

**City of Oakland Zoning Update
Residential Technical Advisory Group
Residential Zoning Issue Paper
Meeting #1: December 4, 2008**

I. Introduction

This issue paper has been prepared to assist the Residential Zoning Technical Advisory Group (TAG) in its dialogue about residential rezoning issues in Oakland.¹ It is intended to help zoning code users (including City officials, staff, developers, residents, and others) weigh in on these issues so that a simpler, more responsive, more effective zoning code can be created.

The issue paper includes a description of the current zoning regulations for residential areas, issues relating to specific zoning topics, and a series of discussion questions. The responses to these questions will inform potential approaches to rewriting the zoning text. Once approaches are in place, the proposed regulations will be vetted by the TAG, presented at public meetings, and presented to the Zoning Update Committee and Planning Commission. Additional residential development issues exist and may be considered for discussion when the TAG convenes. Part of the TAG's role is to identify these issues.

For ease of reference, all of the issues and discussion questions in this report are presented on **page 2**.

A. Background on Zoning Update Process

The purpose of zoning is to regulate the use of land, thereby protecting public health and safety, protecting property values, reducing nuisances, creating economic opportunity, and preserving the quality of life. Zoning regulations effectively dictate what can be built on each parcel of land through use and development standards.

In California, zoning is also used to implement a city's General Plan—the policy document that guides land use decisions. Most cities are required to zone land in a way that is consistent with the General Plan map and policies. Charter cities, such as Oakland, are exempt from this requirement—but it is still good public policy and planning practice to achieve compatibility.

¹ *Technical Advisory Groups (TAGs) will meet on an ad-hoc, temporary basis to act as a sounding board for technical zoning issues throughout the zoning update process. The groups will be comprised of volunteer community members representing balanced and varied interests (i.e., developers, advocates, property owners and renters) and different geographic areas. This issue paper provides the background material for the Residential TAG's first meeting.*

Residential Zoning Update – Issues and Discussion Questions

Some issues that should be addressed as part of the update of the City’s residential zoning regulations are listed below and discussed in more detail in this report. Staff is seeking comments and/or additions to the list of issues from the Technical Advisory Group.

Issue 1. Framework of Residential Zoning Regulations. Probably the most basic question is what changes, if any, should be made to the hierarchy of the City’s 12 residential zoning districts.

Question: Do you have any concerns with /comments about the approach presented in this paper?

Issue 2. Development standards. Some issues related to existing development standards include:

2a. Bulk, scale and/or footprint of new structures or additions is often incompatible with existing houses and context.

2b. In some areas, the zoning regulations do not match the existing development pattern.

2c. Existing zoning regulations have a variety of unintended negative effects on yard space, including excessive paving in some cases and unreasonable limits on building placement in other cases.

Questions: What do you think about the bulk, scale, massing, setback and height issues raised here? Are there additional issues that should be addressed that relate to bulk, scale massing, setbacks or height?

Issue 3. New development in older neighborhoods is often perceived as incompatible with the prevailing historic context.

Question: What steps should the City consider to recognize and protect neighborhood context?

Issue 4. Many of Oakland’s residential areas were developed before zoning regulations were adopted, and as a result have a small amount of non-residential uses. Some of these uses are currently “non-conforming” and may create problems; others may be compatible and are consistent with General Plan goals.

Questions: Should small commercial activities, such as grocery stores, cafes, and retail shops, be conditionally permitted in residential zones? Should they be restricted to existing buildings originally designed for commercial use, or should new construction or conversion of other buildings be allowed? How should these rules address uses such as Bed and Breakfasts and Home-Based Businesses? Should there be a separate local shopping commercial zone mapped within residential areas such as the existing C-5 and C-10?

Issue 5. Adequate Design Standards are lacking for high density housing located in the urban residential classification. What are local examples of well designed high density housing development?

Oakland adopted a new General Plan Land Use and Transportation Element in 1998. The Plan included changes to the city's land use map, and new policies about how and where development should occur. Adoption of the Plan established a new vision for Oakland, but also created inconsistencies between the General Plan and the Zoning Code. Although piecemeal changes to the Zoning Code have been made over time, it has not been comprehensively amended since 1965.

An initial effort to update the Code began in 1999. A consultant was retained, stakeholder meetings were conducted, an ordinance was drafted, and maps were prepared. Some components of the new Code were adopted, including the Housing-Business Mix (HBX) regulations. However, the overall effort was suspended in 2003 due to resource limitations and shifting priorities in the previous administration.

Additionally, other aspects of the zoning regulations have been changed over the last 30 years through processes unrelated to the General Plan. For example:

- R-35 was added to address the needs of neighborhoods comprised of a mix of one and two unit structures
- R-36 was added to address the needs of neighborhoods comprised of lots less than 4,000 sq. ft.
- R-1 was added to address the one-acre lot pattern of several areas in the Oakland Hills
- The conditional use requirement for secondary units was eliminated to comply with state law
- The conversion of industrial and commercial buildings in specific commercial and industrial locations to Joint Living and Working Quarters was permitted.

