

**New Industrial Zoning Districts and Related Zoning Text and Map Amendments;
Interim Urgency Ordinance: Moratorium on Primary Recycling and Intermediate Processing**

Ordinance: C.M.S. 12875

City Council Adoption Date: 6/17/08

Effective Date: 7/18/08

Planning Code Additions/Revisions included in this Ordinance:

1. Chapter 17.73 CIX-1, CIX-2, IG And IO Industrial Zones and mapping **(New)**
2. Chapter 17.10 "Use Classifications" **(Amended)**
3. Chapter 17.100 "S-19 Health And Safety Protection Overlay Zone **(New)**
4. Chapter 17.120 "Performance Standards" **(Amended)**
5. Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations **(Amended)**

Projects not affected by these code amendments:

- Building/construction related permits already issued and not yet expired;
- Zoning applications approved by the City and not yet expired;
- Zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code amendments if the applicant chooses to do so.

These changes supersede the current online version of the Planning Code and will not be represented in the online Planning Code for 3-6 months. Therefore, use the following link on the Planning and Zoning website to view the zoning text amendments enacting the Ordinance and the updated Planning Code: <http://www.oaklandnet.com/government/ceda/revised/planning.html>. A summary of the Planning Code amendments are provided below. The individual Code Chapters should be consulted for the detailed regulations.

Ordinance: 1) C.M.S. 12873; 2) C.M.S. 12889

City Council Adoption Date(s): 6/17/08 (1st 45-day period), 7/15/08 (extension through 12/16/08)

Effective Date: 6/17/08 though 12/16/08

An interim ordinance that established a temporary moratorium on the establishment or expansion of an activity or facility that involves primary recycling and intermediate processing facilities, effective immediately upon adoption, was adopted by City Council as an urgency measure pursuant to California Government Code on June 17, 2008. According to State law, the first passage of the ordinance can only be for 45 days. The Interim Urgency Moratorium Ordinance was extended through December 16, 2008 by a second ordinance, adopted by City Council on July 15, 2008.

A. Summary of Ordinance: C.M.S. 12875

1. O.M.C. Chapter 17.73 CIX-1, CIX-2, IG and IO Industrial Zones and mapping (New)

The following four new industrial zones were created as part of the effort to update the City's planning and zoning regulations:

- **Commercial Industrial Mix-1 (CIX-1)**
- **Commercial Industrial Mix-2 (CIX-2)**
- **General Industrial (IG)**
- **Industrial Office (IO)**

a. SUMMARY OF THE NEW ZONES

- The **CIX zones (CIX-1 and CIX-2)** are *generally* intended to allow for a range of commercial and custom/light industrial activities, and to limit the establishment or expansion of general or heavy manufacturing uses. CIX-1 is mapped in West Oakland and CIX-2 is mapped in Central and East Oakland. Both CIX-1 and CIX-2 may allow heavier impact activities where they will not impact residential uses. The main difference between CIX-1 and CIX-2 is that due to the greater likelihood of trucking-intensive uses to travel through or near residential areas in West Oakland to access the freeway and/or the Port, and the location of industrially-zoned land near residentially-zoned land, there are greater location restrictions in CIX-1 for such uses (e.g. freight/truck terminals, truck yards and truck and other heavy vehicle service, repair and refueling) than in the CIX-2 zone.
- The **IG zone** is intended to create, preserve and enhance areas of the City that are appropriate for a wide variety of businesses and related commercial and industrial establishments that may have the potential to generate off-site impacts such as noise, light/glare, odor, and traffic. This zone allows heavy industrial and manufacturing uses, transportation facilities, warehousing and distribution, and similar and related supporting uses. Uses that may inhibit such uses, or the expansion thereof, are prohibited. This district is applied to areas with good freeway, rail, seaport, and/or airport access.
- The **IO zone** is intended to create and support areas of the City that are appropriate for a wide variety of businesses and related commercial and industrial establishments in a campus-style setting. Development and performance standards in this district are more restrictive and accommodate large-parcel development in an attractive, well-landscaped setting. Future development shall reflect large-scale office, research and development, light industrial, wholesaling and distribution, and similar and related supporting uses.

