

**SUMMARY**

Staff prepared this Director's Report to provide a progress update and timeline for the Citywide Zoning Update and future public hearings. This report presents information about the background, policy and regulatory framework, approach, key issues and schedule for the Zoning Update. Staff recommends that the Planning Commission become familiar with the project prior to the Zoning Update Committee and Planning Commission public hearings anticipated to occur in early 2010.

**BACKGROUND**

*A. Citywide Zoning Update*

Oakland adopted a new General Plan Land Use and Transportation Element (LUTE) in 1998. The LUTE included changes to the city's land use map, and new policies about how and where development should occur. Adoption of the LUTE established a new vision for Oakland, but also created inconsistencies between the General Plan and the zoning regulations (found in Title 17 "Planning Code" of the Oakland Municipal Code). Although piecemeal changes to the Planning Code have been made over time, it has not been comprehensively amended since 1965. The bulk of Oakland's zoning regulations remain outdated; they are not consistent with national best practices in zoning, include many obsolete terms, and are cumbersome for many users.

To address the inconsistency between the zoning and the General Plan, guidelines were adopted to provide a procedure for deciding whether a project is consistent with the Plan's intent.<sup>1</sup> The original intent was for the Guidelines to be in effect for a short, temporary period until new zoning that was up-to-date and consistent with the General Plan was adopted, and render them unnecessary. However, they remain in effect today.

An initial effort to comprehensively update the Code began in 1999, following adoption of the LUTE. A consultant was retained, stakeholder meetings were conducted, an ordinance was drafted, and maps were prepared. Agreement was reached on some components of the new draft Code, including regulations for zones to implement the open space (Resource and Conservation Area and Urban Open Space) and Housing Business Mix (HBX) General Plan land use designations. However, the overall effort was suspended in 2003 due to resource limitations and shifting priorities in the previous administration.

In 2007, the City resumed efforts to complete the Citywide Zoning Update. The City Council adopted new zoning for the city's industrial areas (areas designated as Business Mix or General Industrial/Transportation in the LUTE) in June 2008; new zoning for the Central Business District was just recently adopted in July 2009. In addition, substantial revisions to the use classifications (O.M.C. Ch. 17.10) were adopted in June 2009, in order to modernize and simplify language in the Planning Code, which allow the City to more flexibly and precisely regulate land uses.

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<sup>1</sup> General Plan Conformity Guidelines were first adopted in 1999; they have been amended several times subsequently, as new zoning has been adopted and/or as the need to extend the guidelines has arisen. The Guidelines are accessible online at: <http://oaklandnet.com/strategicplanning>

The remaining work to complete the Citywide Zoning Update is comprised of updating the zoning for areas with residential, commercial and institutional General Plan LUTE land use designations.<sup>2</sup> The effort to update residential and commercial zoning was initiated in fall 2008 and is on-going. Land designated with a residential or commercial General Plan land use designation, listed below, represents over half the land area of Oakland (53% and 5% respectively):

- **Residential General Plan Land Use Designations:** Hillside Residential, Detached Residential, Mixed Housing Type, Urban Residential
- **Commercial General Plan Land Use Designations:** Neighborhood Center Mixed Use Commercial, Community Commercial, Regional Commercial

### *B. Related Efforts to the Citywide Zoning Update*

There are several separate but related efforts underway that are described below.

#### **1. General Plan Land Use Diagram – Corrections, Refinements and Clarifications**

The City is striving to achieve consistency between the General Plan and Zoning Maps through two parallel initiatives. The major initiative, and the one that is the focus of most staff effort, is the Zoning Update. This includes updating the zoning designation on each parcel in the city to reflect the uses depicted on the General Plan Map. A secondary initiative is to “fine tune” the General Plan Map to make it slightly more detailed (or “fine-grained”) than it was when it was adopted in 1998. This is necessary because literal interpretations of the General Plan Map in some locations could result in incorrect and unintended zoning changes.

