

Location:	Citywide (See attached maps)
Proposal:	Recommendation to the City Council to adopt 1) proposed amendments to the zoning regulations that create three new Housing and Business Mix (HBX) zoning designations; 2) a design review manual associated with the new HBX zoning designations; 3) amendments to the Zoning Maps to include the new HBX zones; 4) minor revisions and clarifications to the General Plan map to refine the HBX General Plan designation boundaries; and 5) amendments to the document "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations" to reflect the new zones.
Applicant:	City of Oakland
Planning Permits Required:	Zoning Text Amendments, Zoning Map Amendments, and General Plan Map Amendments.
Environmental Determination:	The proposal relies on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan EIR (1998); the West Oakland Redevelopment Plan EIR (2003); and the Housing Element Update Initial Study/Mitigated Negative Declaration (2004). The proposal is also exempt under CEQA Guidelines section 15061(b)(3): no possibility that the activity in question may have a significant effect on the environment.
Service Delivery Districts:	1 – 5
City Council Districts:	1 – 3; 5 – 7
Status:	Recommended by Zoning Update Committee to be considered by the Planning Commission.
Action to be Taken:	Decide whether to recommend to the City Council adoption of the proposal.
Staff Recommendation:	Recommend to the City Council adoption of the proposal.
Finality of Decision:	Adoption of proposal requires approval by the City Council.
For Further Information:	Contact case planner Neil Gray at 510-238-3878 .

SUMMARY

This project proposes to create three new related zoning districts in the Planning Code and an associated design guidelines manual to implement the Housing and Business Mix (HBX) General Plan designation and the Residential Mixed Use (RMU) Estuary Policy Plan designation. The proposal also maps these designations on the zoning map and makes minor modifications to the General Plan land use designation map.

Staff recommends that the Planning Commission advise the City Council to adopt the proposal.

PROJECT DESCRIPTION

This project is comprised of four main components:

Three new related zoning districts in the Planning Code and an associated design guidelines manual that implement the Housing and Business Mix (HBX) General Plan designation and the Residential Mixed Use (RMU) Estuary Policy Plan designation (the Estuary Policy Plan is a document that refines policies in the General Plan regarding the estuary area. Attachment A contains the proposed zoning district regulations and Attachment B is the proposed design manual;

2. Mapping the three new districts on the zoning map (see Attachment C);
3. Refinement of the General Plan map to more accurately reflect areas appropriate for the HBX General Plan Designation (see Attachment C);
4. Amendments to the document "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations" to reflect the new HBX zones.

BACKGROUND

On October 20, 2004, staff presented to the Zoning Update Committee (ZUC) its proposal to reformat, condense, and simplify the language of key chapters of the existing planning code without making substantive changes to the regulations. At that meeting, staff was directed to begin "Phase II" of the zoning update effort by drafting substantive changes to the zoning regulations in order to meet the 1998 General Plan Land Use Element objectives.

Since then, staff has refined and expanded the reformatting effort previously brought in front of the ZUC; completed a draft of proposed substantive changes to the Activity Classifications contained in Chapter 17.10 of the zoning ordinance; and completed a revised draft of the proposed industrial zones and the HBX zones.

As the first part of the Phase II effort, staff presented a proposal for three HBX zones to the Zoning Update Committee on January 18, 2006. These zones implement the HBX General Plan designation and the RMU designation of the Estuary Policy Plan, a plan that refines policies in the General Plan regarding the estuary area. The ZUC recommended that the proposal be brought in front of the Planning Commission.

Note that staff originally brought the HBX zones to the Planning Commission for input on January 21, 2004. Subsequently, Strategic Planning staff and the Development Director received detailed comments and concerns from Zoning Division Staff indicating that the proposed zones would be difficult to administer due to their vague design criteria and complicated permit processes. This input convinced the Development Director and Strategic Planning to take a second look at the HBX standards. In particular, the intent was to simplify the development standards and entitlement requirements within the ordinance language and develop a complimentary design guideline document to develop more comprehensive and objective design review criteria and evaluation.

Therefore, over the past six months, staff has had discussions with HBX stakeholders (the HBX stakeholders who attended those meetings are primarily landowners and developers, several of whom live in HBX neighborhoods) and the ZUC regarding a newly drafted zones. The draft development standards, design guideline manual, and zoning and General Plan map amendments presented in this report represent the consensus of these meetings.

GENERAL PLAN ANALYSIS

This section describes the regulatory context of the HBX zones in the General Plan.

