

**City of Oakland Zoning Update  
Commercial/Corridor Technical Advisory Group  
Commercial/Corridor Zoning Issue Paper  
Meeting #1: December 10, 2008**

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**I. PURPOSE AND SCOPE OF ISSUE PAPER**

This issue paper has been prepared to assist the Commercial/Corridor Zoning Technical Advisory Group (TAG) in its dialogue with staff about new zoning for Oakland's commercial areas and transportation corridors. This TAG, along with a separate Residential TAG, is comprised of volunteer community members representing a balanced and wide variety of interests (i.e. property owners, residents, business owners, advocates and developers), and different geographic areas of the City. The TAG is intended to act as a sounding board for technical zoning issues brought up by staff and the community. Meetings of the TAG will alternate with larger community meetings taking place over the next six months. In making their recommendations, staff will receive input from a variety of sources, including the TAGs; City, State, and regional land use policies; the wider community; and the Planning Commission.

This issue paper is intended to guide the discussion of the first meeting of the TAG. The paper identifies and discusses development issues in the commercial areas and along major transportation corridors of Oakland. Policy recommendations regarding these issues, and any other issues that are identified by the TAG, the community, or other sources, will be addressed in future reports and meetings.

This paper provides background for the rezoning effort, which uses the Oakland General Plan Land Use and Transportation Element (LUTE) as its basis, and addresses the following general development topics:

- Design and development standards;
- Activities (Uses); and
- Historic resources

Each topic contains issue questions for discussion by the TAG, summarized below:

- Issue 1:** What factors should determine the allowed size and intensity of development in different corridor and commercial areas?
- Issue 2:** How can zoning regulations and design standards be general enough to apply citywide, yet be able to support and enhance the particular characteristics of individual commercial districts?
- Issue 3:** How can zoning encourage high-quality, pedestrian-oriented ground floors?
- Issue 4:** How can zoning regulations reduce the noise and privacy impacts on multi-unit residential development that will locate on the corridors, while still maintaining a connection to the streetfront?

- Issue 5:** How can new high-density development on corridors transition towards adjacent lower density residential areas?
- Issue 6:** How should zoning regulations balance LUTE policies which encourage development along the corridors and the need for open space in private development?
- Issue 7:** How should the activities regulations in the zoning ordinance balance market realities and the goals of the LUTE?
- Issue 8:** How should commercial activities be regulated in areas with an Urban Residential LUTE designation?
- Issue 9:** Should commercial facilities be required on the ground floor of new construction in the Neighborhood Center Mixed Use and the Community Commercial Urban Residential LUTE designation?
- Issue 10:** What regulations should apply to automotive repair activities in the Community Commercial classification?
- Issue 11:** How should the zoning ordinance balance policies of the Historic Preservation Element of the General Plan and policies in the Land Use and Transportation Element of the General Plan when they are in conflict?

## **II. BACKGROUND**

### **A. Rezoning Process**

The Land Use and Transportation Element of the Oakland General Plan (LUTE) and the accompanying Land Use Diagram that illustrates General Plan designations (Attachment A) were adopted in 1998. The broad development policies described in the Element are meant to be implemented by parcel-specific zoning regulations governing maximum height, minimum setbacks, allowed businesses and activities, maximum density, and other physical attributes. To be adopted, these zoning regulations must be recommended by the Planning Commission as amendments to the Oakland Planning Code, and subsequently approved by the City Council.

The City Council has already approved new zoning districts that implement four LUTE land use designations: Open Space, Housing and Business Mix, Business Mix, and General Industry and Transportation.

New commercial and residential zones are targeted for adoption by the City Council in late 2009. Alignment of the Planning Code (zoning regulations) with the LUTE is a top priority of both the Mayor and the City Council. It is an important step towards making the City more attractive, revitalizing our neighborhoods, and creating job and housing opportunities for Oakland residents and businesses.

The first phase (Phase 1) of the commercial and residential rezoning process will create “base zones.” A base zone is a standard zoning district that can be applied to several areas of a City. Approximately one to four base zones will implement each LUTE designation on the corridors (see below for a description of these LUTE designations). A base zone can be combined with an “overlay zone”. An overlay zone provides special regulations to address issues for a specific area. The first phase of the rezoning process will only include overlays for commercial districts such as Rockridge, Montclair, or Temescal that either already have specific zoning designed for their areas or have been involved in a City-sponsored rezoning process. The second phase (Phase 2) of the process will include development of additional overlay zones or other zoning regulations for areas requiring special regulatory treatment. Phase 2 will begin after City Council adoption of the Phase 1 proposal. Identification of possible second phase overlay designations or regulations will occur throughout the rezoning process.