The current General Plan Map was designed at a scale so that the entire city could fit on an 11”x17” sheet of paper, resulting in a very “broad-brush” approach to the way land uses were shown. Many areas were crudely mapped as “blobs” that did not conform to their actual shape and extent. Now that all City Planning maps have been digitized and exported into geographic information system (GIS) files, discrepancies between the General Plan and what is actually on the ground have been identified. These are being addressed through a series of General Plan Map “corrections” and “interpretations” (The Planning Commission is considering the bulk of these corrections at its September 2<sup>nd</sup> meeting).

#### **2. Design Guidelines**

Design guidelines are intended to complement zoning regulations by providing overarching design principles and more specific design guidance at a level of detail and length that would not be appropriate adopting as Code. Planning and Zoning staff have identified the need for updating its existing design guidelines for one- and two-unit dwellings, as well as creating new design guidelines for higher density buildings located along the City’s commercial corridors.

The City of Oakland currently has three adopted design manuals:

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<sup>2</sup> Mixed Waterfront General Plan land use designation was updated by the Estuary Policy Plan (EPP), which was adopted in 1999. Zoning to implement the EPP will be addressed separately from the Citywide Zoning Update effort by other planning processes including the Central Estuary Specific Plan currently underway (described below).

- *Interim Design Review Manual for One-and Two-Unit Residences* (adopted in 2005)
- *Design Review Criteria for High Density Housing* (adopted in 1982, amended in 1991)
- *Small Project Design Review Guidelines* (for storefront design and signage – adopted in 1995, updated in 1992)
- *Housing and Business Mix Design Review Manual* (adopted in 2006)

Staff is currently in the initial phase of conducting field research and researching best practices of cities with similar characteristics.

### 3. Specific Plans

There are a number of parallel efforts underway for specific neighborhoods and other areas of the city where major change is envisioned in the future such as the Central Estuary, the Broadway/Valdez District, and the Lake Merritt BART Station. While these areas will also be rezoned, the guiding document for land use and development standards in each area will be a specific plan (or equivalent) rather than the citywide zoning regulations.<sup>3</sup>

## REGULATORY AND POLICY FRAMEWORK

The policy framework for the Zoning Update is provided by the Oakland General Plan. The relevant elements include:

- **Land Use and Transportation Element (LUTE).** Adopted in 1998, the LUTE includes the City's key policies on Downtown, neighborhoods, the waterfront, transportation, and industry/commerce. The Element also provides specific direction regarding the zoning update. The LUTE was amended in 1999 to add Bicycle Master Plan, which was recently updated in 2007, and again in 2002 to add a Pedestrian Master Plan.
- **Historic Preservation Element.** In 1994, the City of Oakland adopted a Historic Preservation Element as part of its General Plan. The Element includes goals, policies and actions that govern how the City will treat historic properties and neighborhoods. The Element was amended in 1998.
- **Open Space, Conservation, and Recreation Element (OSCAR).** In 1996, the City of Oakland adopted an Open Space and Recreation Element as part of its General Plan. The OSCAR includes policies addressing hillside development; protection of creeks, wetlands, and other natural areas; parkland dedication; open space in private development; and other topics with zoning implications.
- **Safety Element.** The Safety Element, adopted in 2004, includes a policy framework to guide the public decision making process with regard to safety hazards including public safety, geologic hazards, fire, flooding and hazardous materials.
- **Noise Element.** The Noise Element was adopted in 2005 and analyzes and quantifies the existing and projected noise levels from noise sources such as traffic, commercial and

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<sup>3</sup> Project information is available online for the Central Estuary Plan ([www.oaklandnet.com/central\\_estuary\\_plan](http://www.oaklandnet.com/central_estuary_plan)) and for the Broadway/Valdez District Specific Plan (<http://www.business2oakland.com/brcp/>). The Lake Merritt BART Station Area planning process is currently in the contract negotiation phase.

aviation activities, and includes implementation measures to address any foreseeable noise problems.

