

<b>Location:</b>	Central Business District (See map on reverse)
<b>Proposal:</b>	<ol style="list-style-type: none"> <li>1) Amend the zoning regulations to create four new zones and make related text amendments;</li> <li>2) Amend the zoning maps to include the new CBD zones and height/bulk/intensity areas for the CBD;</li> <li>3) Amend the document "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations" to reflect the above changes.</li> </ol>
<b>Applicant:</b>	City Planning Commission
<b>Planning Permits Required:</b>	Rezoning; Zoning Text Amendment
<b>General Plan:</b>	Central Business District
<b>Zoning:</b>	<p><b>From:</b> R-80 High-Rise Apartment Residential; R-90 Downtown Apartment Residential Zone; C-40 Community Thoroughfare Commercial; C-45 Community Shopping Commercial; C-51 Central Business Service Commercial; C-52 Old Oakland Commercial; C-55 Central Core Commercial; S-2 Civic Center; S-4 Design Review Combining; S-7 Preservation Combining; S-8 Urban Street Combining; S-17 Residential Open Space Combining Zones.</p> <p><b>To:</b> CBD-R Central Business District Residential; CBD-P Central Business District Pedestrian Retail Commercial; CBD-C Central Business District General Commercial; CBD-X Central Business District Mix Commercial; and S-7 Preservation Combining Zones.</p>
<b>Environmental Determination:</b>	The proposal relies on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the Final Environmental Report for the 1998 Amendment to the Historic Preservation Element of the General Plan; and the Housing Element Update Initial Study/Mitigated Negative Declaration (2004). As a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Section 15183 "Projects Consistent with a Community Plan, General Plan or Zoning" and/or 15061(b)(3)(General Rule—no possibility of significant environmental impact.
<b>Service Delivery District:</b>	Metro
<b>City Council District:</b>	3
<b>Status:</b>	Zoning Update Committee recommended item to be heard in front of the Planning Commission
<b>Action to be Taken:</b>	Recommendation to the City Council
<b>Staff Recommendation:</b>	Recommend adoption of the proposal to the City Council
<b>Finality of Decision:</b>	Recommendation to the City Council
<b>For Further Information:</b>	Contact case planner Neil Gray at 510-238-3878 or ngray@oaklandnet.com.

**SUMMARY**

This project proposes to create four new related zoning districts in the Planning Code and Zoning Maps for the Central Business District (CBD). The project also creates a height map for application in the CBD. This effort is part of the rezoning process that implements the General Plan through new zoning regulations.

Staff recommends that the Planning Commission advise the City Council to adopt the proposal.

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**BACKGROUND**

In March of 1998, the City of Oakland adopted the Land Use and Transportation Element of the General Plan, including an associated land use map (LUTE). The LUTE lays out the City’s vision for its future development and represents the land use “constitution” for the City. All of the City’s land use decisions and plans must be consistent with this document. Typically, a city’s zoning code and maps implement its general plan through consistent development standards such as maximum height, allowed uses, and maximum density.

However, revisions of these Oakland’s zoning ordinance and maps were not made at the time of the passage of the LUTE, creating several conflicts between the LUTE, the Zoning Code, and the zoning maps. Shortly after the adoption of the LUTE, the City began a process to adopt a new Planning Code, but that effort was not continued.

Updating the zoning code has again become a priority for the City. On December 11, 2007, the City Council approved a work plan to replace the existing zones in the Planning Code; the Mayor has also stated that the rezoning effort is an important priority. The City Council plan describes a process to adopt new zones that implement each of the LUTE land use classifications in the following order:

1. Housing and Business Mix
2. Business Mix and General Industry and Transportation
3. **Central Business District** (current proposal)
4. Urban Residential, Community Commercial and Neighborhood Center Mixed Use
5. Regional Commercial, Hillside Residential, Mixed Housing Type and Detached Unit Residential
6. Institutional, Resource Conservation and Urban Park and Open Space

The City Council has already adopted three zones to implement the Housing and Business Mix LUTE classification and four more zones to implement the Business Mix and General Industrial and Transportation classifications.

The subject of this report is the proposed regulations for the Central Business District (CBD). The proposed regulations (see Attachments A, B, and C) are based on the policies of the LUTE, the current downtown context, regional policies regarding infill development, historic preservation, and design considerations.

There have been three community meetings, eight Zoning Update Committee (ZUC) meetings, and eight Landmarks Preservation Advisory Board (LPAB) meetings regarding the proposed CBD rezoning. This has included a joint meeting of the ZUC and the LPAB and a professionally mediated workshop that included presentations and discussion amongst stakeholder groups. These stakeholder groups included the Oakland Builders Association, the Chinese Chamber of Commerce, Oakland Heritage Alliance, Old Oakland Neighbors, Coalition of Advocates for Lake Merritt, and East Bay Housing Organizations.

**DESCRIPTION OF PLANNING AREA**

The CBD is bounded by I-980 to the west, I-880 to the south, Lake Merritt and Fallon Street to the east, and 23<sup>rd</sup> Street to the north. The planning area does not include the Jack London area. This 580 acre area is a East Bay hub for private offices, public agencies, BART and AC Transit service and, increasingly, high density residential buildings. As described below, the CBD is a diverse collection of established neighborhoods, new construction, historic resources, retail areas, and recreation space.

Downtown is home to several distinct neighborhoods: Chinatown is a 150 year-old historic business and residential district; City Center contains many state, federal, and local government offices and other activities; the Kaiser Center Business District contains several high rise office towers; the Gold Coast District is a historic neighborhood with urban style housing; and Old Oakland is a historic commercial neighborhood with carefully restored Victorian-style buildings. Neighborhoods range in scale from pockets of single family Victorian homes in the western and southeast of downtown to the high rise office towers in the Kaiser Center and City Center neighborhoods. The Uptown neighborhood is burgeoning with new developments and commercial activity with restaurants and bars, the newly renovated Fox Theater, the Paramount Theatre, and the new Uptown apartment development.

Broadway is the major commercial and transit spine of downtown, connecting Chinatown, City Center, Old Oakland, and the Kaiser Center Business District. 14<sup>th</sup> Street is a major east-west artery connecting West Oakland to Lake Merritt. San Pablo and Telegraph Avenues are also major mixed use transit corridors that radiate from downtown to Berkeley, El Cerrito, and Richmond.

Lake Merritt, just to the east of the CBD, is downtown's major recreational resource. This 155-acre tidal estuary is home to several species of birds and is considered a wildlife refuge by the state. The 3.4 mile path around the lake is well used by joggers, walkers, and bikers. Other parks in the CBD include Snow Park, Frank Ogawa Plaza, Lafayette Park, Jefferson Park, Lincoln Park, Madison Park, and Harrison Park.

Downtown has the greatest concentration of historic buildings in Oakland. It has a rich architectural history that includes many historic neighborhoods, landmarks, and highly rated historic buildings. Some landmark buildings include City Hall, the Paramount and Fox Theatres, the African American Museum, the Lake Merritt Hotel, the Tribune Building, the Rotunda Building, the YWCA, the Alameda County Courthouse, the Malonga Casquelourd Center for the Arts, and several others. There are 17 "Areas of Primary Importance" (APIs)<sup>1</sup> in downtown, ranging in size from a few parcels to several blocks. Examples include: Old Oakland, the Lakeside Apartment District, Chinatown Commercial and residential districts, and the Downtown District. There are also several Areas of Secondary Interest (ASIs)<sup>1</sup> that range in size from one parcel to a small block. Attachment D is a map of these districts and historically rated properties in the Central Business District.

Several pockets of active pedestrian-oriented commercial areas thrive in downtown such as Old Oakland, 19<sup>th</sup> and 17<sup>th</sup> Streets near Webster Street, and Chinatown. Broadway has a series of small to medium sized retail storefronts. Downtown was historically the retail core of the city, with several department stores and active retail on many streets. Today, retail has changed—there is one large department store and several smaller national and independent retail stores and restaurants in downtown. Chinatown is thriving international retail district.

The CBD has experienced a number of significant new major developments in recent years. Some of the major projects recently constructed include:

- The Uptown Project: 665 residential units and 14,000 square feet of commercial space in the area bounded by Telegraph Avenue, San Pablo Avenue, 18<sup>th</sup> Street, and 20<sup>th</sup> Street.
- Thomas Berkeley Square Housing: 83 residential units and three commercial spaces on Thomas Berkeley Way at San Pablo Avenue.