Other organizational and format improvements to the regulations have occurred. Despite these updates, the zoning code remains outdated. It is not consistent with national best practices in zoning, includes many obsolete terms, and is cumbersome for many users.

Since the zoning regulations are still not consistent with the General Plan, guidelines are in place to provide a procedure for deciding whether a project is consistent with the Plan's intent. Applicants may apply for an interim conditional use permit to achieve the maximum allowable density set by the General Plan on properties where that density is greater than what the zoning regulations currently allow. Project conformity is decided on a case-by-case basis by the Planning Commission. This creates uncertainty for neighborhood residents and developers alike.

Bringing the zoning into alignment with long-range plans is a top priority of Mayor Dellums and the City Council. It is an important step toward revitalizing our economy, protecting our neighborhoods, and creating job and housing opportunities for Oakland residents.

II. Existing Framework for Residential Zoning Update

A. General Plan and Other Policy Direction for Residential Zones

1. General Plan Policies for Residential Areas

The General Plan is a comprehensive and “future-oriented” document that sets the City’s long-term goals and policies for a range of topics (e.g. land use, housing, transportation, etc). It includes policies to strengthen and expand the framework of healthy, cohesive and identifiable neighborhoods in Oakland. Policies support the maintenance and enhancement of existing neighborhoods by encouraging the compatibility of new development with existing or desired neighborhood character. Zoning provides the mechanism to achieve this vision at the parcel level. For example, zoning regulates the number of homes that can be built on a lot (density), the placement of these homes, parking requirements, front yard paving standards, and landscaping requirements. Taken together, these attributes can create a cohesive context that compliments existing development—or reshape a neighborhood to support a new vision.

2. General Plan Residential Land Use Classifications

The General Plan includes a color-coded map which indicates how land across the city should be used (**Figure 1**). Four different categories are used for residential areas, corresponding to different density ranges. These are summarized below:

Urban Residential

The Urban Residential land use classification corresponds to the existing higher density zones including R-60, R-70 and R-80 (the highest density residential zone, R-90, appears in two areas of the City, downtown, which is being evaluated as part of the Central Business District zoning update, and near Broadway and Valdez St. just beyond the downtown area, which will be evaluated as part of the Broadway Retail Corridor Specific Plan). Urban Residential areas have also been designated along major corridors (MacArthur, Foothill, San Pablo, International, Telegraph), but these areas are zoned for commercial uses in most cases. This issue paper focuses only on the residentially zoned areas, which are clustered around Lake Merritt, in West Oakland, near Piedmont Avenue, and along Park Boulevard.² The desired character for these areas is multi-unit, mid-rise to high-rise residential buildings with some ground floor commercial uses and public facilities of compatible character. The maximum general plan density is 125 units per gross acre.

Mixed Housing Type Residential

This land use classification is characterized by a mix of single-family homes, townhomes, small apartments and neighborhood serving businesses. It is mapped primarily in established neighborhoods in the Fruitvale, San Antonio, North Oakland and West Oakland Planning areas. The General Plan intent is to maintain and enhance these areas as walkable, mixed density neighborhoods with a variety of housing types. The desired character is

² Urban Residential uses along corridors are discussed in the Issue Paper about commercial zoning.

predominately residential, with small businesses, live-work, schools and other small scale compatible civic uses. Although the maximum density provided in the General Plan is fairly generous at 30 dwelling units per gross acre, the intent is for existing lower density areas to be conserved through zoning. The General Plan recognizes that a “one-size-fits-all” approach to zoning can not apply to the Mixed Housing Type areas. Multiple zones, some with densities below the 30 unit per acre “cap” are required. Improved design standards will be an important tool to ensure that new development is compatible with the scale and appearance of existing neighborhoods.

Detached Unit Residential

This classification applies to the typical detached unit single-family neighborhoods in Oakland currently zoned R-30 to R-35. The classification is mapped mostly in the Lower Hills (Glenview, Laurel, Dimond, Redwood Heights, etc.) and in considerable areas of East Oakland where the predominant pattern consists of detached bungalows on lots ranging in size from 4,000 to 8,000 sq. ft. The policy intent is to preserve single-family neighborhoods while allowing schools and other smaller-scale civic institutions. The maximum density is envisioned to remain no more than 11 units to the acre.

Hillside Residential

As the name implies, the Hillside Residential classification applies to detached, single-family structures on hillside lots. Current zoning in this classification ranges from one-acre lots (R-1) to 5,000 square foot lots (R-30). The policy intent is to maintain a low density scale, with an average density of no more than 5 units per gross acre. Lot size, site design, and view and slope protection are key considerations in planning new development. Additionally, emergency vehicle access is also an important consideration in this land use classification because of the steep terrain, narrow roads and high fire danger.

The residential zoning regulations will create one or more new zoning districts for each of the four residential classifications. The regulations will provide further interpretation of land use classifications by setting limits on densities, intensities and activities.

