throughout Oakland and are zoned for the appropriate use in that location, typically allowing for civic activities.

**8. How is the ZIP “on top” of existing programs? How does the ZIP interact with the State Density Bonus program?**

The ZIP is an alternative or an addition to the State Density Bonus program, not a replacement for it. The proposal would allow a developer to choose between the ZIP and Density Bonus program, or to stack the Density Bonus on top of the ZIP, allowing for a density that, in accordance with State law, can exceed that studied under the Environmental Impact Report (EIR) due to density mandated by State law. The DOSP EIR studied the maximum densities that can be achieved in the ZIP.

**9. How does the ZIP compare to the Density Bonus program? If the ZIP is more attractive to developers than the Density Bonus, will the City lose out?**

The ZIP and Density Bonus provide somewhat different incentives to a developer and are intended to generate different outcomes. The Density Bonus is entirely intended to generate affordable housing, whereas the ZIP intends to produce affordable housing in addition to other community-desired benefits that otherwise do not have a source of funding. The ZIP allows additional market-rate units and commercial floor area, whereas the Density Bonus provides several incentives in addition to additional market-rate units, including valuable waivers and concessions. The table below shows the housing outcomes for 26 different development sites in the ZIP area under the Base, ZIP and Density Bonus scenarios. See Hausrath Economics Group’s [Comparison of ZIP and Density Bonus Housing Outcomes](#) for details.

	DOSP Base Zoning	Increment Over Base Zoning	
		DOSP Zoning Incentive Program	CA Density Bonus Law
Analysis of 26 Development Sites Representative of ZIP Densities in DOSP		11% - 808% more density	20% more density
Total Housing Units (base + bonus)	4,489	9,862	5,393
Market Rate Units (base + bonus)	4,489	9,745	5,160
Very Low-Income Units On-Site	0	117	233
Affordable Housing Impact Fee Revenue to Housing Trust Fund	\$120 million	\$140 million	\$0
Percent Increase in Boomerang Dollars for Housing Trust Fund	N/A	123%	21%

Source: Hausrath Economics Group, 2022

In the best case scenario, a developer chooses to use both the ZIP *and* the Density Bonus programs to achieve density that meets Oakland’s housing production and climate goals, pays one-time impact fees into Oakland’s Affordable Housing Trust Fund, provides good jobs for Oakland residents, generates annual, long-term tax revenues that fund City services and maintenance citywide, provides affordable housing on site, and meets other priority needs of Oakland residents, such as providing public restrooms and/or below-market rate commercial space to businesses owned by or serving communities of color.

**10. How does the ZIP interact with the Jobs/Housing Impact Fee (JHLIF), the Affordable Housing Impact Fee (AHIF)?**

A project developed under the ZIP would be required to pay the JHIF and AHIF as would any other development project.

The AHIF goes into the Affordable Housing Trust Fund. Funds in the Affordable Housing Trust Fund are eligible for use in both the construction of new affordable housing and the acquisition/preservation of existing affordable housing. Such construction or acquisition/preservation may occur downtown or in any other part of Oakland. For projects that preserve existing unsubsidized affordable housing, these local funds are often one of the only available funding sources. For new construction, local spending leverages state grants, tax-exempt bonds, and federal tax credits that greatly multiplies the initial investment.

**11. How does the ZIP interact with the TDR Program?**

Regarding the Transfer of Development Rights (TDR) program, a project receiving density under the TDR may only receive half of the total density allowed under the ZIP maximum from TDR credits. This is to encourage such projects to utilize the ZIP as well in order to reach their maximum capacity. See 1.3 for more FAQs on the TDR program.

**12. Do units produced for the ZIP also count as units in lieu of fees for purposes of the AHIF? Or does one have to pay the existing fee, and then can earn additional units using the ZIP? Would the extra market-rate units gained through the ZIP also be subject to the AHIF? (Currently, are the additional market rate units gained from SDB included in the housing impact fee calculation?)**

Units produced under the ZIP are required to pay all impact fees. The current proposal can be amended to clarify that a project cannot earn both a ZIP bonus and simultaneously satisfy the Affordable Housing Impact Fee (AHIF) on-site requirement at the same time.