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<sup>1</sup> APIs and ASIs are historically or visually cohesive areas or property groups identified by City surveys that contain a high proportion of historic buildings. APIs appear eligible for the National Register of Historic Places and thus are considered CEQA Historic Resources. ASIs do not appear eligible and not considered CEQA Historic Resources.

- 8 Orchids: 157 residential units and 3,600 square feet of retail space on Broadway at 6<sup>th</sup> Street.
- Madison Lofts: 76 residential units and 2,666 of retail space on 14<sup>th</sup> Street and Madison Street.
- Housewives Market: 80 residential units and 14,000 square feet of flexible space.
- Rehabilitation of the Historic Fox Theater.
- 100 Grand: 241 Residential Units at Grand and Webster Streets.
- 901 Jefferson: 75 condominium units at Jefferson and 9<sup>th</sup> Streets.
- Broadway West Grand: 421 residential units and 4,710 square feet of retail space on the corner of Grand and Broadway.

## **EXISTING ZONING**

Downtown Oakland has a complicated patchwork of twelve different zones (see Attachment E). The main downtown commercial zones are the C-51 Central Business Service and C-55 Central Core Commercial Zones. The C-51 zone is mainly located in the western area of downtown and Chinatown; C-55 is located in the core of downtown and the Kaiser Center area. Both C-51 and C-55 allow a wide array of commercial and residential activities without any restrictions on ground floor activities. Neither zone requires design review for nonresidential construction or contains guidance regarding evaluating the design of buildings. Both zones have a base floor area ratio (FAR--the ratio of floor area to lot area) of 7.0, a maximum density of one unit per 150 square feet of lot area, and no height limit. Downtown developments can reach the LUTE FAR of 20.0 and density of one unit per 87 square feet of lot area through a conditional use permit process.

The main residential zones for downtown are the R-80 High-Rise Apartment and R-90 Downtown Apartment Residential Zones. All commercial activities in these zones require a conditional use permit and are restricted to spaces only accessible through lobbies of apartment buildings. Both these zones have a base FAR of 7.0. The maximum densities of the R-80 and R-90 zones are one unit per 300 and 150 square feet of lot area, respectively. Like the C-51 and C-55 zones, development can reach the maximum LUTE FAR and density of 20.0 and one unit per 87 square feet of lot area upon the granting of a conditional use permit.

The C-52 zone is a special zone for Old Oakland. This zone is similar to C-55 except it restricts the height of new construction to 50 feet. Old Oakland also has an S-7 Preservation Combining Zone to require special design review for this historic district. The S-7 zone is also applied to Preservation Park.

The CBD has two other significant overlay zones. The S-8 Urban Street Combining Zone is combined with the C-55 on Broadway to preserve the ground floor for retail commercial activities. The S-17 Residential Open Space Combining Zone provides flexible and reduced open space requirements throughout the CBD.

Attachment F compares the development density and bulk restrictions allowed by the existing zoning to that of the proposed zoning.

## GENERAL PLAN ANALYSIS

### Policies of the LUTE

The LUTE envisions a downtown with 24-hour pedestrian activity, active retail nodes, a strong high-rise office center, urban-density residential neighborhoods, and significant cultural and recreational amenities. The document also calls for the preservation of historic resources, a clearer identity for the neighborhoods, and preservation of views in and out of downtown. High quality design and enhancement of the skyline are also priorities of the LUTE.

The maximum floor area ratio for the CBD is 20.0 while the maximum residential density is 300 dwelling units per gross acre (one unit per 87 square feet of lot area). This development intensity has been conditionally permitted for all development in the CBD since the 1998 adoption of the document "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations" (General Plan Guidelines). The LUTE states that this is a maximum density and not appropriate for all areas. One of the functions of the rezoning process is to decide what level of building intensity is appropriate for which areas of the CBD.

The following is a more detailed summary of the goals, objectives, and policies devoted to the Central Business District in Chapter 2 of the LUTE, the Policy Framework. Attachment G contains the complete text in the LUTE regarding the Central Business District.

The overall goals of the LUTE for the CBD are:

- To promote downtown Oakland's position as a dynamic economic center for the region;
- To serve as a primary communications, office, government, high technology, retail, entertainment, and transportation hub for Northern California;
- To become a premier location in the region for urban residential living, by building upon existing neighborhoods, and by promoting and expanding a pedestrian-friendly, diverse and exciting range of housing, social, cultural, and arts opportunities;
- To further develop; support, revitalize, and promote the distinct, attractive, urban character of each of the downtown districts, and to respect historic resources.

The following is a summary of the objectives and policies that correspond to these goals.

- Objective D1 emphasizes enhancing the identity of the distinct districts of downtown. The objectives contain specific policies that encourage the enhancement of the unique character of Chinatown as a regional destination point with a mixed housing type component; Old Oakland's historic, pedestrian oriented character; and the conservation of the character of the historic Gold Coast District. The policies in this objective also emphasize connecting the Kaiser Center with Broadway and enhancing and rehabilitating the Gateway area as a mixed housing type and urban density district.
- Objective D2 is to enhance the "visual quality of downtown by preserving and improving existing housing stock and encouraging new, high quality, development." The policy related to this objective discusses a visually interesting downtown that harmonizes with its surroundings, preserving important views in and out of downtown, respecting the character, history, and pedestrian orientation of the downtown, and contributing to an attractive skyline.
- Objective D3 is to promote a pedestrian friendly downtown through pedestrian oriented commercial areas and appropriate parking design.
- Objective D4 is to increase the economic vitality of downtown through infrastructure improvements and attract new businesses and employment.

- Objective D5 is to enhance the safety and perception of downtown through twenty-four hour pedestrian activity.
- Objective D6 is to eliminate blight through constructing on vacant land and rehabilitating underused buildings.
- Objective D7 is to promote downtown's position as a primary office center and public transportation hub at the state and regional planning levels.
- Objective D8 is to build on the office nodes near the 12<sup>th</sup> and 19<sup>th</sup> Street BART stations. Policies related to Objective D8 include attracting office development to these areas, respecting Lake Merritt and Snow Park, and directing office development along the Broadway Spine.
- Objective D9 is to establish, promote, and retain businesses that serve the needs of downtown workers and residents. Policies emphasize destination shopping along Broadway, shopping geared toward the needs of local residents, and pedestrian friendly ground floor treatments.
- Objective D10 is to maximize housing opportunities in the downtown to create a better sense of community. Policies state that housing should be located within walking distance to BART stations; have an urban density with the exception of a few pockets of lower density areas; have attractive, safe, and high quality design; enhance attractive streetscapes; respect the history of downtown; and include live/work developments.
- Objective D11 is to foster mixed use developments in commercial areas to promote a lively and diverse downtown.
- Objective D12 is to make downtown a regional designation for education, culture, art, and entertainment. Policies focus on placing larger institutions along Broadway and smaller venues throughout the District where the impacts will not disturb residents.
- Objective D13 is to integrate regional and local transportation into downtown by providing convenient public transit and parking facilities.

The Transportation section of the policy framework also has relevant policies including concentrating development near the 12<sup>th</sup> and 19<sup>th</sup> Street BART stations to connect transit with office commuters. Other policies include the following:

- Policy T2.5 states that transportation options should be linked to centers of recreation, job centers, commercial nodes and social services.
- Policy T3.3 calls for accepting congested intersections downtown to promote transit and a pedestrian orientation.
- Policy T3.8 encourages screening downtown parking behind storefronts, parks, landscaping or other means.

Chapter 3 of the LUTE contains descriptions of the 14 different LUTE land use classifications, including the Central Business District. The following is the LUTE's intent for the CBD classification, desired character and uses, and intensity/density:

**Intent:** The Central Business District classification is intended to encourage, support, and enhance the downtown area as a high density mixed use urban center of regional importance and a primary high technology, retail, entertainment, and transportation in Northern California.

**Desired Character and Uses:** The CBD classification includes a mix of large-scale offices, commercial, urban (high rise) residential, institutional open space, cultural, educational, arts, entertainment, service, community facilities, and visitor uses.