- **Housing Element.** Provides an assessment of the need for housing and an inventory of housing; statement of the goals with regard to housing residents; and a program for providing the needed amount of housing throughout the City. Oakland's housing need is derived from the Association of Bay Area Governments' (ABAG) Regional Housing Needs Allocation (RHNA), the projected total number of new housing units that need to be built in the Bay Area to meet expected population demand for a specified five-year period. 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. An update to the Housing Element is currently underway for this period.

Another important new State law that will effect planning and development in 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.

A more detailed briefing on SB375 to the Planning Commission will be forthcoming after ABAG and MTC provide cities with more direction on the protocols and potential draft GHG emissions targets. Currently, Regional Targets Advisory Committees (RTACs) – of which ABAG and MTC participate—are in the process of developing factors and methodologies to be considered in the determination of regional GHG emissions targets, which will then be used by the California Air Resources Board (CARB) to set regional emissions targets.

## **APPROACH TO ZONING UPDATE**

The focus of the Zoning Update process thus far is on **uses** and **development standards** (e.g. height setback, gross bulk/building envelope). Other standards, such as parking, landscaping, buffering, and possible overlay zones will be addressed after the base zones are updated. Updating the City's Zoning Maps will occur concurrently with development of the draft zoning text. Staff anticipates that there will be multiple iterations of mapping as the Zoning Update proceeds, beginning with test areas and continuing as new zones are mapped; the amount of time and effort for this task will depend on the degree that new zoning proposed results in consolidation, expansion or substantial reorganization of existing zones.

The current effort underway to update the zoning for commercial and residential areas in the City was initiated in September 2008. Staff's approach to updating the residential and

commercial zoning generally includes a combination of review and analysis of studies from the initial rezoning effort, best practice research of cities facing issues similar to Oakland, field work and collecting extensive stakeholder and public input.

Since September 2008, Planning and Zoning Division staff has held multiple community and stakeholder meetings to review the land use and development policies described in the City's General Plan for commercial and residential areas and to begin to formulate a zoning framework based on those policies. In addition to soliciting feedback from the public at-large, two Technical Advisory Groups (TAGs) have been formed to act as a sounding board for, and provide input to City staff. The two groups are comprised of volunteer community members representing balanced and varied interests (i.e., developers, advocates, property owners and renters) and different geographic areas that will meet on an ad-hoc, temporary basis throughout the Zoning Update process. The general public is welcome to attend TAG meetings as observers.

In general, the residential zoning TAG focuses on regulations for single-family flatland neighborhoods, hillside residential neighborhoods, mixed density neighborhoods, and multi-family areas (not located along the city's major corridors). The commercial zoning TAG focuses on development regulations for the major corridors of the city (i.e., San Pablo Avenue, International Boulevard, Macarthur Boulevard, etc) and commercial areas outside the corridors. Staff recognizes that there are issues that will concern both TAGs, such as regulations for areas designated in the LUTE as Urban Residential along major corridors, the interface between these areas and adjacent lower density residential areas, and how to address small amounts of commercial uses in primarily residential areas, among other issues.

## **KEY ISSUES IN THE ZONING UPDATE**

This section summarizes the key issues of the Zoning Update. A more detailed discussion of issues will be provided when draft proposals and mapping are developed, which staff tentatively expects to bring before the Zoning Update Committee of the Planning Commission in December of this year. (A schedule for the Zoning Update is presented below.)