3. Other relevant policies

The General Plan provides additional policies to maintain and enhance Oakland neighborhoods. It calls for:

- Enhancement and improvement of established neighborhoods
- Strategies to reduce intensification pressure, particularly in “stable” and mostly built-out areas
- Strategies to ensure that development is compatible with the scale and context of the established neighborhood.
- Possibilities for additional density in economically distressed or transitional areas
- Retention of small neighborhood non-conforming commercial uses
- Access to small-scale activity centers that provide residents with essential services, shopping options and civic activities such as libraries and schools
- Incorporation of pedestrian, bike and public transportation alternatives
- Vehicle access and adequate parking in neighborhood activity centers.

The General Plan also calls for the retention of existing dwelling units wherever possible. It recognizes the chronic housing shortage in the East Bay and the need to conserve housing through neighborhood rehabilitation and preservation. It also expresses a commitment to higher quality design standards for all new residential construction. Its policies suggest that architectural diversity be encouraged. Many other policies relevant to the Zoning Update are included in the Plan, including policies in the Housing Element, the Safety Element, the Open Space/ Conservation/ Recreation (OSCAR) Element, and the Historic Preservation Element.

B. Existing Zoning

There are currently 12 residential base zones. Each zone has an associated set of development standards, and a list of facilities and activities that are permitted or conditionally permitted. Residential densities range from R-1, which allows one home per acre (one unit per 43,560 square feet of land area) to R-80, which allows 145 homes per acre (one unit per 300 square feet of land area).³ Overlay zones also apply to many residential properties. The overlays provide additional standards for parking, design review, historic preservation and protection of public views.

A list of the existing base zones and overlay zones is appears below. Table 1 (at the end of the report) provides a more detailed summary of the development standards associated with each zone. It also includes background data on the extent of each zone as it is currently mapped (number of parcels and acreage in each category).

12 existing residential zones

- R-1 One Acre Estate Residential Zone
- R-10 Estate Residential Zone
- R-20 Low Density Residential Zone
- R-30 One-Family Residential Zone
- R-35 Special One-Family Residential Zone
- R-36 Small Lot Residential Zone
- R-40 Garden Apartment Residential Zone
- R-50 Medium Density Residential Zone
- R-60 Medium-High Density Residential Zone
- R-70 High Density Residential Zone
- R-80 High-Rise Apartment Residential Zone
- R-90 Downtown Apartment Residential Zone (*in General Plan Central Business District)

7 existing (applicable) overlay zones

- S-4 Design Review Combining Zone Regulations
- S-7 Preservation Combining Zone
- S-10 Scenic Route Combining Zone
- S-11 Site Development and Design Review
- S-12 Residential Parking Combining Zone
- S-13 Mixed Use Combining Zone
- S-20 Historic Preservation District Combining Zone

Development standards regulated by existing zoning include height, setback, gross bulk, and building envelope. Lower height and greater setbacks are required in lower density zones while taller buildings with reduced setback requirements are permitted in higher density zones. In low to medium density residential zones, most civic uses such as recreation centers and churches are conditionally permitted while commercial activities are prohibited. The R-70 to R-90 zones allow more flexibility, permitting civic uses and conditionally permitting many commercial uses.

³ R-90 allows even higher densities—348 units per acre—but is not addressed here since it is only mapped in the Central Business District and adjacent area near Valdez Street.

III. Issues and Discussion Questions

The Technical Advisory Group (TAG) is being asked to discuss and provide feedback about the following list of key issues. The list is intended as a starting point for future discussion and is not intended to capture every topic that will need to be addressed. Each issue description includes supporting information, possible approaches and discussion question(s).

Issue 1: Framework of Residential Zoning Regulations

Probably the most basic question is what changes, if any, should be made to the hierarchy of the City's 12 residential zoning districts. Two problems are described below:

- **There are a relatively large number of base zones with the same essential standards, leading to redundancy.** There are twelve (12) residential base zones and seven (7) applicable overlay zones. It may be possible to consolidate some of these zones, or at simplify the regulations to eliminate redundancy. For example, R-30, R-35, R-36, and R-40 all have the same minimum lot size, width, accessory structure height, and maximum lot coverage standards. R-35, R-36, and R-40 all have the same front, side, and rear yard setbacks. R-30, R-35, and R-40 all have the same maximum heights for a primary building. (*See Table 2. Comparison of R-30, R-35, R-36, and R-40 Residential Zones* at the end of this report). It may be worthwhile to explore combining two or more of these zones—or at least exploring a code format where the same standards are not repeated again and again for each zone.
- **Existing residential zones do not correspond to the density ranges for associated General Plan land use classifications.** The General Plan category of “Mixed Housing Type” has a maximum density of 30 units per *gross* acre (which equates to 40 units per *net* acre).⁴ This is equivalent to one dwelling unit per 1,089 square feet, which is a higher density than is allowed in any of the zoning districts that correlate to Mixed Housing Type areas (R-35, R-36, R-40, R-50). The closest zone allowing the General Plan density is R-50, which conditionally permits 34.1 units per net acre or 1 unit per 1,250 square feet (depending on lot size). (*See Table 1. Summary of Residential General Plan Land Use Classifications and Corresponding Residential Zoning Districts, at the end of this report*).