As mentioned, the proposed zones implement the HBX General Plan designation and the RMU designation in the Estuary Policy Plan. The intent of the HBX General Plan designation is to 1) recognize the equal importance of both housing and business 2) guide a transition from heavy industry to low impact light industrial and other businesses that can co-exist compatibly with residential development 3) provide additional housing and neighborhood friendly businesses and 4) respect environmental quality. The General Plan also describes the desired character and uses of HBX General Plan designated areas: “Future Development within this classification should be compatible with housing, and development should recognize the mixed business nature of the area. Development of site specific buffers is essential as are specific conditions under which business and housing will coexist. This classification allows mixed housing type density housing, ‘live/work’, low impact light industrial, commercial, service businesses, and compatible community facilities”. The General Plan designates a maximum nonresidential floor area ratio of 3.0 and density of 30 units per gross acre.

The intent of the RMU designation is to “enhance and strengthen the viability and attractiveness of the Kennedy Tract as a mixed use residential neighborhood of low to medium density housing within a fine-grained fabric of commercial and light industrial uses”. The desired character of the RMU designation “should be primarily residential, live/work, light industrial, neighborhood-serving retail, offices, public parks and open spaces”. The Estuary Plan designates a maximum nonresidential floor area ratio of 1.0 and density of 40 units per gross acre.

The proposed zones are consistent with the General Plan and the Estuary Policy Plan for the following reasons:

- The proposed residential densities reflect 30 units per gross acre for the HBX-1 and HBX-2 zones, consistent with the Housing and Business Mix General Plan designation, and 40 units per acre in the HBX-3 zone, consistent with the Residential Mixed Use Estuary Plan designation. The proposed HBX-1 and HBX-2 designations have different allowed densities because a staff analysis of the entire land area under consideration showed more ground area that cannot be developed (i.e. in use of public right of ways and parks) in the HBX-2 zone than in the HBX-1 zone.
- The maximum nonresidential floor area ratio in the HBX-1, HBX-2, and HBX-3 designations are 1.0, 3.0, and 1.0, respectively. Each of these figures is within the maximum allowed under the General Plan and the Estuary Policy Plan.
- The permitted and conditionally permitted activities and facilities allows for a variety of activities such as residential, light industrial, offices, community facilities, services, and retail activities, and work/live and live/work facilities.
- Through site plan and buffering standards, the regulations and design manual encourage successful combinations of uses in adjacent locations. This approach is in contrast to the classical zoning notion of achieving compatibility through the separation of uses.
- Heavy and General Manufacturing activities and activities involving hazardous waste management are not permitted in the HBX zones because of their essential incompatibility with residential development due to nuisance impacts (noise, vibration, dust, etc.) and health and safety considerations.

DESCRIPTION OF PLANNING AREAS

The regulations would create three new related zones: the HBX-1, HBX-2, and HBX-3 zones.

The HBX-1 zone is mapped in areas of East Oakland on the edge of heavy industrial areas and is mostly located near the 880 freeway. Neighborhoods in the HBX-1 zone typically have a variety of light

industrial activities, auto repair activities, and stretches of low density, detached unit residential development patterns.

The HBX-2 zone is mapped in the Clawson District of West Oakland and the Lowell Street area of North Oakland; the HBX-3 zone is in the neighborhood known as the Kennedy Tract in the Estuary Plan area. These areas have a mix of light manufacturing, artisan activities, live/work units, warehousing, multifamily housing, and Victorian style homes on narrow lots. The nonresidential facilities in the HBX-3 zone tend to be of a larger scale and are located on larger sites than those in the HBX-2 zone.

Some of the existing development patterns in the HBX zones have resulted in land use conflicts, such as a row of two to three houses in the midst of heavy industrial or warehousing uses.

SUMMARY OF PROPOSED HBX ZONES

The following is a summary of the proposed HBX regulations currently in front of the ZUC.

Regulations and guidelines

Staff and the stakeholders group agreed that the standards for the HBX zones be contained in two documents: the zoning regulations and an associated design manual. The regulations avoid strict requirements and define a generous building envelope. The manual provides guidelines and objectives to give direction to staff and developers where construction should occur within this envelope. For instance, there are no generally prescribed setbacks in the zoning regulations but the manual describes instances where setbacks may be appropriate, such as near single family homes or to contribute to rear yard open space.

This method was developed because the varied development patterns and mix of activities in HBX zones makes traditional zoning with stringent regulations impractical and cumbersome. With these varied contexts, each regulation in a traditional zoning ordinance would require confusing exceptions, use permits, and findings that would complicate the process and not provide clear direction to developers and staff. By providing a generous building envelope, the proposed ordinance allows a planner and developer to determine context appropriate standards for a site without a concern for variances. The planner and developer will consult the design guidelines manual to determine the appropriate standards for a site.

