

***Zoning Update Committee***

Michael Lighty, Chair

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<b>Location:</b>	<b>Citywide, Urban Residential General Plan Land Use Designations</b>
<b>Proposal:</b>	Introduction of the Urban Residential Mixed Use Zoning District and Recommendations on re-zoning within the Urban Residential General Plan Land Use Category
<b>Applicant:</b>	City Planning Commission
<b>Staff recommendation:</b>	Review and discuss the proposal for the new Urban Residential Mixed-Use Corridor Zoning District
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**SUMMARY**

This report provides analysis and recommendations for rezoning for consistency to the General Plan areas of the City designated Urban Residential in the General Plan Land Use Map. Beginning with a comprehensive review of the intent of the General Plan, staff first analyzed how well the existing medium to high density residential zoning districts match the intent of the Urban Residential land use designation. If there is, in fact, a significant intention for a mixed-use zone not adequately represented by the zoning, are there other existing zones that can match this intention? If there are no appropriate existing zones, is there a need for creating a new zoning district? Any proposal for a new zone has to be balanced with pragmatic concerns of how probable the General Plan vision for vital mixed-use urban corridors can be encouraged through zoning incentives/regulations, and to what extent a proposed rezoning impacts active and desired uses on the ground.

The analysis and recommendations of this report build off of the zoning update consultant's work to date. Staff recommends that a new zone (RU-X) is needed and appropriate for the areas along key transit corridors intended to have a mixed-use residential and neighborhood-serving commercial character that are presently commercially zoned but designated Urban Residential in the General Plan. A preliminary draft text of the proposed RU-X zone is attached for review (Attachment B).

## BACKGROUND

The City Council adopted a new General Plan in 1998 which included new land use categories and a land use map. Per the General Plan policies staff is carrying out the Zoning Update Project to make zoning regulations consistent with the General Plan. Many of the existing zoning districts, which were adopted many years ago, are not entirely consistent with the intent of the General Plan Land Use classifications. Initially, the Zoning Update Committee reviewed and discussed draft text for entirely new urban residential zones to match the Urban Residential General Plan land use designation. Since that time, the City Council and Mayor have directed staff to utilize existing zoning districts where possible instead of preparing a new Zoning Code.

In undertaking this analysis, staff reviewed the intent of the Urban Residential land use category from the 1998 City of Oakland Land Use and Transportation Element as well as associated policy documents in which the zoning of this land use was discussed. The intentions were then compared to what is presently occurring in these areas in terms of actual uses and in terms of existing zoning. Lastly, the proposed new zoning text and maps, which had been worked on for over a year by staff consultants, Dyett and Batia and Barry Miller, were analyzed to determine the specific recommended zoning activities and standards for a mixed-use Urban Residential zone and where it could be located.

### *General Locations of Urban Residential Land Use Citywide*

The intended citywide geographical pattern of the Urban Residential land use designation is shown in the General Plan Land Use map (see Attachment A). These areas are typically mapped along the main transportation corridors radiating from downtown and along the higher density residential neighborhoods adjacent to downtown and the Lake:

- Along Telegraph Ave. (from Hyw 24 to 63<sup>rd</sup>) and off of Telegraph between Hwy 24 and West Grand Ave.)
- Portions of 40<sup>th</sup> St. (between Telegraph and Piedmont)
- West MacArthur Blvd. (between Emeryville and MLK)
- San Pablo Ave. (two sections between the 580 Fwy. and West Grand Ave.)
- Martin Luther King Blvd., (from Children's Hospital extending towards the Northgate Area)
- West Oakland - Peralta Village and Acorn Village
- West Oakland - 7<sup>th</sup> Street north frontage
- West Oakland - 14<sup>th</sup> to 11<sup>th</sup> and Market St. area
- Edges of Adams Point
- Portions of Oakland Ave and Harrison St.
- Grand Lake Area - between Grand Ave. and lakeshore Ave.
- East Lake - e.g. along Park Blvd., Brooklyn Ave.
- Mid-Foothill Blvd. and Bancroft (22<sup>nd</sup> to 73<sup>rd</sup> Ave/Eastmont Mall)
- Mid-MacArthur - between Lincoln and 35<sup>th</sup>
- (Near) International Blvd. between 14<sup>th</sup> Ave and 22<sup>nd</sup> Ave