Proposed Approach. It is anticipated that the residential zoning hierarchy will not change substantially through this process. As noted earlier in this report, most residentially zoned land is designated as “Maintain and Enhance” on the General Plan Strategy Diagram. Therefore, the approach envisioned by City staff includes the following:

⁴ *Gross density includes the area in streets and easements. Net density does not. Generally, net density is about 25 percent higher than gross density.*

- **Nomenclature changes.** The names of zoning districts will be changed so that the connection between the zoning district and associated General Plan land use classification is more apparent. For example, if there were three zones to implement the Hillside Residential General Plan land use classification, they might be named “Hillside Residential-1 (RH-1), Hillside Residential-2 (RH-2) and Hillside Residential-3 (RH-3)”. While the names are new, the minimum lot sizes would probably correlate somewhat to the existing R-1, R-10, and R-20 districts.
- **Formatting changes to make the regulations more user-friendly.** Similar to the format of the Housing and Business Mix Zones and the recently adopted industrial zones, the residential zoning regulation chapters will use a table format to show permitted and conditionally permitted uses rather than long lists.
- **Changes to make the density ranges in the zoning regulations consistent with the density ranges in the General Plan.** As described above, the “Mixed Housing Type Residential” General Plan classification allows a maximum density of one unit per 1,089 square feet, which is higher than what is allowed by the intended corresponding zones (R-35 to R-50). It may be worth exploring whether some areas currently zoned as R-50 should be in a zone that allows a density equivalent to the maximum referenced by the Mixed Housing Type General Plan land use classification under certain circumstances, such as if the parcel is located within a certain distance from a major corridor. Mapping of this zone would need to be done carefully and selectively, as it would effectively be an “upzoning” of existing R-50 properties. At the same time, there are many properties currently zoned as R-50 that are not appropriate for the density that is currently allowed by the General Plan (including areas currently developed with single family homes, and 2-4 unit buildings), which might be “downzoned” to a new designation that is more akin to R-40 as part of the zoning update process. Ultimately, any changes to the zoning in Mixed Housing Type areas must keep in mind that these areas are typically mapped in the heart of Oakland’s residential neighborhoods.
- **Eliminate redundancy where possible.** There may be opportunities to combine zones and reformat/reorganize the content to eliminate repetitive standards.

Issue 1 – Discussion Question:

- *Do you have any concerns or comments about the approach presented above?*

Issue 2: Development Standards.

The following three issues have been identified and are discussed below:

- 2a. Bulk, scale and/or footprint of new structures or additions is often incompatible with existing houses and context.
- 2b. In some areas, the zoning regulations do not match the existing development pattern.
- 2c. Existing zoning regulations have a variety of unintended negative effects on yard space, including excessive paving in some cases and unreasonable limits on building placement in other cases.

2a: Bulk, scale and/or footprint of new structures or additions is often incompatible with existing houses and context. This issue has slightly different dimensions in hillside areas and flatland areas. Each is addressed separately below.

Hillside Areas

In the past, there have been design and scale problems with new homes on lots in hillside areas (defined as lots with greater than 20% slope). Neighbors may perceive these homes as too massive or tall for the lot. Perceptions of bulk are compounded by steep topography, which can create the impression of homes looming over one another, blocking views and sunlight.

Current zoning regulations relating to hillside development do not adequately prevent the construction of bulky buildings that are out-of-scale buildings with their surrounding context. At the same time they are also too restrictive as evidenced by the high number of variances granted to exceed the 30-foot height limit; for example on parcels with 60% to 90% slope, grade level is not even reached with a project height of 30 feet.

Current zoning regulations include design review criteria requiring that a proposed design will be sensitive to the topography and landscape if situated on a hill. The guidelines also require the design and massing of proposed buildings to relate to the grade of the hill (O.M.C. Section 17.136.050 Regular design review criteria). How these criteria are applied is open to interpretation. Some guidance is provided by the City's *Interim Design Review Manual for One-and Two-Unit Residences* (adopted by the Planning Commission 6/15/05). While these guidelines help improve the design and massing of individual buildings, buildings with excessive bulk still occur. Depending on lot size, allowances for maximum building envelope are fairly generous and can result in structures that are much larger than those around them.

Currently, the zoning regulations include a maximum lot coverage requirement on lots with ***less than*** 20% slope, although there are no such requirements for lots with ***greater*** than 20% slope. Such limits could be considered in the new zoning code. When combined with height limits and setback requirements, maximum lot coverage requirements can provide an effective way to limit the overall bulk of a building.

Another way to control the size and bulk of residential buildings is to set limits on floor area ratio (FAR)⁵. For example, the City of Piedmont has a sliding scale for FAR depending on lot size, with more bulk allowed on smaller lots. In that city, lots smaller than 5,000 square feet have an FAR allowance of 0.55, lots between 5,000 and 10,000 square feet have an FAR allowance of 0.50, and lots greater than 10,000 square feet have an FAR allowance of 0.45.

Flatland Areas

Buildings with excessive bulk are also an issue in flatland neighborhoods, including mixed density areas as well as single family areas. The General Plan's vision for most of these areas (except those located along major transportation corridors and Downtown) is that they should be "maintained and enhanced." Policies for these areas strive to preserve established character and ensure the compatibility of infill development with the existing context.