### **B. Regulatory Setting for Commercial Areas and Transportation Corridors**

There are several different sources for policies and regulations that govern how zoning should be applied in commercial areas and the transportation corridors. These are described below.

#### *1. Land Use and Transportation Element of the General Plan (LUTE)*

The most important document that provides policy direction for zoning on the corridors and commercial areas is the LUTE. The LUTE contains long-term development goals, objectives, and policies addressing a range of required topics. The LUTE directs much of the future growth of the city to the transportation corridors—particularly those that are close to BART and AC Transit service, such as San Pablo Avenue, International Boulevard and Bancroft Avenue—and generally maintains the character of lower density residential neighborhoods. The LUTE states that although there are areas along the corridors that have a vital mix of housing, services, and

retail opportunities, significant parts are characterized by underutilization, empty storefronts and dilapidated buildings.

The document envisions a transformation of the City's less-utilized corridors into mixed use areas with concentrations of pedestrian-oriented, commercial and civic neighborhoods joined by segments of multifamily housing. The LUTE further envisions these commercial and civic areas to be "Neighborhood Activity Centers" that are focal points of the community with diverse businesses; boulevards with attractive, vibrant and walkable street fronts; civic uses; and social activities.

The LUTE created several commercial/corridor land use designations, illustrating the type and intensity of allowable future development in the city. These land use designations give broad policy direction for how to guide future development in Oakland's commercial/corridor areas, and are mapped throughout the city. Each permits some degree of housing. Details of the intention and desired character of each designation are described below:

- **Neighborhood Center Mixed Use** areas support adjacent neighborhoods by providing mixes of retail shops, services, housing and public facilities. These areas are typically smaller scale, have a pedestrian orientation and continuous street frontage; they can also include education, cultural or entertainment uses. Neighborhood Center Mixed Use permits housing up to 125 units per gross acre, and a Floor Area Ratio (FAR)<sup>1</sup> of 4.0.

*Examples: Fruitvale, Rockridge, Montclair, Laurel commercial Districts.*

- **Community Commercial** areas serve the city's major shopping, service and employment needs, and often include shopping centers. The areas may include larger scale retail and commercial uses, such as auto related services, businesses and personal services, health services and medical uses. Community Commercial permits housing up to 125 units per gross acre, and an FAR<sup>1</sup> of 5.0.

*Examples: Upper Broadway, Eastmont Mall, High/International Commercial District,*

- **Regional Commercial** is designated in areas that enable Oakland to capitalize on potential large scale retail and commercial development opportunities, requiring significant parking areas, and adjacent to regional transportation facilities, such as the airport and the I-880 freeway. Regional Commercial permits housing up to 125 units per gross acre in a mixed use project, and the maximum FAR is 4.0.

*Examples: Hegenberger Road/Airport Area.*

- The **Urban Residential** land use designation corresponds to higher density residential neighborhoods. This issue paper focuses only on the Urban Residential areas mapped on

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<sup>1</sup> Floor area ratio (FAR) is an indicator of the size or mass of a building. This mass is measured through a ratio of square footage of construction on a lot divided by the area of the lot. For example, if a lot is 10,000 square feet and the building on the lot is 40,000 square feet, then the FAR for that lot is 4.0.

the major transportation corridors of the City that currently have a commercial zoning designation. The desired character for this classification is primarily multi-unit, mid-rise to high-rise residential buildings with some ground floor commercial, in locations with good access to transportation and other services. Urban Residential areas connect commercial nodes on the corridors with either a Neighborhood Center Mixed Use or Community Commercial designation.

*Examples: International between 15<sup>th</sup> and 22<sup>nd</sup> Avenues, San Pablo between West Grand and 27<sup>th</sup> Street, Bancroft/Foothill area east of 66<sup>th</sup> Avenue.*

As mentioned, this rezoning process will produce approximately one to four zoning designations for each LUTE category.

### *2. The Historic Preservation Element of the General Plan*

In 1994, the City of Oakland adopted a Historic Preservation Element as part of its General Plan. The Element is based on two broad goals: to "use historic preservation to foster economic vitality and quality of life" and to "prevent unnecessary destruction of properties of special historical, cultural, and aesthetic value." The Element spells out these goals through policies and actions that govern how the City will treat historic properties and neighborhoods. The document has several policies regarding the demolition of historic buildings and the construction of new buildings in historic neighborhoods. A number of these historic resources are located on the corridors and commercial districts.

