

**Zoning Update Committee**

Michael Lighty, Chair

Nicole Franklin

Anne E. Mudge

October 15, 2003

<b>Location:</b>	Citywide
<b>Proposal:</b>	Revisions to the land use classifications in Chapter 17.10 of the Oakland Planning Code. <i>Continuation of discussion on this item from the meeting of September 25, 2003.</i>
<b>Applicant:</b>	City Planning Commission
<b>Staff recommendation:</b>	Review and discuss the proposed land use classifications and definitions.
<b>For further information:</b>	Contact <b>Heather Coleman</b> , Strategic Planning, at 510-238-6417 or email <i>hcoleman@oaklandnet.com</i> .

**BACKGROUND**

At the September 25, 2003 meeting, the Zoning Update Committee (ZUC) considered revisions to the land use classifications in Chapter 17.10 of the existing Planning Code. Discussion on the item was carried over to the meeting of October 15, 2003. The Commissioners asked for additional time to review the written material and to discuss the item in the public forum.

**OVERVIEW**

Because the ZUC is still reviewing the material submitted for the September 25<sup>th</sup> meeting, and because the time between the two meetings was short, staff is not re-submitting the whole text of the proposed revised land use classifications. However, staff would like to use this supplemental report to:

- Review particular land uses or sections of the text that were discussed at the last hearing; respond to questions and comments made by the commissioners and the public; and suggest revisions to the proposed classifications where appropriate.
- Report on additional issues discussed with industrial stakeholders since the September 25, 2003 meeting.
- Direct the ZUC's attention to important questions that need resolution.

**KEY ISSUES AND IMPACTS**

Discretion in Classification (Section 17.10.095)

**Question:**

- ***Should the proposed Section 17.10.095, granting the Director of City Planning discretion to classify manufacturing activities based on factors such as scale of operations, truck volumes, and toxic materials used or produced, be retained or deleted?***

In order to address the ranges in scale, intensity, and potential impacts that can occur from the manufacturing of a particular type of good or material, staff proposed adding a section to Chapter 17.10 that would spell out a set of factors that the Director of City Planning could use in making a determination of the appropriate classification of a manufacturing use. The proposed factors were: the scale of the activity, including the volume of input or output, the floor or site area devoted to manufacturing, or the size of equipment used; volume of truck activities; air emissions; noise, vibrations, dust, or odors generated; hazardous materials used in or resulting from production; and toxicity of waste generated. Commissioner Mudge commented that the section would provide flexibility that would likely benefit manufacturing businesses. However, the industry representatives who spoke at the ZUC meeting of September 25, 2003 were opposed to addition of this section of the code. They were concerned that it would grant too much discretionary authority to the Director of City Planning; that it would imply the need for costly or time-consuming environmental impacts assessment to be conducted in order to make a land use determination; and that it would create uncertainty for manufacturers. In addition, the speakers were particularly concerned that because a determination can be requested by any party and appealed by any party, the proposed code section would be used against industrial operators in a “NIMBY” fashion. Commissioner Lighty was also opposed to addition of the section.

The ZUC asked staff to describe where determinations are already provided for in the existing Planning Code. Section 17.10.090 states that unlisted uses shall be included in the use type that most closely portrays them. It states that in the case of uncertainty as to the classification of any use, the Director of City Planning shall classify said use, subject to the right of appeal from such determination pursuant to the administrative appeal procedure in Chapter 17.132. Chapter 17.132 states that any determination or interpretation made by the Director of City Planning may be appealed to the City Planning Commission by any interested party.

Due to the opposition to the proposed new Section 17.10.095, and the fact that the Planning Code already provides for land use determinations in cases where the classification of a use is unclear, staff recommends not including the new section after all.

Food Processing (Sections 17.10.560 and .570):

***Questions:***

- ***Should food and beverage processing be retained in the Light Manufacturing category?***
- ***Should manufacturing of tobacco products processing be retained in the Light Manufacturing category?***
- ***Should the processing of fish, yeast, and beer continue to be classified as General Manufacturing?***
- ***Should the processing or packing of meat be classified as Light or General Manufacturing?***
- ***Are there additional types of food processing activities which should be classified as General Manufacturing?***

In the existing Planning Code, the manufacturing, processing, assembling, packaging, or treatment of food, beverages, and tobacco is classified as Light Manufacturing, except for the processing of certain items – alcoholic beverages, fish, meat, sauerkraut, vinegar, and yeast – which are classified as General Manufacturing. The consultant to the Zoning Update had proposed defining all food, beverage, and tobacco processing as General Manufacturing, and this change was reflected in the draft definitions that went before the ZUC and received preliminary approval in June, 2002.