Current zoning regulations include design review criteria requiring that a building's design should be "well related to the surrounding area in (its) setting, scale, bulk, height, materials, and texture" (O.M.C. Section 17.136.050 Regular design review criteria). Some guidance is provided by the City's *Interim Design Review Manual for One- and Two-Unit Residences* (adopted by the Planning Commission 6/15/05). While the design guidelines improve the design and massing of individual buildings, excessively large buildings may still result. Current zoning still permits a relatively large building envelope, depending on the size and dimensions of a lot. For example, the R-50 zone allows multiple units, with the number of allowable units varying depending on lot size. On long and narrow lots, the standards effectively result in long "motel-style" buildings oriented perpendicular to the street, with very little articulation on the facade. As noted above, Zones R-1 through R-50 have a maximum lot coverage requirement (for lots that are less than 20% slope). However, it is not uncommon for proposed buildings to be able to meet front, side, and rear yard setback requirements, as well as parking requirements and still not exceed the maximum lot coverage required. It is possible that existing maximum lot coverage requirements are too generous for lots of certain dimensions.

One possible solution would be to apply a bulk standard that currently applies only in hillside areas to flatland lots. This requirement states that any building more than 35 feet long must be setback at least 10 feet from the side property line or 20% of the lot width, whichever is greater.⁶ This is double the standard setback, which is 5 feet or 10% of the lot width. The increased side yard setback for "long" buildings effectively requires some articulation and can decrease perceived bulk.

⁵ FAR is the ratio of building area to lot area. An FAR of 0.5 would allow a 2,500 square foot home on a 5,000 square foot lot.

⁶ Requirement currently applies to lots in R-1, R-10, R-20, and R-30 with slopes over 20%. Only the portion of the building that exceeds the 35-foot length limit is affected.

2b. In some areas, the zoning regulations do not match the existing development pattern.

The General Plan allows construction of housing on “orphan lots” (lots that are below the currently allowed minimum area but which cannot be increased in size because of physical constraints) where the proposed unit meets all other applicable standards. This policy is important, because there are numerous areas of Oakland where the prevailing lot size is actually smaller than the minimum lot size allowed by zoning.

The R-30, R-35, R-36, and R-40 districts require that new lots are a minimum of 5,000 square feet and have a lot width of 45 feet. The corresponding setback regulations generally require front, side and rear setbacks of 20 feet, 5 feet and 15 feet, respectively. However, many of the existing lots in these zones are as small as 2,500 square feet and have a lot width of 25 feet. The required setbacks often cannot feasibly be met and variances are often required in build an addition or a new home. Some years ago, the City developed the R-36 zone to address this circumstance, allowing side yard setbacks of just 3 feet and front yard setbacks of just 10 feet on lots smaller than 4,000 square feet. It will be important to maintain provisions for small lots in the new zoning regulations to avoid an excessive number of Variance applications.

A parallel issue is that some areas of the City may be “overzoned” or “underzoned” based on what is actually on the ground. For example, some areas that are developed entirely with single family detached homes are zoned “R-50” while some areas with multi-story apartment buildings are zoned R-30. The General Plan Map identifies and attempts to correct some of these discrepancies, but anomalies (and in some cases, map errors) persist. These discrepancies will need to be addressed through the new zoning maps, rather than through text changes.

2c: Existing zoning regulations have a variety of unintended negative effects on yard space, including excessive paving in some cases and unreasonable limits on building placement in other.

Two problems are noted here. First, the General Plan states that adequate off-street parking should be provided as development occurs, but that its visual prominence should be minimized. Currently all R-Zones allow paving no more than 50 percent of a property’s required front yard setback. There are no restrictions on paving back yards or side yards, however. This can cause aesthetic problems, as well as environmental and stormwater runoff problems. This is particularly problematic on multi-family lots where backyards or side yards may become parking lots, with little or no visual relief or greenery.

Second, current zoning regulations for the R-1 through R-30 zoning districts require that lots over 100 feet long must add ½-foot to the required rear yard setback for every foot over 100 feet up to a maximum of a 80 feet. In other words, a lot that is 150 feet “deep” has a rear setback requirement of 45 feet instead of 20 feet.⁷ The original purpose for this regulation may have been a desire to push development towards the front of long lots in order to

⁷ $(20') + [(150' - 100') * (.5)] = 45'$

maximize backyards and create more privacy between lots. However, many houses on deep lots were built in the middle of the lot or fairly close to the required rear setback. Variances are often required if the homeowner wants to build a rear addition or secondary unit. In the case of second units, the rear yard would be the preferred location to minimize its visual prominence. Yet, the “sliding scale” setback may require that the unit be placed in front of (or on top of) the primary unit. The bottom line is that a 40-foot to 80-foot rear setback seems excessive when the base zone rear setback is just 20 feet.

Issue 2 - Discussion Questions:

- ***What do you think about the bulk, scale, massing, setback and height issues raised here? Are there additional issues that should be addressed that relate to bulk, scale massing, setbacks or height?***

Issue 3: New development in older neighborhoods is often perceived as incompatible with the prevailing historic context.

