

INTRODUCED BY COUNCIL MEMBER _____
OFFICE OF THE CITY CLERK
OAKLAND

2008 OCT 30 PM 4:04

REVISED
APPROVED AS TO FORM AND LEGALITY

Mark P. Wald
City Attorney

OAKLAND CITY COUNCIL
ORDINANCE NO. 12899 **C.M.S.**

AN ORDINANCE ADOPTING VARIOUS PLANNING CODE TEXT AMENDMENTS, INCLUDING : A) ADDING EXTENSIVE IMPACT CIVIC ACTIVITIES AS A CONDITIONALLY PERMITTED ACTIVITY TO THE C-45 AND C-55 ZONES; B) ADDING ANIMAL CARE COMMERCIAL ACTIVITIES AS A CONDITIONALLY PERMITTED ACTIVITY TO THE C-36 ZONE; C) REDUCING THE TIME THAT AN AUTOMOTIVE SERVICING, OR A REPAIR AND CLEANING ACTIVITY, MAY BE DISCONTINUED BEFORE IT LOSES ITS LEGAL, NON-CONFORMING STATUS IN THE S-5 BROADWAY RETAIL FRONTAGE ZONE; D) MAKING PERMANENT AN EMERGENCY ORDINANCE THAT CREATES SPECIAL VARIANCE FINDINGS AND EXPEDITED APPEAL PROCEDURES FOR SIGNS; E) CLARIFYING THAT UNIFORMLY APPLIED DEVELOPMENT STANDARDS/STANDARD CONDITIONS OF APPROVAL ARE AUTOMATICALLY IMPOSED ON ALL APPLICATIONS, INCLUDING THOSE "DEEMED APPROVED" UNDER THE STATE PERMIT STREAMLINING ACT; AND F) VARIOUS AMENDMENTS WHICH CODIFY ADMINISTRATIVE PRACTICE, UPDATE REFERENCES, CLARIFY LANGUAGE, AND OTHER CHANGES.

WHEREAS, the General Plan Land Use and Transportation Element, adopted in 1998, prioritized updating the Planning Code to create a more user-friendly framework for reviewing and approving development proposals; and

WHEREAS, the Planning Code uses overly complex language, is difficult to navigate and ultimately needs formatting and reference updates, as well as organizational improvements; and

WHEREAS, the Planning Code contains provisions that are inconsistent with State law; and

WHEREAS, the recent adoption of industrial zoning districts CIX, IG and IO created new activities (uses) which require revisions of the language in the existing code, to achieve consistency, such as changing the phrase "manufacturing" for "industrial" where appropriate; and

WHEREAS, Car-sharing services are an activity that the City seeks to promote, and the Planning Code does not explicitly address, and the activity is already considered administratively as an accessory activity to the primary activities on a lot; and

WHEREAS, previous revisions to the C-36 Gateway Boulevard Service Commercial Zone, (mapped along Hegenberger Road near the Oakland Airport) created numerous typographical errors, such as listing activities as a facilities, and additionally left out of conditionally permitted facilities Macro and Monopole Telecommunications, when those facilities are conditionally permitted in other, similar commercial zones; and

WHEREAS, the C-36 Gateway Boulevard Service Commercial Zone doesn't permit Animal Care Commercial activities, but similar commercial zones conditionally permit the activity; and

WHEREAS, the permitted exceptions to the openness of yards and courts have not to date explicitly allowed the construction of wheelchair ramps and other access required by the Americans with Disabilities act; and

WHEREAS, the City routinely imposes Uniformly Applied Development Standards on development projects as Standard Conditions of Approval, regardless of a project's environmental determination, pursuant, in part, to CEQA Guidelines section 15183. However, this practice is not currently referenced in the Planning Code; and

WHEREAS, under current City practice, but not in the Planning Code, a development application requiring both legislative and adjudicatory actions is automatically considered by the City Council for final action, even though there may not be an appeal of the adjudicatory, land use permit; and

WHEREAS, to uphold a court determination, and make permanent an emergency ordinance, the Planning Code requires special variance findings and an expedited appeal procedures for signs; those sections in the Planning Code where signs are conditionally permitted should be deleted, so that signs require a variance; and

WHEREAS, a loophole exists in Section 17.10.050 (D) of the Planning Code which permits disparate activities to locate in gas stations, regardless if they were related to automotive servicing; and