- (Far) International Blvd. - four sections between Hegenberger to 90th
- East MacArthur Blvd. and Bancroft Ave. (to the Oakland-San Leandro border)

The majority of these areas are presently zoned medium to high density residential (R-60, 70, 80) with a few pockets of lower density residential (R-40, R-50), and one pocket of higher density (R-90). There is, however, a significant and widespread prevalence of existing commercial zones, especially along the major transit corridors of Telegraph Ave., San Pablo Ave., Foothill and International Blvds. and the secondary corridors such as MacArthur, 40<sup>th</sup> St., Martin Luther King and Park Blvd.

The most salient feature of the urban residential land use, reiterated in policy discussions of the ZUC (2002), is that there are two types of conditions of urban residential: (1) a medium to high density residential apartment neighborhood condition, and (2) a desired mixed-use corridor condition. In fact, creating vibrant, mixed-use, medium to higher density residential environments along the highly used key transit corridors was one of the principal new policy visions the General Plan. There is certainly a great need for housing citywide and, along these major transportation corridors where new Rapid Transit bus lines and redevelopment improvements are planned, a “smart growth” opportunity for promoting new housing above neighborhood-serving commercial. Staff will present examples of this type of development in Oakland at the meeting.

The General Plan vision supports significant housing development along these “urban residential” corridors that are currently predominantly commercial and thus far from this intended character. The central question this report focuses upon is: *Do the existing zones adequately reflect and support this General Plan vision or is a new zone needed?*

**Referenced Documents**

- City of Oakland General Plan Land Use and Transportation Element, 1998
- City of Oakland Housing Element, 2002
- General Plan Policy Issue Brief #5, May 2002
- ZUC Staff report of February 19, 2003: “*Review and discussion of proposed policies for allowed land uses in residential zones.*”
- Proposed Zoning Code by Dyett and Bhatia
- Draft Citywide Zoning Maps prepared by Barry Miller and Dyett and Bhatia

**POLICY CONTEXT REGARDING THE URBAN RESIDENTIAL LAND USE DESIGNATION**

*Intentions of an Urban Residential Corridor Mixed Use Condition*

The first step in assessing re-zoning options for the Urban Residential land use is gaining a full understanding of what the key characteristics such zones would have to have in order to fulfill the intentions of the General Plan. The following discussion highlights a list of some the documented “intentions” for the character of development within the urban residential land use as expressed by City General Plan Land Use and

Transportation Element (LUTE) and in specific rezoning issue discussed at various times by the Zoning Update Committees (ZUC), building on previous interpretations of consultants and staff.

The General Plan, in fairly broad terms, articulates a specific land-use vision for the designated urban residential areas of the City such as development intent and gross development density standards. The Urban Residential land use classification is defined in the Land Use and Transportation Element (p.148) under the category “Corridor Mixed Use classification.”

***Intent:*** The urban residential classification is intended to create, maintain, and enhance areas of the City that are appropriate for multi-unit, mid-rise or high-rise residential structures in locations with good access to transportation and other services.

***Desired Character and Uses:*** The primary future use in this classification is residential. Mixed-use buildings that house ground floor commercial uses and public facilities of compatible character are also encouraged. If possible, where detached density housing adjoins urban residential the zoning should be structured to create a transition area between the two.

***Intensity/Density:*** Maximum allowable density in these areas is 125 units per gross acre. (This translates to approximately 167 units per net acre or 260 SF of site area per unit).

The specifics of any consistent zoning may be partially inferred from cross-referencing other relevant sections of the General Plan referring to specific land-use visions. There are important clues that refine the General Plan’s intent regarding the characteristics of zones within this land use. The reference of “good access to transportation” and the mapping along key transit corridors ties into the General Plan definitions of transportation corridors. These regional and local transit corridors are designated as mixed-use urban environments with concentrations of commercial and civic uses linked by segments of multi-family housing. The text also states, “[c]oncentrate commercial areas into viable “nodes” rather than lengthy struggling commercial corridors” (LUTE, p.33).

