

1)	Location:	Central Business District
	Proposal:	1) Amend the zoning regulations to create four new zones and a height/bulk/intensity map for the Central Business District (CBD); 2) Amend the Zoning Maps to include the new CBD zones.
	Applicant:	City Planning Commission
	General Plan:	Central Business District (CBD)
	Existing Zoning:	R-80 High-Rise Apartment Residential Zone R-90 Downtown Apartment Residential Zone C-40 Community Thoroughfare Commercial Zone C-45 Community Shopping Commercial Zone C-51 Central Business Service Commercial Zone C-52 Old Oakland Commercial Zone C-55 Central Core Commercial Zone S-2 Civic Center Zone S-4 Design Review Combining Zone S-7 Preservation Combining Zone S-8 Urban Street Combining Zone S-17 Residential Open Space Combining Zone
	Environmental Determination:	The proposal relies on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998) and the Housing Element Update Initial Study/Mitigated Negative Declaration (2004).
	Case File Number:	RZ08060, ZT08054
	Action to be taken:	Joint meeting of the Landmarks Preservation Advisory Board and the Zoning Update Committee of the Planning Commission to discuss historic preservation strategies for use in the proposed new zoning regulations for the Central Business District.
	For further information:	Contact: Joann Pavlinec at 238-6344 or email jpavlinec@oaklandnet.com .

INTRODUCTION

The Planning Commission, Zoning Update Committee (ZUC) requested that the Landmarks Preservation Advisory Board (LPAB) review the proposal to amend the zoning regulations to create four new zones and a height/bulk/intensity map for the Central Business District (CBD). The ZUC requested that the LPAB forward advisory comments and recommendations on potential strategies, regulations and incentives to retain and protect historic resources in the CBD. At the July 9, 2008 LPAB meeting, an introduction to the proposed amendments and zoning regulations, along with a Power Point presentation of historic districts in the CBD, was presented to the Board. At the August 11 and September 15, 2008 LPAB meetings, the Board reviewed and discussed the proposal along with potential strategies to retain and protect historic resources in the CBD. The Board also held a Workshop on September 11, 2008 to continue discussing and refining preliminary recommendations to the ZUC and Planning Commission.

LPAB RECOMMENDED STRATEGIES

The purpose of this joint ZUC/LPAB meeting is to review and discuss LPAB recommendations and LPAB strategy discussions with the ZUC. The LPAB has reviewed seventeen potential Short, Intermediate and Long Term strategies suggested by staff for LPAB review and consideration. At their August 11, 2008 meeting the LPAB recommended seven of the strategies, (Numbers 1, 2, 3, 5, 7, 8 and 9 in this report). Following further discussion, the LPAB added two additional strategies (Numbers 4 and 6 in this report) at their September 15, 2008 meeting. However, the LPAB focused much of their discussion on Strategy #5 – the ‘Fine-Grain Strategy Approach’ to the Central Business District Zoning. Based on this focus, the Board recommended at their September 15, 2008 meeting that the ZUC discuss with the LPAB the ‘Fine-Grain’ strategies that the Board has been considering over the past few meetings. The ‘Fine-Grain’ approach the Board has discussed is also to give developers more predictability in historic districts, which speakers have requested.

The recommended strategies, other than the #5 “Fine-Grain Approach”, seek to address potential impacts on the historic resources in the CBD with strategies that either do not address height or with strategies that address height indirectly (#6–views and #7-bulk and massing). These strategies include:

- incentives and disincentives to be incorporated into the Zoning Regulations;
- urban design/development standards considerations to be incorporated into the Zoning Regulations;
- flexibility for additions to historic resources in the CBD; and
- funding sources specifically targeted for historic preservation in the CBD.