**Intensity/Density:** For sites in the CBD, the maximum floor area ratio (FAR) is 20.0, and the maximum allowable residential density is 300 units per gross acre. In some areas identified by the Policy Framework, such as the Broadway spine, the highest FAR may be encouraged, while in other areas such as near Lake Merritt and Old Oakland, lower FARs may be appropriate.

According to the General Plan Guidelines, 300 residential units per gross acre equal one unit per 87 square feet of lot area.

The proposed zoning is consistent with the LUTE

The proposal is consistent with and directly implements the vision provided by the LUTE. Overall, the proposal encourages downtown development by allowing high building intensity. Most of the Central Business District would allow a density at the LUTE maximum of 300 residential units per gross acre to encourage a vital downtown and residents near BART stations. Further, much of the downtown would have no height limit and the maximum allowable FAR under the LUTE. As mandated by the LUTE, the most building intensity is proposed around the Broadway core and the Kaiser Center to take advantage of the convenient transit at the 12<sup>th</sup> and 19<sup>th</sup> Street BART stations. These areas also allow the largest building tower floor plates in the CBD to encourage the Kaiser Center and Broadway core to expand their function as regional office centers (office development requires large floor plates to be marketable). Much of the area also allows ground floor offices to further encourage construction of office space.

The proposed zoning maps enhance and connect distinct pedestrian-oriented retail nodes in this core of the CBD through regulations requiring activities and ground floor building design that provide pedestrian interest. These nodes include Broadway, Telegraph Avenue, 17<sup>th</sup> Street, 15<sup>th</sup> Street, in Chinatown, Old Oakland, and other locations. The identity of residential neighborhoods is also enhanced through applying a new residential zone that encourages upper story housing and allows ground floor retail space to serve local residents. In general, staff recommends the stricter height regulations to the most residential of the neighborhoods, particularly those with a concentration of historic buildings, to preserve their distinct character. Proposed regulations regarding historic neighborhoods will further protect the distinct character of neighborhoods (see “Historic Resources” section, below). The regulations also allow a mix of residential and commercial activities throughout downtown to provide convenient shopping for residents and a lively street environment.

The proposal will enhance the visual quality of downtown through several methods. Design regulations are included to ensure a ground floor pedestrian orientation such as minimum window transparencies; a requirement for high quality materials; minimum ground floor heights; maximum front yard setbacks; a requirement for new buildings to have a prominent entrance; and parking location requirements. Regulations regarding the breaking up of upper story mass and the placement of windows on all sides of a tower will create visual interest in the upper stories. The proposal allows varied tower locations, shapes, and sizes to create an interesting skyline. Graduating height toward the Broadway core will allow views of the tallest buildings from several vantage points. Several recommendations are proposed to protect the design of historic buildings (see “Historic Resources” section, below).

Finally, the proposal does not permit a density or FAR greater than that allowed by the LUTE. The LUTE maximum density is 300 units per gross acre. According to the General Plan Guidelines, this density translates to one unit per 87 square feet of lot area. No areas are proposed to exceed these maximums.

Historic Preservation Element of the General Plan

The Historic Preservation Element of the General Plan (HPE) outlines “Preservation Incentives and Regulations” for historic properties throughout the City. The objective of the element is to develop a

system of preservation incentives and regulations for specially designated significant older properties. Some major policies of the HPE include the following:

Policy 1.3 states that the City will designate significant older properties which definitely warrant preservation as Landmarks, Preservation Districts, or Heritage Properties. The designations will be based on a combination of Historical and Architectural Inventory Rating, National Register of Historical Places criteria, and special criteria for Landmarks and Preservation District eligibility.

Policy 2.1 states that the City will use a combination of incentives and regulations to encourage the preservation of significant older properties and areas which have been designated as Landmarks, Preservation Districts, or Heritage Properties. The regulations will be applied according to the importance of each property, with the more important properties having stronger regulations.

Policy 2.4 states that demolitions and removals involving Landmarks or Preservation Districts will generally not be permitted or be subject to postponement unless certain findings are made. Alterations or new construction involving Landmarks or Preservation Districts will normally be approved if they are found to meet Secretary of the Interior Standards for the Treatment of Historic Properties or if certain other findings are made.

Policy 2.5 states that properties which definitively warrant preservation but which are not Landmarks or Preservation Districts will be eligible as Heritage Properties...Demolition, removal, or Specified Major Alterations of Heritage Properties may normally be postponed for up to 120 days.

Policy 2.6 states that landmarks and all properties contributing or potentially contributing to a Preservation District will be eligible for all of the following preservation incentives: Mills Act contracts; use of the State Historic Building Code; conservation easements; broader range of conditional uses; transferable development rights; priority for community and economic development assistance; eligible for acquisition, rehabilitation, or development assistance from possible historic preservation revolving fund; and fee waivers.

Policy 3.4 states that where all other means of preservation have been exhausted, the City will consider acquiring, by eminent domain if necessary, existing or potential designated historic properties, or portions thereof, in order to preserve them. Such acquisition may be in fee, as conservation easement, or a combination thereof.

Policy 3.5 states that for additions or alterations to Heritage Properties or Potential Designated Historic Properties requiring discretionary permits, the City will normally require that either: (1) the design match or be compatible with the property's existing or historical design; (2) the proposed design comprehensively modifies and is at least equal in quality to the existing design and is compatible with the character of the neighborhood; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood. This policy also requires that projects involving demolition of historic properties be of equal or better design quality than the demolished resource.

Policy 3.7 states that the City requires reasonable efforts to relocate a historic building to an acceptable site rather than demolish it to accommodate a new development.

Policy 3.9b states that the City will consider including a historic preservation component in area wide plans and that impact on historic properties will be evaluated.

The following describes how the proposal is consistent with the above the above policies:

Policy 1.3: This policy has already been implemented through the work of the City’s Office of Cultural Survey. This office has surveyed every property and neighborhood in Oakland and provided historic designations based on systematic rating criteria.

Policies 2.1, 2.4, and 2.5: The proposal includes significant new processes, regulations, and findings that will encourage the preservation and appropriate alteration of API and ASI contributors, new construction in ASIs and APIs, designated historic properties (including Heritage Properties), and potentially designated historic properties in the Central Business District. In particular, Section 17.136.055 of the proposal includes new required findings for demolition of historic buildings, new construction in historic districts, and alterations to historic buildings. These proposals are further described in the “Historic Resources” section, below. Current regulations in Sections 17.136.060 (Review by the LPAB in certain cases), 17.136.070 (Special regulations for designated landmarks), and 17.136.075 (Postponement of demolition) of the Planning Code contain regulations regarding the alteration and demolition of historic properties.

Policies 2.6 and 3.4: These incentives and tools are long term proposals that will get implemented outside of the Planning Code and are out of the scope of this proposal.

Policy 3.5: Section 17.136.055 of the proposal requires that any exterior alteration to a character-defining element of a Designated Historic Property or Potentially Designated Historic Property be required to meet findings regarding the retention of the character-defining appearance of the affected feature.

Policies 3.5, 3.7, and 3.9b are implemented through proposed findings for demolitions. These findings have not been written but will be proposed at a future Planning Commission meeting.

CALM letter

The Coalition of Advocates for Lake Merritt (CALM) has written a letter to the City stating that the proposal is contrary to policies in the LUTE, the Housing Element of the General Plan (Housing Element) and the Open Space, Conservation and Recreation Element of the General Plan (OSCAR). CALM’s letter and staff’s response are contained in Attachment H.

In sum, staff believes the proposal is consistent with and directly implements the vision provided by the General Plan. The following sections describe this proposal in more detail.

**CONSISTENCY WITH STATE AND REGIONAL POLICY**

The Association of Bay Area Governments (ABAG) has adopted its State mandated Regional Housing Needs Allocation (RHNA), describing regional housing needs and focusing housing production at certain areas depending on State and regional policy. The City of Oakland’s allocation is a relatively high 14,000 units because the RHNA directs housing to major urban areas to where there are major transit hubs.

Cities and counties, in turn, update their Housing Elements of their General Plans to reflect the RHNA; City of Oakland is in the process of adopting its 2007-2014 Housing Element in the summer of 2009. The City’s proposed Housing Element directs new housing to centralized urban areas, near transit stations, and along major public transportation corridors such as the CBD. These policies are consistent with State policies and laws such as SB375 to increase the use of transit, protect agricultural land, ease traffic congestion, reduce automobile related pollution, and promote efficient development patterns. The CBD area is the type of area targeted for additional development.