The Historic Preservation Element of the General Plan directs the City to “preserve, protect, enhance, perpetuate, use and prevent the unnecessary destruction or impairment of properties or physical features of special character or special historic, cultural, educational, architectural or aesthetic interest or value.” The City implements this goal through several regulatory tools. The highest levels of review and protection are given to properties or areas that are Designated Historic Properties (DHPs) and/or are on the Oakland Register of Historic Resources. DHPs consist of those properties that have been officially designated as Landmarks or part of a Preservation District. The Local Register is a list that recognizes the city's most important buildings and districts, whether or not they have been designated by the Landmarks Board; they generally consist of buildings that have been given a rating of “A” or “B” as part of the City’s Cultural Heritage Survey.⁸ For properties that are not formally designated, the City of Oakland has developed an inventory of “Potentially Designated Historic Properties” (PDHPs). The list is extensive and includes more than 20 percent of all structures in Oakland. Many PDHPs are not individually distinguished but collectively have a character that defines the ambiance of a neighborhood. The higher ranked PDHPs are subject to special design review requirements.

Designation as a Landmark or Preservation District is reserved for the highest quality historic properties. The designation process requires approval by the Landmarks Preservation Advisory Board (LPAB), the Planning

⁸ *All properties in Oakland have been at least preliminarily surveyed and given a rating for their relative historical or architectural value and given ratings of A (highest importance) to E (least importance) and 1 through 3 to indicate “district” status for larger areas. Properties can have “existing” and “contingency” ratings if they have been altered to indicate what rating the property would have if restored.*

Commission, the City Council, and in practice, also requires significant property-owner support. Design review for a property designated as a Landmark (or with the S-7 preservation overlay zone) generally must go through the LPAB; design review for properties with the S-20 preservation overlay zone can be handled administratively by Planning and Zoning staff with potential referral to the LPAB if needed. Under the provisions of the California Environmental Quality Act (CEQA), projects that may affect DHPs or properties on the Local Register also require environmental evaluation, including the possible requirement to prepare an Environmental Impact Report (EIR) in order to analyze specific effects, demonstrate alternatives, and identify mitigation measures.

PDHPs (those with an existing rating of “C” or lower or *any* contingency rating), and all other residential properties in Oakland, are subject to administrative staff review according to established design review criteria for neighborhood context and compatibility. These criteria focus on the relationship of the front 40 feet of a property to the “context” area, as outlined in the City’s *Design Review Manual for One- and Two-Unit Residences* (adopted 6/15/05). In most cases, the “context area” is defined as the five lots on either side of the project site and the ten closest lots across the street (exceptions to this definition apply). At least half of the surrounding houses must exhibit similar (positive) characteristics in order for a context issue to apply. Characteristics not considered to be positive (e.g. dominance of open parking in the front) are not included as part of the context consideration.

Residents in some of the city’s older neighborhoods have expressed concern that new development does not fit the established context and that additional alterations to existing buildings have been done inappropriately . There is also a concern that there should be additional design review guidelines for PDHPs including those with contingency ratings of “c” or below since this represents a large number of structures that “hang in the balance” of retaining their character-defining features; alteration or addition of these structures might have a substantial impact. For example, in the San Antonio District east of Lake Merritt, much of the housing consists of bungalows from the 1910s and 1920s, Victorian cottages, and pre-war apartment buildings. The overall mix is eclectic, and the multiple styles do not rise to the level of “Landmark” or preservation district status, and some buildings have been previously altered. The issue for these areas is that the approximately 1-block “context area” set by the current design guidelines may be too small.

Issue 3 – Discussion Question:

- ***What steps should the City consider to recognize and protect neighborhood context and identity?***

Issue 4: Many of Oakland’s residential areas were developed before zoning, and as a result have a small amount of non-residential uses. Some of these uses are currently “non-conforming” and may create problems; others may be compatible and are consistent with General Plan goals. In addition, new non-conformities may be created when zoning regulations are changed.

Several challenges are addressed below related to the issue of existing non-conforming uses or creating new non-conforming uses as a result of changes to the zoning regulations.

4a: Non-Conforming Uses and Non-Conforming Facilities

The City’s Planning Code currently has a chapter that deals with non-conforming facilities and uses (O.M.C. Chapter 17.114). A nonconforming *use* refers to a use that is not permitted where it is located, or that does not conform to the off-street parking or loading requirements, performance standards, or other requirements applying to such uses. Generally, these uses can be maintained but cannot be expanded. A nonconforming *facility* refers to a facility that is not permitted where it is located or does not conform to the density, floor-area ratio, height, yard, court, buffering, landscaping or screening, or usable open space requirements. Generally, no additional units can be created but existing units can be made larger.

New nonconformities can be created when zoning regulations are changed. Provided that such uses and facilities were legally permitted at the time they were established, these uses may remain or be “grandfathered-in”. However, if the activity is discontinued for more than a year it loses its “grandfathered-in” status and cannot be reestablished. The General Plan states that legal non-conforming residential structures may be allowed to rebuild at their original density in instances of catastrophic damage or destruction. Rebuilding is subject to development standards and must be responsive to neighborhood concerns. Existing zoning supports these provisions.