The Board is seeking ZUC comments and discussion on a number of the ‘Fine Grain’ ideas that have developed during LPAB meeting discussions. In addition, if the ZUC has issues with one or more of the other eight recommended LPAB strategies, those should be discussed in more detail. The Short Term strategies are conceptual at this time and will require further development to be included in the CBD zoning regulations amendment. It is anticipated that the Intermediate and Long Term strategies will not be included immediately in the CBD zoning update, due to time constraints.

The LPAB also noted that although the recommended strategies are to be considered for the Central Business Zoning update, many are appropriate for citywide consideration as the zoning update proceeds citywide.

LPAB Discussion (8/11, 9/11 and 9/15/08) -‘Fine-Grain’ Approach

Proposed Greater Heights – Risk of Loss of Integrity either through Demolition or Infill

The Board focused considerable discussion on the significance of the proposed greater height limits on retention of historic resources, although it is the Board consensus that the protection and retention of historic resources is not *solely* dependent on height limits. The disjunction between the zoning proposal’s height limits and the predominant heights in many of the historic districts and individual historic buildings in the CBD was noted as a critical issue to address, since the proposed height limits which are significantly greater than historic resources could be an incentive for demolition. Also, the insertion of significantly greater scaled buildings into an historic district where height and massing are character defining features of the district could lead to a loss of integrity of the CBD historic districts. An historic district must retain its character defining features in order to maintain its historic district status. As more and more visual changes occur, delisting or ineligibility of this historic district becomes a risk (See Attachment I).

Outlined below are several definitions from the City of Oakland General Plan, Historic Preservation Element and the U.S. Department of the Interior, National Park Service Interagency Resources Division to provide clarification and background on what qualifies a district for local designation (API) and for listing on the National Register.

What constitutes an historic district in Oakland?

The **City of Oakland**, General Plan Historic Preservation Element defines a **District** as:

A significant concentration, linkage, or continuity of buildings, structures, objects, sites, natural features related to human presence; or activities united historically or aesthetically by plan, appearance, or physical development.

The **City of Oakland**, General Plan Historic Preservation Element defines an **Area of Primary Importance** as:

A historically or visually cohesive area of property group identified by the Reconnaissance or Intensive Surveys which usually contains a high proportion of individual properties with ratings of “C” or higher. At least two-thirds of the properties within an API must be contributory to the API, i.e. they reflect the API’s principal historical or architectural themes.

Properties which do not contribute to the API because of alterations, but which would contribute if restored are considered noncontributors for purposes of the two-thirds threshold.

APIs appear eligible for the National Register of Historic Places either as districts or as historically-related complexes.

The **City of Oakland**, General Plan Historic Preservation Element defines an **Area of Secondary Importance** as:

Similar to Area of Primary Importance except that (1) an ASI does not appear eligible for the National Register of Historic Places and (2) altered properties which do not now contribute to the ASI but would if restored are counted as contributors for the purposes of the two-thirds threshold.

The **City of Oakland**, General Plan Historic Preservation Element defines a **Character Defining Element** as:

Those features of design, materials, workmanship, setting, location, and association that identify a property as a representative of its period and contribute to its visual distinction or historical significance.

The **City of Oakland**, General Plan includes the Oakland Cultural Heritage survey Evaluation Methods. Under this evaluation criteria, **Integrity**, one of many criteria, is broken down to degrees of Condition and Exterior Alterations.

What constitutes a National Register historic district?

The **National Register** is the official Federal list of districts, sites, buildings, structure, and objects significant in American history, architecture, archeology, engineering and culture. National Register properties have significance to the prehistory or history of their community, State, or the Nation. It is administered by the National Park Service. Nominations for listing historic properties come from the State Historic Preservation Officers (SHPOs).

Properties listed on the National Register of Historic Places possess **historic significance and integrity**.

Significance may be found in four aspects of American historic recognized by the National Register Criteria:

- Association with historic events or activities;
- Association with important persons;
- Distinctive design or physical characteristics, or
- Potential to provide important information about prehistory or history.