## SUMMARY OF PROPOSAL

The regulations are split into three main parts: 1) new zoning designations that contain use and associated design regulations; 2) height, bulk, and intensity regulations; and 3) other design related regulations for new construction. The regulations include two maps: one map showing the zoning designations (see Attachment B) and the other showing where different height, bulk, and intensity standards are designated (see Attachment C). The height, bulk, and intensity regulations are mapped differently than the zoning designations because often the uses preferred at a location may not relate to a building's overall size. For instance, pedestrian oriented commercial activities are appropriate for both Broadway and Old Oakland, even though the appropriate bulk of buildings in these areas are far different. This separation allows the number of zones to be reduced from the current eight to the proposed four base zones and from four combining zone to only one combining zone in the current proposal. This technique is a fairly common planning practice and currently used in San Francisco, San Diego, Seattle, and Portland. Several other zoning tools that are new to Oakland are also proposed, including maximum setbacks, required ground floor window space transparency for commercial activities, and other design related standards.

### Summary of Proposed Zones

Staff is proposing four new zones: the Central Business District Residential Zone (CBD-R), Central Business District Pedestrian Retail Commercial Zone (CBD-P), Central Business District General Commercial Zone (CBD-C), and Central Business District Mix Commercial Zone (CBD-X). The mapping of the zones is based on staff research and public input, including:

- A parcel-by-parcel land use inventory performed by staff of existing uses in the Central Business District (see Attachment I). This information was used to divide Downtown Oakland into 27 contextual "sub-districts" based on the prevailing character of each block (or portion of a block). These maps were particularly useful in determining the extent of ground floor retail uses, which was critical in determining potential retail nodes.
- Discussions with the staff of the City's Economic Development Division and Façade Improvement Program regarding the feasibility of ground floor retail and commercial activities at different locations;
- Information in the City's Retail Enhancement Study that identified Downtown retail nodes, including Old Oakland, Uptown, Chinatown, and Broadway; and
- Input from the ZUC, LPAB, stakeholders, and residents provided in meetings with staff and at public hearings.

The following is a summary of the zones:

The CBD-R zone is proposed to be mapped in existing residential neighborhoods such as the Gold Coast District, the Uptown area, and neighborhoods containing low-rise apartment buildings and Victorian era structures near Chinatown and Jefferson Square. The zone allows a wide range of small, ground level facilities including offices, retail, and residential, but preserves upper stories for residential units. In general, the zone requires a use permit for businesses greater than 7,500 square feet to protect the character of residential neighborhoods and mitigate the impacts of larger businesses. Development regulations for the CBD-R zone reflect a more residential emphasis including no maximum front yard setback, a required grade separation between the floor level of residential units and the street, and only a fifty percent ground floor transparency requirement for commercial storefronts.

The CBD-P zone intends to create and enhance retail nodes and streets by encouraging ground level, pedestrian oriented, active storefront uses. This zone requires new development to have ground level retail space with a storefront appearance. Upper story spaces are allowed to contain a wide range of commercial and residential activities. Purely administrative offices and residential activities would not be allowed on the ground floor in the CBD-P zone. Special design requirements for the CBD-P zone include:

- A relatively high ground floor transparency requirement of 70 percent to create a more active and interesting streetscape;
- A minimum 14-foot ground floor height to create a human scale at the street; and
- A maximum setback requirement of five feet from the sidewalk for the first three stories of a building. This regulation establishes a street edge that creates a comfortable pedestrian scale and a unified street space. This setback requirement is required over 75 percent of the lot line adjacent to the principal street, with exceptions for outdoor seating.

The zone is proposed to be located in the Chinatown commercial district, Broadway, Old Oakland, along 14<sup>th</sup> Street, in various existing retail nodes, and in areas identified by the Conley Retail Study to be potential retail nodes. The CBD-P zone also provides a future pedestrian route down 14<sup>th</sup> Street from Broadway to the Lake and connections from retail nodes such as 17<sup>th</sup> and 15<sup>th</sup> Streets between Webster and Harrison to Broadway, downtown’s major artery.

The CBD-C zone is a general commercial zone that encourages a wide variety of ground floor commercial activities including office, retail, and service businesses. Upper story spaces are available for a wide range of commercial and residential activities. Residential activities would not be permitted on the ground floor in the CBD-C zone. This zone is located in the Kaiser Center area and the core areas of downtown that are outside Broadway and the CBD-P zone. The CBD-C zone has design requirements that are similar to CBD-P zone except it has a ground floor transparency requirement of 60 instead of 70 percent. This reduction is made because the CBD-C zone is expected to have more administrative activities and lobbies on the ground floor than the CBD-P zone.

The CBD-X zone is intended to flexibly adapt to a changing development environment by allowing a wide variety of building types and activities, including residential, commercial, and light industrial (light industrial activities would require a conditional use permit). Neither commercial nor residential activities are limited to any part of a building. This designation is proposed for areas still forming a distinct identity such as some western areas of downtown and the County Government Center. This zone has a minimum transparency requirement of 50 percent for ground level commercial facilities and a 10-foot maximum setback requirement for only the ground floor.

The following table summarizes the information provided above:

	<b>CBD-R</b>	<b>CBD-P</b>	<b>CBD-C</b>	<b>CBD-X</b>
<b>Location</b>	See Attachment B	See Attachment B	See Attachment B	See Attachment B
<b>Intent</b>	Development of residential neighborhoods	Development of pedestrian retail nodes and streets	Encourage general commercial activities	Allow a mix of building types and activities
<b>Ground floor uses</b>	Small ground level commercial facilities including offices, retail, and residential	Small pedestrian oriented commercial retail and restaurant activities	Wide variety of commercial activities	Wide variety of commercial and residential activities
<b>Upper story uses</b>	Residential	Commercial or residential	Commercial or residential	Commercial or residential
<b>Maximum setback from sidewalk for</b>	Not regulated	5 feet*	5 feet*	10 feet, but only on ground floor*

<b>bottom three stories*</b>				
<b>Percent transparency in front of ground floor commercial facilities</b>	50 percent	70 percent	60 percent	50 percent
<b>Minimum ground floor height</b>	12 feet	14 feet	14 feet	14 feet

\* Only required over 75 percent of the street frontage. Exceptions are included for restaurant seating areas.

### Summary of Height/Bulk/Intensity Regulations

Overview. The height/bulk/intensity map is separated into seven basic designations (see Attachments A and C). Area 1 is the least intensive and Area 6 the most (the Height Areas only go up to six because there is a Height Area 1a). Each height area allows a “base” of a building with no bulk restrictions and, with the exceptions of Height Areas 1 and 1a, a “tower” above the base with regulations relating to width and bulk. The lower the height area, the less bulk is allowed in a building, particularly above the base, and a narrower tower is required. To encourage creativity, the regulations provide a significant amount of flexibility to designers regarding the location and shape of the tower.

Staff recommends a base and tower building design for several reasons:

- It is important that a building has a base at the street to create a “wall” to define the street space. In general, the height of this wall should be approximately half width of the street right-of-way. On the other hand, if this wall is too high, its scale can overwhelm the street and the pedestrian. The proposed base provides the appropriate balance between these two factors;
- The tower requires some level of articulation in each building to provide visual interest;
- Towers will reduce the upper story bulkiness of buildings that block views and cast shadows on streets and sidewalks;
- The reduction in scale on the upper floors will accommodate windows on all four sides of each building; and
- The proposal recommends maximum flexibility for the location of the towers to allow significant creativity. This will allow for a variety of building forms for the skyline and flexibility in creating site specific solutions.

In general, the greatest building intensity is proposed to be near the Broadway core and intensity graduates down to the eastern and western edges of downtown. This strategy is reflective of LUTE policies regarding establishing a core on and near Broadway to increase ridership at the 12<sup>th</sup> and 19<sup>th</sup> Street BART stations, reinforce existing development patterns, and expose an interesting skyline at the interior of the downtown. The lowest height area is designated for historically rated neighborhoods known as “Areas of Primary Importance” (APIs)<sup>2</sup> where a particular height is a characteristic feature of the district<sup>3</sup>.

These districts are generally lower scale residential neighborhoods that ring the edges of downtown (see Attachment J). The regulations also provide for the narrowest towers near the lake to preserve view from and to the lake. Staff also considered gateway locations, transitional areas, and neighborhood identity in drawing the height map.