### *3. Regional Regulations*

The Association of Bay Area Governments (ABAG) creates the Regional Housing Needs Allocation (RHNA), a total number of new housing units that need to be built in the Bay Area to meet expected population demand between 2009 and 2014. The State requires each region to produce an RHNA based on state policies to promote infill development, environmental and agricultural protection, and efficient development patterns. The RHNA requires Oakland to create capacity for approximately 15,000 units between 2009 and 2014. These regional policies, as reflected in the RHNA projections, assume that there will be increased housing growth in existing urbanized areas, near transit stations and along major public transportation corridors such as those in Oakland.

### *4. State Regulations*

An important state law related to land use in Oakland's commercial corridors is the mandate that every city have a current Housing Element, which is updated every five years with the latest population projections for how many new units of housing are expected to be built or renovated in order to house the city's newest residents. This number, the RHNA, is described in section 3, above.

Another important new state law which will effect development on the commercial corridors of Oakland is SB375, which requires that ABAG and the Metropolitan Transportation Commission (MTC) adopt, as part of their regional transportation plan, a "sustainable community strategy" that will meet the region's target for reducing Greenhouse gas emissions (GHG). These strategies

would help reduce automobile travel, a major contributor to GHG in Oakland, by promoting smart growth principles such as:

- Development near public transit;
- Construction of mixed use projects; and
- Creation of housing that is affordable in the inner Bay Area to help reduce new housing developments in outlying areas with cheaper land.

This new law creates incentives for implementing the sustainable community strategies by allocating federal transportation funds only to projects that are consistent with the emissions reduction goals. It does this by allowing projects that are shown to conform to the sustainable community strategy (and therefore contribute to GHG reduction) to have a more streamlined environmental review process. By concentrating development along the transportation corridors, Oakland's LUTE already anticipated many of these smart growth principles back in 1998.

### **C. Other City Processes**

Zoning is only one tool that cities have to improve the success and appearance its commercial corridors. Zoning concentrates on regulations that affect the appearance, location, and uses related to development on private property. Any comprehensive change to a neighborhood includes other efforts such as infrastructure and streetscape improvements, design guidelines, retail strategies, specific plans, and area plans. Other strategies and plans that are currently being developed by the City include:

- **Retail Enhancement Strategy:** The City recently commissioned the Conley Consulting Group of Oakland to draft a Retail Enhancement Strategy for the revitalization of the City's commercial areas, particularly focusing on the need to recapture retail dollars spent by Oakland residents outside City limits. The City Council considered the Strategy in July, 2008. The strategy identified and categorized 53 different "retail nodes" among the City's commercial areas. Each "node" was ranked: "Functioning well"; "Expand"; "Reposition" and "Improve." While these 53 "nodes" do not represent all the commercial areas of the City, staff will carefully consider the proposed zoning districts with the recommendations from the Conley Report.
- **Oakland Redevelopment Agency (ORA):** ORA updates redevelopment plans every five years, which fund improvements to infrastructure, creation of new opportunities for affordable housing, and other civic goals in the areas of the Coliseum, Central City East, West Oakland and Central Business District Redevelopment Areas. The Agency's façade improvement program invests moneys into assistance for property owners in these areas to renovate their storefronts.
- **Specific Plans:** In 2008, the City has started the public process of developing three different Specific Plans, which, when adopted by the City Council, will act in lieu of the zoning for the areas in the plan. These locations are: Broadway Auto Row, the areas around Lake Merritt BART station and the Central Estuary area from 19<sup>th</sup> to 50<sup>th</sup> Avenues, between the I-880 Freeway to the east and the water to the west.

- Green Building initiative: the City is in the process of recommending mandatory Green Building regulations for all construction in the City, to be phased in over several years.

#### **D. Existing Zoning**

There are 20 different commercial zoning districts in Oakland and three high density residential zones on the corridors. See Attachment B for a table that summarizes some of the regulations that apply to these zoning districts. Many of the commercial zones are redundant, overly complex, and do not address design issues, or lack any design review procedure for many types of new development. The work of the zoning update process is to create new zoning districts based on the LUTE designations (see above), which, after a public process of development and revision, will reduce the number and redundancy of zoning districts, while preserving the individual character of the city's commercial areas and streets.

### III. ISSUES

#### A. Design and Development Standards

The LUTE includes a vision for the visual character of each of the different commercial and corridor designations. The vision is intended to identify, create, maintain or enhance the character of the City's existing commercial and corridor areas.

The General Plan envisions the **Neighborhood Center Mixed Use** areas as small-scale commercial districts. Development should be pedestrian-friendly, so buildings are oriented towards the street, are located at or near the front of the property line, with a lot of ground floor window area.