The design guidelines manual is organized into eight general “design objectives” relating to the orientation of buildings, parking location and design, open space, building scale, architectural quality, landscaping, and buffering. Each objective is followed by suggested guidelines to meet the objectives. To encourage design creativity, the manual states that alternative methods to achieve the objectives in an equivalent manner are allowed.

The manual also describes basic urban design techniques to create a comfortable pedestrian scale and attractive streetscapes to improve the public realm. The document also provides guidelines specific to the HBX zones such as how to transition from existing, low density development to a more intense development pattern and buffering residential activities from impacts associated with nonresidential activities. Finally, the document stresses a design review process accepts a variety of architectural styles and designs.

All proposals would be required to conform to the manual, whether they are proposals that can be approved over the counter or require a design review process (see next section for a discussion of the proposed required design process).

Summary of regulations and design manual

The following describes key features of the proposed manual and their associated regulations in the draft zoning provisions.

Design review

The regulations state that the regular design review process is required for:

- Any increase in the height of a building over eight feet;
- The new construction of a principal building
- The creation of any new HBX work/live or live/work unit; and
- Any increase in the footprint or square footage of a building of 20 percent or more or 10,000 square feet, whichever is less.

Consistent with the other zones in the City, new signs and telecommunications facilities also require a design review process. In addition, all proposals require conformance to the design guidelines manual.

These thresholds allow for a detailed review of larger projects and projects that may impact neighboring properties, but allows a significant number of small additions to be approved over the counter.

Permitted and conditionally permitted activities

Each HBX zone has similar permitted and conditionally permitted activities that allow for a variety of activities such as residential, light industrial, offices, community facilities, services, and retail. The only difference between the zones is the HBX-1 zone conditionally permits auto repair with strict design standards where neither the HBX-2 or HBX-3 zone allow auto repair. Automotive repair is conditionally permitted in the HBX-1 zone because there are many nonconforming auto repair shops in HBX-1 areas; this allows the existing shops to expand under strict design standards. Several of the activities such as offices, grocery stores, and manufacturing require a use permit for facilities over 25,000 square feet to assure there are not negative impact on surrounding properties.

Site planning

Due to the varied contexts in the HBX zones, the zoning regulations provide no generally required setbacks in the HBX zones; instead, the design manual provides direction to developers and planners for when to setback a building from property lines. The guidelines encourage the following design and site planning elements:

- A limited side and front yard setback pattern that encloses the street space by defining a street wall. An exception to accommodate parking on smaller lots is also provided.
- A ten foot setback behind residential facilities to contribute to a collective rear yard open space area;
- Mitigating light and air impacts on small scale facilities through the use of open space, upper story stepbacks, court yards, and light wells (this issue is further discussed in the Key Issues and Impacts section of this report); and
- Shifting mass away from neighboring small scale homes towards neighboring larger scale buildings and nonresidential properties.

The manual also provides basic site planning techniques to create an attractive and active streetscape such as orienting a main entrance to the street, reducing the visibility of parking areas, and integrating functional open space into a development.

Building design

The building design section of the manual contains guidelines regarding appropriate building scale, transitioning from the lower intensity building patterns, architectural style, and façade design.

Maximum height and scale. In the zoning regulations, staff proposes a maximum height of thirty feet for the HBX-1 zone due to its existing small scale, mostly one story, single-family homes. In the HBX-2 zone, the draft zoning regulations propose a maximum height of 45 ft when a lot is abutting a street right of way that is less than 80 ft wide and 55 feet when a lot is abutting a street right of way that is 80 feet wide or more. Staff proposes an increased maximum height along wider streets because taller buildings will not overwhelm their public space. The height maximum in the HBX-3 zone is 55 feet due to the larger scale development existing there.

The regulations also allow for a maximum height of 85 feet in two situations: 1) buildings within 125 of a freeway and 2) on sites both greater than 25,000 square feet and adjacent to a street 80 feet wide or greater. To qualify for the additional height, the manual states that a new development must either shield the surrounding neighborhood from the noise and visual impacts of the freeway or use the additional height to shift mass away from nearby small scale residential buildings.

The design manual provides guidelines for reducing the vertical scale of a building through a menu of techniques such as stepping back the front façade, placing larger buildings behind shorter structures, providing cornice lines, reducing the amount of façade area at upper stories, and the use of contrasting materials and colors at upper stories. The manual states that these techniques should be used at about the 35 to 45 foot level, depending on the width of the street. Exceptions for corner lots are made to frame the streetscape and set the tone for a block. An exception is also made for lots along streets wider than 100 feet.