<sup>2</sup> APIs are historically or visually cohesive areas or property groups identified by City surveys that contain a high proportion of historic buildings. APIs appear eligible for the National Register of Historic Places.

<sup>3</sup> Height is a character-defining feature district when most of the buildings that contribute to the API are about the same height and this height contributes to the historic character of the neighborhood.

“Fine grain” mapping approach. Staff has applied the concepts described in the previous section to develop a “fine grain” approach to the height map. Early in the CBD rezoning process, the Zoning Update Committee indicated their preference for a very fine-grained approach to mapping, carefully studying existing conditions when applying height limits and new designations. This is a departure from the way Downtown Oakland has been mapped in the past. The 1965 zoning for the CBD applied C-40, C-51 and C-55 zones to broad swaths of the commercial areas and R-80/ R-90 to the residential areas with little relationship to the land uses or building types that were actually on the ground. No height limits were applied. In addition, the 1998 LUTE designated the entire CBD with a single land use category with a very high Floor Area Ratio (20.0) and residential density (300 units/acre). LUTE’s policies provide some direction—for example, identifying Downtown sub-districts and the concept of building heights stepping down between Broadway and Lake Merritt—but only at a very broad level.

Staff has used a fine-grained approach throughout the CBD zoning, responding to input from the ZUC, downtown residents, property owners, historic preservation advocates, and others. This approach has involved significant research of existing conditions and many iterative rounds of mapping, each more detailed than the one before it.

In January 2008, staff completed a parcel-by-parcel land use inventory of the CBD, recording ground floor and upper floor uses, building height, and other pertinent information for more than 1,000 properties. This information was used to divide Downtown Oakland into 27 contextual “sub-districts” based on the prevailing character of each block (or portion of a block). The sub-districts provided the foundation for the first draft of a height map. Staff also prepared a parcel-specific map of sites with development potential, which was another variable in determining how height boundaries should be drawn.

As mentioned, one of the most important mapping criteria was the presence of historic resources. Staff initially overlaid maps of historic districts and designated landmarks on the existing land use map to ensure that appropriate zoning districts and height limits were applied. Staff balanced historic preservation goals against the housing, economic development, land use, and transportation goals of the LUTE (for example, not applying the lowest height limits around BART stations or along the Broadway spine). The initial height boundaries were drawn to protect the most important historic resources in Downtown Oakland, such as the Old Oakland historic district, the Pardee House, Preservation Park, and the Camron Stanford House.

The first draft of the CBD Height Map included six height zones, ranging from 55 feet in the most restrictive zone (Height Area 1) to unlimited heights in the least restrictive zone (Height Area 6). As mentioned, the boundaries were drawn with the overarching goal of stepping heights down from Broadway to the Lake and maximizing development near transit, consistent with LUTE policies. In a few cases, existing high-rise buildings precluded mapping the lowest heights along the Lake, so adjustments were made accordingly. In other cases, the presence of historic structures, low-scale residential neighborhoods (such as the Gold Coast), or commercial districts with a low existing height context resulted in lower heights being mapped. Other considerations included the desire to preserve view “corridors” into the CBD from perimeter freeways and from across the Lake, and the desire to create distinctive Downtown “gateways” on key streets such as Grand Avenue.

Subsequent drafts of the height map were refined to further reflect existing building heights and to expand the range of historic resources that were considered. Following the Zoning Update Committee’s direction and responding to input from the LPAB, staff mapped all Potential Designated Historic Properties (PDHPs), Areas of Primary Importance (APIs), Areas of Secondary Importance (ASIs), and Class A, B and C rated structures. Staff also distinguished between those areas where height was a contributing factor to the integrity of a group of historic buildings, and those areas without a consistent height context.

Taking this even “finer-grain” approach, numerous parcels were moved from one height zone to another. In some cases, portions of city blocks (such as 17<sup>th</sup> Street between Franklin and Harrison) were reduced from the highest height zone to the lowest zone, creating “pockets” of older low-rise buildings in areas otherwise envisioned as future high-rise areas. Staff also modified the height zones themselves, creating a new category (Height Area 1A) and applying this zone to selected sub-areas.

Height Areas. The following describes the regulations and location of each of the height areas. For reference, the height areas referred to below are shown in Attachment C. A detailed summary of the regulations for each height area is contained in Attachment K.

As mentioned, Height Area 1 is the least intense designation, with a 55-foot height limit. It is generally located in APIs where height is a character defining feature, such as the Lakeside Apartment District, Old Oakland and smaller residential neighborhoods on the eastern ring of the Central Business District (see Attachment J). This designation was chosen for these areas to preserve the character of these districts (see “Historic Resources” section, below)

Height Area 1a has an 85-foot height limit and is applied to the 244 Lakeside Drive API, a district located between Snow Park and Lake Merritt, to preserve this cluster of A1+ historically rated residential properties. The district includes the Regillus building (110 feet tall), 244 Lakeside Drive (131 feet tall), Lake Merritt Hotel (70 feet tall), and the Schilling House Garage. An A1+ historic rating is Oakland Heritage Survey’s highest rating for a historic building. The Schilling Gardens site at 222 19<sup>th</sup> Street, another A+ rated property, was excluded from this height area, despite its being in the 244 Lakeside Group API. This issue is discussed in the “Key Issues and Impacts” section of this report. Height area 1a is also applied at the following locations:

- On Alice and Jefferson Streets adjacent to the Lakeside Apartment District to provide a transition between Height areas 1 and 4; and
- On the western edges of downtown to provide low to mid-rise development opportunities at these locations.

Height Area 2 provides a 55-foot base and allows a narrow tower that can reach 170 feet tall. This designation is applied to a small portion of the Gold Coast (an area near the western shore of Lake Merritt), where it is consistent with existing heights while still preserving future views to and from Lake Merritt. The Gold Coast recommendation is further discussed in the “Key Issues and Impacts” section, below.

Height Area 3 allows an 85-foot base with a tower that can reach a height of 275 feet. An 85-foot base is allowed in Height Areas 3 through 5 to provide a scale appropriate for the approximately 80 foot wide street right of ways for those areas. This designation is applied to the following areas:

- Between Jefferson Street and Martin Luther King Jr. Way in the western area of the CBD to provide a transition between Height Areas 5, 2, and 1;
- San Pablo Avenue at the northwest corner of the CBD map to serve as a gateway into downtown;
- The area near the intersection of Broadway and 6<sup>th</sup> Street to allow a view of the taller buildings planned for the Broadway core area;
- On 19<sup>th</sup> and 17<sup>th</sup> Streets to be consistent with existing development patterns.
- In the Chinatown residential area in the southeast area of downtown. This designation is generally applied to this area and will be refined during the Lake Merritt BART Station Specific Plan process (see “Key Issues and Impacts”, below).

Height Area 4 allows an 85-foot base and a 400-foot maximum height and is proposed for the following two areas:

- The Civic Center area bounded by Madison, Harrison, 11<sup>th</sup>, and 14<sup>th</sup> Street. This designation was applied here because the many development sites in the area could serve as an extension of the Broadway Core; and
- Harrison Street between 14<sup>th</sup> and 17<sup>th</sup> Streets to serve as a transition between the downtown core (Height Area 5) and the Lakeside Apartment District (Height Area 1).

Height Area 5 is applied to the outer ring of the Broadway Core area and Height Area 6 is applied to the inner part of the Broadway Core area and the Kaiser Center. Both these height areas allow unlimited height, while Area 6 allows a taller base height to account for the greater street width on Broadway. These areas are designated at locations to implement LUTE policies to establish a high-rise core on and near Broadway. These height areas also allow for the largest tower floor plates to fulfill LUTE policies regarding the encouragement of office development in the core of the CBD.

#### *Special height regulation*

The proposal requires that new construction from the eastern side of Harrison Street to the lake (see “Special Area A” in Attachment C) cover no more than two-thirds (2/3) the length of any east or west side property line. This regulation is proposed to preserve views to and from the lake. Lots less than 90 feet wide are proposed to be excluded from this regulation to allow construction of towers on smaller lots.

