

Location:	The Temescal Corridor area--Parcels on or near Telegraph Avenue between 41 st Street and the Berkeley border (Woolsey Street); Shattuck Avenue between 46 th Street and Highway 24; and Claremont Avenue between Telegraph and Cavour. The area bounded by Macarthur Boulevard, Telegraph Avenue, 40th Street and Manila is also part of the proposal. See Attachments D through H for complete location maps.
Proposal:	<ol style="list-style-type: none"> 1) Zoning Text Amendments to create a new combining zone in the Planning Code that establishes development regulations specific to the Temescal Corridor; 2) Design Guidelines specific to the Temescal Corridor; 3) Zoning Text Amendments to the C-28, Commercial Shopping District Zone; and 4) Various General Plan and Zoning Maps Amendments.
Applicant:	Oakland Planning Division
General Plan:	Neighborhood Center Mixed Use, Urban Residential, Community Commercial, and Mixed Housing Type Residential
Zoning:	C-28, Commercial Shopping District Zone; R-70, High Density Residential Zone C-30; District Thoroughfare Commercial 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); Also, exempt per State CEQA Guidelines, Section 15061(b): "general rule", no possibility of significant effect on the environment.
Case File Number:	ZT07-166; GP07-165
Action to be taken:	Recommendation to the Planning Commission
For further information:	Contact: Neil Gray at 238-3878 or email ngray@oaklandnet.com

SUMMARY

The following report describes staff’s proposed development regulations for the Temescal District’s major transit corridors and related areas. The goal of the proposal is to provide common development expectations for the community and implement General Plan land use classifications and policies for the Temescal Corridor. The proposal includes a new Temescal combining zone, design guidelines, zoning map amendments, and General Plan map amendments.

Staff requests that the ZUC review the proposal, provide direction to staff, and provide a recommendation regarding the proposal to the full Planning Commission.

BACKGROUND

In March of 1998, the City of Oakland adopted the Land Use and Transportation Element of the General Plan (General Plan) and an associated land use map. These documents lay out the City's vision for future development and represent the land use "constitution" for the City. All of the City's land use decisions and plans must be consistent with these documents; a city's zoning code and zoning maps should directly implement and refine the intent of the General Plan through clear development standards.

In Oakland, however, revisions of these zoning documents were not made at the time of the passage of the General Plan, creating several inconsistencies between the General Plan, the zoning code, and the zoning maps. In particular, the General Plan encourages higher density development patterns than currently allowed by the Planning Code along the City's corridors. The General Plan encourages development along the corridors to promote public transportation, enhance the viability of corridor businesses, and create lively, pedestrian-oriented commercial districts (see General Plan and Regional Policy Context section, below).

Development applications on transportation corridors are frequently submitted to the Planning Department that propose a development intensity (usually residential density and height) greater than allowed by the underlying zoning designation but consistent with the type of construction encouraged by the General Plan. When this occurs, staff and the Planning Commission apply the standards of a "best fit zone" according to a process outlined by the document "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations." The standards of the best fit zone may be inconsistent with a site's underlying zoning but more consistent with the intent of the General Plan. This process creates uncertainty and confusion among developers and the public, and makes evaluation of projects difficult for staff and the Planning Commission. It also can create contention amongst the public, the City, and developers regarding what appropriate development standards should be applied for a particular project.

This uncertainty and contention has been particularly evident on the transportation corridors in the Temescal District on Telegraph and Shattuck Avenues. In the past few years, several new mixed use projects have been approved, constructed, or in the preapplication phase in the area:

- Project Civiq (a five-story, 68-unit building at 51st and Telegraph Avenue) and Centrada Temescal (a five-story, 51-unit building at 4700 Telegraph Avenue) have been approved by the Planning Commission;
- Temescal Place (a five-story, 24-unit project at Telegraph Avenue and 48th Street) and Gate 48 (a three-story, 12-unit building on 48th Street near Shattuck Avenue) have already been constructed; and
- Staff is currently in preapplication discussions regarding a proposed six-story, 144-unit development on Telegraph Avenue at 51st Street, and a five-story, 33-unit development at Claremont and Telegraph Avenues.

Several public hearings and community meetings associated with these developments have exposed different development expectations in the community for Temescal regarding height, density, open space, preservation of historic buildings, parking, and other issues.

As a result, the Planning Department and Councilmember Jane Brunner initiated a community planning process to update the zoning along the Temescal Corridor to be consistent with the General Plan. Providing standards consistent with the General Plan would eliminate the process of choosing best fit zones and provide common expectations for new construction in the Temescal Corridor. The subject of this report is staff's recommendations regarding land use regulation changes for the Temescal Corridor and other related areas. For the purpose of this report, the Temescal Corridor includes Telegraph Avenue from 41th Avenue to the Berkeley border, "Short Shattuck" (Shattuck Avenue between 46th Street and Highway 24), and Claremont Avenue between Telegraph Avenue and Cavour Street. The full proposal, including maps, is contained in Attachments A through G of this report.

Staff requests that the ZUC make recommendations to the full Planning Commission regarding the proposal for the Temescal Corridor.

COMMUNITY INVOLVEMENT

A series of five well-attended community workshops have been held regarding Temescal Corridor zoning. Guest speakers at the meetings included experts on historic resources, traffic, and public transit. The meetings produced consensus on several themes, such as:

- Establishment of minimum ground floor heights;
- Encouragement of housing available to residents of a variety of income levels;
- Creation of a variety of residential unit sizes;
- Funding for streetscape improvements;
- Preservation of Temescal's core commercial buildings on Telegraph Avenue between 48th and Claremont Streets;
- Preservation of open space; and
- Encouragement of contemporary architecture that draws upon the architectural vernacular of the area.

However, some significant differences remain, particularly regarding height along Telegraph Avenue and the level of protection for older buildings. There have been two community groups involved in the process: STAND (Standing Together for Accountable Neighborhood Development) and ULTRA (Urbanists for a Livable Temescal Rockridge Area). STAND and other community members people raised concerns regarding height, particularly its effect on sunlight, views, privacy, and the appearance of Telegraph Avenue. ULTRA and other community members stated that greater density and height is required to create a transit-oriented corridor, promote active retail nodes, mitigate regional sprawl, and contribute to the Bay Area's housing needs.

Community opinions regarding height in the Temescal Corridor have ranged from instituting a height limit of three stories to an unrestricted height limit. There have been a sizable number of residents expressing a preference for a 40-45 foot height limit and a sizable number expressing a preference for a 65-75 foot height limit. Correspondences to staff, notes from the September 16, 2006 community meeting, and notes and staff responses to comments from the March 1, 2007 community meeting, are contained in Attachments H, I, and K respectively.

EXISTING CONDITIONS

Both Telegraph and Claremont Avenues have a relatively wide 100 foot right-of-way, consistent with other major transit corridors in Oakland. Shattuck Avenue has an 80 foot wide right-of-way and is considered of secondary transit importance relative to Telegraph and Claremont Avenues. Several older apartment buildings, storefronts, mixed use buildings, and Victorian homes have common architectural features that give the corridor a distinct architectural context. In particular, Telegraph Avenue between 49th and 52nd Streets contains a vibrant pedestrian-oriented commercial district with distinctive historic buildings. However, much of the area outside this district lacks the coherent street level façade or streetscape improvements desired for a pedestrian-oriented corridor.