The manual also provide guidelines for the following:

- Avoiding abrupt transitions in height from neighboring properties;
- Transitioning from smaller scale building patterns to more intense development through the use of open areas, building modulation, massing, and other techniques; and
- Emphasizing a pedestrian scale at the street level of a building.

Architectural style and façade elements. The manual places emphasis on creating a design review process that is open to creative designs and varied architectural styles in the HBX zone. Staff believes that this is appropriate because the intermixing of industrial commercial, modern, multi-family, and traditional style buildings found in HBX zones provides unique opportunities for innovative building design.

The manual discourages blank walls, particularly at the ground level, because they deaden the pedestrian space. Recognizing that they are sometimes unavoidable due to site constraints, the manual also provides a menu of techniques to bring visual interest to continuous ground level walls.

Landscaping and buffering

The manual and regulations provide direction regarding street trees and the buffering of outdoor storage activities, parking areas, and nonresidential activities. The regulations also provide maximum paving area for front yards and encourage the use of landscaped, permeable paving surfaces such as grasscrete.

Other regulations

Usable Open Space. The regulations state that the HBX-1 zone requires 200 square feet of usable open space per residential unit while the HBX-2 and HBX-3 zones require 150 square feet of usable open space per residential unit. The regulations further provide flexibility to a developer by allowing all the open space to be provided above ground, requiring no minimum group open space, and allowing each square foot of private open space to count as two square feet of usable open space. As mentioned previously, the manual provides guidelines regarding integrating open space into the design of a development.

Minimum lot area, width, and frontage. Staff recommends the minimum lot area, width, and frontage to be 4,000 square feet, 35 feet, and 35 feet, respectively. Staff chose these standards because they allow for some amount of site plan flexibility to provide legal curb cuts, garage parking, an entrance on a front facade, open space, and landscaping.

Maximum density. The maximum densities are proposed to be the following:

Zone		
HBX-1	HBX-2	HBX-3
1,000 sf of lot area per unit	930 sf of lot area per unit	730 sf of lot area per unit

These densities are the maximum allowed under the General Plan.

Floor area ratio. The proposed floor area ratio (FAR) maximums are the following:

Standard	Zone		
	HBX-1	HBX-2	HBX-3
When lot is abutting street right of way is less than 80 ft wide			
Maximum FAR	1.0	2.6	2.6
When lot is abutting street right of way is 80 ft wide or more			
Maximum FAR	1.0	3.4	3.4
Maximum nonresidential FAR	1.0	3.0	1.0

These FAR maximums reflect the following policies:

- The proposed nonresidential FARs are the maximum allowed in the General Plan. A relatively low nonresidential FAR of 1.0 is prescribed in the HBX-3 zone because Estuary Plan policies emphasize residential development in the Kennedy Tract.
- The proposed FAR for all structures is relatively high in the HBX-2 and HBX-3 zones to accommodate more intense development patterns.
- Greater FARs are allowed along streets 80 feet wide or more because wider streets provide broad visual sight lines for larger structures.

Measurement of FAR and density. Outside of downtown, providing living units on a lot proportionately reduces the amount of nonresidential square footage on a lot. In other words, if a development contains the maximum number of units allowed on a lot, then that same development is not allowed to contain any nonresidential floor area even though the nonresidential FAR limit has not been reached. This restriction penalizes mixed use developments. To encourage a deeper mixture of uses, staff proposes that for the HBX zones the amount of nonresidential square footage allowed on a lot be unaffected by the number of units on a lot if 1) the maximum FAR allowed on a lot is not exceeded and 2) at least 25 percent of the square footage of the development contains nonresidential square footage.

Staff expects that most developers will maximize the number of dwelling units permitted under the zone and mostly provide work/live units (a nonresidential facility) for the remainder of the allowed floor area. This should provide dynamic developments with a mix of residential and entrepreneurial and artistic nonresidential activities. This issue is further discussed in the “Key Issues and Impacts” section of this report.