#### Other Design Regulations

The following is a summary of proposed design regulations applying to new construction in all the zones:

- Entrance: Newly constructed principal buildings are proposed to have at least one prominent pedestrian entrance facing the principal street.
- Ground Floor Treatment: All ground floors are proposed to be constructed of durable and high quality exterior materials.
- Active Space Requirement: Parking spaces, locker areas, mechanical rooms, and other non-active spaces are proposed to be located outside the front thirty feet of a building.
- Parking and Loading Location: Access to parking and loading facilities are proposed to be located from a secondary frontage or an alley, where possible.
- Massing: The proposal requires the mass of newly constructed principal buildings to be broken up into smaller forms to enhance the visual interest of the streetscape.
- Upper Story Windows: The proposal contains a provision requiring ample placement of windows above the ground floor.
- Building Terminus: An element that provides a visual terminus is proposed to be required at the top of new buildings.
- Utility Storage: The proposal includes a provision requiring that areas housing trash, storage, or other utility services be located in the garage or otherwise completely concealed from view of the public right-of-way.

## **HISTORIC RESOURCES**

The CBD has the greatest concentration of historic buildings in the City. In formulating regulations regarding these historic resources, staff has balanced several important policies in the LUTE and the Historic Preservation of the General Plan regarding encouraging downtown building intensity, historic preservation, and neighborhood identification. This section summarizes staff's proposal.

"Fine Grain Approach"

As mentioned in the "Summary of Height/Bulk/Intensity Regulations" subsection, above, a major factor in developing the "fine grain" height map was the location of historic resources. This fine grain approach applies height limitations to preserve or allow appropriate construction in historic areas. Staff proposes Height Area 1 (at 55 feet, the height area with the lowest maximum height of any proposed height area) to cover nearly all the APIs where a certain height is a defining historic characteristic of the district. In general, the current height context of these districts range from about 35 feet to 55 feet. Attachments L and J contain the proposed height map, the location of all the APIs, and the location of APIs where height is a character defining feature. At the January 28, 2009 Zoning Update Committee meeting, Commissioner Colbruno asked staff to study the expansion of the fine grain approach to the ASIs in downtown. Attachment M shows the areas that staff analyzed since the last ZUC meeting and additional proposed changes to the height map.

New findings, processes, and recommendations for historic resources

Design review findings and processes. Section 17.136.055 of Attachment N contains proposed findings and processes regarding the treatment of historic properties downtown. The new findings would require alterations to historic structure to retain the character of the building and would also require that repair, not replacement, of character defining features be performed whenever feasible.

The following are the new findings proposed for new construction and additions to buildings that contribute to APIs:

- The construction is compatible with other buildings in the district in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and detailing;
- New construction has street frontage consistent with the district and has high visual interest;
- The proposal is visually cohesive with the district.
- The development transitions to lower scale historic properties in areas where height is a character defining feature of the district;
- Any new additions are consistent with the Secretary of Interior Standards for the Treatment of Historic Resources. This finding can be waived 1) upon the granting of a conditional use permit; 2) if the addition will not result in the API losing its status as an API; and 3) after a hearing in front of the LPAB. Findings relating to quality, craftsmanship, and the scale of new buildings in an API are also proposed.

Approval of other applications involving historic properties outside an API would require the following findings:

- The construction is compatible with the existing district and/or building in terms of massing, siting, rhythm, composition, patterns of openings, quality of material, and intensity of detailing;
- The proposal does not remove the designation of a historic district; and
- Upper story additions are stepped back at least 5 feet at the front façade.

- Applications can bypass the previous three findings if the proposal will result in a signature quality building. This process would require a hearing in front of the LPAB.

The proposal also includes requirements that: 1) a new building in an API, and 2) any construction of a building over the height context of an API, where a height context is a character defining feature of the district, be heard in front of the LPAB for their advice and recommendations to the decision making body. Note that not all APIs have a height context that is a character defining feature. Determination of which APIs have a height context and what those height contexts are will be determined prior to the any hearing in front of the City Council.

The findings currently proposed are somewhat different than those proposed at the last meeting of the Zoning Update Committee. The changes include:

- Combining the findings required for new buildings and additions in an API. This is recommended to simplify the code by standardizing the requirements for proposals in an API;
- Removing a finding requiring additions to historic buildings in an ASI to preserve the cohesiveness of the ASI. This finding was originally recommended to assure that ASIs remained cohesive districts. Upon further research, staff discovered that ASIs in downtown are often very small (two to three parcels) and have limited visual cohesiveness.
- The previous version of the regulations recommended a finding requiring that any addition to a contributing building in an API be consistent with Secretary of Interior Standards. The current version allows an addition to a building to be approved without this consistency upon the granting of a conditional use permit. Approval of a conditional use permit requires that the proposal not cause an API to lose its status as an API. This conditional use permit would require a hearing in front of the LPAB for their advice and recommendation to the decision-making body.

Demolition Findings. Staff is in the process of developing new findings required for the demolition of historic resources. Staff will present its recommendations at a future meeting of the Planning Commission after a hearing before the LPAB.

#### Transfer of Development Rights

The issue of Transfer of Development Rights (TDRs) is discussed in the “Key Issues and Impacts” section, below.

#### Other recommendations regarding historic resources

Other recommendations regarding historic resources include:

- Providing open space and parking space requirement relief for developments that involve the rehabilitation of historic buildings. This recommendation allows the rehabilitation of historic buildings when it otherwise may be impractical due to parking and open space regulations. Note that this text has not yet been placed in the proposal, but will be in future drafts.
- Allowing the conversion of historic buildings to bed and breakfast hotels and relaxing activity regulations in historic buildings. This recommendation would encourage the rehabilitation of buildings through adaptive reuse;
- Expansion of the Mills Act program to larger buildings downtown. This study would take place in the future and be separate from the current rezoning process;

- Studying downtown view corridors to historic or important features. This study would take place in the future and be separate from the current rezoning process;

Landmarks Preservation Advisory Board recommendations

The LPAB has held eight meetings, including a joint meeting with the ZUC on October 6, 2008, to formulate advice for the ZUC and the Planning Commission regarding preservation of historic resources in the CBD. On January 12, 2009, the LPAB formulated recommendations regarding a fine grain height approach to the Central Business District. A full text of LPAB the recommendations is contained in Attachment O. The following is a summary.

In the short term:

- Implement a “fine grain” height map approach. This includes recommendations for new design review processes and findings for new construction in API’s and ASI’s; alterations to buildings that contribute to an API’s and ASI’s; and alterations and additions to historic buildings not in an API or ASI.
- Reevaluate the southwest portion of the Lakeside Apartment District API to modify the dramatic height change between Height Area 1 (55-foot height maximum) and Height Area 4 (400-foot height maximum).
- Reduce the maximum tower dimensions along Lakeside Drive between 11<sup>th</sup> and 17<sup>th</sup> Street from those originally proposed by staff.
- Provide open space and parking space requirement relief for developments that involve the rehabilitation of historic buildings.
- Allow the conversion of historic buildings to bed and breakfast hotels and relax activity regulations in historic buildings.
- Adopt new findings regarding demolition of historic buildings that both implement and go beyond the findings described in the Historic Preservation Element.

In the intermediate term:

- Protect historic vistas, focal points (the terminus of vistas), and gateways through special zoning standards.
- Provide development standards that take into consideration existing parcel frontage widths and height to width ratios of existing buildings in historic districts.
- Develop guidelines for how to provide a transition between small scale historic resources and large scale new construction.

In the long term:

- Explore adding height to historic resource buildings without loss of the building’s historic status.
- Expand the Mills Act Program in the CBD.