From 41st to 49th Street, Telegraph Avenue contains a concentration of older ground level retail space in, generally, two- to three-story buildings built to the sidewalk. Temescal Place, a new five-story mixed use building at 48th and Telegraph is an exception to this pattern. In addition to the ground level retail buildings, the area contains a mix of churches, mini-malls, and some Victorian single-family homes. The pink Hoopers Chocolates Factory Store, built in 1939, is located at 4632 Telegraph Avenue.

As mentioned, the core commercial district of the planning area is on Telegraph Avenue between 49th and 52nd Streets. The east side of this core shopping district contains historic buildings with architectural features that help create a successful pedestrian-oriented shopping district such as traditional storefronts, a lot of window space, high quality detailing, a consistent street front built to the sidewalk, and other features. Buildings along this historic commercial core are about 27-35 feet in height. The architectural features displayed on this block are found in lesser concentration and quality throughout Temescal Corridor. One building on the block, the “Brick House” built in the early 1870’s, is a City landmark. This area is currently being considered by the Office of Cultural Survey to be designated a local historic district to provide additional CEQA protections for its buildings. A shopping center containing a Walgreen’s, a post office, a delicatessen, a fitness center, and other retail businesses is across the street from these historic buildings.

Telegraph Avenue from 49th Street to Highway 24 contains the Temescal Library, multi-family housing, a church, a gas station, commercial buildings, a low income housing project, and other facilities. The Temescal Library is a landmark building.

Short Shattuck (Shattuck Avenue between 46th Street and Highway 24) contains a mix of office, multi- and single-family residential structures, and a PG&E substation built in 1924. A few

single-family homes built in the 1890's are along this street, along with multi-family residential buildings and offices built in the early 1900's. The original Kaspers's Hot Dogs is located at the corner of Shattuck and Telegraph Avenues.

Telegraph Avenue from Highway 24 to the Berkeley border contains an inconsistent mix of low rise apartment buildings, small homes, medical offices, and older commercial buildings. Claremont Avenue between Telegraph and Cavour contains several office buildings, a four-story apartment building, the Kingfish Pub, and other buildings. A five-story cohousing proposal is proposed on Claremont Avenue at the Kingfish Pub location.

The intersection of Claremont Avenue, Telegraph Avenue, 51st Street, and 52nd Street is the widest and busiest intersection in the area. Civiq, a five-story mixed use building at Telegraph Avenue and 51st Street has been approved at the southeast corner of the intersection; a six-story building is proposed on an adjacent site at the current location of a former bank building that now houses the Global Video store.

Claremont Avenue becomes 52nd Street east of Telegraph Avenue. This section of 52nd Street contains a freeway ramp, an oil change business, a gas station, and series of small businesses in a one-story building. The Claremont Avenue and 52nd Street route serves as a busy automotive service corridor that leads to freeway ramps, Telegraph Avenue, Rockridge, and the Oakland/Berkeley Hills.

Each major street in the corridor backs up to areas with a mix of low to medium density residential areas containing single-family homes, duplexes, and small apartment buildings.

GENERAL PLAN, STATE, AND REGIONAL POLICY CONTEXT

This section describes the regional and City policy framework for the proposal.

State and regional policy

The Association of Bay Area Governments (ABAG) has begun the latest update of its State mandated Regional Housing Needs Analysis (RHNA). This analysis describes regional housing needs and focuses housing production at certain areas depending on State and regional policy. Cities and counties, in turn, update the Housing Element of their General Plans to reflect the RHNA. The latest RHNA is similar to past RHNAs in that it mandates housing in existing urbanized areas, near transit stations, and along major public transportation corridors. These regional policies are consistent with State housing policies to increase the use of transit, protect agricultural land, ease traffic congestion, reduce automobile related pollution, and promote efficient development patterns. ABAG's report mandates that the City of Oakland be zoned to allow 16,000 additional housing units in the next seven years and to focus the housing downtown and along major transit corridors. The Cities of San Francisco and San Jose have been issued similar mandates. Housing production along Telegraph Avenue is particularly consistent with the RHNA because of its many major bus lines and the Macarthur BART Station at 40th and Telegraph Avenue. Further, AC Transit has just published the Draft Environmental Impact

Statement/Report (DEIS/R) on running a “Bus Rapid Transit” (BRT) along Telegraph Avenue and International Boulevard. BRT is a bus system that provides travel times similar to rail by providing dedicated bus lanes, signal priority over cars, signal coordination, and fewer bus stops. BRT stations are planned for Telegraph Avenue in the Temescal district and AC Transit intends higher density development at these nodes. Development intensity along the Telegraph corridor would support BRT ridership and the BRT would minimize the traffic impact of new development.

General Plan policies

The General Plan’s vision for the corridors is consistent with regional and State policy. The General Plan envisions a transformation of the City’s corridors into mixed use, transit-oriented, urban environments with concentrations of commercial and mixed use nodes linked by high concentrations of residential development. The General Plan states that the City should direct urban density near transit or commercial corridors, transit stations, downtown, and waterfront locations. In addition to revitalizing the corridors and enhancing transit use, the General Plan states that satisfying development demand at these locations allows Oakland’s lower density residential neighborhoods to preserve their character.

The General Plan recognizes that Oakland has several areas such as Temescal where transportation corridors back up to lower density residential neighborhoods. The General Plan specifically addresses this type of interface in the following policy:

Policy N8.2 Making Compatible Interfaces Between Densities. The height of development in urban residential and other higher density residential areas should step down as it nears lower density residential areas to minimize conflicts at the interface between the different types of development.

Existing General Plan Land Use Classifications

There are currently four General Plan land use classifications in the Temescal Corridor: Neighborhood Center Mixed Use, Urban Residential, Community Commercial, and Mixed Housing Type Residential (see Attachment D). These land use classifications are at the following locations:

- “Neighborhood Center Mixed Use” predominates along the corridor. This classification is located along Short Shattuck, Telegraph Avenue from 41st Street to Claremont Avenue, and Telegraph Avenue from 63rd Street to the Berkeley border.
- “Urban Residential” is at two locations: the area between Highway 24 to 63rd Street and a sliver between Shattuck and Telegraph Avenues near Highway 24.
- “Community Commercial” is located on Telegraph Avenue between Claremont Avenue and the Highway 24.
- “Mixed Housing Type Residential” is located on Claremont Avenue between Telegraph and Cavour.

The following are descriptions of each of these classifications.

Neighborhood Center Mixed Use

Intent: The Neighborhood Center Mixed Use General Plan land use classification is intended to identify, create, maintain and enhance mixed use neighborhood commercial centers. These centers are typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller scale educational, cultural, or entertainment uses.

Desired Character and Uses: Future development within this classification should be commercial or mixed uses that are pedestrian-oriented and serve nearby neighborhoods, or urban residential with ground floor commercial.

Maximum Density: one unit per 261 square feet of lot area

Urban Residential

Intent: The Urban Residential General Plan land use classification is intended to create, maintain, and enhance areas of the City that are appropriate for multi-unit, and mid-rise or high-rise residential structures in locations with good access to transportation and other services.