HBX work/live units. The new zones propose a new type of allowed facility: an HBX work/live unit. This unit accommodates both working and living activities but emphasizes the accommodation of nonresidential activities. As discussed above, staff proposes that nonresidential floor area as part of development not result in a decrease of the number of residential units allowed at a site. Several stakeholders have stated that they would like to use this development “bonus” to construct HBX work/live units, because they count as nonresidential floor area in the zoning code, not toward the maximum residential density. Therefore, the creation of distinct standards for what constitutes a nonresidential facility as opposed to purely living unit is a critical element of the regulations. The stakeholders group and staff believed that standards for new work/live units should encourage business activities, not be a mask for loft style residential units. With input from the stakeholders, staff has developed standards that both fulfill this goal and are flexible enough to be feasibly applied. The following are highlights of these standards:

1. At least two-thirds of a unit must be designated as nonresidential floor area. Requiring at least two-thirds of a unit to be designated as nonresidential floor area assures that the unit will have ample open areas for work activities, with three exceptions:
 - 50 percent of a unit can be designated residential when the residential and nonresidential spaces are on different floors and the nonresidential space is on the ground level and oriented to the street; and
 - 45 percent of a unit can be designated residential when there are two entrances into a unit, one a residential entrance and the other a commercial entrance; and
 - 50 percent of a unit can be designated residential when the residential and nonresidential spaces for a certain number of small units (see item 3, below);

The first exception allows units to have a ground level business and upper story living areas without an awkward floor plan. The second exception encourages a floor plan that is more convenient for residential living and further differentiates a unit from a traditional residential floor plan. The third exception allows for a certain number of small units to be feasibly constructed.

2. Nonresidential space and residential space would be separated by a wall or between floors (including mezzanines), except kitchens may be open to the nonresidential space.
3. Units would be a minimum of 1,000 square feet. This figure is used because it would allow 333 square feet of residential area, a minimally sufficient space for residential activities. Staff also proposes that some units smaller than 800 square feet be allowed in buildings that are predominantly nonresidential. These units would be allowed to have 50 percent of their floor area devoted to residential activities to allow for feasible floor plans.
4. At least one tenant of each unit must operate a business and maintain a City of Oakland Business Tax Certificate. Also, a statement of disclosure must be provided to tenants and a sign must be posted at a public area of the building stating that 1) a business must be run out of each unit and 2) the units may experience impacts associated with business operations. These provisions provide some assurance that units will be used for business activities, not a residential loft.
5. Each unit must have an entrance accessible to a nonresidential space without traveling through a residential space. This avoids residential activities being disturbed by business visitors or employees.
6. Design review criteria requiring:

- A commercial or industrial appearance to buildings containing predominantly work/live facilities;
- Bona fide working spaces with unpartitioned work areas;
- Ground floor units having a commercial or industrial presence on the street;
- Provisions for the delivery of goods.

HBX live/work units. At the request of a stakeholder, staff has developed another type of facility: an HBX live/work unit. This unit accommodates both living and working, but does not emphasize one activity over the other. This unit would count toward the residential density maximum and have the same open space requirements as residential units. Therefore, floor plan standards and design review criteria are much more flexible in this type of unit than the HBX work/live units.

Note that the construction of new HBX live/work units will be eligible to generate residential condominium conversion rights because they are considered residential facilities. Staff believes this is appropriate because new HBX live/work units will meet the same zoning standards as would be required for purely residential units (i.e. density, open space, and parking). Further, the proposed zones require a design review process for the creation of any new HBX live/work unit to: 1) assure adherence to the standards; and 2) create an official record for what the City considers an HBX live/work unit. The official record would distinguish an HBX live/work from an HBX work/live unit or a joint living and working quarter. This distinction is critical because HBX work/live units and joint living and working quarters are considered nonresidential facilities and therefore not eligible to generate condominium conversion rights. Note that the design review requirement applies to all new units whether they are converted from an existing structure or in a newly constructed building.

Currently, the proposal does not explicitly say that HBX live/work units can generate condominium conversion rights. Staff recommends that this language be inserted into the HBX regulations to make this issue clear to future regulators. This language would be inserted prior to a hearing in front of the City Council.

MAPPING

Staff proposes changes to the zoning map that identify the location of the three new zones. These zones are proposed to be located where the General Plan or Estuary Policy Plan is mapped either HBX or RMU. The General Plan map is proposed for minor modifications where there were previous mapping errors. These errors include areas that should have been mapped HBX because they are adjacent to proposed HBX areas and contain a mix of residential and nonresidential activities. In other instances, an HBX designation was removed from an area because there is a solid and extensive pattern of either residential or nonresidential development. These refinements are shown in Attachment C.

GENERAL PLAN GUIDELINES

On May 12, 1998, the City Council adopted interim controls that implement the General Plan prior to the adoption of revisions to the Oakland Planning Code. These interim controls are in a document entitled "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations". However, the new zones will now implement HBX General Plan and the RMU Estuary Policy Plan designations. Therefore, staff proposes to replace text in the Guidelines that implement the General or Estuary Plan designations with text that refers to the Planning Code (see Attachment D).