### **1. Zoning Framework**

As noted above, the existing framework of 12 residential and 20 commercial zones is not consistent with the General Plan and has not been comprehensively updated since 1965. Overall, the updated residential and commercial zoning will be based on General Plan land use designations. All of the residential and commercial zoning districts will be renamed so that the connection between the zoning district and associated General Plan land use classification is more apparent. The name of the General Plan land use classification would be part of the name of the zoning district, followed by a number (corresponding to the number of zones that implemented a particular General Plan land use classification). For example, the zones that implemented the Hillside Residential General Plan land use designation would be named Residential Hillside-1 (RH-1), Residential Hillside-2 (RH-2), etc., and the zones that implemented the Community Commercial designation would be named Community Commercial-1 (CC-1), Community Commercial-2 (CC-2), etc. All of the zones that implemented a particular General Plan land use classification would be grouped together in the

same chapter of the Planning Code. In addition, all zoning district regulations will use a table format to show permitted and conditionally permitted uses (instead of long lists of uses), which will be easier to read and allow for comparisons across different zones in the same chapter.

- **Residential Zoning Framework.** Overall, staff does not anticipate major changes in residential zoning district hierarchy, which is consistent with policy guidance provided in the General Plan which designates most of the city's residential areas as "Maintain and Enhance" areas. New residential zones will have a rough correspondence to existing zones. The existing 12 residential zoning districts do not correspond with density ranges established in the General Plan. Staff is considering refining existing density ranges and potentially creating a new zone(s) to address these discrepancies. There are also a few cases where staff is considering consolidating zones whose standards are essentially the same, in order to eliminate redundancy (such as merging the R-36 and R-40 zoning districts).
- **Commercial Zoning Framework.** Proposals under consideration to update the commercial zoning districts would result in a substantially changed zoning district hierarchy, which is consistent with policy guidance provided in the General Plan which designates most of the city's commercial corridors and commercial areas as "Grow and Change" areas. The existing array of 20 commercial zoning districts and three residential zoning districts are mapped throughout the commercial General Plan land use classifications. As noted above, new commercial zoning districts would be based on the LUTE land use designations, thus requiring a more extensive reorganization of existing commercial zoning districts. In addition, the LUTE provides policy guidance 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.

## 2. Changes to Development Standards for All Residential Zoning Districts

Staff is considering the following changes that would apply to all residential zoning districts:

- New Floor Area Ratio (FAR) Standards for all residential zones for lots that have a footprint slope greater than 20%. FAR, when combined with lot coverage and height limits, is an effective way to control building bulk and scale.
- Sliding scale for setbacks for small lots (less than 4,000 square feet), which is based on the existing R-36 zone that would apply to all small lots with a footprint slope less than 20%. It seems reasonable to apply this standard to all existing small lots on relatively flat lots rather than only allow the sliding scale for certain zoning districts.

## 3. Changes to Hillside Development Standards

Staff is considering changing regulations for steep sloped lots in the Oakland hills, and in other areas of the city, in order to better prevent the construction of bulky buildings that are out-of-scale with their surrounding context, and have greater environmental impacts relating to increased impervious surfaces and grading. Staff is considering the following changes:

- Applying lot coverage requirements to *all* steeply sloped lots (greater than 20% slope) in the city, which would be based on lot size and not zoning district. Currently, lot coverage requirements only exist for lots in the city that have *less than* 20% slope.

- Introducing a new floor-area ratio (FAR) requirement that would be based on lot size (not zoning district).
- Changing the point of measurement for height for upslope lots from edge of pavement to at grade and revising maximum heights for downslope lots.

Another issue that has been raised during the Zoning Update process is the need to better control development intensity in the more environmentally sensitive hillside areas, potentially through methods such as a slope density formula. A slope density formula determines the total number of dwelling units, allowable on a property, based on the average slope. There are many different ways to calculate a slope density formula. Generally, the steeper the average slope, the fewer number of units will be permitted. Further discussion about slope density will not be part of this phase of the Zoning Update, which concentrates on getting base zones adopted as part of the Planning Code. Considering slope density proposals will require extensive public input and would involve changes to the city's subdivision regulations (O.M.C. Title 16: Subdivisions), which will need to be addressed at a later date, after the Zoning Update effort is completed.