Desired Character and Uses: The primary future use in this classification is residential. Mixed use buildings that house ground floor commercial uses and public facilities of compatible character are also encouraged. If possible, where detached density housing adjoins urban residential the zoning should be structured to create a transition area between the two.

Maximum Density: one unit per 261 square feet of lot area

Maximum Floor Area Ratio: 4.0

Community Commercial

Intent: The Community Commercial General Plan land use classification is intended to identify, create, maintain, and enhance areas suitable for a wide variety of commercial and institutional operations along the City's major corridors and in shopping districts and centers.

Desired Character and Uses: Community Commercial areas may include neighborhood center uses and larger scale retail and commercial uses, such as auto related businesses, business and personal services, health services and medical uses, educational facilities, and entertainment uses. Community Commercial areas can be complemented by the addition of urban residential development and compatible mixed use development.

Maximum Density: one unit per 261 square feet of lot area

Maximum Floor Area Ratio: 5.0

Mixed Housing Type Residential

Intent: The Mixed Housing Type Residential General Plan land use classification is intended to create, maintain, and enhance residential areas typically located near the City's major arterials and characterized by a mix of single-family homes, townhouses, small multi-unit buildings, and neighborhood businesses where appropriate.

Desired Character and Uses: Future development within this classification should be primarily residential in character, with live-work types of development, small commercial enterprises, schools, and other small scale, compatible civic uses possible in appropriate locations.

Maximum Density: one unit per 1,089 square feet of lot area

SUMMARY OF PROPOSAL

The proposal contains the following seven components:

1. Adopt General Plan map amendments to adjust General Plan land use classification boundaries within the Temescal Corridor (see Attachments D and E).
2. Adjust the boundary of base zones to implement the General Plan land use classifications established in item 1.
3. Couple the base zones map changes with a new combining zone, the Temescal Corridor Combining Zone (SD-TEM zone). The combining zone proposes five subzones: SD-TEM-1, SD-TEM-2, SD-TEM-3, and SD-TEM-4 (see Attachment A).
4. Adopt zoning text modifications to the C-28, Commercial Shopping District Zone (see Attachment B).
5. Adopt a set of design guidelines specific to the Temescal Corridor.
6. Rezone the parcels bounded by Manila Avenue, Macarthur Boulevard, Telegraph Avenue, and 40th Street from the R-70, High Density Residential Zone to the R-50, Medium Density Residential Zone. This part of the proposal does not include parcels facing Telegraph Avenue or Macarthur Boulevard (Attachment G).
7. Change the General Plan land use classification of the parcels bounded by Shattuck Avenue, Highway 24, 41st Street, and 48th Street from Urban Residential to Mixed Housing Type Residential. This part of the proposal does not include parcels facing Shattuck Avenue or 41st Street. See Attachment G for maps of the proposal.

This section will provide an overview, explanation, and rationale for each of these components.

1. General Plan amendments within the Temescal Corridor

Maps showing the location of existing and proposed General Plan land use classification boundaries are contained in Attachments D and E, respectively. The proposed General Plan map changes consist of the following:

- Replacing the Mixed Housing Type Residential General Plan land use classification on Claremont Avenue with Community Commercial;

- Replacing Neighborhood Center Mixed Use on the north side of 52nd Street and one parcel on the south side of 52nd Street with Community Commercial; and
- Replacing Mixed Housing Type Residential on the east side of the block bounded by Clark Street, 51st Street, Claremont Avenue, and Telegraph Avenue with Neighborhood Center Mixed Use; and
- Other minor refinements to the existing General Plan land use classification boundaries.

The Claremont Avenue map amendment is proposed because the current uses there (a four story apartment building, commercial activities, and office buildings) are inconsistent with the Mixed Housing Type Residential General Plan land use classification. Further, buildings of greater scale than envisioned by the Mixed Housing Type Residential classification are appropriate for Claremont Avenue because of its wide right of way and its function as an automotive service corridor that leads to freeway ramps, Telegraph Avenue, Rockridge, and the Oakland/Berkeley Hills.

Staff recommends the 52nd Street map amendment because that stretch of street is not compatible with the pedestrian-oriented retail shopping neighborhood envisioned by the Neighborhood Center Mixed Use land use classification and is more consistent with the Community Commercial land use classification. This stretch currently contains a gas station, an oil change business, and service uses, activities generally incompatible with the desired pedestrian-oriented retail uses envisioned for the Neighborhood Center Mixed Use land use classification. Further, like Claremont Avenue, the road's function as a busy automotive service corridor also makes it incompatible with a pedestrian-oriented shopping district.

The Mixed Housing Type Residential General Plan land use classification is proposed to be replaced by Neighborhood Center Mixed Use for part of the block bounded by Clarke, Claremont Avenue, 51st Street, and Telegraph Avenue, so that this island of parcels can be evaluated comprehensively and with consistent standards. Staff further recommends that the next draft of the proposal limit building heights along the Clark Street frontage to a maximum of 30 feet. This proposal will assure a smooth transition to the lower density development on Clark Street.

Finally, staff proposes minor refinements to the borders of land use classifications on the General Plan map to match the proposed zoning designations.

2. Apply base zones that implement the General Plan land use classifications

This subsection describes proposed zoning map amendments that apply base zones that are as consistent as possible with the proposed General Plan land use classifications. The City's current zoning designations were not written to specifically implement the General Plan because they were adopted in 1964, prior to the adoption of the General Plan in 1998. Therefore, the proposed Temescal Corridor combining zone (see proposal #3, below) contains regulations that refine regulations in the base zones to better implement the proposed General Plan land use classifications.

Staff proposes that the C-28, Commercial Shopping District Zone be applied where the General Plan land use classification is Neighborhood Center Mixed Use. This does not represent a major change because the C-28 zone already predominates in this area (see Attachments D and E). The C-28 zone is designed to be applied to mixed use, pedestrian-oriented shopping districts, consistent with the intent of the Neighborhood Center Mixed Use land use classification. The zone is also designed to be applied on major boulevards such as Telegraph and Shattuck Avenues. Regulations in the C-28 zone limiting the size and type of businesses, restricting driveways off the main street, and providing development bonuses for mixed use projects are designed to promote the pedestrian-oriented, mixed use districts envisioned by the Neighborhood Center Mixed Use land use classification.

Staff proposes that the C-28 commercial zone also remain for the Urban Residential classification on Telegraph Avenue from Highway 24 to 63rd Street and Short Shattuck. Generally, a high density residential zone, not a commercial zone, would be chosen to implement the Urban Residential General Plan land use classification. However, the City's high density residential zones do not allow the ground floor retail activities appropriate along a major corridor. Staff recommends that the proposed SD-TEM Combining Zone (see proposal #3, below) refine regulations in the C-28 zone to implement the Urban Residential land use classification by providing development bonuses for high density residential projects on this stretch of the corridor.

Finally, staff proposes that the C-30, District Thoroughfare Commercial Zone, be applied along Claremont Avenue, 52nd Street, and Telegraph Avenue between 52nd Street and Highway 24 to implement the Community Commercial General Plan land use classification. This represents an expansion of the C-30 zone, replacing R-70 and C-28 districts above Claremont Avenue and 52nd Street. The C-30 zone implements the intent of the Community Commercial land use classification because it allows a wide range of retail establishments and contains development standards appropriate for major thoroughfares.