*Telegraph Avenue*

The General Plan envisions the **Community Commercial** areas as accommodating larger scale development than would normally be found in neighborhood centers. Development should be pedestrian friendly, but the scale and nature of the retail and other commercial activities may also require more automobile access. See images of Neighborhood Center Mixed Use areas below.



*Upper Broadway Corridor*

The General Plan intends the **Regional Commercial** areas to accommodate large scale, regional commercial destinations. Regional Commercial areas should be able to accommodate the functional and physical requirements of regional retail uses, which may include large areas for automobile parking, service areas for large trucks and large bulky buildings. However these needs should be balanced with the need to enhance the overall image and commercial vitality of these districts and create a pedestrian friendly environment.



*View down Hegenberger Road*

The General Plan envisions **Urban Residential** areas as high-density residential development that may also contain some ground-floor commercial. Development should include proper building and site design to provide a quality living environment for residents and an attractive and activated streetfront. At the same time, the high-density residential development on corridors should be sensitive to adjacent to lower-density housing.



*High-density residential development in Oakland*

**Issue 1: What factors should determine the allowed size and intensity of development in different corridor and commercial areas?**

In general, the size and intensity of buildings are measured in three ways in a zoning ordinance: floor area ration (FAR, see definition in footnote on page 4), residential density and height. Although the LUTE does not specifically identify maximum heights, the allowed height of a building is generally related to the maximum FAR and density allowed on a lot; a building with less floor area will generally require a building with less height than a building with greater floor area.

The following table describes the maximum residential density and FAR for each LUTE land use designation:

<b>LUTE Designation</b>	<b>Maximum Residential Density</b>	<b>Maximum FAR</b>
<b>Urban Residential</b>	1 residential unit per 261 sf of lot area (125 units per gross acre) <sup>2</sup>	NA
<b>Neighborhood Center Mixed Use</b>	1 residential unit per 261 sf of lot area (125 units per gross acre) <sup>1</sup>	4.0
<b>Community Commercial</b>	1 residential unit per 261 sf of lot area (125 units per gross acre) <sup>1</sup>	5.0
<b>Regional Commercial</b>	1 residential unit per 261 sf of lot area (125 units per gross acre) <sup>1</sup>	4.0

Although the height of buildings can significantly vary depending on the size of floorplates and living units, an FAR of 4.0 generally produces a building of about five- to eight-stories; an FAR of 5.0 generally results in an approximately six- to eight-story building on a lot; and a density of one unit per 261 square feet of lot area translates to an approximately five- to eight-story building.

The maximum figures described above are not meant to apply to all areas within a designation. For instance, not all zones with a Neighborhood Center Mixed Use designation must have a maximum FAR of 4.0. Rather, this maximum is meant to be applied to the areas where intense construction is most appropriate. The zones proposed for this designation may have a range of maximums depending on their development context. In some areas, an appropriate maximum FAR may be well below 4.0

One issue to be considered through the rezoning process is what size buildings should be permitted in the various contexts on each corridor and commercial area. The zoning

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<sup>2</sup> The LUTE states that each of these designations allows a maximum of 125 units per gross acre. This number translates to one unit per 261 square feet of lot area through the following method. Assuming that 75 percent of land in any given area is developable (this includes all land exclusive of parks, open space, and streets), 125 unit per gross translates into 166.67 units per net acre. Dividing 43,560 (the number of square feet in an acre) by 166.67 is approximately one unit per 261 square feet of lot area.

update process will utilize and balance a set of factors in determining what development intensities should apply to which areas. Topics for consideration may include:

- The width of a street. In general, urban environments depend on buildings to provide the appropriate “walls” to define the street space. Buildings facing each other across a wide street should, generally, have a larger scale to properly unify or define the public space. Conversely, buildings with too great a perceived height can overwhelm and loom over a narrow street. Therefore, the appropriate scale of a building depends, in part, on the width of the public space between buildings on opposite sides of a street.
- Corner lots. Larger buildings on corners are often appropriate because they represent a crossroads in the street network, set the character of a neighborhood, and frame the streetscape. Further, taller buildings are required to frame and provide “walls” to the greater pavement space found at intersections.
- Context of historic buildings. The regulations should take into account the context of existing buildings in a historic neighborhood with a consistent height context. New buildings of significantly greater scale than existing buildings may lower the historic value of a neighborhood.
- Locations near transit. Greater building height and intensity should be considered where there are several AC Transit lines or a BART station. This is consistent with LUTE policies regarding maximizing transit use by placing transit customers near transit options.
- Shadows and transitions to residential neighborhoods. Many of the corridors in Oakland back up to low density residential neighborhoods. Therefore, building scale should consider the possible transitional and shadowing effects on these neighborhoods.
- Economic feasibility. Economic feasibility should be considered when establishing building intensity regulations. The land use vision of the LUTE cannot be accomplished without a financial incentive to construct new buildings (i.e. enabling property owners to achieve sufficient intensity on their property to make development viable).
- Density required to support commercial activity. Customers are required to support the commercial nodes envisioned by the LUTE. Therefore, the zoning code should allow enough development to support neighborhood-serving commercial businesses.
- Location of Parks. More residential development may be appropriate near parks for the use of new residents.