Integrity is the authenticity of a district's identity, evidenced by the survival of physical characteristics that existed during the district's historic period. Integrity must be evident through historic qualities including location, design, setting, materials, workmanship, feeling, and association.

CBD Areas of Primary Importance (APIs) and the Downtown National Register Districts

The Board specifically focused on the concern that proposed height limits in CBD Areas of Primary Importance (APIs) Historic Districts and CBD National Register Districts exceed the predominant existing building heights.

In historic districts with a fairly consistent pattern of building heights (e.g. Lakeside Apartment District, Cathedral District and other 19th century residential districts, etc.) height is a character defining feature, essential to the integrity of the district. Height is also a concern in the National Register Downtown District because the pattern of height - tall buildings, up to 18 stories, occur at intervals, one or two per block, punctuating the surrounding low- to medium- rise small office and specialty retail buildings - is one of the character defining features of the District, and essential to the integrity of the District.

For a district to retain its integrity the relationships among the district's components must be substantially unchanged, and contributing resources must outweigh non-contributing resources. For example, in the Downtown National Register district there are approximately 45 contributing resources and 13 non-contributing resources. Over time intervening barriers or visual changes must be examined to assess the current integrity of a district. In addition to retention of existing contributors, infill and new construction must be sensitive because it affects the district's historic setting and the district's expression of the aesthetic or historic sense of a particular period of time and place. The district must retain its character defining setting. As more and more visual changes occur, delisting or ineligibility of the historic district could become a risk. Significant changes to the district could modify three of the seven characteristics of integrity as follows:

Association – the quality of integrity through which an historic property is linked to a particular past time and place.

Feeling – the quality of integrity through which a historic property evokes the aesthetic or historic sense of past time and place.

Setting – the quality of integrity applying to the physical environment of a historic district.

When evaluating the impact of intrusions and/or demolitions upon the district's integrity, the relative number, size, scale, design and location of the components that do not contribute to the significance must be taken into consideration. A district is not eligible if it contains so many alterations or new intrusions that it no longer conveys the sense of a historic environment.

SPECIFIC 'FINE GRAIN' STRATEGIES for ZUC/LPAB DISCUSSION

The Board has suggested that the ZUC/LPAB joint meeting focus discussion on the 'Fine-Grain' ideas the Board has considered over the past several LPAB meetings. These ideas, suggested by one or more Board Members, have been discussed, but no final LPAB recommendations have been made. The Board is seeking discussion and further input from the ZUC for Board consideration in their final recommendations to the ZUC and Planning Commission. These ideas were generated based on Strategy #5 in this report and are outlined below:

- **In Areas of Primary Importance (API) with a predominant height as a character defining feature:**
 - Require LPAB design review for new construction in an API and Historic Preservation staff design review for new construction in an ASI.
 - Create review thresholds, as follows:
 - Streamlined review for proposals consistent with the predominant API district height;
 - Conditional Use Permit with findings (addressing compatibility with and integrity of the district) for proposals not consistent with the predominant height, but within 1.2 to 1.5 times greater than the predominant API height (exact multiplier to be studied by staff);
 - Variance with findings (addressing compatibility with and integrity of the district) for proposals greater than 1.5 times the predominant API height (exact multiplier to be studied by staff); and
 - In those cases where a Conditional Use Permit/Variance is required for additional height, explore if/how Transfer of Development Rights can be utilized for the additional height proposal.
 - Advantages of height limits in APIs':
 - Insures that APIs will be retained; and
 - Creates air, light and view for buildings surrounding an API.
- **In the Downtown National Register District:**
 - Require Conditional Use Permit with findings (addressing compatibility with and integrity of the district) to continue historic height patterns.
 - Refine proposed base height and tower height. Allow a limited number of towers per block in the National Register District, depending on the size of the block. This could be regulated by prescribing minimum and maximum lot sizes for towers and by prescribing minimum distances between towers on a block.
 - Incorporate a process (e.g., easement, or other process) to transfer air rights over a historic building to adjacent properties, in order that the adjacent property could incorporate windows at the adjacent property line, providing air, light and views to tenants and also eliminating large blank walls from the urban fabric.