3. New Temescal Corridor combining zone and four subzones

The third proposal involves adopting a new combining zone, the Temescal Corridor Combining Zone (SD-TEM zone), to establish development regulations specific to the Temescal Corridor (see Attachments A, D, and E). This combining zone allows the City to modify or add regulations to base zones just for Temescal without changing the regulations in the base zone that also apply to other parts of the City.

Staff proposes four subzones within the SD-TEM zone: the SD-TEM-1, SD-TEM-2, SD-TEM-3, and SD-TEM-4. All properties within the Temescal Corridor would contain two zoning designations--a base zone and a combining zone. For instance, 5006 Telegraph Avenue would be designated C-28/SD-TEM-3. The following chart describes the location, corresponding General Plan land use classification, and corresponding base zone of each of these subzones:

Subzone	General Plan land use classification	Base Zoning designation	Location(s)
SD-TEM-1	Neighborhood Center Mixed Use	C-28, Commercial Shopping District Zone	1. Telegraph Ave between 63 rd St. and the Berkeley border 2. Short Shattuck
SD-TEM-2	Urban Residential	1. C-28, Commercial Shopping District Zone 2. R-70, High Density Residential Zone	1. Telegraph Ave between Highway 24 and 63 rd St. (corresponds to C-28) 2. Areas on 53 rd and 55 th Streets and Shattuck Ave.(corresponds to R-70)
SD-TEM-3	Community Commercial	C-30, District Thoroughfare Commercial Zone	Claremont Avenue, 52 nd Street, and Telegraph Avenue between 52 nd Street and Highway 24
SD-TEM-4	Neighborhood Center Mixed Use	C-28, Commercial Shopping District Zone	Telegraph Avenue between 41 st St and Claremont Ave.

Most of the regulations are the same for each subzone; subzones only differ when it is necessary to provide incentives to meet the intent of their corresponding General Plan land use classification or accommodate different existing contexts.

The following describes the key regulations contained in the SD-TEM zone.

Design Review. Section 17.101.008 of the proposal states that a project requires conformance to the proposed “Temescal Corridor Design Guidelines” whenever the base zone requires a project to gain either: 1) regular design review approval for any building, or 2) small project design review approval for a “neighborhood character defining building.” See proposals #3 and #5 for a description of the “Temescal Corridor Design Guidelines” and “neighborhood character defining buildings,” respectively.

Special ground floor regulations in the SD-TEM-4 subzone. Section 17.101.010 requires: 1) that new projects in the SD-TEM-4 subzone contain ground level storefronts in at least the front 20 feet of a building, and 2) the granting of a conditional use permit for new ground floor residential or office activities in the SD-TEM-4 subzone. These special restrictions are proposed for the SD-TEM-4 subzone because that area already contains a strong and viable retail and restaurant presence. New construction or activities should not interrupt or weaken the continuity of pedestrian-oriented retail facilities on this commercially successful stretch of Telegraph Avenue. These restrictions do not apply to other areas with a commercial General Plan classification because those areas do not currently have a solid context of ground level commercial activities. Staff believes that requiring commercial facilities at these locations may create nonviable, vacant spaces along the corridor. Therefore, staff proposes incentives, not requirements, for commercial facilities and activities in the SD-TEM-1 and SD-TEM-3 subzones (see the Development Bonuses section, below, for a description of the incentives). Note that new construction in the SD-TEM-4 subzone on lots less than 50 feet wide is encouraged to have ground floor commercial through the design guidelines. However, the regulations do not require commercial facilities on the ground floor due to site plan constraints on narrow lots.

Also, staff proposes that the conditional use permit requirement for ground floor office or residential activities that are covered by the SD-TEM-4 subzone be moved from the C-28 zone to the SD-TEM zone.

Maximum Density. Section 17.101.012 states that the maximum density for all the SD-TEM subzones is one unit per 450 square feet of lot area. This maximum density could be increased by 30 percent upon the granting of a conditional use permit for projects that both 1) provide community benefits (these benefits are detailed in the Development bonuses subsection below) and, 2) fulfill the intent of the applicable General Plan designation. Developments that preserve the façade of a “neighborhood character defining building” (see Protections for neighborhood character defining buildings subsection, below) for a description of this type of building) are also eligible for this density bonus.

The only difference between the proposed “by right” maximum density of one unit per 450 square feet of lot area and the maximum density of the base zones is that the proposal does not contain a greater maximum density for efficiency units (single room units less than 500 square feet) or rooming units. This adjustment was made to assure that no density permitted in the zone is greater than allowed by the General Plan.

Maximum Height. Staff proposes that a “height map” be applied to the corridor that defines two different height areas, Height Area A and Height Area B (see Attachment F). Height Area B includes the core commercial area of the Temescal Corridor (Telegraph Avenue between 48th Street and Telegraph Avenue) and Shattuck Avenue between 48th Street and 51st Street. Height Area A includes the remainder of the corridor.

Height Areas A and B allow a base height limit of 45 and 35 feet, respectively. Both of these height map areas allow an additional 10 feet of height above the base height limit upon the granting of a conditional use permit. A project could only be granted the conditional use permit for the extra height if all of the following criteria are met:

1. Any construction over the base height limit will be stepped back of at least ten feet from the base of the building. The setback must occur over at least eighty percent of the building frontage above the maximum base height;
2. The scale and massing of the proposal will create a visual transition to the height, bulk, and scale of buildings on those adjacent lots that contain construction reflecting a stable and desirable neighborhood context; and
3. The project will provide at least one of the community benefits that are listed in the development bonus section (section 17.101.016C of the regulations). See the Development bonuses subsection, below, for a description of these bonuses.

A further discussion of these height limits is contained in the Key Issues and Impacts section of this report.

Staff proposes two other height regulations:

1. A conditional use permit requirement to construct a one-story building. This regulation discourages the construction of buildings of a smaller scale than envisioned by the General Plan; and

2. A minimum 12 foot height required on the ground floors of new construction. This regulation contributes to a comfortable human scale on the ground level façade of new buildings and will contribute to the success of new retail spaces.

Development bonuses. In section 17.101.016, staff proposes that development bonuses be offered to developments that fulfill the intent of a particular General Plan land use classification. For instance, a project in the Urban Residential General Plan classification would only be granted development bonuses if it contains a significant number of residential facilities. The following table lists the type of projects eligible for development bonuses by General Plan land use classification and subzone:

General Plan land use classification	Subzone(s)	Type of development eligible for bonus
Neighborhood Center Mixed Use	SD-TEM-1, and SD-TEM-4	Mixed use developments: A project that contains both: 1) 25 percent of the number of residential units that would be permitted if the project were solely residential, and 2) a significant amount of ground level retail facilities.
Urban Residential	SD-TEM-2	Residential developments: projects that contain at least three stories of living units.
Community Commercial	SD-TEM-3	Commercial developments: projects that have a nonresidential floor area of at least 0.5

Upon the granting of a conditional use permit, the projects described above would earn the bonuses described in Section 17.44.200 of the C-28 zone:

1. A reduction of parking lot aisle and stall width according to those listed in the S-12 overlay zone;
2. An increase in the number of compact parking spaces available according to those listed in the S-12 overlay zone;
3. A reduction of the minimum area of open space from 150 square feet per dwelling unit to 100 square feet of open space per dwelling unit; and
4. A twenty-five (25) reduction of the amount of required parking.