When the zoning map is amended to match the General Plan, new non-conformities may result. Some areas may be downzoned where the General Plan calls for less density than existing zoning allows. There may be scattered apartment buildings in these areas that would not be permitted under the new zoning. These buildings will become non-conforming *facilities* and will not be able to add units. In other instances nonconforming *activities* will be created where commercially zoned land is rezoned as residential, particularly along corridor streets. For instance auto body shops on International Boulevard that are permitted under current C-40 zoning may become non-conforming after these areas are rezoned for high density housing. This issue will be addressed by the Commercial Technical Advisory Group.

4b: Neighborhood Stores and Small Commercial Uses

Some residentially zoned neighborhoods in Oakland include small commercial uses such as neighborhood stores, dental offices, and “mom and pop” businesses. This is a remnant of the City’s original development pattern, and

recalls a time when most residents walked or took streetcars, and shopped at businesses near their homes. The General Plan recognizes this pattern and even encourages a limited number of small-scale, pedestrian- and neighborhood-oriented commercial uses within primarily residential areas, particularly those areas classified as Mixed Housing Type.

The future of these small commercial uses is in question. Some are considered legal non-conforming uses. Some are vacant or have been converted to other activities. Others have actually been zoned for commercial use, and represent tiny “pockets” of C-5 or C-10 zoning in otherwise residential areas. Some of the parcels in the latter category have been replaced with modern uses such as drive-up convenience stores and gas stations. In a few cases, this has created compatibility issues with adjacent development and problems for nearby neighbors.

The use regulations and development standards for Oakland’s neighborhoods will need to recognize the presence of hundreds of small-scale, isolated commercial uses. The City recognizes that these businesses provide services to their neighborhoods and a livelihood for their owners. However, these benefits must be balanced by recognizing the potential for negative impacts, such as traffic, parking, odor, loitering, and noise. This balance is typically achieved by regulating through a conditional use permit size, parking, hours of operation, and buffering from neighboring uses.

Presently, convenience markets and services are not permitted “by right” in any of the city’s residential zones. They are allowed with a conditional use permit in the R-80 and R-90 zones. They are not allowed in R-70 or any of the lower density zones, even with a use permit. In such areas, these uses are considered legal and non-conforming.

There are two basic ways to approach the regulation of commercial uses in residential areas. The first is to actually zone these areas for commercial use, using a district equivalent to the existing C-5 or C-10 district. The second is to develop use regulations for residential areas that allow commercial uses and include development standards and limitations for commercial uses. In the former case, small stores could be permitted uses in locations where they currently exist. In the latter case, small stores could be conditionally permitted where a specific set of locational criteria are met. Conditional use permits would need to address issues such as parking, signage, and buffering.

Other cities have tackled this issue by allowing a limited number of commercial uses in residential zones, subject to strict limitations. In Portland, retail, medical services, offices, and restaurants, are permitted in multifamily residential zones, although in some cases only if the site is within 1,000 feet of a light rail station. Floor area limits are generally set at 20 percent of the total development floor area, and in case of conversions, no residential floor area may be lost. In Seattle, ground floor commercial uses are permitted in Mid-Rise residential zones (equivalent to Oakland’s R-70), as long as they are within a 1-block radius of a commercial zone. In High-Rise residential zones, these uses are permitted provided they are not intended for customers arriving by car. As such, parking is not required and no floor area limit is specified.

4c: Commercial Uses Along Secondary Commercial Corridors

In addition to small pockets of commercial uses in existing residential zones there are also areas of continuous commercial use along arterial streets, or “secondary commercial corridors” that in areas classified as Mixed Housing Type Residential by the General Plan. These arterials include High, Market and 98th Streets, Shattuck, Fruitvale and Seminary Avenues, among others; many of these arterials have bus lines running along them. Some of these areas are currently zoned as residential, and other areas are zoned as C-5 Neighborhood Commercial, C-10 Local Retail Commercial, or C-20 Shopping Center Commercial. Currently, residential zones do not allow any commercial uses, except in the higher density zones (R-70, R-80, and R-90) where some commercial uses are permitted with the granting of a conditional use permit. Changing zoning from a commercial to a residential zone would make existing commercial uses non-conforming, which would make it more difficult for new businesses to replace old ones or to fill vacant commercial buildings. The future sustainability of the secondary commercial corridor could be threatened if new commercial uses are not allowed or extremely limited by requiring a conditional use permit.

One possible alternative would be to rezone the secondary commercial corridors to a zone that primarily allows residential uses but also allows a very limited amount of commercial uses. A residential density approaching or equal to the maximum density allowed for the Mixed Housing Type Residential General Plan classification of 1 unit per 1,089 square feet could be considered for this zone under certain conditions, such as proximity to transit. In this way, a higher density would be allowed along/near transit arterials, away from the core of residential areas.