**ISSUES IDENTIFIED DURING THE JANUARY 28, 2009 ZUC MEETING**

At the January 28, 2009 ZUC meeting, the ZUC members asked staff to respond to the following issues. The responses are in italics:

- 1. In some APIs, the proposal allows a maximum height greater than the contextual height of the district. The previous proposal also required that all new development in an API meet Secretary of Interior standards for the treatment of historic resources. Commissioner Mudge expressed concern that new construction would not be allowed to construct up to the maximum height allowed in these areas because they could not meet the Secretary of Interior standards.**

*The Secretary of Interior standards relate to the treatment of individual historic buildings, not to districts as a whole. The standards are separated into three categories: standards for preservation, standards for rehabilitation, standards for restoration, and standards for reconstruction. Secretary of Interior guidelines state that only modest upper story additions can meet the standards, so the contradiction described by Commissioner Mudge does exist for additions to historic resources. Therefore, staff has changed the proposal to allow additions in APIs to not meet the Secretary of Interior standards granted a conditional use permit and found compliant with findings regarding the quality of the design and relationship to the district.*

*Staff removed the requirement that new construction in an API be consistent with Secretary of Interior standards because these standards relate to the alteration of an existing building, not the integrity of a historic district. Staff replaced this requirement with findings that the new construction not result in the loss of API status and findings regarding the quality of design and relationship to the district.*

- 2. Commissioner Mudge asked Staff to discuss why findings regarding historic resources should not be applied citywide.**

*Staff does not recommend applying the proposed findings regarding historic resources citywide until all the affected areas are notified as part of the larger citywide rezoning process. Staff agrees that there should be a consistent citywide policy regarding the preservation of historic properties and hopes that the current effort can lay the foundation towards this end.*

- 3. Commissioner Colbruno asked staff to determine where the “fine grain” height map approach could be applied to ASIs.**

*Staff studied the extension of the fine grain approach to ASIs. As discussed in the “Historic Resources” section, above and Attachment N, staff extended the fine grain approach to five ASIs.*

- 4. Commissioner Colbruno requested that staff research how transfer of development rights may work for downtown.**

*This issue is discussed in the “Key Issues and Impacts” section and Attachment P.*

- 5. Commissioner Boxer asked staff to determine why 1429 Alice Street is in an API when it is on the edge of the Lakeside Apartment District and an empty lot.**

*Staff research has discovered that 1429 Alice Street once had a two-story 1916 commercial building that contributed to the Lakeside Apartment District API. This building was demolished in 1988. Removing the site from the API would require a hearing in front of the LPAB; staff has discussed the matter with a representative of the property owner regarding this process.*

- 6. Commissioner Boxer requested that staff discuss Staff’s interpretation of the “fine grain” height map approach.**

*A discussion of staff’s interpretation of the “fine grain” height map approach is contained in the “Summary of Height/Bulk/Intensity” and “Historic Resources” sections, above.*

### **TEXT CHANGES SINCE THE JANUARY 28, 2009 ZUC MEETING**

The following are the proposed changes to the CBD zones since the January 28, 2009 ZUC meeting. These changes do not include those involving historic resources because those are described in the “Historic Resources” section, above.

Currently, proposed Section 17.058.030 requires that any new store over 7,500 square feet obtain a conditional use permit to operate in the CBD-P zone to preserve a fine grain, pedestrian oriented storefront character. Staff proposes to exclude storefronts on Broadway from this requirement because there are currently larger stores on the street such as Walgreens, Rite Aid, and Sears. Further, a large store would not overwhelm the character of Broadway because of the street’s large width and length.

Staff proposes changing proposed Section 17.28.060(B)(6) to contain a guideline encouraging windows on each side of towers, preventing blank walls and providing visual interest to the skyline.

Staff also proposes adding the new Height Area 1a to 17.28.060(C), the table containing the height, bulk, and density regulations. This height area was proposed to the ZUC on the height maps but was mistakenly not included in the zoning text previously reviewed by the ZUC.

Staff removed a requirement that a five-foot setback be required for additions above an historic structure outside an API. This was changed to allow more design flexibility.

The new proposal also includes changes required throughout the code to reflect the new zones. This requires changes inserting the new regulations, removing the old downtown designations, and replacing references to the old designations with the new designations (see Attachment N).

### **ENVIRONMENTAL DETERMINATION**

Several past environmental documents discussed and evaluated the environmental impacts associated with this proposal and reliance on them satisfies any requirements under the California Environmental Quality Act (CEQA). These documents include the Environmental Impact Report (EIR) for the LUTE, certified in 1998; the Initial Study/Mitigated Negative Declaration for the 2004 Housing Element Update, certified in 2004, and the EIR for Amendments to the Historic Preservation Element of the Oakland General Plan, certified in 1998. As a separate and independent basis, the proposal is also exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (Projects Consistent with a Community Plan, General Plan, or Zoning) and /or 15061(b)(3) (General Rule—no possibility of significant environmental impact). A detailed environmental determination is contained in Attachment Q.

### **GENERAL PLAN GUIDELINES**

On May 12, 1998, the City Council adopted interim controls that implement the General Plan prior to the adoption of revisions to the Oakland Planning Code. These interim controls are in the “Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations” (General Plan Guidelines). However, the new CBD zones will now implement Central Business District LUTE designations. Therefore, staff proposes to replace CBD-related text in the General Plan Guidelines that implement the designation with text that refers to the Planning Code (see Attachment R).

**MINOR MODIFICATIONS**

Staff requests that the Planning Commission authorize staff to make minor changes, clarifications and refinements to the proposal prior to submittal to the City Council. This may be required to clean up language, correct typing errors, or make other minor changes consistent with the Commission’s recommendations. Although not anticipated, Staff proposes to bring any staff initiated significant or controversial changes back to the Planning Commission for further recommendation prior to submittal to the City Council.

**KEY ISSUES AND IMPACTS**

Height and Historic Resources

The related issues of what the allowed height should be in various areas of downtown and the protection of historic resources have been a major focus of the meetings in front of the ZUC. On the one hand, the LUTE (as well as regional and state policies) clearly calls for much greater development and building intensity in downtown where there is easy access to transit, available land, and opportunities for a vibrant, mixed use community. On the other hand, the LUTE and the Historic Preservation Element of the General Plan (HPE) also call for a variety of downtown building intensities to preserve historic neighborhoods and historic resources, establish a downtown “spine” near Broadway, and create a varied and interesting skyline.

Staff believes the current proposal strikes a good balance between these competing priorities. Staff is proposing no height limits and a maximum floor area ratio of 20.0 through the core of downtown and the Chinatown commercial district where there are heavily used BART stations and a hub of AC Transit service. Staff also proposes significant development throughout downtown where there are available parcels, including a 400-foot height limit in the County Civic Center (the area bounded by Madison, 11<sup>th</sup>, Harrison, and 14<sup>th</sup> Streets), the Telegraph and San Pablo Avenue gateways, and other locations.

At the same time, staff acknowledges that the downtown has the greatest concentration of historic resources in the City. These resources will be protected by applying the lowest height limits in Areas of Primary Importance (APIs, Oakland Heritage Survey’s highest rated historic neighborhoods) where height is a character defining feature of the district. In the most historic districts where there is a strong context of a particular height, staff has lowered the height limit to 55 feet. Allowing greater building heights in these neighborhoods could endanger the cohesiveness of these historic districts. In historic districts where height is not a strong context, staff does not propose these height limits, but has design findings requiring that new buildings and additions strongly relate to the historic features of the neighborhood.

Staff has further fulfilled LUTE policies regarding an interesting skyline by graduating height down from the Broadway core to Lake Merritt and the western edge of downtown. This pattern dovetails with policies regarding preserving historic neighborhoods because APIs where height is a character defining feature tend to be located on the edges of the CBD. The proposed base and tower requirements will further develop a varied skyline by creating varied tower forms. The base and tower design will also ameliorate view and solar access issues that may arise due to the proposed building intensity.

Lakeside Drive

Appropriate height regulations for Lakeside Drive between 14<sup>th</sup> and 17<sup>th</sup> Streets have been a key issue for discussion (see Issue Area A in Attachment S). This area is an API and features a mix of historic and more recently constructed buildings such as the approximately 128-foot tall Scottish Rite Temple, 36 –

50-foot tall historic apartment buildings, and 12-16 story modern apartment buildings. Overall, the heights of buildings vary significantly from an approximately 25-foot-tall apartment building on the corner of 17<sup>th</sup> Street and Lakeside Drive to the approximately 170-foot tall apartment building at 1503 and 1515 Lakeside Drive. The parcels on this part of Lakeside Drive face Lake Merritt and are approximately 190 to 450 feet from its shore.

Coalition of Advocates for Lake Merritt (CALM) has consistently proposed that this area have a 55-foot height limit, arguing that greater height would block views and solar access to the Lake. CALM has further argued that staff's proposed height limit is inconsistent with LUTE policies regarding the area's designation as a "maintain and enhance" neighborhood. Attachment H contains a letter from CALM regarding this area and staff's response.

On the other hand, the Oakland Builders Association has argued that this neighborhood's proximity to the Lake makes it a desirable area for residential development. Therefore, OBA suggests that staff propose taller heights to fulfill LUTE policies regarding a vibrant, transit oriented, and populated downtown.