In addition, projects described in the table above that also provides community benefits would earn the following bonuses: 1) the 30 percent density bonus described in the Maximum Density subsection (see above) and 2) a 30 increase in the maximum nonresidential FAR of a project. Community benefits are also required in order to be granted an additional ten feet of maximum height (see Maximum height subsection, above). In order to qualify as a community benefit, a project would need to contribute at least one of the following:

- Construction of family housing in the SD-TEM-1, SD-TEM-2, or SD-TEM-4 subzone. To qualify as a benefit, at least 25 percent of the residential dwelling units in a project must have three or four bedrooms.
- Construction of underground parking. To qualify as a benefit at least sixty (60) percent of the onsite parking must be contained underground.
- Construction of affordable housing. To qualify as a benefit, the affordable housing must be sufficient to earn any of the bonuses for affordable housing described in Chapter 17.107 of the zoning ordinance.

- Improvements to neighborhood parks or streets. To qualify as a benefit, the project must contribute either: 1) three dollars per square foot of new development if the improvement is installed by the developer, or 2) five dollars per square foot if the contribution is through an in-lieu payment to a City fund. The street improvement must also be consistent with the “Telegraph Avenue Pedestrian Streetscape Improvements Project”, a document developed by City Redevelopment staff in 2005. Both the parks and the street improvements must be in the Temescal District and constructed to the satisfaction of the Public Works Department. Note that section 17.101.016 of the proposed regulations does not currently state that the parks improvement must be within Temescal. Staff will specify this location in future drafts of the regulations.

Protections for neighborhood character defining buildings. In response to concerns expressed by the community in neighborhood meetings regarding the demolition of older buildings, staff proposes that a conditional use permit be required to demolish any “neighborhood character defining building” in the Temescal Corridor. Section 17.101.018A of the proposed regulations defines a neighborhood character defining building as an existing building that contains the following characteristics:

- A rating of “A”, “B”, or “C” by the Oakland Cultural Heritage Survey;
- A building envelope that could be feasibly incorporated into a development that is consistent with the vision of the General Plan for the corridors and the associated General Plan land use classification;
- Distinctive detailing; and
- A number of desirable architectural elements that are common to desirable buildings in the neighborhood. The draft lists the following as examples of “desirable architectural elements”:
 - Traditional storefront design;
 - Significant and detailed architectural features common to the neighborhood;
 - A prominent top and/or bottom floor;
 - Transparent windows with a regular pattern on upper story facades;
 - A clear distinction between ground floor and upper story spaces;
 - A finer grain of detail at the ground level;
 - Significant window depth with a detailed and thick trim and sill;
 - High quality detailing and durable building materials, particularly on the ground floor; and
 - Prominent entrances.

In order to be granted a conditional use permit to demolish a neighborhood character defining building, an applicant would need to demonstrate that the public benefits of the proposal are greater than the existing building; it is not economically feasible to preserve the building; and the design quality, craftsmanship, and building materials of the new building are equal to or greater than the existing building. The regulations also provide bonuses for projects that preserve the façade of neighborhood character defining buildings (see the Development bonuses subsection, above).

The draft also proposes a process to develop a list of neighborhood character defining buildings. The process would include approval by the Planning Commission after a recommendation by the Landmarks Board. The Planning Commission hearing would require a notice sent to all property owners within 300 feet of any building proposed for designation.

Issues regarding historic buildings and neighborhood character defining buildings are further discussed in the “Key Issues and Impacts” section, below.

4. Modifications to the C-28, Commercial Shopping District Zone.

Staff proposes modifications to the height and bonus regulations in the C-28 Zone (see Attachment B). These modifications would apply to the C-28 Zone citywide except where a combining zone supercedes the regulations.

Section 17.44.160 sets the height limit for the C-28 Zone at 40 feet for residential facilities and 35 feet for commercial facilities. Staff proposes a uniform height limit of 45 feet for all facilities to accommodate pedestrian scaled ground floors and to simplify the regulations. This change would not affect the Temescal proposal because the height regulations in the SD-TEM combining zone would supercede those in the C-28 zone.

Section 17.44.200 of the C-28 zone provides bonuses for mixed use developments without specifying how much commercial space a development is required to have in order for a project to be considered mixed use. The proposal rectifies this by stating that the street level façade of the mixed use development must predominantly contain nonresidential facilities that are at least twenty (20) feet in depth.

Section 17.44.200 also only allows height and density bonuses for mixed use projects on sites greater than an acre. Staff proposes that the acre requirement be removed because it significantly reduces the effectiveness and applicability of the incentive to construct mixed use projects in the C-28 Zone.

5. Temescal Corridor Design Guidelines.

Staff has developed the “Temescal Corridor Design Guidelines” as a companion to the Temescal Corridor Combining zone regulations (see Attachment C). As mentioned, conformance to these guidelines would be required whenever: 1) the base zone requires a project to gain regular design review approval, or 2) small project design review approval is required for a project involving a “neighborhood character defining building.” The document identifies five objectives to which these projects must conform:

- Objective 1: Provide spatial definition for Telegraph and Shattuck Avenues;
- Objective 2: Provide a pedestrian-oriented environment;
- Objective 3: Develop an attractive and active streetscape;
- Objective 4: Build upon historic contexts to further unify Temescal as a distinct district;
and

Objective 5: Provide a respectful transition from larger construction on Shattuck and Telegraph Avenues to adjacent properties in lower density zones.

Each guideline in the document contributes to at least one of these objectives.

The guidelines are separated into six sections: site planning, street facades, corner buildings, sidewalk amenities, transitions to lower density zones, and preservation of neighborhood character defining buildings. Many of the guidelines focus on design issues that are important along any mixed use corridor such as providing spatial definition to the street, active and pedestrian-oriented street fronts, emphasis at major intersections, and attractive façades. Other guidelines focus on issues specific to the Temescal Corridor, such as:

- Guideline 2.3 encourages the development of the Temescal Corridor as a unique district by building upon its existing “design vocabulary” with contemporary building styles;
- Guidelines 2.5, 5.1, and 5.2 provide techniques to provide transitions to the lower scale buildings currently on the corridor and to lower density construction on side streets; and
- Guideline 6.1 describes techniques to rehabilitate and integrate neighborhood character defining buildings.

6. Rezoning proposal in area east of Telegraph Avenue below 41st Street.

Staff proposes that the parcels bounded by Manila Avenue, Macarthur Boulevard, Telegraph Avenue, and 40th Street be rezoned from R-70, High Density Residential Zone, to the R-50 Medium Density Residential Zone (see Attachment G). This area currently contains a mix of single-family homes, duplexes and small apartment buildings consistent with the R-50 Zone. Further, this downzoning is consistent with General Plan policies encouraging development downtown and on the corridors and away from lower density residential neighborhoods.