**Issue 2: How can zoning regulations and design standards be general enough to apply citywide, yet be able to support and enhance the particular characteristics of individual commercial districts?**

The LUTE describes a vision for the character of development in the different Commercial corridor designations. However, even within each commercial designation there are areas of the City with distinct development characteristics. For example, the areas classified as Neighborhood Center Mixed Use include a wide variety of commercial areas with a variety of existing street characteristics. Centers at Thornhill Drive, Telegraph Avenue, Piedmont Avenue, Grand Avenue and Fruitvale Avenue are illustrative of the major variations. Areas designated as Community Commercial include a mix of linear and non-linear commercial districts. The linear districts, such as along Telegraph Avenue, Broadway, International Boulevard, San Pablo Avenue, have a development pattern similar to areas classified as Neighborhood Center Mixed Use. The non-linear Community Commercial districts, such as Rockridge Center, Eastmont Mall and Foothill Square often have a conventional shopping center pattern, in which buildings are clustered and ringed by large shared parking areas. The area classified as Regional Commercial includes a “big-box” center near the Emeryville border that accommodates larger-scale merchandisers as part of an overall project master plan. It also includes the area near Hegenberger and the Coliseum, which has a mix of sites, building designs, and landscaping patterns. There are also two types of Urban Residential developments. Some Urban Residential areas have many existing commercial uses while others have more of an exclusively residential character.

Each LUTE classification can become multiple (one to four) base zones to address some of the variation within each of the classifications. The base zones can contain many of the regulations that will provide basic guidelines for good design. More specific “overlay” zones may be created to reflect neighborhood-specific conditions. Overlay zones would be implemented first in areas that currently receive special treatment in the zoning ordinance or in neighborhoods that have already been through a City-sponsored process. Further refinement of those design criteria, design regulations, and a more complete vision, that might include recommendations such as streetscape improvements, could be achieved through a Specific Plan or through other neighborhood-based initiatives during Phase 2 of this process (see Background section, above).

**Issue 3: How can zoning encourage high-quality, pedestrian-oriented ground floors?**

High-quality, pedestrian-oriented ground floors can create attractive and active streetfronts. Elements of building design, including articulation, prominent pedestrian entrances, high-quality materials, fenestration and glazing, can help achieve those goals. Articulation can help break up the mass of a large project by dividing the building into distinct planes that are smaller and more human-scaled. High-quality, durable materials and architectural features, such as bay windows, or details, such



*High-quality materials,*

as window trim, can provide visual interest. For ground-floor commercial uses, large, transparent glazed areas that have lighted window displays and outdoor space for dining also improve and activate the pedestrian environment. Development can be more pedestrian-oriented by directing pedestrians to prominent main entrances that are accessible on the main corridor street, instead of interior streets. The location and treatment of parking areas can also affect the pedestrian environment at the street-level. Some existing commercial buildings have large, un-landscaped surface lots between the sidewalk and the main building. This can create an unattractive and barren streetscape that is not pedestrian friendly. Instead, development can be encouraged to site parking behind, on top of, beneath or to the side of a building. If parking is located along the sidewalk, development standards could require landscaping to create a greater sense of enclosure and to reduce the amount of impervious surface.



*Parking lot in front of this building creates a barren and unattractive streetscape.*

Some of these elements of good building design, such as the provision of large windows, utilization of high quality materials and under-grounding of parking can increase the cost of construction of new development. However, these elements also add value to the development and to the character of the neighborhood.

Design review is one of the tools that can be used to evaluate the quality of design of new construction or alterations in exterior appearance of existing development. Historically, the majority of the City’s commercial corridors have not had access to the design review tool. Only a few of the existing base commercial corridor zoning districts require design review (see Attachment B). The S-4 Design Review Combining Zone Regulations (or overlay zone) have recently been implemented along many corridors, but many areas still do not have required design review for exterior changes to nonresidential buildings.

As part of a design review process, projects must conform to certain design criteria. Those criteria need to allow flexible and innovative design that responds to site-specific issues, yet they must also provide clear guidance on how buildings should contribute to attractive and active streetscapes as envisioned by the LUTE.