ENVIRONMENTAL DETERMINATION

Several past environmental documents discussed and evaluated the environmental impacts associated with this proposal and reliance on them satisfies any requirements under the California Environmental Quality Act (CEQA). Those environmental documents include the previously certified Final Environmental Impact Report for the Land Use and Transportation Element of the General Plan, adopted 1998 (General Plan EIR); the Oakland Estuary Policy Plan Environmental Impact Report, adopted 1998 (Estuary Plan EIR); the West Oakland Redevelopment Plan Environmental Impact Report, adopted 2003; and the Housing Element Update Initial Study/Mitigated Negative Declaration, adopted 2003. Furthermore, the proposed map changes are exempt under CEQA Guidelines section 15061(b)(3), known as the “General Rule”, that states a project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment. This section describes how these documents are applicable to the proposal.

General Plan EIR

The General Plan EIR evaluated the environmental impacts of the proposal and anticipated future reliance on it for actions that were consistent with it and intended to implement it. Reliance on the General Plan EIR is appropriate as stated on page I-4 of that document:

The EIR may also be used at a future date by the Planning Commission and City Council to evaluate the environmental impacts of subsequent actions that are consistent with the Land use and Transportation Element or are intended to implement the Land Use and Transportation Element.

Further, the changes to the ordinance and zoning map being proposed were evaluated by the General Plan EIR. The General Plan EIR specifically states that the document may be used to evaluate the environmental impacts of “amendments of the Zoning Ordinance and Zoning Map for General Plan consistency”. This General Plan EIR contains several mitigation measures that reduce development impacts proposed by the General Plan to less than significant and identify others as unavoidable or irreversible. Attachment E summarizes the mitigation measures and the impacts associated with the General Plan identified in the EIR. Staff has considered and incorporated the mitigations into the proposal.

Several projects have been constructed and/or entitled in the HBX General Plan designation since the General Plan EIR was certified in 1998, particularly in the Clawson neighborhood in West Oakland. Each of these projects was analyzed during their permitting processes and shown to be consistent with the General Plan. The intensity and character of these projects were, therefore, anticipated by the General Plan EIR. Further, the intensity and character of the proposed HBX-1 and HBX-2 zones are consistent with that anticipated by the General Plan (see General Plan analysis, above).

As mentioned in the Mapping section of this report, the Housing and Business Mix mapping process refined the General Plan Map adopted in 1998. This refinement was anticipated by the General Plan EIR:

The proposed Land Use Diagram is more generalized than the 1980 map. While the 1980 map drew fine distinctions on individual blocks based on existing uses and residential densities, the proposed diagrams uses more generalized designations. This is partly a result of the more inclusive categories, and partially a policy decision to leave block by block distinctions to the rezoning process.

Staff analysis calculates that the proposed refinements reduce the number of acres of Housing and Business Mix designated land by less than ten percent; this type of small alteration in the map was

anticipated by the General Plan EIR in its analysis of environmental impacts. Therefore, reliance on the General Plan EIR for the proposed General Plan map amendments is consistent with CEQA.

Estuary Policy Plan EIR

The Estuary Plan EIR evaluated the environmental impacts of the proposed HBX-3 zone and anticipated future reliance on it for actions that were consistent with it. Reliance on the Estuary Plan EIR for the proposed HBX-3 zone, which implements the Estuary Policy Plan RMU designation, is appropriate as stated on page I-3 of that document:

The EIR may also be used at a future date by the Planning Commission and City Council to evaluate the environmental impacts of subsequent actions that are consistent with the Estuary Plan or are intended to implement the Estuary Plan.

As discussed in the General Plan Analysis section, above, the proposed HBX-3 zone directly implements and is consistent with the Estuary Policy Plan. The Estuary Plan EIR contains several mitigation measures to reduce impacts of development anticipated by the Plan to less than significant and identifies unavoidable or irreversible impacts. See Attachment F for the mitigation measures and the impacts associated with the Estuary Plan identified in the EIR. The proposal has considered and incorporated these mitigation measures to mitigate potential impacts.

The Kennedy Tract has seen several projects either constructed or entitled since the Estuary Plan EIR was certified in 1998. These projects were analyzed during the permitting process to assure consistency with the Estuary Policy Plan. Further, the General Plan Analysis section of this report shows that the intensity and character of the proposed HBX-3 zone was anticipated by the Estuary Policy Plan.