- Incorporate view corridors with lower height limits as a strategy to retain intermittent low- to medium- rise small office and specialty retail buildings.
- **Recognize historic API and ASI districts, PDHP's, etc. in the CBD.**
 - Incorporate an overlay "H" (Historic) zone.
 - Advantages of an overlay "H" zone:
 - Identifies:
 - properties eligible for relief from development standards (Strategies #1 and #2);
 - properties adjacent to historic resources that have the opportunity to purchase air rights;
 - districts where a tiered height threshold review is required;
 - properties potentially eligible for the Mills Act; and
 - properties eligible to use the State Historical Building Code to provide more flexible construction standards;
 - Raise awareness of historic resources;
 - Developer certainty.
- **Focus incentives for height and density in a concentrated 'opportunity' area of the CBD to create development excitement.**

The proposed CBD area is greater than what most would consider a 'downtown character.' There are many different districts in the CBD. If the goal is to encourage development excitement in the CBD, a limited area to stimulate height and density should be focused on an initial concentrated area to create momentum, where there are less historic properties. When that occurs, then that area should be expanded.

POTENTIAL STRATEGIES, REGULATIONS, AND INCENTIVES

Outlined below are LPAB recommended potential strategies, regulations and incentives for ZUC review and discussion. Staff has investigated the same cities that were reviewed by the Strategic Planning Staff for possible models for the Zoning Update. These include Portland, Sacramento, San Diego, San Francisco, Seattle, and Vancouver. This report references those cities that have programs similar to the LPAB recommended strategies.

Not any one strategy would provide a comprehensive enough approach to encourage retention of historic resources in every development proposal. Staff believes that an array of strategies would be the most potentially successful protection.

D) SHORT TERM STRATEGIES

The following strategies could be incorporated into the CBD Zoning Regulations Amendment.

- 1) **Provide relief from Development Standards for rehabilitation of and additions to historic buildings:**
 - Incorporate into the zoning, CUP's for reduction or elimination of parking and open space requirements for all historic properties subject to CEQA (Local Register).
 - For historic properties not subject to CEQA (PDHP's), allow same relief through CUP's, even if façade only is retained.

Portland, San Diego, Seattle and Vancouver have Zoning Code relief for development standards for historic properties, including open space, setbacks, increase in FAR (Seattle and Vancouver at the discretion of the Planning Director; Portland with CUP's).

2) Provide relief from Zoning Activities Requirements:

- Permit conversion of a historic resource to a Bed and Breakfast in all areas of the CBD.
- Allow for consideration of uses for historic resource sites that are not normally permitted by zoning, at the discretion of the Planning Director. If the Director determines that a proposed use could have a significant effect, the Director may at his discretion, refer the project to the Planning Commission.

Portland, San Diego, and Seattle allow uses for historical sites that are not normally permitted under zoning (Seattle at the discretion of the Planning Director; Portland with a CUP). In Portland, non-residential uses are allowed in residential zones.

3) Include More Restrictive Demolition and Alteration Findings:

Demolition

Incorporate stronger demolition and removal regulations for higher ranked Landmarks and Preservation District properties into the CBD regulations as outlined in Policy 2.4 of the Historic Preservation Element (HPE).

Currently the S-7 and S-20 Historic District zones and the Historic Preservation Element incorporate Criteria for Demolition and the existing landmark and preservation district regulations delay demolition or removal for up to 240 days (See Attachment A). General Plan HPE Policy 2.4 recommends more restrictive required findings.

Demolition prohibition rather than delay is essential if the preservation of Historic Properties is to be assured. HPE Policy 2.4 prohibits demolition unless certain findings can be made. The findings are intended to weigh the value of preserving Landmark and Preservation District properties against other concerns which may require their demolition or removal. HPE Policy 2.4 recognizes that demolition or removal of Landmark and Preservation District properties is permitted when an immediate hazard to public safety and that the demolition or removal is necessary to abate the hazard.