4d: Formerly Industrial Uses in Residential Zones

There are also nonconforming industrial uses in some residential zones. Currently, conversion of an existing industrial or commercial building into “Joint Living and Work Quarters” (JLWQ) is allowed in any part of the city that has a Residential General Plan land use classification. The intent of allowing such conversions is to provide a viable reuse alternative and to prevent nonconforming industrial buildings from sitting vacant, since establishing new industrial uses would not be allowed. A building that is converted to a JLWQ is considered a commercial facility, since the majority of the unit must be used for a commercial purpose (2/3 of the unit must be devoted to the commercial use and 1/3 of the unit can be used for residential use). Since the facility is considered to be commercial, parking and open space standards associated with the base residential zone do not apply to the conversion, resulting in the following three issues:

- the number of units is based on square footage and there are no density limits for the number of commercial units allowed in a zone, so many of these projects can result in much higher densities than the base residential zone would otherwise allow;
- no new parking is required for the created units, which can be a problem for the neighborhood if no parking existed on the property and many new units are created;

- no private open space is required so conversions can be approved that provide no open space for each unit.

In the case when the building is a Potentially Designated Historic Property (PDHP), these issues could be considered a worthwhile tradeoff to save a historic building that may have not have an economically feasible alternative to demolition. However, if historic merit is not an issue, there may be occasions when it would be preferable for a nonconforming industrial/commercial building to be demolished and have a new use that conforms to the residential zone (in terms of use, density, etc.) developed in its place.

4e: Converting Homes Into Non-Residential or Mixed Use Structures

With the advent of the internet, a growing percentage of residents are telecommuting and running businesses from their homes. This is consistent with good planning practice, insofar as it reduces vehicle miles travels and helps achieve congestion management and air quality goals. Oakland's zoning regulations currently include provisions for home-based businesses. Several nonresidential activities are allowed as a "home occupation" if the uses are ***accessory*** to the primary (residential) use. The home occupation must be performed within a living unit or within an attached garage by an occupant of the living unit. The person performing the home occupation is not allowed to have any employees come to work at his/her home.⁹ There are limitations and prohibitions in terms of traffic generation, articles sold, storage, signage and other general nuisance concerns.

Other cities, such as Seattle and Portland, allow home occupations with employees. Seattle and Portland both recognize two different types of Home Occupations: Type "A" is for employees who work at home and Type "B" allows for one non-resident employee and also allows customers to come to the site. Type B permits require noticing of neighbors, as well as a two-year renewal that can be revoked. Portland also limits the number of customers who can come to the home to eight persons. The work can also take place in a separate accessory building. Other cities have limited customers to "by appointment only" to avoid potential impacts from drop-in traffic.

A separate but related issue relates to people who may want to use their homes as small lodging or bed and breakfast-type uses. Currently, the City's zoning regulations limit the occupancy of any dwelling unit to a person/family and "not more than three boarders, roomers, or lodgers where access to all rooms occupied by such boarders, roomers, or lodgers is had through the main entrance of the dwelling unit" (O.M.C. Section 17.102.260 Occupancy of a dwelling unit). A bed and breakfast with more than three rooms would be considered a "hotel" and would fall under the use category of "Transient Habitation Commercial Activities." These uses are only allowed in Downtown Oakland, and require a conditional use permit under existing zoning regulations.

⁹ *Medical service practitioners are allowed to have one assistant as an employee.*

Issue 4 – Discussion Questions:

- ***Should small commercial activities, such as grocery stores, cafes, and retail shops, be conditionally permitted in residential zones? Should they be restricted to existing buildings originally designed for commercial use, or should new construction or conversion of other buildings be allowed in certain circumstances?***
- ***Should there be separate zones mapped within residential areas, either separate local shopping zones, such as the existing C-5 and C-10 or a new primarily residential zone that allows limited commercial?***
- ***Should changes be made to how industrial buildings are treated in residential zones?***
- ***Should changes be made in the regulations for Bed and Breakfasts and Home-Based Businesses?***

Issue 5: Adequate design standards are lacking for high density housing located in the Urban Residential land use classification

The City's current high density high density housing design standards were adopted in 1982, and no longer adequately address the issues resulting from current development applications. Having design standards that are outdated and ineffective has resulted in two major problems. One problem is buildings that are out of scale with the existing or desired neighborhood character. The second problem relates to the absence of effective design review criteria and inadequate guidance for applicants prior to plan submittal which often results in a poor quality initial design submittal, a longer application process and more opposition and conflict from neighbors.

Oakland's zoning regulations include density standards and setback requirements which have a significant impact on building and site design. In addition, Oakland adopted *Design Review Criteria for High Density Housing* in 1982. Ideally, zoning regulations and design review criteria should provide a process for submitting development applications, as well as objective criteria to evaluate applications. However, the *Design Review Criteria for High Density Housing* inadequately addresses the design of high density buildings. It contains poor examples of high quality building design and does not provide clear, objective design review criteria. Further elaboration on current design principles and innovative techniques are needed to increase the usefulness and applicability of the document.

Although design review guidelines are beyond the scope of the residential zoning update, development of elements design review criteria and a predictable application submittal and evaluation process should be folded into the update of the zoning regulations, possibly through approaches such as form-based zoning.

Issue 5 – Discussion Question:

- ***What are local examples of well-designed high density development?***