In discussions with staff during Summer, 2003, representatives from the industrial groups expressed concern that moving food processing from Light to General Manufacturing could make some existing operations nonconforming or conditionally permitted where they are currently permitted outright. In addition, food processing is one of the industries that the City is expressly trying to attract and retain. Food and beverage processing can include a range of processes and potential impacts. Even meat packing, which is classified as General Manufacturing in the existing code, can occur on a small scale, such as with Niman Ranch, a meat packer located in Oakland that specializes in healthy/organic meat products.

In recognition of this variety, staff proposed classifying food processing according to scale of operation. In the draft land use definitions submitted to the ZUC for September 25, 2003 hearing, processing operations with 25,000 square feet or less of production area were classified as Light Manufacturing and operations over 25,000 square feet were classified as General Manufacturing. However, at the meeting, both Commissioner Lighty and the public speakers expressed concern with this approach. There are some existing food processors located in areas designated for light manufacturing (the proposed IBX zone) that are over 25,000 square feet in size and would go from being permitted outright to conditionally permitted if this change were instituted. Commissioner Mudge suggested that the City may need to keep food processing as a Light Manufacturing Activity, but call out certain types of processing that tend to create heavier impacts, similar to the approach used in the existing code, where meat, fish, yeast, sauerkraut, and alcoholic beverages, are called out as General Manufacturing.

Staff proposes retaining food, beverage, and tobacco processing as Light Manufacturing Activities, but calling out fish, yeast, and beer brewing (which involve distinct smells) as General Manufacturing Activities. If there are additional food manufacturing processes that are inherently odiferous or otherwise impactful, these could also be explicitly called out and placed in the General Manufacturing category. Size thresholds for particular use categories may be utilized in the individual zones, but not in the land use definitions themselves. For example, in the proposed BHX zone, Light Manufacturing Activities up to 25,000 square feet will be permitted outright, while those over 25,000 square feet will be conditionally permitted.

(Note: Beverage warehouses where no bottling occurs are considered a warehousing rather than manufacturing activity. Animal slaughtering is considered a Heavy Manufacturing Activity.)

General and Heavy Manufacturing (Sections 17.10.570 and .580)

***Questions:***

- ***Should primary metal manufacturing, including smelting and refining, be classified as Heavy Manufacturing?***
- ***Should metal fabrication and metal products assembly be classified as General Manufacturing?***
- ***Should the manufacturing of paint, synthetic dye and pigments, coating and adhesives, urethane and other open-cell foam products, be relocated from General to Heavy Manufacturing, as recommended by WOCA?***

The West Oakland Commerce Association (WOCA) had suggested moving certain types of manufacturing activities, including the manufacture of paints, dyes, and certain other chemicals, as well as certain types of metals manufacturing, from the General Manufacturing to the Heavy Manufacturing category. In the draft text revisions submitted to the ZUC for the meeting of September 25, 2003, staff incorporated most of WOCA's suggestions for the Heavy Manufacturing category. "Primary metals manufacturing" such as smelting and refining, is located in Heavy Manufacturing, whereas "fabricated metal products" is located in General Manufacturing. Since the September 25, 2003, the Industry and Labor Alliance of Oakland (ILAO) spoke with staff and expressed concern about moving metals manufacturing into the Heavy Manufacturing category. Staff clarified the intent of the differentiation between "primary metals manufacturing" and "fabricated metals products." "Primary metals manufacturing" was intended to encompass smelting and refining metals from ore, pig, or scrap. Other types of metal fabrication should be classified as General Manufacturing.

Staff recommends retaining the distinction proposed at the last meeting between primary metal manufacturing and fabricated metal products, but adding specific language as necessary to clarify the distinction.

(Note: Craft/custom metalwork, such as custom blacksmithing or hand jewelry making, is classified as Custom Manufacturing.)

