

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:	Provide recommendations to the Zoning Update Committee and Planning Commission on protection of historic resources, including potential incentives and regulations.
	For further information:	Contact: Joann Pavlinec at 238-6344 or email jpavlinec@oaklandnet.com

INTRODUCTION

The Planning Commission, Zoning Update Committee (ZUC) has 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 seeks the LPAB’s advisory comments and recommendations on potential strategies, regulations and incentives to retain and protect historic resources in the CBD. At the June 9, 2008 LPAB meeting, an introduction to the proposed amendments and zoning regulations was presented to the Board.

The purpose of this meeting is to review, comment and make recommendations on the potential strategies outlined in this report to retain and protect historic resources in the CBD. The Board is encouraged to consider these strategies as a starting point, to shape and/or modify these strategies and to propose additional strategies.

BACKGROUND – LPAB Meeting July 9, 2008

At the July 9th meeting the Board took the opportunity to discuss some potential recommendations, following the informational presentation. These are outlined below.

Urban and Building Design Recommendations:

- Regulate to provide for a common character and feel of neighborhoods.
- Based on the proposed tower model, regulate design and location of rooftop equipment so that tower users are not looking down on equipment.
- Consider views.
- Provide a massing model and/or cross sections to communicate the worst case scenario.

Zoning Regulation Recommendations:

- Development Standards should include a minimum first floor height to provide compatibility with historic buildings, which typically have a tall commercial first floor.
- Provide relief for conversion of historic resources currently used as offices to residential. Specifically, provide a mechanism so that open space and parking requirements can be reduced or eliminated.

General Concerns/Comments:

- The need to develop strategies to:
 - balance a land owner's right to develop against the potential loss of historic resources in areas where the height limit significantly exceeds the existing height of a building; and
 - address the disjunction between the zoning proposal and the great number of historic buildings in the Central Business District.
- Support for retail at the ground floor of residential development.

POTENTIAL STRATEGIES, REGULATIONS, AND INCENTIVES

Staff has outlined potential strategies, regulations and incentives for the Board's consideration. The Board is encouraged to shape and/or modify these and to propose and discuss additional strategies. The strategies outlined below include:

- Incentives and disincentives to be incorporated into the Zoning Regulations;
- Urban design/development standards considerations to be incorporated into the Zoning Regulations;
- Longer term strategies and incentives that explore more flexibility for additions and uses;
- Additional funding sources specifically targeted for historic preservation in the CBD; and
- Educational materials.

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. The report references those cities that have programs similar to the suggested strategies.

Not any one strategy would provide a comprehensive enough approach to encourage retention of historic resources in every development proposal. An array of strategies would be the most

potentially successful protection. Staff is recommending that the Board determine those strategies, incentives/disincentives and regulations to forward to the Planning Commission for their consideration.

I) SHORT TERM STRATEGIES

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

1) Create a Transfer of Development Rights Program:

Because proposed CBD height and FAR limits are great, there may be little opportunity for Transfer of Development Rights (TDR). Therefore, staff suggests that the Board brainstorm and discuss desirable development rights that may substitute for height and FAR TDRs.

Portland, San Francisco, Seattle and Vancouver have a TDR program. San Diego's General Plan proposes TDRs. Sacramento does not have a TDR program.

2) 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).

3) 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.

4) Reduce Allowed Development Standards for demolition of a historic resource:

- Establish a reduction of density/FAR for demolition of a historic resource. Any potential bonuses would also not be permitted.

Any Seattle downtown project that results in the destruction of any designated feature(s) of a Landmark structure is prohibited from gaining additional floor area through the FAR bonuses or TDRs.

Staff will check with the City Attorney's Office, prior to the meeting, to determine any legal restrictions on this suggestion.

5) 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 to 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.

6) 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.

7) **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, 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.

8) **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.
- Map historic resources that act as Gateways or prominent transition buildings to sub-neighborhood CBD districts. Zone these to promote retention.

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.

9) **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 by the LPAB at their annual Goal Setting Meeting or the LPAB could set up a Work Program Sub-committee to address some of these.

10) 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).

11) Explore adding height to historic resource buildings, with loss of the building's historic status:

- Initiate a City programmatic, focused Environmental Impact Report for the CBD to allow historic resources to add appropriate height (future development projects will contribute their fair share to the cost of the EIR).

If the City wishes to pursue appropriately adding height to historic resources rather than losing historic resources through demolition, and the SHPO/NPS finds that this cannot be pursued if the project is to comply with the Secretary of the Interior's Standards, staff is suggesting that the City prepare an area wide (CBD) programmatic, focused EIR to address this negative adverse effect with overriding considerations. A City initiated area wide EIR would potentially eliminate the requirement for each individual applicant to prepare an EIR each time a proposal for additional height to a historic resource is submitted (this assumes no other CEQA thresholds are triggered).