This emphasis was highlighted in the Oakland General Plan Policy Framework discussions of the ZUC (Issue Paper #5, May 2000, Dyett and Bhatia). It was stated that the proposed zones which would correspond to the Urban Residential land use should be “directed to places with good access to transportation and other services such as travel corridors...” They should “have high densities but not as high as downtown.” The discussion goes on to recognize the two types of conditions within the Urban Residential land use that need to be addressed: “there is a need to address the corridor conditions differently than existing ‘apartment neighborhood’ conditions” (p.6). The consultants suggest that the zone for the corridors would roughly correspond to the existing R-80 in terms of density and development standards. Further specifics of this corridor condition were suggested by the consultants in other issue briefs to the ZUC and to staff.

*Summary of Zoning Characteristics (from the LUTE, ZUC discussions, and consultant suggestions):*

Types and Location of Desired Uses

- Commercial should be noded and focused along corridors (LUTE, ZUC)
- Neighborhood –Serving Retail should be encouraged (Feb. 19, 2003 staff report to the ZUC)
- Small offices and neighborhood oriented civic uses should be allowed (not large offices)
- Affordable housing should be dispersed (not sure how this can be done effectively through zoning aside from the fact these mixed-use models lend themselves very well to mixed-income private/public projects)
- Home occupation should be allowed (LUTE)
- Live/work should be permitted (ZUC)

Uses that should be prohibited or discouraged

- Single Family Dwellings should not be allowed (ZUC).
- Motels and Hotels should be discouraged.
- Large scale institutional uses should be discouraged (LUTE)
- Alcohol sales should be prohibited (consultants)
- Auto uses should not be allowed (consultants)
- No work/live (ZUC)

Types and Concerns for Facilities (development standards/regulations)

- Heights and Density – Heights of 60’ to allow sufficient height for mid or high rise development (e.g. 5 stories above retail). Heights of developments should step down as it nears lower density to minimize conflicts. Maximum density that allows 125 units per gross acre. (LUTE, ZUC)
- Relation to street - Travel corridors should have attention to pedestrian and vehicular function, e.g. driveway restrictions on street (ZUC)
- Ground Floor Uses - Retail uses need to be encouraged as part of residential buildings (LUTE, ZUC)
- Design review - There should be sufficient design review for the commercial on the ground floor (LUTE)
- Setbacks – Generally, no front setback. Should be side set-backs for light, courtyards; larger setbacks for differ heights in rear, buffering, etc. (ZUC, consultant zoning proposals).
- Other development standards - Address issues of lack of open space and noise along corridors; address transition/abutment to adjacent lower density residential such as blocking of light and views, privacy needs; enclose service docks where appropriate (ZUC)

## **SIGNIFICANT ISSUE AREAS**

In conducting this Urban Residential zoning analysis there are three significant issue areas, identified for consideration by the Zoning Update Committee, which are highlighted below. After discussion, specific staff recommendations for each issue are provided for consideration by the Zoning Update Committee.

### ***1. Should we use an existing zone (e.g., C-28 or R-80) for the Urban Residential Corridor Mixed Use conditions or establish a new zone?***

Along the corridors, in the urban residential areas, a large percentage is currently zoned one of seven types of commercial (from C-10 to C-40). While all of these commercial zones technically allow multi-unit residential they offer little, if any, comprehensive incentives or protections for the type of pedestrian-friendly neighborhood-serving mixed use character with medium to high density residential. Based on the stated and inferred intentions of the General Plan for a corridor *mixed use Urban Residential* land use, is there any single existing zone that matches or supports this desired character?

For the corridor mixed-use condition, the two best existing zone candidates are the C-28 and the R-80 zones. The C-25, listed in the General Plan Conformity Interim Guidelines as a best-fit for Urban Residential, could also be considered. The other existing high density residential zones (R-60 and R-70), besides having relatively lower height and density limits than the “mixed-use corridor intentions,” do not allow commercial and therefore cannot be considered. While the General Plan is clear that the Urban Residential designation is a residential category, the C-28 can be considered based on its unique provisions for mixed-use developments. The C-25, likewise, is intended to introduce certain types of commercial mixed-uses within residential corridors.