If a project provides affordable units in order to earn a bonus under the ZIP, that will be considered the new baseline. If the project then goes above this baseline level of affordable units and provides the amount and level of affordable units required under the AHIF Ordinance in addition to the ZIP's affordable units, they may only count the units produced over the new ZIP baseline when receiving credit for on-site affordable units under O.M.C. Chapter 15.72 (AHIF program).

Similarly, if a project participates in the ZIP and the Density Bonus, the number of units achieved through the ZIP will be considered the new baseline from which the percentage of additional affordable units and Density Bonus units are calculated.

**13. Would additional non-residential floor space be subject to the JHIF?**

Yes, additional non-residential floor area earned under the ZIP would be subject to the Jobs/Housing Impact Fee.

**14. How would in-lieu fees be dedicated and expended? Would they be lost in the City's General Fund?**

The in-lieu fees would not be placed into the General Fund. In-lieu fees dedicated to affordable housing would be transferred to the City's Affordable Housing Trust Fund. In-lieu fees dedicated to employment would go to supplement the City's existing employment programs. The remainder of the in-lieu fees would be held in a separate fund to meet the other objectives of the ZIP as opportunities arise, with implementation input from the community. Those other objectives are subsidized commercial space for arts and cultural tenants and tenants impacted by racial disparities, culturally relevant infrastructure and streetscape improvements, or sea level rise infrastructure improvements that go beyond those needed by the specific development project.

The revised Zoning Amendments could specify a specific percentage breakdown of goals. For example, an equal split would look like:

- 25% Affordable Housing
- 25% Below Market-Rate Commercial Space
- 25% Employment Programs
- 25% Infrastructure Improvements

A split to prioritize subsidized affordable housing to address the current crisis would be:

- 40% Affordable Housing
- 20% Below Market-Rate Commercial Space
- 20% Employment Programs
- 20% Infrastructure Improvements

A split to prioritize subsidized commercial space, to support the only benefit which has no other source of funding, would be:

- 20% Affordable Housing
- 40% Below Market-Rate Commercial Space
- 20% Employment Programs
- 20% Infrastructure Improvements

### **1.3 TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM**

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**1. Why was the highly successful San Francisco TDR program not used more as a starting point?**

San Francisco has a different rating system than Oakland so it is difficult to directly apply their program. Staff intends to study the procedural requirements in the San Francisco program and include appropriate provisions in an administrative instruction after the Zoning is adopted.

One of the features of the San Francisco program that has been mentioned favorably is that their by-right maximum intensity is only about half that of Oakland's. That is the existing context San Francisco was working with when it developed its TDR program. Oakland is working with a very different context, in which the existing by-right maximum intensity is significantly higher. As addressed elsewhere, the City does not believe it is legally defensible to reduce its existing by-right intensity in order to require a developer to participate in a program like TDR or ZIP in order to buy it back. This would be considered a downzoning of existing uses, and counter to the State and City's goals to encourage development near transit and to remove barriers to the production of housing.

**2. The TDR zoning text lacks important procedural provisions like San Francisco's. Will these kinds of provisions be included?**

Staff plans to include procedural provisions in an administrative instruction document following the adoption of the Zoning.

**3. Why are receiving sites limited to those that allow multifamily residential by right?**

That requirement was a remnant from a prior draft and will be removed.

**4. Why must the sending site be within the same or lower height zone as the receiving site?**

Staff intends to remove that requirement. It was originally placed in the proposal to assure that the proposed construction at a receiving site would not be out of scale with the surrounding neighborhood. However, the regulations say that the receiving site must be within a Zoning Incentive Area and that the maximum height at the receiving site cannot be greater than permitted under the ZIP.

**5. Why do the sending sites include Potentially Designated Historic Properties (PDHPs) in Areas of Primary Importance (APIs) and Areas of Secondary Importance (ASIs) but not freestanding PDHPs?**

Staff intends to change the proposal to include Designated Historic Properties and properties with a non-contingency rating of “A” or “B” as potential sending sites.

**6. How does the TDR Program interact with existing fees and bonus programs?**

The TDR program is intended to work in tandem with the ZIP program. The additional number of units and/or floor area at a receiving site would not be allowed to be more than half of the maximum of what could be achieved through the ZIP.