Staff has proposed Height Area 2 for this part of Lakeside Drive. This designation allows a 55-foot base height with a narrow tower up to 170 feet. The average tower floor plate could be no more than an average of 7,500 to 10,000 square feet, depending on the size of the lot. Towers would not be allowed to cover more than two-thirds (2/3) the length of any east or west side property line to preserve views to and from the lake. This proposal will be beneficial for the area in terms of solar access, views to and from the lake, the effect on the skyline, existing context, and development potential. The following is an analysis of these issues:

- *Solar access:* Shadow studies for the Essex building show that taller buildings in this area would have little solar impact on the lake due the alignment of the lots on this part of Lakeside Drive. The solar impact is additionally mitigated by the significant separation between the parcels and the lake edge.
- *View impacts:* The proposed narrow towers and limitations on tower coverage will allow views to and from Lake Merritt.
- *Skyline:* As mentioned much of the existing development on Lakeside Drive is approximately 170 feet tall and the Scottish Rite Temple is approximately 128 feet tall. Therefore, the proposal is consistent with the current context. Staff believes that greater heights would be too tall to allow a proper foreground to present the inner part of downtown, particularly for views from the eastern side of the lake.
- *Development Potential:* Staff believes that a 170-foot tall building provides ample development potential for the district. This height is taller than many buildings that have been proposed and constructed in the core of downtown.

#### 222 19<sup>th</sup> Street

229 19<sup>th</sup> Street is the site of Schilling Gardens, an A-rated historic resource that has been proposed for a 42-story residential tower (see Issue Area B on Attachment S). The site is in the 244 Lakeside Drive Group API and is part of the August Schilling (of Schilling Spices) original estate. Staff proposes Height Area 3 (275 foot height limit, 85-foot tall base height, and 15,000 square foot average tower floor plate) for this location. Staff proposes this height to provide an appropriate height transition to the taller office buildings in the Kaiser Center and to provide an edge to Snow Park. The OBA has argued that this height maximum would limit development and be counter to LUTE policies regarding a vibrant, transit oriented, and dense downtown. The Oakland Heritage Alliance (OHA), CALM, and members of the neighborhood have argued that this height is out of scale with the neighborhood and will block views and sunlight to

and from the Lake, and that this parcel should not be treated differently than the rest of the 244 Lakeside Drive Group API, which is proposed for an 85-foot height limit.

Chinatown East

The Greater Chinatown/Lake Merritt BART Station Area is designated as “Issue Area C” on Attachment S. This area generally consists of single-family homes and apartment buildings, urban parks, the MetroCenter (headquarters for the Metropolitan Transportation Commission and the Association of Bay Area Governments), and the Lake Merritt BART Station. The 7<sup>th</sup> Street/Harrison Square Residential District API is also located in this area (see Attachment L). This historic district contains a high concentration of 19<sup>th</sup> and early 20<sup>th</sup> historic structures that vary in quality but together constitute a neighborhood with a consistent historic and height character. Staff recommends that all of Chinatown outside of the commercial area be designated Height Area 3 on the height map. The Chinatown Chamber of Commerce has argued that this area should have no height limits to maximize development potential and land values.

As mentioned, this area contains a lower-scale historic neighborhood as well as a BART station. Policies in the LUTE encourages both preservation of the historic scale of the neighborhood and intense development near the BART station. Staff believes more study is required on how to allow intense development compatible with the historic resources in the neighborhood. This will occur through the Specific Plan process that is currently underway. Staff proposes designating this area Height Area 3 to provide development opportunity around the BART station until adoption of the Lake Merritt BART Area Specific Plan.

Transfer of Development Rights

Transfer of Development Rights (TDRs) are a mechanism that allows developers to purchase development rights (additional height, density, or other development right) from one property (the sending site) to allow greater development on a new development site (the receiving site). TDRs provide benefits to local government by compensating landowners for lost property value due to zoning, and they use the market to pay for the preservation of public goods.

A successful TDR program requires that developers demand development opportunity beyond that allowed by the basic zoning regulations. For instance, if the zoning has a height maximum of 100 feet, but there is a demand for buildings of 500 feet, then there is an incentive for a developer to purchase development rights from another property. A TDR program would be difficult under the currently proposed regulations due to their permissive height and density regulations. Other important factors required for a successful program include strong support from the community, clearly stated requirements, a streamlined administrative process, and a robust real estate market. TDRs can be administratively challenging and require public education to promote the use of the program.

The Oakland Historical Alliance has proposed a TDR program to preserve historic properties in the CBD. In this case, historic properties in the CBD would be the sending sites and vacant and underutilized properties in the core of the CBD would be the receiving sites. Oakland’s General Plan Historic Preservation Element (HPE) contains a recommendation for the creation of a TDR program to facilitate the protection of landmarks and preservation Districts. Specific recommendations related to the amount of transferable developable area are also included in the HPE.

Oakland’s zoning regulations currently contain provisions for acquiring development rights from adjacent properties to allow greater development at a site. However, the program has never been used for historic preservation purposes. For most of the cities studied, the TDR program was seldom used, with the

notable exception of San Francisco. The success of San Francisco’s program is largely due to the demand for high-rise development there and the restrictive maximum base heights allowed by their planning code.

Due to the complexity of developing a successful TDR program, staff recommends that more research is needed including an economic study tailored to Oakland’s downtown market characteristics. However, staff presents a framework for a TDR program if the Planning Commission decides to recommend such a program to the City Council. The program would be based on the Central Business District Height/Bulk/Intensity Map. Essentially, historic resources in APIs and ASIs in Height Area 6 would be preserved by selling the development potential of these properties. Height Area 5 would be the receiving area, making an additional 35’ of base height possible and 10 percent more tower coverage.

A full analysis of TDR and this potential framework is contained in Attachment P.

1443 Alice Street

The issue of the allowed height for 1443 Alice Street has been another point of discussion during ZUC meetings and through correspondence to staff from the public (see Attachment S, Issue Area D). The site is the third lot north of 14<sup>th</sup> Street on the west side of Alice Street. This site currently has a B-rated, 45-80 foot tall historic garage. An application for a 37-story, 395-foot tall building (up to 245 residential units) built above the historic garage has been submitted to the City.

Previously, this site was to be in the same height area as 14<sup>th</sup> Street (Height Area 4--400 foot height limit) to accommodate development potential at the site. The current proposal designates this area as Height Area 1a (85-foot maximum) because:

- This height is consistent with the rest of that part of the Lakeside Apartment District API;
- The height of the existing 45-50 foot tall historic garage is consistent with the rest of the API;
- The site contains a historic garage and is a Designated Historic Property with a B rating;
- A 400-foot tall building would be out of scale with the A-rated Melonga Casquelourd Center for the Arts, which is across from the site;
- The Lakeside Apartment District is an API where a height is a character defining feature of the neighborhood. A 400-foot tall building would be out of scale with the neighborhood as a whole and would reduce the architectural cohesiveness of the district; and
- The site does not face 14<sup>th</sup> Street, where the height map focuses taller buildings.

**RECOMMENDATIONS:**

1. Affirm staff’s environmental determination.
2. Recommend adoption of the proposal to the City Council.

Prepared by:

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NEIL GRAY  
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Approved by:

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ERIC ANGSTADT  
Deputy Director of CEDA

Approved for forwarding to the  
City Planning Commission:

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WALTER COHEN  
CEDA Director

**ATTACHMENTS:**

- A. Proposed text for the Central Business District zones
- B. Proposed zoning map
- C. Proposed height map
- D. Maps of historic resources
- E. Map of existing zones
- F. Comparison of existing and proposed density and bulk regulations
- G. Text regarding the CBD in the LUTE
- H. October 29, 2009 letter from CALM and staff response
- I. Land use inventory map
- J. APIs where height is a character defining feature
- K. Summary of proposed height/intensity/bulk regulations
- L. Proposed height map with modifications and map of all the APIs
- M. Summary of modifications to the height map
- N. Proposed changes to text throughout the Planning Code
- O. Full text of the LPAB recommendations
- P. Transfer of Development Rights analysis
- Q. Environmental Determination
- R. Proposed changes to the "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations"
- S. Issue area map
- T. Comments since the January 28, 2009 ZUC meeting