The Board may recommend these Policy 2.4 findings as stated or modify them. (See Attachment B). Staff recommends that Board also review the Criteria for Demolition Findings in the S-20 and S-7 zones (See Attachment A). The Board may recommend that all of these be reviewed by staff to propose more restrictive findings for the CBD for review to the full Board at the next LPAB meeting.

Alterations and New Construction

Incorporate stronger alteration and new construction findings into the CBD regulations as outlined in Policy 2.4 of the Historic Preservation Element. (See Attachment B).

Currently there are findings that must be made for alterations or new construction involving Landmarks or Preservation Districts (See Attachment A).

Other Jurisdictions

Vancouver requires a formal independent consultant's report on the physical condition and economic viability of retaining a Category A building proposed for demolition. Other cities were not fully investigated.

**4) Incorporate HPE Policy 3.5 Findings for stronger protection of 'Secondary Importance' PDHPs into the Zoning Regulations
Define 'design quality' and 'equal in quality':**

The current Design Review findings incorporated in the Zoning Regulations protect only properties that are in the Local Register of Historical Resources (i.e., DHPs and PDHPs that have an existing rating of “A” or “B” or are located within an Area of Primary Importance). Buildings of “Secondary Importance” (individual ratings of ‘C’, Areas of Secondary Importance) are recognized as “historic” (PDHPs) in the HPE to protect neighborhood character, but there is not concurrent protection in the Zoning Regulations. Requiring HPE Policy 3.5 findings for demolition and alterations to PDHPs in the CBD would provide stronger protection to the prominent historic character of the CBD, one of the densest areas of historic buildings in the City. Without ‘historic’ findings these PDHPs fall under the same category as a non-historic building for design review of any alterations and for demolition. The HPE Policy 3.5 findings would assist in retaining the integrity of these PDHPs.

HPE Policy 3.5 (See Attachment C) uses the terms ‘design quality’ and ‘equal in quality’. These terms must be defined to ensure that the Findings are applied consistently and fairly.

5) Zoning Update Approach – Fine- Grain Strategy:

- Recommend that the zoning update approach take a fine-grained strategy to zoning sub-areas in order to align the zoning height with identified historic districts, prioritizing those historic districts with a high degree of integrity (e.g. Lakeside Apartment district, etc.). A broad brush approach does not protect the existing rich historic resources in the CBD.

In historic districts with a fairly consistent pattern of building heights (e.g. Lakeside Apartment District, Cathedral District etc.) that scale should be maintained. Height can be a character defining feature, essential to the integrity of the district.

- Provide Development Standards that require setbacks on new construction directly across the street from the edge of a historic district.

Both San Francisco and Seattle use a fine grained approach to height limits in their downtowns (See Attachment D). Other cities were not fully investigated.

II) INTERMEDIATE TERM STRATEGIES

Depending on the timeline for the Planning Commission’s forwarding of their recommendation to the City Council, the following strategies could be incorporated into the CBD Zoning Regulation Amendments, but it is anticipated that developing the required information would take longer than the Short Term Strategies.

6) Map and Zone historic Vistas, focal points (terminus of vistas), gateways for Protection (height limits):

- Map sites that are major historic focal points (e.g. City Hall, Tribune Towers, etc.). Determine existing view corridors and protect these in the zoning. These termination sites often act as focal points of interest or points of orientation and are important to the CBD character. Provide zoning in these view corridors that is not in conflict with retention of these historic focal point vistas. These would also serve as air and light corridors amidst taller scaled buildings.

Seattle provides such protection for the prominence of its King Street Tower by appropriately requiring setbacks of buildings in a certain area to create a physical separation between the tower and other tall buildings in the vicinity, helping to preserve the tower’s visual prominence at the center of this downtown area, and retaining views of the tower from one direction. Other cities were not fully investigated.