Residential uses are prohibited in all four zones. Special regulations for work/live for the industrial zones only (Section 17.73.040) establish rules for the establishment of new and conversion of existing buildings as follows:

- **New:** Establishment of new work/live units in the industrial zones is only permitted with a conditional use permit (CUP) in CIX-1 or CIX-2 zones within 300 feet of a residential zone; additional CUP criteria is found in 17.73.040.
- **Conversions:** Special regulations for work/live for the industrial zones (only) 17.73.040 supersede 17.102.190 relating to the conversion of buildings originally designed for commercial or industrial activities into joint living and working quarters.
 - "Establishment of a work/live unit through the conversion of an existing building originally designed for commercial or industrial activities is permitted in all industrial zones with the granting of a conditional use permit pursuant to the conditional use permit procedure in

Chapter 17.134 provided there are existing artist and/or artisan residents who meet the requirements of Zoning Code Bulletin regarding “live/work” (issued August 29, 2001 and amended August 23, 2004)”

b. WHERE THE NEW ZONES ARE MAPPED

The new zones are generally mapped in areas of the City that have the General Plan land use classification of Business Mix or General Industrial/Transportation and replace “M” (Manufacturing) zoning districts. In these areas, CIX zones generally replace M-10, M-20 and M-30 zones and the IG zone replaces M-40. At the present time, the IO zone is only mapped to two areas in east Oakland where the existing conditions seem conducive to the larger parcel, campus-style setting intended by this zone. Other areas may be appropriate for consideration to be designated as an IO zone in the future, as interest from property owners and the community develops.

At the present time, ***there still are some areas in the city where M-zones have not been replaced with the new industrial zones***; these areas, will keep their existing M-zone and associated General Plan or Estuary Plan land use classification until updated at a later date, as indicated below:

- **Areas with a General Plan land use classification other than Business Mix or General Industrial/Transportation.** These areas will be addressed as part of a separate phase of the citywide zoning update effort, as other General Plan land use classification and their associated zoning districts are addressed. Zoning districts for areas that have the Central Business District General Plan land use classification are currently being discussed at public meetings of the Zoning Update Committee (ZUC) of the City Planning Commission. Updating zoning districts associated with residential and commercial General Plan land use classifications is expected to begin in the fall of 2008.
- **Areas within the Estuary Policy Plan that currently are zoned as an “M-zone”.** The City intends to prepare a Specific Plan and EIR for the central estuary area. Part of the specific planning process will include developing zoning to implement the plan.

2. O.M.C. Chapter 17.10 “Use Classifications” (Amended)

The land use classification activity types have been revised to make the industrial land use definitions more up-to-date, more descriptive and representative of the types of activities that are more likely to occur in Oakland.

This zoning update creates a total of eleven land use activity types including “research and development”, where previously only seven categories of industrial land uses existed. What was previously defined as the overly broad category of “Transport and Warehousing Commercial Activities” has now been moved to the industrial activities category and refined into several different categories and subcategories of “Warehousing, Storage and Distribution”, “Regional Freight and Transportation” and “Trucking and Truck-Related Activities” in recognition that they tend to have different off-site impacts and should be regulated differently.

At the present time, ***all other existing zoning districts*** have not yet been revised to reflect the recently adopted industrial land use classifications. This includes areas in the city that will remain zoned as an “M-zone” (that have not been rezoned as part of this zoning update – see explanation in section 2b above), and all other existing non-manufacturing/industrial zoning districts. Until the citywide zoning update is complete, the Zoning Administrator needs to make a determination if there is any question regarding which rules apply to a particular property in these areas. Such decisions are appealable to the Planning Commission, as specified in O.M.C. 17.132.

3. Chapter 17.100 “S-19 Health and Safety Protection Overlay Zone (New)”

The Health and Safety Protection Zone is intended to provide a procedure by which to route businesses which may use, store or process chemicals that could pose environmental risks, directly to Fire Department Hazardous Materials division for clearance, rather than have land use planners determining the nature and risks of commercial/ industrial uses.

The Fire Department now has the discretion to review any such land use activities, per the Certified Uniform Program ordinance (CUPA), lead agency authority. However, in practicality, the Fire Department does not have the vehicle for such referrals now. The referral to Fire Hazardous Material Program would be made when the business seeks to obtain a Zoning Clearance as part of the business license process, or during a CUP or other Planning permit application. The distance of 300 ft from any residential, open space or institutional zone as the appropriate mapping of the zone of referral was determined by the Hazardous Material Program Supervisor as acceptable.