#### **4. Using a Height and Intensity Map in Commercial Corridors**

Staff is proposing to regulate height, bulk and intensity regulations separately from other zoning regulations in the city's commercial corridors through the use of a "height and intensity map"—similar to the approach that was used for the recently adopted new zoning districts for the Central Business District. The reason that height, bulk, and intensity regulations would be mapped differently than the zoning districts is because the uses preferred at a particular location may not relate to the overall size and scale of a building. Appropriate size and scale of a building (regardless of use) is more closely related to the surrounding context (e.g. street width, neighborhood context). For instance, zoning districts which encourage pedestrian-oriented commercial activities are appropriate for both the Grand Avenue and Fruitvale neighborhoods, even though the appropriate bulk of buildings in these areas vary, due to factors such as street width and proximity to a BART station.

#### **5. New Design Regulations for Commercial Corridors**

Staff is proposing several types of new design regulations for areas located along the city's major corridors to enhance visual quality of the built environment, pedestrian-friendliness, safety, transitions between adjacent higher density and lower density neighborhoods, including the following:

- Minimum ground floor height for commercial spaces
- Ground floor transparency requirements for storefronts
- Parking, automobile access and active space location requirements;
- Maximum front setbacks in commercial neighborhoods;
- Minimum grade separation for ground floor residential units
- Minimum required rear setbacks and stepbacks for new higher density development to ensure appropriate transition to adjacent to low- to medium-density residential neighborhoods.

#### **6. Commercial Uses in Primarily Residential Areas**

The use regulations and development standards for Oakland's neighborhoods will need to recognize the presence of commercial uses in areas with Residential General Plan land use designations. These commercial uses consist of:

- Small neighborhood stores considered to be legal non-conforming uses in residential zones;
- Tiny "pockets" of C-5 or C-10 zoning in otherwise residential areas;
- Areas of continuous commercial use along arterial streets, or "secondary commercial corridors" such as 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.

Staff is considering a range of possible ways to approach the regulation of commercial uses in residential areas. One approach would be to actually zone these areas for commercial use, using a district equivalent to the existing C-5 or C-10 district. Another approach being considered is to develop a zone that primarily allows residential uses but also allows a limited number of commercial uses, subject to strict limitations and/or be conditionally permitted with a specific set of locational criteria. With any of these approaches, careful consideration of the degree to which changes increase legal nonconforming uses and potential impacts (e.g. noise, litter, traffic) from certain commercial uses in residential areas.

## **7. Historic Preservation**

In residential neighborhoods, which the General Plan primarily designates as "Maintain and Enhance", staff is exploring measures to preserve neighborhood identity and context where there are substantial collections of buildings from a certain period or periods. Oakland's commercial corridors have a legacy of well-preserved, older buildings which are fundamental to the unique character of the City's "main streets". Some of these buildings are mapped in Areas of Primary or Secondary Importance, and some are buildings which stand alone with a high historic rating in the Oakland Cultural Heritage Survey.

## **CITYWIDE ZONING UPDATE SCHEDULE**

Additional residential and commercial Technical Advisory Group (TAG) meetings are planned for the end of September to flesh out proposed zoning concepts in preparation for another round of large public meetings in late October/early November. Consultation with the Landmarks Preservation Advisory Board (LPAB) is tentatively scheduled for October/November 2009. Staff expects to begin bringing draft zoning text and mapping proposals to the Zoning Update Committee in early 2010.

## **RECOMMENDATIONS**

Staff recommends that the Planning Commission become familiar with the background and key issues of the update to the residential and commercial zoning regulations. All documents related to the Zoning Update are located at the project website: [www.oaklandnet.com/zoningupdate](http://www.oaklandnet.com/zoningupdate). Staff

expects to begin bringing draft zoning text and mapping proposals to the Zoning Update Committee in early 2010 and then to the full Commission.

**CONCLUSION**

Formal public hearings are expected to be scheduled the Planning Commission to review the draft zoning and mapping proposals in mid 2010.

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