7. General Plan amendment for area between Shattuck Avenue and Highway 24.

Staff proposes that the General Plan land use classification of the parcels bounded by Shattuck Avenue, Highway 24, 41st Street, and 48th Street be changed from Urban Residential to Mixed Housing Type Residential. This proposal does not include parcels facing Shattuck Avenue or 41st Street (see Attachment G for a map of the proposal). Like the area described in proposal #6., above, this area is characterized by a mix of single-family homes, duplexes and small apartment buildings. Although this area is currently zoned R-50, Medium Density Residential, the Urban Residential General Plan land use classification conditionally permits high density residential projects. The proposed rezoning would require proposals to be consistent with the R-50 designation. Community meeting attendees expressed a clear preference to preserve the lower density character of this neighborhood. Like proposal #6, this proposal is consistent with policies concentrating density on the corridors and away from lower density residential neighborhoods.

KEY ISSUES AND IMPACTS

The following section lists some of the key issues and impacts of the proposal. Staff requests that the ZUC provide input regarding each of these items.

Height limits

There has been considerable community debate regarding the appropriate maximum height along the corridor. Community opinions regarding height in the Temescal Corridor have ranged from a height limit of three stories to an unrestricted height limit. There have been a sizable number of residents expressing a preference for a 40-45 foot height limit and a sizable number expressing a preference for a 65-75 foot height limit.

Staff is recommending a balanced approach in Height Area A (the area outside Shattuck Avenue and the core commercial area on Telegraph Avenue) by proposing a 45 foot height limit and a 55 feet limit permitted upon the granting of a conditional use permit. As mentioned previously, the conditional use permit could only be granted if there is a ten foot stepback over 80 percent of the top story of the building, the developer provides one of four community benefits, and there are effective transitions to neighboring properties.

Staff chose to recommend that the 45-55 foot height limit because these are the minimum heights required to provide spatial definition to Telegraph and Claremont Avenues. Successful streets define and unify a space by focusing the eyes on the street area. Generally, the walls of buildings create the boundaries of this street space. When these boundaries are not sufficiently high, views outward are not contained enough to provide a sense of unifying space or place. In general, urban designers state that streets require at least a 1:2 height-to-street width ratio to achieve enough spatial confinement to define a space. The Telegraph and Claremont Avenue rights of way are 100 feet wide and, therefore, require building heights of at least 50 feet to properly enclose and define the street. Staff recommends an overall 55 foot instead of 50 foot height limit because the extra five feet allows developments to have a higher ground level. In general, each upper story of a building is about 10 feet high; therefore, a 55 foot height limit allows a ground level height of up to 15 feet with four stories above. This higher ground level provides a human scale, a more comfortable pedestrian experience, and more viable commercial spaces.

Staff also chose to recommend the 55 foot overall height limit because development proposals in the area have shown that this is the minimum height required for a building to contain a development density that fulfills the intent of General Plan, State, and regional policies promoting higher development density along major transit corridors. The density issue is further discussed below.

As mentioned, staff recommends a lower height limit in Height Area B (35 feet and 45 feet with a conditional use permit), the area containing the core historic commercial district and Shattuck Avenue. Staff recommends this lower height maximum in the core commercial area to better relate to its solid and established context of historic retail buildings. The height and building context of Height Area A is much less established than that of Height Area B, and therefore, should not receive this height restriction. Staff also recommends the lower height maximum on

Shattuck Avenue because a 35 to 45 foot tall building can spatially define its narrower 80-foot right of way.

In order to alleviate height impacts on surrounding properties, the regulations and guidelines contain several requirements to transition to buildings in lower density zones (see Transitions to lower intensity zones subsection, below). Further, the regulations and guidelines require that visual transitions be made to buildings that represent a stable context such as “neighborhood character defining buildings”, newer buildings, and buildings that implement the intent of a particular site’s General Plan land use designation.

Residential density

STAND and some community members have stated that the proposed conditionally permitted residential density is too high due to the existing development context and impacts on neighboring properties in residential zones. The proposal permits one unit per 450 square feet of lot area and conditionally permits one unit per 315 square feet of lot area for developments that both fulfill the intent of the site’s General Plan classification and provide community benefits. As is standard for commercial and high density residential throughout the code, the regulations allow a ten percent increase in the maximum density for developments that are opposite a park or on a corner gain. With this ten percent increase, the maximum conditionally permitted density is one unit per 283 square feet of lot area. The General Plan maximum for the corridor is one unit per 261 square feet of lot area.

Staff believes that this proposed density is appropriate for the following reasons. As discussed above, State, regional, and General Plan policies support density in existing urbanized areas, major transportation corridors, and near transit. Density at these locations alleviates regional traffic congestion, protect agricultural land, reduce automobile related pollution, increase transit use, and revitalize commercial neighborhoods. Allowing density on corridors also steers intense development away from lower density neighborhoods and provides development alternatives to the conversion of industrial land to residential areas.

With its location in the inner Bay Area, proposed Bus Rapid Transit line, many existing bus lines, wide right of way, the BART station at 40th Street, and existing retail nodes, Telegraph Avenue is just the type transportation corridor where these policies direct development intensity to occur.

Staff believes that the regulations and guidelines provide an appropriate balance between respecting the existing context and providing density consistent with the General Plan by:

- Requiring the transitional features described in the Height limit subsection, above;
- Conditionally permitting additional height and density to give the City an opportunity to study and mitigate impacts of new development; and
- Requiring a conditional use permit and the fulfillment of special findings to demolish “neighborhood character defining buildings”.

Height projections at major intersections

Staff has received input from ULTRA and some community members requesting that the regulations allow greater height for parcels near major intersections. This proposal would provide additional architectural emphasis at key gateway locations and height variations on the street façade. Staff believes that this proposal is worthy of consideration and requests direction from the ZUC.

Conditionally permitted increase in height maximum

As mentioned, the proposal recommends a 10-foot height increase in the maximum height upon the granting of a conditional use permit and conformance to criteria regarding establishment of a visual transition to the height, bulk, and scale of buildings on adjacent lots, providing community benefits, and stepping back the top story.

ULTRA has raised concerns regarding the requirement for a conditional use permit for the extra ten feet of maximum building height. The concern is that without an agreed upon height limit, contentious debates regarding height will continue through the review process of individual development proposals. An alternative proposal would be to review the additional height as part of the design review process instead of through the conditional use permit process. In this alternative, the criteria described above would be design review criteria instead of conditional use permit criteria. However, staff has also received input from STAND and many in the community that the conditional use permit should requirement should remain to preserve the City's discretion for the additional height and give community members more input into the height of proposed construction.

Allowed projections into the top story setback

The proposal recommends that a conditional use permit to allow ten feet of construction above the base height only be granted if the additional height is stepped back ten feet from the base of the building. This top story setback is required over at least eighty percent of the building frontage above the maximum base height. Staff recommends the setback due to community concerns regarding construction scale along the corridor.

Staff has received input from STAND that allowing the 20 percent projection into the setback will reduce the effectiveness of the setback and result in buildings that are out of scale with the neighborhood. Staff recommends keeping the projection allowance to provide architectural variation along the corridor, emphasis at corners, and elements that break up the mass of buildings.