WHEREAS, due to a probable printing error after a recent amendment, Extensive Impact Civic Activities was left out of the conditionally permitted activities sections in both the C-55 Central Core Commercial Zone and the C-45 Community Shopping Commercial Zone; this set of activities, as defined in Section 17.10.240 of the Planning Code, is conditionally permitted in all other zoning districts, except in the C-28 Commercial Shopping District Zone, where it was specifically prohibited upon the creation of that zone in the 1990's; and

WHEREAS, the recent S-5 Broadway Retail Frontage Zone made automotive servicing and repair activities prohibited, in anticipation of an adopted Retail strategy and Specific Plan for Broadway Auto Row, and existing businesses in this activity type were made legal, non-conforming uses; despite these new regulations, new automotive servicing and repair activities continue to open in Broadway Auto Row; the number of these businesses might be reduced should the time period to reactivate a legal, non-conforming activity be shortened from one year to six months; and

WHEREAS, on August 6, 2008, at a duly noticed public meeting, the Zoning Update Committee of the Planning Commission recommended that the Planning Code Amendments be heard by the Planning Commission; and

WHEREAS, on September 17, 2008, at a duly noticed public hearing, the Planning Commission recommended approval of the proposed Planning Code Amendments, now, therefore

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

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

Section 2. Prior to adopting this Ordinance, the City Council independently finds and determines that this action complies with the California Environmental Quality Act (CEQA) because the City is relying on previously certified CEQA documents, including the Environmental Impact Report for the Land Use and Transportation Element of the General Plan, and no further environmental review is required under CEQA Guidelines sections 15162 and 15163. As a separate and independent basis, this Ordinance is also exempt under Sections 15061(b)(3), 15183, and/or Section 15273 of the State CEQA Guidelines. The Environmental Review Officer is directed to cause to be filed a Notice of Exemption/Determination with the appropriate agencies.

Section 3. Except for Uniformly Applied Development Standards, imposed as Standard Conditions of Approval, which are already in effect and apply to all development applications, this ordinance shall be effective thirty (30) days from the date of final passage by the City Council, but shall not apply to: (a) building/construction related permits already issued and not yet expired; (b) zoning applications approved by the City and not yet expired; (c) complete zoning applications or; (d) zoning applications that would otherwise be considered complete except for an environmental determination, as of the date of final passage.

Section 4. The Oakland Planning Code is hereby amended to include the zoning text amendments contained in **Exhibit A**, attached hereto and hereby incorporated by reference.

Section 5. That the City Council adopts the Uniformly Applied Development Standards, imposed as Standard Conditions of Approval, authorized pursuant to Oakland Planning Code section 17.130.070, contained in **Exhibit B**, attached hereto and hereby incorporated by reference. The City Council hereby finds and determines that the Uniformly Applied Development Standards are designed to and will substantially mitigate environmental impacts/effects when applied to future projects. The Planning Director is hereby authorized to

periodically revise, clarify, refine and amend the Uniformly Applied Development Standards, consistent with this Ordinance.

Section 6. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 7. If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full effect.

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

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

Section 9. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA.

IN COUNCIL, OAKLAND, CALIFORNIA, NOV 3 2008

PASSED BY THE FOLLOWING VOTE:

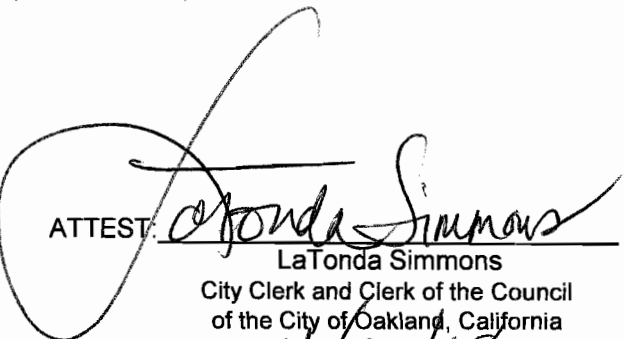
AYES- BROOKS, ~~BRUNNER~~, CHANG, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT DE LA FUENTE - 7

NOES- 0

ABSENT- 0

ABSTENTION- 0

Excused- Brunner - 1

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

Introduction Date: **OCT 21 2008**

DATE OF ATTESTATION: 11/6/08