**7. On the Intensity Area map, why are base heights/FAR increased for some APIs and ASIs, including the Gold Coast, fire alarm building, some of the Victorian residential neighborhoods and some of the low-rise historic commercial areas?**

Intensity has been increased in these areas – though less significantly than in other areas of the downtown – to allow for context-sensitive development on vacant lots and lots with non-historic resource buildings that fits the character of these areas. It also provides additional development capacity for historic buildings that they may trade in return for funds to help preserve their buildings through the TDR program.

In the case of the Fire Alarm Building specifically, the height has been increased to allow for the more feasible development of a Jazz Museum, which would be a public use, connect with OMCA and other public uses along the lake, and help anchor the Black Arts Movement Business District (BAMBD). The Fire Alarm Building is City property, and as such any application would be subject to rigorous legislative approval process before Boards and Commissions, ending up at City Council. During this multi-tiered review process, design and historic preservation review would occur, including several opportunities for public review and input.

**8. Why does staff consider all the existing Tower Standards dimension limits (such as maximum building width), to be “unwieldy” and is therefore eliminating these standards?**

Several variances for towers have been granted from the dimensional limits, particularly office towers. Staff is currently developing objective design standards for downtown that will include requirements for towers. Several public meetings will be held to discuss design standards, and a draft of these standards will be available for public review and input throughout the approval process.

## **1.4 EQUITY**

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**1. How does the [ZIP Economic Report] study balance the cost to the developer to provide benefits with the cost to the community of displacement related to BIPOC and creative economy contributors? Has the City attempted to quantify the latter in any way?**

The Economic Report for the ZIP does not balance costs to developers because the ZIP is not designed to be an impact fee. It is designed as a value capture program. See 1.2.4 for more information about the structure of the ZIP.

The City has not quantified the cost of cultural displacement as an impact of development, but this would be an interesting idea to consider if a clear linkage has been made between development and cultural displacement. Current impact fees, which according to State law have a clear nexus between a development and its impacts, include the Affordable Housing Impact Fee, the Jobs/Housing Impact Fee, and the Capital Improvements Fee.

**2. What metrics will be collected and used to track equity achievements via the ZIP, Cultural Zones, and other programs to assess whether the gaps identified in the Disparity Study are being affected in any meaningful way?**

There are metrics in each chapter of the Plan that are designed to map to the DOSP’s key equity indicators. The achievements of the ZIP and Cultural Zones will be monitored along with the equity indicators. The City will set up a system to track and report on progress, and the success of the zoning amendments in meeting DOSP goals will be part of this measurement.

**3. The Housing Element reports indicate huge disconnects between affordable housing targets and implementation. Equity indicators report shows the income inequality gap is growing. Will the anti-displacement and cultural preservation components of the DOSP move the needle on these inequities?**

The zoning amendments for the DOSP are intended to help implement the goals, strategies, and policies of the Plan. The DOSP zoning amendments are one tool we are using to address the City’s housing needs, however, it cannot and is not intended to solve

all the City's housing issues. The [General Plan Housing Element](#) is the City's overarching strategy to address Oakland's housing affordability and supply issues.

In addition, the DOSP recommends several non-zoning approaches to addressing the housing and homelessness crisis. These include seeking and developing more significant and/or more sustainable sources of funding for affordable housing, such as increases to the Affordable Housing Impact Fee (AHIF), an Enhanced Infrastructure Financing District (EIFD) and a bond measure. The Impact Fee study is underway, an EIFD is currently being considered, and City Council has voted to put a bond measure on the November 2022 ballot that would include \$350 million for affordable housing.

**4. Equity is needed for non-residential uses, not just for housing - for example, access to discounted ground floor spaces.**

The ZIP includes a benefit under which new development projects provide below market-rate commercial space with the intent of supporting small businesses, cultural organizations and local non-profits that are run by and serve communities harmed by racial inequities, including those that contribute to the Black Arts Movement and Business District (BAMBD). The criteria for selecting tenants for below market rate (BMR) space will be developed as part of the implementation process but will follow these principles.