#### Truck Repair and Truck Sales

##### ***Questions:***

- ***Should truck repair and truck sales constitute two separate land use categories?***
- ***Shall combined operations including both new truck sales and repair services be classified as "Truck and Other Heavy Vehicle Sales, Rental, and Leasing" while those engaged only in repair, or, in repair and the accessory sale of used vehicles, be classified as "Truck and Other Heavy Vehicle Service, Repair, and Refueling"?***

In the draft definitions brought to the ZUC on September 25, 2003, "Truck and Other Heavy Vehicles Sales, Rental, and Leasing" was a separate land use category from "Truck and Other Heavy Vehicle Service, Repair, and Refueling" (See page 28, Attachment A, of the 9/25/03 staff report).

Since the September ZUC meeting, ILAO contacted staff and brought to our attention that truck repair/refueling/servicing and truck sales most often occur on the same site, and recommended combining the two land uses into a single category. There are a number of establishments in Oakland that sell new trucks and equipment, and also have on-site repair services. These include East Bay Truck Center, Oakland Truck Center, and Kenworth Trucks. To our knowledge, all of the new truck sales establishments also engage in truck repair. The repair component appears to represent a more significant portion of business than it typically does for auto dealers.

However, staff was also in contact with WOCA representatives, and reminded of the purpose of the distinction between the two uses. There are a number of establishments that engage *only* in repair of trucks and heavy equipment. There are other establishments that combine repair as a primary activity with the accessory sale of used trucks and equipment. Some of the repair-only operations in West Oakland have raised the ire of residential neighbors due to poor site maintenance and appearance. Dealers of new trucks and equipment, on the other hand, are held to certain standards by the truck manufacturers.

Staff recommends retaining the two categories but adding language to the definition to specify that new truck and vehicle sales, when combined with repair activities on the same site, shall be classified as "Truck and Other Heavy Vehicle *Sales, Rental, and Leasing*" while those engaged *only* in repair, *or*, in repair and the accessory sale of used vehicles, be classified as "Truck and Other Heavy Vehicle *Service, Repair, and Refueling*."

*(Note: There was an error in the draft text of the definitions on page 28, Attachment A of the 9/25/03 staff report. The sentence, “This classification includes fueling stations, repair shops, body and fender shops, wheel and brake shops, engine repair and rebuilding, welding, major painting service, tire sales and installation, and upholstery shops, but excludes vehicle dismantling or salvage and tire re-treading or recapping” was intended only for the Vehicle Service, Repair, and Refueling definition, but was accidentally included in the Sales, Rental and Leasing definition. This error will be corrected).*

Warehousing, Storage, and Distribution – With Accessory Store

**Questions:**

- ***Should “Warehousing, Storage, and Distribution” be a separate land use category from “Warehousing, Storage and Distribution – with Accessory Store”?***
- ***Should 20% be the maximum floor area occupied by an accessory store in the “Warehousing, Storage, and Distribution – with Accessory Store” category?***

Since the September 25, 2003 meeting, ILAO discussed with staff the proposed threshold for an accessory store within a warehouse of 5,000 square feet or 20% of floor area (See page 27, Attachment A, of the 9/25/03 staff report). ILAO recommended relying simply on the 20% figure and eliminating the 5,000 square foot threshold, which seemed like a small store size and a somewhat arbitrary threshold.

Staff also questioned whether “Warehousing, Storage, and Distribution - with Accessory Store” is necessary as a separate land use category. Thresholds for accessory uses are typically located in Section 17.10.040 of the code. However, the intention of creating this category is that a warehouse with accessory store may be less appropriate than traditional warehousing without store facilities in Oakland’s general industrial areas, where it is particularly important to retain land for industrial purposes.

Staff recommends retaining the category “Warehousing, Storage, and Distribution – With Accessory Store,” as proposed at the meeting of September 25, 2003, and retaining the maximum 20% of floor area, which ensures that the primary activity is warehousing rather than retail sales. However, staff proposes eliminating the previously proposed 5,000 square foot size threshold, which may be unnecessarily restrictive. (Note: a store over this threshold would not necessarily be prohibited, but would just push the establishment into a different land use category, either General Retail Sales, or General Wholesale Sales).

**RECOMMENDATIONS**

Staff recommends that Zoning Update Committee review the proposed revised land use classifications and the above questions and provide comments and direction to staff.

Prepared by:

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Approved for forwarding to the  
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