#### Limitations of the “Best-Fit” Existing Zones Options

Although the R-80 works in some regards, particularly as far as height, density, and yard requirements it falls short of the intent of the mixed-use corridor character because it only allows a limited number of commercial uses and only if they are accessed internally and not from the street. While the existing R-80 zone could be modified to allow certain commercial uses outright, this would bring a new host of issues for the areas that are zoned R-80 elsewhere in the City not on the corridors. R-80 currently exists in neighborhoods bordering the lake, where narrow streets and a more quiet residential character predominate. Introducing commercial uses into R-80 as a permitted ground floor use in these areas would not be appropriate. In addition, all the other R-80 references in the existing zoning code might have to be altered.

The C-28 or C-25 commercial zones, both somewhat geared towards mixed-use development, have an advantage in that they are commercial zones and will not create many nonconforming uses. However, they are not residential zones, and are therefore not consistent with the fundamental intent of the General Plan Urban Residential classification. As far as comparing development standards with the intended character of urban residential, the permitted density in C-25 and C-28 of 1 unit/450 SF of lot area and

the height limits of 40 feet would be low and stand as a disincentive to achieving desired housing density. The C-28 is much closer to the desired character in terms of incentives for parking reductions in mixed-use projects and restrictions on non-retail ground floor uses, though it does not have specific streetscape standards oriented to pedestrians. (See Fig. 1 for comparison of standards and see Fig.2 for comparison of uses)

As far as uses, the 7500 SF maximum size for commercial uses (w/out a CUP) in the C-28, potentially allows non-neighborhood-serving business or other commercial/civic uses which by virtue of size or exclusive nature could be detrimental to the desired character (e.g. civic administration, retail, general food sales, offices, etc.). The C-28 also allows typically non-residentially compatible auto uses and custom manufacturing. The C-25 does introduce stricter size limitations (at 3,000 SF w/out a CUP) but the lack of particular design standards oriented towards maintaining a pedestrian oriented streetscape and ground floor commercial with residential above ultimately does not encourage mixed-use developments.

Ideally, the corridor urban residential would be a residential zone with the heights and densities allowed in the R-80 zone, the kind of size and ground floor limitations specified in the C-28 and C-25 zones and a variety of uses supporting the idea of “neighborhood-serving mixed-use.” There should also be further incentives for residential.

Comparison of Existing Zones, Original Consultant’s Proposal, and Staff’s Recommended Urban Residential Zone

The consultants basically concurred that the zones appropriate to urban residential should have new types of incentives and regulations to allow mixed-use commercial. Generally, they proposed utilizing a “RU-70” zone - a new urban residential mixed-use zone of comparable density to the existing R-70 or R-80. The chart below highlights specific standards of the existing “best-fit” zones, a potential draft zone prepared by Dyett and Bhatia, and staff’s proposed Urban Residential zone.

**Fig. 1. Potential Re-Zoning Options for Urban Residential Corridor Mixed Use Land Use Condition. Comparison of Development Standards**

Relevant Zoning Standards	Staff’s Proposed Zone	Consultant’s Recommendation	Best-Fit Existing Zones		
			C-25 Office Commercial	C-28 Commercial Shopping	R-80-High Density Apartment
	<b>RU-X</b>	<b>(RU-70)</b>			
Res. Density	1u/300 SF	--	1u/450 SF	1u/450 SF	1u/300 SF
Max FAR	3.5	2.75-3.0	2.0-3.0	3.0	3.50
Basic Height Limit	55’-90’(w/CUP)	65’	35-40’+ with step-backs	40-55’ (w/CUP)	None
Setbacks: front	10*	*	10	0*	10’
Side interior yard	*	0	*	*	*
Rear yard	10	10	10	10’	10’
Group Open Space	150 SF	100 SF	150 SF	120-150 SF	150 SF
Design Review for Com/Civic	Y	Y	Y	Y	(2)
Parking for resid.	.75/u -.5 w/CUP (1/u for 3 bed rooms+)	1/u	1/u	1/u.or .75 w/CUP	1/u
Amt. of req. pkg.	Med to less	--	Most	Med	Most

for com					
Gen. Restrictions on Ground Level Uses	(1,3)	--	N	(1)	N

\*Yards shall be provided or exempted in certain circumstances

- (1) No front yard parking or loading areas, no non-retail on ground floor w/out CUP
- (2) If residential constitutes 75% of total floor space in the facility
- (3) Other specified standards for driveway restrictions, transparency, streetscape