7) Parcelization/Building Proportions/Transitions

- Provide development standards that take into consideration existing parcel frontage widths and height to width ratios of existing buildings in historic districts.
- Provide development standards that take into consideration transitions of small scale historic resources to large scale new construction. This could be integrated with guidelines for the location of towers when adjacent to a historic resource.

Please see visual diagrams from San Francisco (Attachment E).

III) LONG TERM STRATEGIES

The following strategies could be prioritized and adopted. The LPAB could set up a Work Program Sub-committee to address these.

8) Explore adding height to historic resource buildings, without loss of the building's historic status:

- Create design parameters to appropriately limit height additions proportionally to the existing historic resource.
- Create design parameters to establish appropriate setbacks.
- Determine appropriate design strategies for compatibility with existing historic resource.

The current Guidelines of the Secretary of Interior's Standards do not permit significant upper level additions. This is an issue where a building or district has National Register designation or is seeking Federal Tax Credits or where environmental review is required. Examples in the Standards' Guidelines usually illustrate Main Street scale examples. Typically a one- to two-story addition, setback from the existing building facade, is the limit. Staff and Management believe that this does not work for dense urban, mid to high-rise areas such as Oakland's downtown. This would be a long term goal as it could involve numerous discussions with the State Historic Preservation Office (SHPO) and National Park Service (NPO).

9) Expand the Mills Act Program in the CBD:

- Increase the Mills Act current loss of revenue limits for the Central Business District.
- Adopt a Permanent Mills Act Program for the CBD (the current program is a two-year pilot program).

With respect to monetary incentives, Sacramento, San Diego, San Francisco, Seattle and Vancouver all have various programs, including tax deduction incentives and City funding programs, including loans, code enforcement rehabilitation funds, unreinforced masonry building loans, façade improvement programs, rehabilitation matching grants specifically targeted for historic resources.

Vancouver has a property tax exemption for up to 10 years to facilitate major rehabilitation of a historic building. Seattle has a Special Tax Valuation that permits rehab costs to be subtracted from a property's assessed value (for taxation purposes) for up to 10 years. San Francisco, San Diego, and Sacramento have established permanent Mills Act Programs.

ATTACHMENTS

At the August 20, 2008 ZUC meeting, the Committee requested additional research and maps, as follows:

- Proposed Height Area Map
- Historic resources with Proposed Height Areas Map
 - Height Area 1
 - Height Area 2
 - Height Area 3
 - Height Area 4
 - Height Area 5
 - Height Area 6
- Residential Housing Production in the Downtown
- Population in the Downtown
- Potential Downtown Developable Parcels Map

These are included in this packet.

RECOMMENDATIONS

1. Discuss the Fine-Grain strategies that the Board has been considering over the past few meetings (See Strategy #5).
2. Discuss above preliminary recommendations with respect to any refinements, modifications and/or deletions, and propose and discuss additional potential strategies;

Respectfully submitted:

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Interim Deputy Director of CEDA

Prepared by:

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Historic Preservation

Attachments:

- A: [Current Regulations for:](#)
Design Criteria for Alteration and New Construction
Criteria for Demolition or Removal
Postponement of Demolition or Removal

- B. [Historic Preservation Element: Demolition and Removal Regulations](#)
Alteration and New Construction Regulations
- C. [General Plan Historic Preservation Element Policy 3.5](#)
- D. [Samples for Height Mapping from San Francisco and Seattle](#)
- E. [San Francisco diagrams - Parcelization/Building Proportions/Transitions](#)
- F. [Mid-Continent Tower in Tulsa](#)
- G: Maps – See Additional Enclosed Attachments
- H: [Central Business District Regulations](#)
- I. [Visual – Inappropriate Historic District Infill Projects](#)

Ref: cbdhistoricpreservation08-10-06