Upon referral to this zone, Fire staff may make any one of the following recommendations:

- a. Business may proceed with the Zoning Clearance or other process, with no plan required by Fire and a notation of such made in the PTS system under the site address; or
- b. Require a Risk Management Plan, or
- c. Require a Hazardous Materials Business Plan; or
- d. Limit or prohibit the storage or use of specific hazardous materials; or specific processes that use hazardous materials; or
- e. Require containment measures for storage or use of hazardous materials; or
- f. Limit the location for storage or use of hazardous materials.

4. Chapter 17.120 “Performance Standards” (Revisions)

The existing Zoning Code has Performance Standards regulations (Chapter 17.120) regulate common impacts from noise, dust, air particulates, odor etc. The existing language has not been substantially altered in the recently adopted version. It has been made more specific for a business by stating the standard for the measurement and where it should be measured. Activities in all Industrial Zones would be required to conform to the Industrial Noise Standards for all lot lines that internally abut another industrial zone. Any industrially zoned properties must conform to the appropriate residential receiving levels at any lot line where they abut a residential zone, which is a change from existing regulations which reference noise levels that may be received from any residential, civic or open space activities. The performance standards have been cross-referenced to other sections of the Code which are the enforcement authority for the standards (e.g.cross-reference to the City’s Noise Ordinance and the Construction Noise Ordinance).

Performance standard regulations are administered in practicality on a complaint-driven basis, whereby a call is made from a community or local business owner to the Fire Department or Code Enforcement. Some industries (typically the largest and heaviest users) are subject primarily to the authority of the Bay Area Quality Management District, which issues its permit to operate, and are not enforced by a local authority.

The current regulation per Section 17.120.020 of the Zoning Code specifically states that conforming activities existing on the effective date of the current code or of a subsequent rezoning that applies more restrictive performance standards to such activities are not required to comply with the performance standards. However, no operations should be so changed as to result in a greater degree of nonconformity with respect to such standards. Staff recommends adding the following threshold to quantify an example of an increased degree of nonconformity with respect to performance standards only

(as defined in 17.114.080.C “Activity Nonconforming for Other Reasons”): whenever a business adds more than 20 percent of production (e.g. non-administrative) floor area, it be required to come into compliance with current code in regards to noise, vibrations, smoke and particulate matter, odorous matter, humidity, heat, cold, and glare and electrical disturbance.

This chapter will, in the future, be brought before the Planning Commission and City Council to adopt further substantive changes to the noise standards and associated changes to the City’s Noise Ordinance to conform these to the City’s current practice and policy.

5. “Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations” to Reflect the New Zones

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 a document entitled “Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations”. However, the new zones will now implement the General Plan Business Mix and General Industrial/Transportation designations. Therefore, text in the Guidelines that implement these General Plan designations have been replaced with text that refers to the new chapter in the Planning Code, O.M.C. 17.73.

B. Summary of Ordinance: C.M.S. 12873 and C.M.S. 12889

The interim ordinance (**C.M.S. 12873**) was adopted on June 17, 2008 as an urgency measure that establishes a temporary citywide moratorium on the establishment or expansion of Primary Collection Centers and Intermediate Recycling Processing Facilities, as defined in the attached ordinance (Ordinance No. 12873 C.M.S.). The purpose of the urgency interim moratorium ordinance is to ensure that the deletion of regulations relating to Primary Collection Centers and Intermediate Recycling Processing Facilities would not result in the absence of any regulations regarding these uses after passage and adoption of the new industrial zone regulations (also adopted on June 17, 2008), and also give staff time to develop a proposal of regulations for these uses that could include performance standards in combination with other types of regulation.

Since 45-days was not sufficient time to meet with stakeholders and process any revisions, staff brought back a second ordinance (**C.M.S. 12889**), which was adopted at the July 15, 2008 Council meeting (prior to the Council’s Annual Recess) to extend the Urgency measure through December 16, 2008, in order to have adequate time to meet with stakeholders, develop regulations and bring them through the approval process to the Planning Commission, the City Council and their respective committees.