➤ ***Staff Recommendations: Create a new zone “RU-X” that would match the intentions of the Urban Residential Corridor Mixed-use land use classification.***

Staff believes that there are sufficient reasons to formulate a new urban residential mixed-use zoning district which can support the intentions of the General Plan and build off the work our consultants completed. To be consistent with other prevalent provisions of the Zoning Code, the new zone should use the R-80 as a starting point, especially for development standards, and aspects of the C-28 and C-25 for activities. Further, staff believes that auto-uses are not intended for this zone, especially given the notorious non-conforming manner in which some operate along the corridors.

A new zone provides a clear zoning district for this special mixed-use condition. The new zone is designed to better induce both new residential densities and more supportive neighborhood-serving commercial on the ground floor (e.g. require less parking for residential and commercial, discourage disruptive facilities and activities including preventing ground floor residential or single family houses that disrupt a mixed-use street frontage). Desired commercial uses that might be neighborhood-serving below a certain size threshold (e.g. 3,000-5,000 SF) should be permitted out-right. The new zoning standards will be particularly important for new construction.

For the other condition within Urban Residential, the “apartment neighborhoods” both along the corridors and off, the existing (R-60, 70, and 80) residential zones should be seen as consistent and can be designated in these areas. The few existing R-40 and R-50 pockets should either be up-zoned to the lowest density urban residential zone (R-60) or, through a General Plan Amendment, be changed to the Mixed Housing Residential land use.

Staff has compiled a draft new residential zone for review and discussion by the ZUC (see Attachment B). Specific standards and uses are summarized for discussion:

**Summary of a New “RU-X” Zone**

Name

- RU-X Urban Residential Corridor Mixed-Use Zone to be inserted into Zoning Code at 17.31 (after R-80 and before R-90).

Mixed-Use Controls

- Commercial or civic uses only are permitted on ground floor. No residential units along ground floor of principal streets except with a CUP.

- No new construction of exclusive commercial or civic except with a CUP
- Single-family houses and duplexes are not permitted (unless presently existing)

Uses/Activities

- Most low-intensive and residential compatible commercial and civic uses are permitted outright except:
  - **Uses Not permitted** - mechanical or electronic games, research service, general wholesale sales, auto sales, rental, servicing, repair, undertaking.
  - **Uses allowed only with CUP** - utility and vehicular, extensive impact, convenience markets, telecommunications, general assembly, animal care, fast food, live work.
- Permitted commercial and civic uses are limited by a square footage threshold established at 5,000 SF and by location - on ground floor or in some cases on second floor.
- Fast food and convenience marts are allowed conditionally and only as part of mixed-use developments (to prevent the disruption of mixed-use character by typical stand-alone chain developments).
- No manufacturing uses are allowed

Development Standards

- Design requirements to promote cohesive pedestrian oriented streetscape
  - No parking within 40 feet of front lot line or side abutting transit street except w/ CUP (if below grade, with up to 3 feet extending above grade, ok if not exposed)
  - No driveways entrances or loading areas along street front except w/CUP
  - Front yard setback required to create a minimum 12 foot public sidewalk which may include outdoor seating
  - Prohibition of blank walls on public right of way, transparency no less than 60%
- Allowances for encouraging higher density housing (as part of mixed-use)
  - Parking: .75 space/unit, .5/unit with a CUP, 1 space/unit for 3+ bedrooms
  - Density: 1 unit/300 SF of lot area
  - FAR: 3.50 Maximum
  - Height: 55 feet, up to 90 feet with CUP
- Maximum applicable existing transition and buffering requirements to assure minimal impact to abutting lower density residential areas
- Design Review for new construction and additions (exemptions under 10% of floor area)

Non-conforming Uses

- Uses greater than 5,000 SF that are otherwise permitted shall be allowed to expand with a CUP.

*1.2 Are the proposed standards for the RU-X zone appropriate?*

These proposed standards (as shown in Fig. 1) are deliberately similar to what now exists for the R-80 zone as far as residential density, FAR, setbacks, group open space. The

differences are: more specific height restrictions - as opposed to no general height limits for the R-80; added design review for all projects; added exemptions and regulations to front yard setback to create a pedestrian-oriented street frontage; less required parking for residential, commercial and civic uses; and added restrictions on ground level uses.