Redevelopment Plan EIR

In 1994, the City of Oakland adopted the Redevelopment Plan for the West Oakland Project Area (Redevelopment Plan) and certified an associated EIR (see Attachment G). The Redevelopment Plan covers a substantial amount of West Oakland, including some areas proposed for an HBX-2 designation. The redevelopment plan is a broad document that does not contain specific projects, but directs and targets funding sources towards affordable housing, general housing and business improvements, infrastructure, and environmental improvements. The EIR identifies the potential impacts of these investments in the project area. Any mitigation required by the EIR has been considered and incorporated into this proposal to mitigate potential impacts.

Housing Element Initial Study

The purpose of the 2004 Housing Element is to establish goals, policies, and programs that address identified housing needs. The City's Housing Element is based on eight goals that provide direction and guidance for meeting the City's housing needs through 2006. An associated negative declaration for this document, certified in 2004, identifies the impacts of fulfilling these goals and describes mitigations to reduce the impacts to less than significant. The new housing that will be developed in the HBX zones is anticipated by the Housing Element, including the mitigation measures, and any mitigation required has been considered and incorporated into this proposal to mitigate potential impacts. The mitigated negative declaration and the mitigation measures are contained in Attachment H of this document and incorporated by reference.

General Rule

The areas potentially affected by the proposed zoning text, zoning map, and general plan map amendments have been thoroughly analyzed by several CEQA documents as discussed above. The proposal implements various plans described above; and these plans have undergone thorough environmental analysis, and satisfy the requirements of CEQA. Staff recommends the Planning Commission find it exempt under CEQA Guidelines section 15061(b)(3), known as the “General Rule”, that states a project is exempt from CEQA if there is no possibility that the activity in question will have a significant effect on the environment.

KEY ISSUES AND IMPACTS

Self Storage

Issue. The issue of how self storage facilities should be regulated in the HBX zones is an issue amongst stakeholders. Those in favor of allowing self storage facilities argue that they 1) create few noise or traffic impacts on residential activities; 2) are consistent with the intent of the HBX zones to allow a mix of activities; and 3) provide a needed service to the City. Also, conditionally permitting self storage would give the City an opportunity to deny an application if it is not appropriate for a neighborhood.

Others argue that self storage facilities should not be a permitted activity for the following reasons:

- They create a dead space on street frontages that provide little visual interest to residents or pedestrians;
- Self storage facilities do not populate a neighborhood with people to support neighborhood businesses and street activity;
- The profitability of self storage businesses and the HBX designations’ proximity to the freeway may create an overconcentration of these businesses in HBX neighborhoods;
- Self storage businesses bring an insignificant number of jobs to the City;
- Their proximity to the freeway may create pressure to permit tall signs in HBX neighborhoods; and
- There are many other areas of the City where self storage facilities have an opportunity to locate.

Recommendation. Staff recommends that self storage facilities be conditionally permitted in a project that:

- Has no more than 20 percent of its square footage devoted to self storage;
- Does not have storage space in the front of a building; and
- Has ground floor retail space.

Conditionally permitting self storage facilities behind other more active uses allows these businesses to exist in the HBX zones without deadening the streetscape. Limiting the square footage of the activity assures that there will not be an overconcentration of self storage facilities in the HBX zones. A successful example of this combination is the former Sears store at the corner 27th Street and Grand Avenue.

Conversion of Residential Facilities to Joint Living and Working Quarters

Issue. Bruce Beasley, a member of the stakeholder group, has expressed a desire to place an exception in the HBX zones that would allow residential facilities to be converted to joint living and working quarters (JLWQs). Currently, under section 17.102.190 of the zoning ordinance, only existing nonresidential buildings can be converted to JLWQ’s. Mr. Beasley contends that JLWQ conversions should be allowed in residential buildings within the HBX zones because these zones are intended to allow a variety of activities and contain buildings that can be flexibly used for various activities over time. Therefore, the ability to move from one use to another and back is an important characteristic.

Allowing conversion of residential buildings to JLWQs would bring up several important issues:

- The City Attorney has informed staff that allowing conversion to JLWQs from a residential facility may be attempted by property owners to avoid the condominium conversion requirements of Oakland's condominium conversion ordinance, including, among other things, tenant rights requirements and the requirement to replace rental units being lost due to the conversion.
- Joint living and working quarters converted from residential space will look and act like residential units because they were originally designed for residential buildings. The existing development standards for conversions are highly broad and flexible which further limits the City's ability to assure that the units would operate as commercial facilities.
- Density, open space, and parking requirements do not apply to JLWQs. Therefore, allowing conversions would create a loophole where new units with a residential character could be approved without the density, open space, and parking requirements that are required for residential units. This would also allow residential densities over that allowed by the General Plan without providing the amenities and mitigations required of residential units.