**Issue 4: How can zoning regulations reduce the noise and privacy impacts on multi-unit residential development that will locate on the corridors, while still maintaining a connection to the streetfront?**

Livability is a key factor in the design of multi-family and mixed-use developments on the City’s corridors. In the areas classified as Urban Residential, some of the residential development may include residential units near the ground floor. These units may be particularly susceptible to the impacts of noise and reduced privacy on the busy corridors.



*High-density residential development in Oakland that has a landscaped setback and step-up.*

Design solutions can be used to protect residents in ground-level units from traffic and street noise and to achieve a greater sense of privacy. Development could create a wall around the ground-floor units, but this would negatively impact the streetscape and isolate the residents. Instead design standards could require development to incorporate design elements, such as first floor units elevated above sidewalk grade (step-up), a large front yard building setback and landscaping in the front yard. Design guidelines could also encourage some new development to include facilities at the ground level that may not be as affected by the busy street, such as lobbies, multi-purpose rooms, or even small office spaces.



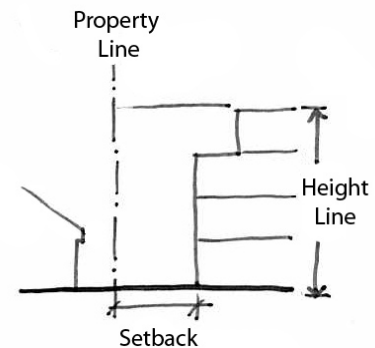
*Ground-floor lobby in Jack London Square provides a buffer from the busy street*

**Issue 5: How can new high-density development on corridors transition towards adjacent lower density residential areas?**

Policies in the LUTE call for density on the corridors to be more intense than density in adjacent residential neighborhoods and density that exists in most parts of the corridors. Many of the residential neighborhoods that are adjacent to the City’s main corridors are composed of one to two-story single family homes with 15 dwelling units per acre or less. However, the LUTE encourages relatively dense infill development on the corridors of up to 125 dwelling units per acre and up to a 5.0 floor area ratio. This could produce mid-rise buildings as high as 10 stories. However, as described in Issue 1, this maximum intensity described by the LUTE is not meant to apply to all areas. Rather, various criteria will be used to determine where the appropriate intensity of each area. Some areas may have 10 story buildings, some may have 5 to 8 story buildings, and some may have 3 to 4 story buildings.

Proposed density along the corridor will vary in scale, but would still allow for development that is more intense than existing residential neighborhoods. These large developments may affect the character, solar access, privacy, noise and traffic levels of nearby lower-density areas. However, these impacts should be balanced with the citywide need for additional housing and the desire to create dynamic, pedestrian-friendly, transit-friendly, mixed-use neighborhoods.

Furthermore, design standards in the zoning regulations can be used to increase the compatibility and reduce the impacts of new high-density development. Particular consideration should be afforded to the part of development projects that abut less dense residential areas. For example, design standards may require buildings to step back in the rear in order to allow sunlight to penetrate the lower density development. Landscaped setbacks can also provide a sensitive buffer.



**Issue 6: How should zoning regulations balance LUTE policies which encourage development along the corridors and the need for open space in private development?**

“Usable open space” in the zoning ordinance refers to open space required within each development site, and should not be confused with public parks. The zoning ordinance requires a certain amount of usable open space per residential unit in a development. Commercial space has no open space requirements. The purpose of the usable open space requirements is to provide areas within a development that serve the need for leisure, recreation, and space for residents. Open space can come in the form of “group open space” (roof decks, yards, gardens, etc.), open to an entire development and “private open space” (balconies and back yards, etc.), areas exclusively for the use of an individual unit.

Currently, the zoning regulations’ open space requirements on the corridors range from 150 square feet of open space per unit in most commercial and high density residential zoning districts, to 200 square feet of open space per unit in the R-60, C-10, and C-20 districts. Most zones require the following usable open space standards:

- Group open space must be large enough to inscribe a 15-foot by 15-foot square;
- Private open space must be large enough to inscribe a ten-foot by ten-foot square if on the ground and ten-foot by fifteen-foot rectangle if on a balcony;
- Each square foot of private open space counts as two square feet of group open space, but each zone requires a minimum amount of group open space, regardless of how much private open space is contained in a project;
- No more than 20 percent of the required open space may be on rooftops; and
- All group open space must be placed within 25 feet of each unit.

Exceptions to these regulations are found in two special districts, the S-15, Transit Oriented Development Zone and S-17 Downtown Open Space Combining Zone. Both these zones have more flexible standards in terms of rooftop open space, plaza area, and other standards.