Going back to the intent of this proposed zoning district, a key question is how to treat new construction of exclusive multi-unit residential projects. On one hand, we want a degree of flexibility in situations where ground floor commercial or civic might not work or might not be desired. On the other hand, we do not want to open the door to situations where there is no compelling reason for a developer to build ground floor commercial or civic uses as part of a residential project, or the situation where ground floor residential units could potentially disrupt the pedestrian-oriented character of the desired district – e.g., street front blank walls, unit windows with security bars or entrances right at the street, or conversely, too many set-backs breaking the street frontage pattern. However, there are many designs that could work with ground floor residential – units raised above sidewalk level, units at the sides or rear, units that are setback at the front behind arcaded gardens or patios, etc. Instead of trying to write limitations for each contingency into the regulations and, at the same time, allowing flexibility for ground floor units at the sides or rear of projects, staff recommends making projects with residential units occupying more than 50% of the ground floor street frontage conditionally permitted in the RU-X provided no entrances are at the street. Staff has also added residential front yard design requirements for maintaining a continuous street frontage.

***2. Where along the corridors or other places should the proposed new zone (RU-X) be designated?***

If there is an RU-X zone that would satisfy the intent of the mixed use urban residential corridor condition, the next question is how or where should this zone be applied? The intent is to have the urban residential mixed-use character condition located along transit corridors in between commercial nodes and segments of medium to high density apartment residential. Such an application also has to be balanced as far as what is actually happening on the ground in terms of zoning and what existing uses would become nonconforming.

Issue 2.1: Designation Strategy for Corridor Mix-Used Zones

The General Plan has already established interspersed areas of commercial land uses (Neighborhood Mixed Use Commercial or Community Commercial) along many of the key corridors between stretches of Urban Residential. These district commercial areas are intended to allow more intensive commercial uses than the type of neighborhood-serving mixed-use intended for the Urban Residential Areas.

- ***Staff Recommendation: Designate the proposed new “RUX” zone on existing commercial areas within the Urban Residential Land Use classification in order to support and attract neighborhood-serving commercial and civic uses on ground floor with multi-unit residential above (see Attachment A).***

In the other areas mapped Urban Residential, which are currently zoned residential and have a strong existing residential character, staff recommends leaving or adjusting the existing zones to R-60, R-70, or R-80 and not changing to a new residential mixed use zone. *This mapping strategy should be seen as a starting point and will need to be refined with further field study.* Even within residential zones, there may be areas that should appropriately be rezoned as mixed-use (such as at the elbow of Foothill near Fremont High School and the Melrose Library), likewise, there are stretches along some of the commercially-zoned Urban Residential areas that are so predominantly residential they should be rezoned as R-60, R-70 or R-80.

Attachment A shows all areas designated as Urban Residential in the General Plan in light grey. Areas with existing commercial zoning where staff recommends considering the new Urban Residential Zone are shown in a cross-hatch pattern.

Issue 2.2: Implications of Rezoning Areas That Have Existing Commercial Zones

If we begin looking at rezoning the existing commercial zoned areas within the Urban Residential land use we also must consider the extent of uses that would become non-conforming. This proposed re-zoning represents a fundamental land use classification change and we would expect many activities and facilities to become non-conforming.

Nonconforming uses (Chapter 17.114 of the Zoning Code) are divided into nonconforming activities and nonconforming facilities. Nonconforming activities are defined as an activity that is no longer a permitted use, or one that does not conform to parking, or loading, performance standards, or *other requirements applying to activities*. A nonconforming facility is defined as one that fails to conform as far as density, FAR, height, open space, yards, signs, etc. If the regulations are changed to now require a conditional use permit, the existing activity or facility would not be nonconforming. The problem with a nonconforming status is that, normally, a non-conforming use is not allowed to substitute, extend or otherwise change or alter the facility. However, there are certain exceptions.