Similarly, the ZIP includes in-lieu fees to support the City's existing employment programs. The intent of this is to ensure that as new employment space is built in downtown, Oakland's residents of color have the resources and training to access the jobs and entrepreneurship opportunities that are being created. In-lieu fees may also be used to support below-market rate commercial spaces.

**5. Has staff looked at how discrimination factors into the development plan for Downtown? Is there an analysis of the underlying factors that create and maintain racial and economic disparities in the Downtown? How is Oakland's equity mandate served by these new policies and how will these new zoning changes make an impact and help to eliminate the underlying factors?**

The Housing Element does this throughout the City; the City of Oakland joined various Alameda County cities and Housing Authority agencies to complete a regional [Analysis of Impediments to Fair Housing](#) for fiscal years 2020/21-2024/25. In addition, the [Draft Housing Element](#), to be adopted in 2023, includes throughout an analysis of factors that create and maintain racial disparities, in addition to Appendix D, which addresses Affirmatively Furthering Fair Housing. These apply to downtown, as well as citywide. In the downtown, the *Disparity Analysis* conducted for the DOSP showed that, as in other parts of Oakland, Black Oaklanders are most impacted by housing cost burden. While the analysis showed that residents downtown are less likely than residents citywide to be housing cost burdened, this is likely related to the fact that most of downtown is undergoing ongoing gentrification and displacement. This is due to both systemic and individual discrimination that has barred Black and other residents of color from opportunities for homeownership, education, employment and other factors that would support health and quality of life.

The Draft Zoning Amendments are designed to implement the goals of the DOSP, which include many goals, of which equity is at the heart. The DOSP targets improving the City's

equity indicators including median income, housing cost burden, and unemployment. The DOSP includes several policies designed to do this, only some of which are implemented through zoning amendments. However, the zoning amendments are designed to reduce barriers and provide opportunities that will reduce racial inequities in these areas.

The ZIP incentivizes provision of affordable housing on site by providing a 10% discount over providing a fee, with the intent of ensuring that affordable units are available downtown, where land costs are high, not only in less wealthy neighborhoods where land values are more affordable and subsidized housing often is built as a result. While this may not be the most efficient approach to providing affordable housing, as it produces less subsidized units total, it is a necessary step toward reducing segregation. While not all people of color have low incomes, policies that have blocked people of color from accessing good jobs, affordable education and wealth-growing opportunities such as home loans have led to a higher need for subsidized housing in Black, Indigenous and other Person of Color (BIPOC) communities. Because of this, prioritizing housing for Oakland's lowest income residents means prioritizing it for BIPOC Oaklanders.

Separate from the zoning amendments, the Plan allows affordable housing in the DOSP area to receive priority points to encourage more affordable units in the downtown in order to ensure downtown is a mixed-income community rather than an exclusively upper-income one. The zoning amendments are just one of the many implementation measures contained in the DOSP.

In addition to addressing unequal access to housing, the zoning amendments include measures to close racial gaps in the area of median income and unemployment through job training funds and subsidies for small business tenants, targeted to the DOSP's equity goals. Please see the [Summary of Key Changes](#) for more information about how the zoning amendments address the plan's goals, including equity.

## 1.5 LABOR

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### 1. Can the proposed DOSP Community Construction Impact Mitigation measures (labor standards for construction projects in the DOSP) be addressed and incorporate State law precedents?

The zoning amendments do not include impact mitigation measures – environmental mitigation measures are done through the EIR, and other impacts are addressed with fees that are developed through their own citywide nexus study process.

Labor advocates have proposed a requirement that all construction projects in the DOSP abide by labor standards such as local hire and paid health care. Planning staff do not believe such a blanket requirement is allowable under State law (because it could be seen as a constraint on housing) and has proposed instead incentivizing such labor benefits through participation in the ZIP, which is allowable. However, because the financial value of opting into these labor standards is difficult to quantify, staff has instead proposed an in-lieu fee option that would support employment programs. This would benefit not only construction workers during project construction, but meet the DOSP's goals for providing

employment resources to ensure that all Oaklanders are able to benefit on an ongoing basis from new jobs in all sectors created downtown under the DOSP.

Also, the City cannot justify creating labor standards and local hire requirements for projects in the downtown only (as opposed to citywide). Thus, such efforts are better justified on a citywide basis for consideration through the City's legislative process.