On the one hand, well designed open space is an important part of any successful development, particularly with the lack of public parkland near the corridor areas. On the other hand, the LUTE has clear policies regarding increased development along the corridors; rigid open space standards can be counter to this policy. Further, the current standards, such as the rooftop open space maximum and the 25 foot standard, have limited the ability of architects creatively incorporate open space in their design and encourage balconies and ground level open spaces that are often substandard. As a result, the City has issued several variances for development proposals on the corridors to allow more creative solutions. One solution may be to require a similar amount of required usable open space as current regulations but allow it to be more flexibly sited on a lot.

**B. Activities**

**Issue 7: How should the activities regulations in the zoning ordinance balance market realities and the goals of the LUTE?**

The zoning ordinance contains a lengthy list of activity classifications, such as General Retail Sales (i.e. retail stores), General Food Sales (i.e. restaurants, grocery stores, etc.), Permanent Residential (i.e. apartments, single family homes, etc.), and Medical Services (i.e. doctor’s/dentist offices, medical testing facilities, etc.) Each zoning district lists which of these activities are permitted by right, permitted with a conditional use permit (a discretionary permit requiring public notice), and prohibited. Some activities are permitted with special restrictions. Attachment C is an example of an activity table in the recently adopted Housing and Business Mix zones.

The LUTE contains policies regarding the character of activities that should be encouraged in each zone. The following table lists LUTE policies regarding the character of activities encouraged in each LUTE designation.

<b>LUTE land use designation</b>	<b>Character of activities encouraged in the LUTE</b>
<b>Urban Residential</b>	The general character of the district is residential. Mixed Use buildings that house ground floor commercial uses and public facilities of compatible character are also encouraged.
<b>Neighborhood Center Mixed Use</b>	Ground floor pedestrian oriented commercial activities that serve nearby neighborhoods or urban residential with ground floor commercial.
<b>Community Commercial</b>	Community scale shopping centers, auto related businesses, personal services, health services, educational facilities, and entertainment uses. These areas can be complemented by urban residential development.
<b>Regional Commercial</b>	A mix of commercial, office, entertainment, arts, recreation, sports, and visitor serving activities.

The rezoning process may create new legal nonconforming businesses. A business is considered “legal nonconforming” if it was consistent with the zoning that existed when the business was established, but is not a permitted activity under the current zoning regulations. For instance, a legally operating storage facility in an Urban Residential LUTE designation may be rezoned to a designation that no longer allows storage activities since such activities are incompatible with the desired character in this designation.

If an activity is no longer permitted in a neighborhood due to a change in the zoning regulations, businesses performing that activity can continue operating their business as they always have. However, the Planning Code requires any expansion of the building that contains the business to follow the current requirements of the underlying zone. In general, if a business performing an activity not allowed by the zoning code leaves a site, a similar business may move to the same site as long as no more than a year has passed since the previous business closed.

Creating nonconforming activities is an inevitable outcome in transitioning areas. On the one hand, it enables the City to eventually fulfill the vision of revitalized corridors and thriving mixed use neighborhoods and phase out nuisance-creating businesses. On the other hand, the legal nonconforming designation can hamper businesses by not allowing them to expand. It also limits the choice of tenants for commercial landlords. In a down market, creating nonconforming activities can eventually create empty storefronts and blighted property.

Commercial areas in the City have had various levels of economic success. According to the Retail Enhancement Strategy, a report commissioned by the City Council and developed by the Conley Consulting Group, commercial areas of the City can be categorized into those that are “functioning well” (Fruitvale at International, Piedmont Avenue, etc.), need to “improve” (Eastmont Mall, Hegenberger Corridor, etc), should “reposition” (Foothill Square, Lower Broadway, etc) or should “expand” (Elmhurst South, Temescal, etc).

Activity regulations may differ in some neighborhoods that are in the same LUTE category, but function under different market conditions. For instance, should retail neighborhoods such as Rockridge or Monclair that are “functioning well” be regulated differently than neighborhoods that need to “improve” such as the Foothill/Seminary commercial district, even if they are both in the Neighborhood Center Mixed Use LUTE designation? Regulations requiring ground floor retail activities are appropriate for thriving pedestrian oriented neighborhoods such as Rockridge or Piedmont because the retail activities are proven to be viable in these areas and they assure the maintenance of a continuous storefront shopping environment. These requirements, however, may not be as economically feasible and can hamper developing businesses in other areas. On the other hand, applying the more stringent regulations in less thriving areas could more quickly achieve the LUTE vision of pedestrian-oriented shopping districts.