In the rezoning scenario (see Fig. 2), the most prevalent use type that would become nonconforming would be auto repair and servicing and alcohol sales (separate from those as part of corner markets). Aside from mortuaries and a few other uses, most other uses would be permitted or conditionally permitted in these areas. A substantial issue will arise due to nonconformity with the size threshold (CUP required for commercial or civic activities larger than 5,000 sf) or the regulations governing location of uses in relationship to the ground floor. Overall, this would be the widest form of activity nonconformity. As far as facility standards, there would be a host of widespread, but less serious, nonconformity which would be expected with any rezoning, even between different commercial zones. Generally, a nonconforming facility can be altered or otherwise changed if does not create any new nonconformity (per 17.114.110).

Section 17.114.080 C of the Zoning Code seems to provide adequate protections concerning nonconformity issues arising due to parking, loading, performance standards, or *other requirements applying to activities* (this would cover size thresholds and location

nonconformities expected to widely occur). The Code states that “uses with this type of nonconformity may be extended, and the facilities accommodating or serving such activity may be altered or otherwise changed, in any way which does not result in a greater degree of nonconformity with respects to such requirements normally applying to uses where the activity is located.”

However, an activity that is nonconforming because it is no longer a permitted use, such as the potential case of auto-uses and services in the proposed “RUX” zone, would not be allowed to expand. Certainly, this implication should not be construed to suggest staff does not value the economic/employment role auto servicing and repair play in Oakland. In fact, staff and consultants have maintained in the general rezoning efforts that a dedicated location should be provided for such uses that does not immediately impact residential or pedestrian oriented neighborhoods.

The two following charts help to assess the degree of nonconformity that might be expected in the proposed rezoning scenario along the Urban Residential corridors. Fig 2 describes, in general terms, the present uses and zoning for most of the areas, and Fig 3. illustrates what particular types of activities would become nonconforming in the rezoning (highlighting the most prevalent zones of C-30, 40, 28, 25 expected to affected).

**Fig. 2. Description of Existing Commercial Areas in the Urban Residential**

<b>Location/Corridor</b>	<b>General Character</b>	<b>Ext. Zoning</b>
West Macarthur (from Emeryville to MLK)	Two corners of auto uses - at West St. –gas station, repair, Big O tire, oil change, at Market – tire sales, drive-in liquor stores, gas station, detail shop/car wash. The rest of the corridor contains many hotels.	C-25, C-40, C-30
Park Ave	Multi-family housing, some above assorted commercial, cleaners, corner markets, etc.	C-28
East Lake Brooklyn	Two corners of ground floor neighborhood-serving with residential above (2-3 stories), one corner convenience market	C-28
Martin Luther King Jr. Blvd	Some corners markets, typically with second floor residential (e.g. at 34 <sup>th</sup> , 29 <sup>th</sup> with auto shop across the street. Sections of larger commercial: e.g. around 40 <sup>th</sup> St. (Marcus Books); at 27 <sup>th</sup> - barber shop, two stories of residential above, one corner w/screened auto; around 26 <sup>th</sup> St./Sycamor St. - auto uses, Laundromat. In between: duplexes, small apartments, a few churches, mix of marginal commercial, vacant lots, etc.	C-45, C-30 C-10
San Pablo Ave.	Auto uses, new housing, various small commercial with residential above, some hotels, furniture stores and other general commercial uses, St. Vincent de Paul, live work, warehouses	C-35, C-30
Telegraph (Hw 24 to 63 St.)	Sections of low-density commercial, e.g., one story, fast foods, small offices, retail/service, Laundromat, restaurants, and a church and sections of medium density residential apartment developments, some duplexes	C-28
Mid-Foothill Blvd.	Mix of commercial buildings, some auto uses, churches, mix of apartments, old SF homes, marginal commercial uses, vacant land and bldgs. Active pedestrian retail block b/w 33 <sup>rd</sup> and 34 <sup>th</sup> on S. side of Foothill.	C-20, C-30
Mid-MacArthur Blvd.	Assorted commercial uses, offices	C-25, C-30
East Foothill Blvd.	SF Homes, apts, scattered commercial, nursing homes, small local commercial uses	C-30
Bancroft Ave.	Small markets, auto body store, gas station, vacant lot.	
East Macarthur Blvd.	Med density residential, corner stores, townhouses, fourplexes, churches, small retail clusters, offices, corner stores, vacant	C-10