Claremont Avenue

The Rockridge Community Planning Council (RCPC) has expressed concerns that allowed heights of 45 feet (55 feet with a conditional use permit, a top story setback, and a community benefits package) is too great a scale for Claremont Avenue and will lead to taller buildings along the rest of Claremont Avenue. RCPC recommends the same 35 foot height limit (45 feet with a conditional use permit, a top story setback, and a community benefits package) proposed for Temescal's core commercial district in Height Area B.

Staff disagrees with RCPC. Buildings this scale are appropriate for Claremont Avenue because of its wide, 100 foot right of way and its function as an automotive service corridor that leads to freeway ramps, Telegraph Avenue, Rockridge, and the Oakland/Berkeley Hills. Further, there is not the concentration of historic buildings found in Temescal's commercial core to warrant these height restrictions.

Historic Structures and neighborhood character defining buildings

STAND has argued that the proposed regulations do not contain enough protections for historic structures. The input states that although existing protections are sufficient for highly rated historic buildings, the cumulative effect of demolishing older buildings of lesser historic rating will eventually impact the character of the neighborhood.

Staff disagrees with STAND's assessment. As described, the proposal includes a use permit requirement for the demolition of "neighborhood character defining buildings", buildings with a historic rating of A, B, or C and contain several architectural elements that are common to desirable buildings in the neighborhood. The use permit requirement for demolition includes criteria regarding the feasibility of preserving the building proposed for demolition, the quality of the replacement building, and the public benefits of the proposal. This proposed regulation represents some of the strictest criteria for the demolition of a building in Oakland and the City's only requirement for a conditional use permit to demolish a building.

Staff is also pursuing the possibility of defining the core commercial area of Temescal as a "locally designated historic district". This designation would require additional California Environmental Quality Act (CEQA) review for the demolition of buildings in this area. Other than this core area, the corridor does not have the concentration of historic structures to be considered a historic district under Department of the Interior standards.

STAND has argued that the demolition of a neighborhood character defining building should never be allowed regardless of the economic feasibility. Staff believes that prohibiting the demolition of a class of buildings could expose the City to serious legal challenges. Further, a ban on demolition would remove the City's discretion to weigh the public benefits of a new proposal against the costs of preserving the neighborhood character defining building.

Staff does not recommend any further regulations for historic buildings in Temescal because the regulations would be inconsistent with how historic structures are regulated in the rest of the City. Staff recommends that any changes to policies regarding historic structures should be made Citywide through amendments to the Historic Resources Element of the General Plan and implementing zoning regulations, not on an inconsistent, district by district basis.

Transitions to lower intensity zones

Staff has received input from STAND stating that the proposed regulations do not sufficiently protect homes in the lower density zones behind Telegraph, Shattuck, and Claremont Avenues from the solar and privacy impacts of new construction. The following protections are contained in the proposal and are consistent with the rest of the City:

- All construction on a corridor zone has a reduced height limit of 30 feet at the setback line adjacent to a lower density zone. This height maximum increases one foot for every foot of distance away from the setback line.
- A ten foot setback is required at any property line adjacent to a lower density residential zone.

The proposed design guidelines also provide several visual and site plan techniques to mitigate the impacts of new construction on neighboring properties in lower density zones. The guidelines also provide techniques to design corner buildings that architecturally complement homes on side streets.

Staff believes that the proposed regulations will provide sufficient protections to low density neighborhoods behind new construction on the corridors. The lower density zones have a height limit of 30 feet, consistent with the 30 foot height limit at the setback lines of the proposed SD-TEM zone. The required step backs from the setback line further minimize the impacts of new development on lots in lower density zones. The ten foot setback requirement is greater than the typical five foot side setback requirement in the lower density zones.

Careful site planning and design treatment will be necessary to provide compatibility between new development on the corridors and surrounding neighborhoods. Staff believes that the required setbacks, required upper stories stepbacks, and provisions in the design guidelines provide the appropriate balance between policies that encourage development along the corridor and providing compatibility between larger scale developments in higher density areas and neighboring properties in lower density General Plan designations.

Preservation of the facades of neighborhood character defining buildings

The current proposal contains regulations that provide bonuses for projects that preserve the façade of neighborhood character defining buildings. Staff proposes to adjust this bonus in future drafts to only be permitted for construction that preserves all or the majority of the structure of neighborhood character defining buildings, not just facades. This adjustment encourages a more authentic preservation of these buildings.

Temescal Creek

STAND has been a strong proponent of daylighting Temescal Creek. Temescal Creek is currently contained within an approximately 17 foot deep flood control culvert, although was once an open creek running through the Temescal District. County Flood Control District maps indicate that in the planning area the creek runs under the block bounded by Clarke Street,

Claremont Avenue, and Telegraph Avenue (the site of the approved Civiq and the proposed Creekside developments), Telegraph Avenue, Temescal Plaza (the site of the mall containing Walgreens), Shattuck Avenue, and multifamily homes on 51st Street.

Preliminary analysis by staff indicates that the daylighting of the creek in the area currently proposed for rezoning would be an extremely ambitious and complicated undertaking. The culvert is an Alameda County flood control facility so the new creek would have to be approved by the County and engineered to continue to control floods. Further, full restoration of the creek would require at least a 90 foot wide swath of land through highly developed areas and private property to accommodate natural creek banks (creek banks generally require a 2:1 to a 3:1 slope) and adjacent walking paths. STAND's proposal to try to preserve the potential path for the creek through development restrictions exceeding the current flood control easement width may result in legal action by the owners of the affected parcels.

Staff believes that the making the daylighting of the creek part of this planning process is not feasible at this time. STAND has requested that no development be allowed over the site of the potential fully daylighted creek. However, determining the actual path of the creek would require engineering and environmental studies which would result in a significant delay of the current planning process; even if the path of the creek was determined and construction was prohibited at these locations, the complications described above would still make the eventual daylighting of the creek an extremely difficult task. Finally, the daylighting of the creek is currently being studied in the permitting process for a development at Telegraph Avenue and 51st Street (the current site of Global Video); further study and regulations as part of this process would create unnecessary redundancies.

Global warming

STAND has stated that it desires a statement in the Title Purpose and Applicability section of the regulations that the Temescal Corridor Combining zone intends "to ameliorate the effects of global warming". Staff believes that this is a broad policy statement that is more appropriately inserted into the General Plan, not an individual zone. Staff requests input from the ZUC whether amendments to the General Plan regarding the role of land use and transportation in the reduction of global warming should be pursued by the City. Staff envisions that the amendments would consist of an objective statement, associated policies, and implementation measures. If the ZUC believes these amendments should be pursued, staff requests input on whether this effort should be part of the Temescal process or some future process that would provide staff more time to analyze the issue.

Staff does believe that the current proposal would reduce the emission of greenhouse gases. Pollution created by transportation is the largest single contributor to global warming. By facilitating infill development along a major urbanized transportation corridor and near the Bay Area's employment center, the proposal reduces automobile use and increases the use of transit. Coordination of transportation and land use is considered to be an effective method to reduce greenhouse gas emissions.