**Issue 8: How should commercial activities be regulated in areas with an Urban Residential LUTE designation?**

As mentioned, the LUTE has a vision of mixed use retail nodes connected by stretches of dense urban housing. The LUTE also states that the Urban Residential designation encourages mixed use buildings that house ground floor commercial and public uses. Allowing ground floor commercial along the entire length of the corridors could dilute the commercial presence, and slow down the development of concentrated commercial nodes. On the other hand, mixed use buildings can provide convenient services to residents and limiting a commercial presence in Urban Residential buildings could increase reliance on automobiles. Finally, limiting commercial activities in Urban Residential areas could create more legal-nonconforming businesses along the corridors.

**Issue 9: Should commercial facilities be required on the ground floor of new construction in the Neighborhood Center Mixed Use and the Community Commercial Urban Residential LUTE designation?**

Requiring commercial facilities on the ground floor of new construction in the Community Commercial and Neighborhood Center Mixed Use designations would directly implement LUTE vision encouraging commercial activity nodes on the corridors. On the other hand, prohibiting ground floor residential facilities in new construction would limit development options. One option would be to conditionally permit ground floor residential construction in new construction so the City has a chance to review the appropriateness of this type of development. If this is the option chosen, the new zoning regulations would need to lay out the circumstances under which new construction could have ground floor residential facilities. Possible considerations in evaluating the appropriateness of ground floor residential facilities in new construction may be the location of the site (i.e. corner versus interior lot), the width of the lot, and the existing concentration of commercial activities.

**Issue 10: What regulations should apply to automotive repair activities in the Community Commercial classification?**

There are numerous automotive repair businesses along the corridors in Oakland, particularly International Boulevard and San Pablo Avenue. These are necessary businesses and create jobs in Oakland, but can create nuisances to adjacent residential neighborhoods and other businesses in terms of parked and stored cars, toxic substances, noise, and other issues. The LUTE states that “auto-related” businesses are intended for the Community Commercial corridor classification. How should automotive repair activities be regulated given the LUTE intent, their necessary community function, and the nuisances some create? Possibilities include: 1) placing strict design standards on all new auto repair businesses; 2) requiring a conditional use permit for new or expanded repair operations; and 3) limiting auto repair to certain areas.

**C. Historic Resources**

**Issue 11: How should zoning regulations balance policies of the Historic Preservation Element of the General Plan and policies in the Land Use and Transportation Element of the General Plan when they are in conflict?**

The commercial and corridor areas of Oakland have many pockets of important historic resources. There are some historic landmarks on the corridors, including the Safeway warehouse on International Boulevard at 57<sup>th</sup> Avenue, the Melrose Library at Foothill and 48<sup>th</sup> Avenue, and the Grand Lake Theater on Grand Avenue. However, the more common historic resources are clusters of “Potentially Designated Historic Properties”<sup>1</sup>

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<sup>1</sup> The City considers any property that has at least a historic rating of C (on a scale of A to F) or contributes or potentially contributes to a historic district to "warrant consideration for possible preservation." If they are not already designated, all properties meeting these minimum significance thresholds are called Potential Designated Historic Properties (PDHPs) by the City's Office of Historic Survey.

that make up “Areas of Secondary Importance” (ASIs) as classified by the City’s Office of Cultural Heritage. ASIs are areas of local historic interest but have not qualified for the National Register of Historic Places. Examples include the Temescal, Lakeshore, and Fruitvale commercial districts. There are also several historically rated buildings in commercial districts and the corridors that are not in an ASI.

The Historic Preservation Element of the General Plan has a number of policies regarding the preservation of these historic resources, including protection against demolition and special design review findings. Further, the California Environmental Quality Act (CEQA) requires analysis whenever there is an impact to a historic resource. CEQA requires that an Environmental Impact Report be written whenever a project may have a significant impact on a property that the state defines as an historic resource.

As mentioned in the introduction, the Historic Preservation Element of the General Plan has a number of policies regarding the preservation of historic resources. At the same time, the LUTE encourages dense development along the corridors. These policies can come into conflict. For instance, what scale of building should be allowed on a part of a major transportation corridor that is an ASI with a height context of one- to three-stories? On the one hand, policies in the Historic Element would encourage respecting this height context, on the other hand, the Land Use and Transportation Element encourages more intense development along the transportation corridors. Another example would be a proposal to construct a high quality development that conforms to the policies of the LUTE but requires the demolition of or impact on a historic resource.

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PDHPs are a large group: a fifth of the buildings in Oakland. They are meant to be "numerous enough to significantly influence the city's character." Properties with contingency ratings are classified as PDHPs to highlight their value as restoration opportunities. District contributors and potential contributors are classified as PDHPs to promote preservation of Oakland's distinctive districts and neighborhoods.