**2. If labor standards were to be required, would this be in the zoning ordinance, or would the Plan call this out as a required condition of approval?**

Tracking of labor standards would not be in the zoning ordinance or Planning Code; Planning does not address construction requirements.

## **1.6 ARTS & CULTURE ZONING CHANGES**

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**1. How and when will areas like the Art + Garage District (AGD) and Chinatown, etc. be adopted by the city council as official Arts + Cultural districts?**

This is under the control of the City Council. If the arts and cultural communities would like to see additional cultural districts designated, and a more robust Arts & Culture District program developed, advocacy for this would be an important role for the Arts Commission, supported by the Cultural Affairs division of the Economic and Workforce Development Department.

**2. What is the role of the Cultural Affairs Commission?**

Please refer to Cultural Affairs for details about the general role of the [Cultural Affairs Commission](#). The Cultural Affairs Commission has received a presentation about the DOSP, provided comments, and has reviewed and provided comments on the Draft Zoning Amendments. The Cultural Affairs Commission might be consulted for DOSP implementation actions such as developing criteria for selecting tenants that meet the equity goals of the DOSP to receive commercial rent subsidies under the Zoning Incentive Program (ZIP), or for advising on what land uses should be considered "arts and cultural" uses.

**3. What will be the process for spending the developer fees that goes into community benefits fund? How will you ensure that the money is spent in a timely fashion on community priorities?**

The process is still being developed, with the idea of utilizing as much as possible existing City funds, such as the Affordable Housing Trust Fund, that the money could go towards in order to expedite the use of the funds. See answer 1.2.14 for more details about options for distributing the in-lieu fees across the DOSP's goals for the ZIP. It will require an interdepartmental effort to ensure that funds collected are appropriated to City programs that serve the need for which the community benefit was created.

**4. Can combining zone boundaries extend beyond the boundary of the DOSP if natural boundaries spill into other areas such as BVDSP or LMAP?**

Extending beyond the boundaries of the DOSP is not within the scope of this project and would require its own separate process. The General Plan is currently being updated, and Phase II will include an overhaul of the Land Use and Transportation Element (LUTE) and corresponding zoning updates. This would be an appropriate time to create additional combining zones or change the boundaries of a combining zone.

**5. How has the Cultural Affairs Dept. been involved in crafting or reviewing the latest Arts + Culture elements of the DOSP draft? How will they be involved in implementation? Which Arts & Cultural groups were consulted prior to the latest draft of the zoning amendments?**

Cultural Affairs staff have been integrally involved from the beginning of the DOSP, helping advise Planning staff on strategies, implementation actions and measures of success, as well as on outreach to the arts and cultural communities. They have met with Planning staff several times about the draft zoning, and reviewed drafts. The DOSP Staff also presented the DOSP to the Cultural Affairs Commission after it was incorporated and has received input from the Commission on the draft amendments.

No groups were additionally consulted prior to the latest draft of the zoning amendments, because the amendments were directly based on the input already received from community organizations in the process to develop the DOSP (including focused Arts & Culture related focus groups to which groups such as Art + Garage District stakeholders, BAMBD merchants and artists, the Malonga Casquelord Center for the Arts and other arts organizations were invited). Cultural groups are being consulted now to review the drafts that were created based on their input. This includes invitations to representatives of arts/cultural organizations who are on the CAG to attend CAG and public meetings, as well a focused meeting of the BAMBD, to which the BAMBD CDC and Malonga Center stakeholders have been invited. The Art + Garage District stakeholders have also been invited to meet to discuss the zoning amendments.

**6. How are the BAMBD guidelines differentiated from Art + Garage 'District' guidelines?**

The Arts + Garage District Zone is a base zone that applies to the small area that is the AGD. It limits non-arts or service uses or requires an arts component to non-arts uses in order to protect arts uses from encroachment, including being "priced out." This zoning district applies only along 24th, 25th and 26th Streets, limits non-arts and auto uses on the ground floor to protect the existing garages and artisan manufacturing uses, including allowing housing only in the form of work/live units on upper stories (not considered "residential").