Ground floor commercial

As described in the Summary of Proposal section of this report, staff proposes that storefront commercial space be required for new construction in SD-TEM-4 subzone because this area both has an existing concentration of commercial activity and a General Plan classification, Neighborhood Center Mixed Use, that strongly promotes ground level commercial activity. The SD-TEM-1 and SD-TEM-3 subzones also have General Plan designations that encourage commercial development but are designated in areas that have a spotty existing context of commercial activity. Therefore, instead of requiring ground floor commercial space, staff proposes density, parking, and open space incentives to encourage commercial floor area. Staff believes that requiring commercial facilities at these locations may create nonviable, vacant spaces that may, in turn, create blight issues and deaden the streetscape. Finally, the regulations do not require or provide incentives for commercial space in SD-TEM-2 because that zone is in the Urban Residential General Plan classification. This designation focuses on the development of multi-family housing. The regulations permit ground floor commercial space in this subzone but do not place a high priority on the development of retail nodes.

STAND has proposed that ground level commercial space be required throughout the SD-TEM corridor, including the Urban Residential General Plan designation. Staff is concerned that requiring commercial space in a residential classification would contradict the intent of the General Plan of creating retail nodes connected by higher density housing. Another alternative for the ZUC to consider is requiring ground floor commercial construction on main corridors that do not have an Urban Residential General Plan classification. This alternative may create some unviable commercial space initially and the blight issues described above. On the other hand, the requirement may “bank” ground level commercial space for future commercial use when more people live on the corridor and ground level commercial businesses become more viable.

A third alternative would be to require ground level “flex” space if a developer chooses not to construct ground level commercial space. The flex space could be used as either living, commercial, or live work space. Flex space has the advantage of providing flexibility for developers and allowing buildings to adapt over time to economic and demographic circumstances. Design and building code issues for this type of construction would require further study by staff because it would introduce a new type of facility into the code. A challenge to flex space is designing units that provide privacy and noise buffering for residential units, a prominent street presence for businesses (including storefront windows), and an active façade on the street. Also, commercial activities would probably rarely use a flex space unit once it has been occupied by residential activities.

A fourth alternative would be to require “work/live” if a developer chooses not to construct ground level commercial space. The work/live space would require a ground level, storefront type of appearance and only allow mezzanine or second story living space. This type of development would provide flexibility to developers and not face the same design challenges as flex units. On the other hand, not allowing ground floor activities poses enforcement challenges for the City.

In lieu fees

STAND and ULTRA have both inquired about the possibility of charging in lieu fees for new construction to fund infrastructure projects or affordable housing in Temescal. In order to apply in lieu fees, the City must meet the requirements of AB 1600, the “Mitigation Fee Act” passed by the state in 1987. This law states that in order to institute an in-lieu fee, the City must:

- Identify the purpose of the fee;
- Specifically identify how the fee will be used;
- Demonstrate that a reasonable relationship exists between the purpose of the fees and the type of development project on which the fee is imposed;
- Demonstrate that there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed; and
- Establish a “reasonable relationship” between the specific amount of the fee and the cost of the facility attributable to a project.

Preparing the appropriate studies to establish in-lieu fees is an expensive multi-year process. As mentioned in the above list, the fee can only amount to the impact a particular development would have. Due to the expense and length of time required to meet the requirements of AB1600, staff does not recommend that they be pursued with this Temescal rezoning process. Also, affordable housing and in lieu fees on new development are both issues that are currently being discussed for citywide application. A parallel discussion for Temescal would contradict this effort.

Community Benefit

As described in the Summary of Proposal section of this report, in order to qualify for increased height or density, a developer would need to contribute at least one of the following community benefits:

- Construction of family housing in the SD-TEM-1, SD-TEM-2, or SD-TEM-4 subzone. To qualify as a benefit, at least 25 percent of the residential dwelling units in a project must have three or four bedrooms.
- Construction of underground parking. To qualify as a benefit at least sixty (60) percent of the onsite parking must be contained underground.
- Construction of affordable housing. To qualify as a benefit, the affordable housing must be sufficient to earn any of the bonuses for affordable housing described in Chapter 17.107 of the zoning ordinance.
- Improvements to neighborhood parks or streets. To qualify as a benefit, the project must contribute either: 1) three dollars per square foot of new development if the improvement is installed by the developer, or 2) five dollars per square foot if the contribution is through an in-lieu payment to a City fund.

STAND has opposed the use of community benefits to allow density or height bonuses because it considers the extra height and density to be a detriment to the City that cannot be balanced by community benefits. Stand has further argued that providing only one of these benefits to qualify for extra height and density is not a sufficient requirement.

Staff has chosen benefit options that will provide significant improvements to the community:

- The construction of family housing will bring demographic diversity to the neighborhood, provide affordable units to families that cannot afford single family homes in Oakland, and alleviate suburban sprawl by providing family housing in the inner Bay Area.
- Underground parking provides a more active streetscape and additional units along the corridor without requiring additional height;
- The construction of affordable housing prevents lower income residents from being displaced and brings diversity to the neighborhood; and
- Contributions to parks and streets provide important amenities to the residents of the neighborhood.

Staff also chose to recommend these options because they are attainable by developers. As discussed above, staff believes that the additional density and height should be attainable because development on the corridors fulfills the intent of General Plan, regional, and state policies, eases development pressure on low density neighborhoods, and allows development alternatives to the conversion of industrial land.

Staff proposes two other possible community benefits:

- A traffic demand management plan that includes the preservation of a parking space for a car-share activity and providing a transit subsidy for tenants along with information about transit options; and
- Providing a community meeting and cultural gathering room within a development.

Both ULTRA and STAND have stated that underground parking should not be considered a community benefit. Staff requests that the ZUC consider this issue in their discussion of the proposal.

Finally, both STAND and ULTRA have stated that two community benefits should be required to achieve the height and density bonus. Staff is concerned that this could be a significant disincentive to achieve the height and density envisioned by the General Plan.

ACTION REQUESTED OF THE ZONING UPDATE COMMITTEE

Staff recommends that the Zoning Update Committee provide input on the issues outlined in the “Key Issues and Impacts” section, above and endorse the forwarding of the proposed zoning regulations, design guidelines, zoning map amendments, and General Plan map amendments to the full Planning Commission.

Prepared by:

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Approved for forwarding to the
Zoning Update Committee of the
City Planning Commission

CLAUDIA CAPPPIO, Development Director

ATTACHMENTS:

- A. [Proposed SD-TEM Zone](#)
- B. [Proposed zoning text amendment to the C-28 zone](#)
- C. [Proposed Temescal Corridor Design Guidelines](#)
- D. [Maps of existing Temescal Corridor General Plan classifications and zoning designations](#)
- E. [Maps of proposed Temescal Corridor General Plan classifications and zoning designations](#)
- F. [Proposed SD-TEM height maps](#)
- G. [Maps of proposed General Plan and zoning changes outside the SD-TEM zone](#)
- H. [Correspondences to staff from community members](#)
- I. [Notes from the September 16, 2006 community workshop](#)
- J. [Staff responses to comments from the March 1, 2007 community meeting](#)
- K. [STAND comments and staff responses regarding the proposal](#)
- L. [Chapter 17.108 General Height, Yard, and Court Regulations](#)
- M. [ULTRA comments regarding proposal](#)