Under this scenario, the result is that while the City would retain historic resources that might have been lost to demolition, the National Register Downtown District would lose integrity and at some point may no longer be eligible for the National Register (since additional height to historic resources would materially alter, in an adverse manner, physical characteristics of the resource that convey its historical significance and that justify its inclusion on the National Register). However, a local City of Oakland district could be designated.

Staff proposes this with caution, but with the intent to retain historic resources in the CBD when development pressure ensues. The City has already taken policy direction to approve alterations or additions which match the style of the existing building, if the work is well done, but violate the Standards (Rehabilitation Standard 3- false historicism, HPE Policy 2.4). Staff also notes that a number of downtown historic resources have had early height additions, within approximately 2-15 years of the original building completion. These include 1600-06 San Pablo Avenue, 1200-12 Broadway, and the Tribune Building. Finally, the fact that historic preservation in the United States is in its infancy must be taken into consideration (National Historic

Preservation Act was passed in 1966) as modifications to the interpretation of the Standards in the Guidelines may occur in the future as the field develops and different philosophical/academic approaches evolve. The Guideline's interpretations of the Standards have already gone through some fads. A nationally good example is the Mid-Continent Tower in Tulsa (Attachment J). The addition is more than half a century from the building's original construction in 1918. Completed in 1984 the Tower received an Honor Award from the National Trust for Historic Preservation in 1985. The building has been listed on the National Register of Historic Places since 1980.

Strategies 12 through 14

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.

12) Create In Lieu Fees:

- Establish in lieu fees for any construction in an historic district, ASI, API, or adjacent to a Landmark.

13) Create a CBD Historic Mitigation Fund:

- Establish a CBD Mitigation fund for historic resources to provide financing for the following:
 - i. Locating and purchasing vacant land in existing historic districts to relocate historic resources approved for demolition;
 - ii. Moving of historic resources and PDHP's approved for demolition.

14) 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).

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.

15) Explore strategies to enhance Class B¹ historic office buildings

- Establish a program similar to the Façade Grant Program, which currently funds both facades and tenant improvements, to include funding of building infrastructure improvements of historic resource Class B office buildings.

This would deter 'demolition by neglect' and close the gap which is continually widening between Class A office space and Class B office space. Currently the vacancy rate in Class B office buildings is 15% and in Class A office buildings 10%.

¹ Class A office space describes the highest quality office space locally available, including modern construction with state-of-the-art functionality and architectural design, infrastructure, life safety and mechanical systems.

Class B office space buildings are usually highly functional, well-located facilities more than 10 years old. They generally feature a less desirable design and infrastructure, although a well-located B building can be renovated and reclassified as Class A.

- Establish Code Enforcement review of Class B historic resource buildings, so that property owners can take advantage of these funds.

San Francisco, San Diego, Sacramento and Vancouver have City Funding Programs (i.e., loans and grants) for rehabilitation of historic properties. San Francisco's specifically has loans for Code Enforcement rehabilitation.

16) Permit a percentage of Conversion Rights in the Condominium Conversion Impact Areas in the CBD for Historic Resource buildings

- Allow a maximum of 25% of units to convert to condominiums without any requirement for conversion rights.

17) Preservation Easements Brochure

- Develop a brochure to educate CBD property owners of historic resources about Preservation Easements and do a mailing to all CBD historic property owners.

San Diego and San Francisco have a Preservation Easement program. Property owners can permanently protect their historic properties with a preservation easement. A preservation easement is a private legal interest conveyed voluntarily by a historic property owner to a preservation organization or to a government entity. Once made, it binds both the current owner and future owners to protect the historic character of the property subject to the easement. Taxpayers can take charitable contribution deductions for federal income, estate, and gift tax purposes on the value of a conservation easement (including a preservation easement) donated to a qualified charity or public agency if the building is on the National Register.

RECOMMENDATIONS

1. Receive any testimony from interested citizens;
2. Recommend, shape and/or modify the above strategies and propose and discuss additional strategies;
3. Based on the above discussion, make recommendations to the Zoning Adjustment Board and Planning Commission to forward strategies to protect and retain historic resources in the CBD; and
4. Determine if the Board wishes to form Sub-committees to work on any long-term strategies and/or if the Board wishes to address these at their annual Goal Setting Meeting.

Respectfully submitted:

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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 – Central Business District (Historic Properties, Proposed Height, Bulk and Intensity Map, Proposed New Zones)**
- H: Central Business District Regulations**

Ref: cbdhistoricpreservationLPABReport08-8-11

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