The BAMBD Arts & Culture Combining Zone is a zoning overlay that applies to all zones within focused nodes of the BAMBD as a starting point but could be expanded to other parts of the BAMBD if successful at helping build out those nodes of activity enough that

it would be valuable to extend further. It is designed to support both arts uses and a broad range of cultural uses, including businesses and community-based nonprofits, that serve and reflect the Black community.

This overlay zone applies to a limited area of the BAMBD along 14th Street, requires new projects dedicate 50% of ground floor to arts and cultural uses, with a broad definition of this to include businesses and other institutions owned by and serving the BAMBD community; and requires a Conditional Use Permit (CUP) for non-arts & cultural uses on ground floor. Such Arts & Culture overlay zoning could be extended to other areas of Oakland as the City designates further cultural zones, such as those discussed for Chinatown and the Black Cultural Zone.

**7. How will other Cultural Overlays or zones respond to different Cultural “district” Areas’ needs/requirements?**

The intent of the Arts & Culture overlay is that a similar model could be expanded to other Cultural Districts throughout the city as they are designated. In the same way that the BAMBD Arts & Culture Combining Zone regulations were developed in response to input from BAMBD stakeholders, new Arts & Culture Combining Zones would be developed to respond to the unique needs of those areas and communities.

**8. Is work/live permitted on the ground floor in the Art + Garage District?**

Work/live units are not permitted on the ground floor of the Arts and Garage Districts due to concerns regarding residents detracting from the commercial character of the ground floor. Residents of work/live units tend to place curtains or blinds on their windows, which block out views of the commercial space leading to “dead” and unsafe spaces on streets that are intended to be active with transparent and welcoming commercial spaces. In addition, there is limited ground floor space available for artist gallery space; therefore, this is the prioritized use on the ground floor.

**9. Is work/live permitted throughout the Downtown?**

Work/live units are permitted in every base zone except the Downtown District Jack London Industrial Zone. There are ground floor limitations on establishing work/live units in the Downtown District Arts and Garage District, Downtown District Produce District, and Downtown District Pedestrian Commercial Zones. Work/live units are only permitted on the ground floor in the Downtown District Residential Zone. The Employment Priority Commercial Zone does not permit work/live units.

**10. Can we allow for light industrial throughout the Downtown as an optional ground floor use to make up for the lost light industrial throughout the city?**

Light industrial has been retained in the downtown. An *additional* land use activity, Artisan Production Commercial, has been created to support the creation and sale of arts and creative manufacturing products and is allowed by right throughout the downtown.

## 1.7 OTHER

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- 1. How can long term affordability be incorporated into both live and work spaces as suggested in the Sept 2019 Mayor's Task Force report?**

Staff is looking into the question of whether work/live spaces could be included as part of the below market rate (BMR) commercial space program.

- 2. Has there been a review of new and cumulative impacts of current or proposed projects in areas of concern?**

The Draft Environmental Impact Report (DEIR) published for the Draft Plan included cumulative impacts, as required under CEQA. The Final EIR (FEIR) will be presented for certification to the Planning Commission for recommendation and the City Council for final approval, along with the Final Draft DOSP.

### **3. Can we issue moratoria on development until the Downtown Plan is completed?**

It is not within the purview of Staff to enact a development moratorium. Generally, development moratoriums arise when the Council directs, and ultimately votes by supermajority (4/5ths vote), to approve a resolution that a moratorium be implemented as a result of a current and immediate threat to the public health, safety, and welfare.

Specifically, State law (Government Code section 65858) permits the City Council to enact a development moratorium of up to two years after it makes findings that approving projects would create an immediate threat to the public health, safety, or welfare. The moratorium is initially limited to 45 days but can be extended with another vote of the City Council to a maximum of up to two years. Both the vote to enact the moratorium and the vote to extend must be approved by a supermajority (i.e., 4/5ths) vote.

A development moratorium that would prohibit residential uses on a site or within a designated area would violate State housing laws, so such moratorium would have to: (1) have well established findings as to why certain development would create an immediate threat to the public health, safety and welfare and (2) would have to exempt residential development from the moratorium due to the various State laws mandating the production of residential development and the prohibition against: (a) downzoning sites permitting residential development and (b) creating additional constraints on the production of housing.