Note that under the current proposal, any building, including residential building, can be converted to HBX live/work units or HBX work/live units through a design review process if they meet the requirements for these types of facilities.

Recommendation. Staff agrees that the HBX zones should allow buildings that can be flexibly used for a variety of activities. Therefore, staff recommends that section 102.230 of the zoning ordinance be amended to allow the conversion of residential structures to nonresidential facilities without a use permit in the HBX zones (see Attachment A). If directed by the Commission, staff can also amend 17.102.190 to allow the conversion of residential buildings to JLWQs in the HBX zones if the new units meet the density, open space, parking, and condominium conversion requirements of residential units. This would allow buildings to be flexibly used while meeting the intent and standards of the General Plan, condominium ordinance, and zoning ordinance.

Applicability of Manual to Nonresidential Development

Issue. The West Oakland Commerce Association (WOCA) has written a letter to staff expressing their concern that the "tone" of the Design Manual is geared towards residential development, not commercial or industrial development (see Attachment H). They further state that the manual would make it "impossible to design a building that would be functional and economically efficient". WOCA also stated that the document lacks clarity because it does not clearly state which guidelines would apply to nonresidential development and which would not.

Recommendation. At the request of the Commission, staff can provide a short passage in the introduction of the manual stating that the guidelines are applicable to both residential and nonresidential development unless 1) specifically stated otherwise or 2) type of development is clear from the context of the guideline. Staff also recommends that the manual include more illustrations of nonresidential buildings.

Staff does not feel other modifications are required because a review of the manual showed that its guidelines could equally be applied to residential and nonresidential development. Further, the manual clearly states when a guideline should only be applied to one type of development.

Each guideline addresses one or more of four basic elements: massing, site planning, architectural style, and buffering. The massing guidelines address universal issues that can be equally applied to residential and nonresidential development: transitioning from existing patterns on the street, breaking up the mass of a building, and scaling a building to be pedestrian friendly and appropriate to the width of a street.

Similarly the site planning sections describe elements appropriate for any type of development: mitigating light and air impacts of new development on neighboring small residential buildings and appropriate location of parking. The manual does discuss location of open space in the site planning section but makes clear that the subject applies to residential development. The guidelines relating to architectural style and visual quality are also flexible enough to be applied to any development: they encourage a variety of architectural styles, including industrial; they state that particular attention should be paid to street facing facades; and they discourage blank street facing walls. Finally, the landscaping and buffering section makes clear when its guidelines apply to nonresidential construction.

In addition, several guidelines provide a menu of examples of techniques that can be used to fulfill the intent of the manual. Several of these examples include techniques appropriate for nonresidential buildings such as providing ground level glazing, canopies, awnings, prominent ground floor heights, and other features.

If the Commissioners believe that more work on this issue is required, staff could hold a focused meeting with WOCA members to review the manual in more detail.

Minor modifications

Staff requests that the Planning Commission authorize staff to make minor changes to the text and illustrations of the manual or regulations prior to adoption in front of the City Council. This may be required to clean up language, correct typing errors, or provide improved graphic examples. Staff also requests permission to reformat the manual to be more attractive and user friendly prior to the City Council hearing. Staff proposes to bring any significant or controversial changes back to the Planning Commission for approval.

RECOMMENDATIONS:

1. Recommend to the City Council that they affirm staff's environmental determination;
2. Recommend to the City Council to adopt the proposed Zoning Text Amendments, Zoning Map Amendments, General Plan Map Amendments, and changes to the "Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations".

Prepared by:

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Planner III

Approved by:

GARY PATTON
Deputy Director of Planning and Zoning

Approved for forwarding to the
City Planning Commission:

Claudia Cappio
Development Director

ATTACHMENTS:

- A. Proposed zoning text amendments
- B. Proposed Design Manual
- C. Proposed Zoning and General Plan map amendments
- D. Proposed Amendments to the General Plan Guidelines
- E. Summary of Environmental impacts and mitigations measures described in the General Plan EIR
- F. Summary of Environmental impacts and mitigations measures described in the Estuary Policy Plan EIR
- G. West Oakland Redevelopment Plan EIR
- H. Initial Study/Mitigated Negative Declaration for the 2004 City of Oakland Housing Element Update
- I. March 23, 2006 letter from the West Oakland Commerce Association to Neil Gray