East Int’l Blvd.	Mortuary, hotels, corner stores, auto. Many automotive service businesses	C-40
Near Int’l Blvd.	Automotive, assorted commercial	C-20, C-40

**Fig 3. Differences in Key Uses Between Existing and Proposed Corridor Zoning**

Uses	Proposed RU-X	Existing Commercial Zones			
		C-25	C-28	C-30	C-40
Residential	P	P	P	P	
Rooming houses	P	P	N	P	
Limited Child care	P	P	P	P	P
Community Education	P-GF/2 <sup>nd</sup> < 5K SF or CUP	P	C	P	P
Community Assem	P-GF/2 <sup>nd</sup> <5K SF of CUP	P	P	P	P
Civic-Admin	P-GF/2 <sup>nd</sup> Floor < 5KSF or C	P	P	P	P
General Retail	P-GF < 5K SF or CUP	P<3k SF	P	P	P
Alcohol sales	N	C	C	C	P
Auto services	N	N	C	C	P
Auto repair	N	N	C	C	P
Health Care	P-GF/2 <sup>nd</sup> < 5-5K SF or C	C	P	P	P
Hotels	N	N	N	N	C
Personal Services	P-GF/2 <sup>nd</sup> < 5K SF or C	C	P	P	P
Gen Food Sales	P-GF/2 <sup>nd</sup> < 5K SF or CUP	P<3k SF	P	P	P
Eating and Drinking	P-GF/2 <sup>nd</sup> < 5K SF or CUP	P<3k SF	P	P	P
Fast Food	C (1)	C	C	C	C
w/ outdoor seating	P (2)	P	P	P	P
Joint live/work	C	C	C	C	C
Conv Markets	C (1)	C	C	C	C
Conv Sales and Services	P-GF/2 <sup>nd</sup> < 5K SF or CUP	P<3k SF	C	P	P
Consultative and Financial	P-GF/2 <sup>nd</sup> < 5K SF or C	P<3k SF	P	P	P
Offices	P-GF/2 <sup>nd</sup> Floor < 5KSF or C	P<3k SF	P	P	P
Cust Manuf.	N	N	C	C	P

- (1) Permitted only in mixed-use buildings
- (2) Permitted in front but not in rear without CUP

The level of resulting non-conformity expected in a rezoning to the proposed “RUX” may be quantitatively higher than a rezoning to the exiting C-28 for example, but for the most part, the proposed rezoning would not hinder the operation of the majority of existing businesses, and only impact a few intensive activities that are typically viewed as incompatible to residential and pedestrian oriented environments.

- **Staff Recommendation:** *The potential implications of creating nonconforming uses should not be seen as a significant reason to avoid rezoning existing commercial areas in the Urban Residential to the proposed “RUX” zone.*

The majority of nonconformity use issues that may arise with a rezoning can largely and satisfactorily be addressed through existing provisions in the Zoning Code (Sec 17.114.080.C). In addition, to minimize issues with nonconformity, the zoning text should include language that would say existing uses that are already greater than 5000 square feet, and still permitted, be allowed to expand with a conditional use permit.

The auto-uses that would be affected, could continue at their existing locations as legal nonconforming, or relocate to more appropriate and more protected locations if they wish to expand. An exception might be the two full corners of auto-servicing and repair along West Mac Arthur that seem to be well-utilized and conforming to code in operation. These should not be made nonconforming through an “RUX” rezoning but should instead be given a more appropriate land use designation such as Neighborhood Mixed Use Commercial or Community Commercial. This might also apply to the corner of 98<sup>th</sup> Ave and Bancroft Ave.

### ***3. With the Proposed Re-zoning, are there other Actions needed to make the General Plan more consistent with the Urban Residential Land Use designation?***

These three issues are presented for general context discussion and no staff recommendations are included. The ZUC should evaluate if these issues deserve further staff consideration and discussion as part of the zoning update process.

#### **3.1 Relationship between the Urban Residential Mixed-Use Corridors and the Designated “Growth and Change” Corridors**

About half of the designated corridors proposed to be rezoned as Urban Residential Corridor Mixed Use (RUX) are identified as “Growth and Change” corridors as depicted in the City Structure Diagram on p.122 of the LUTE. Although this diagram is “only illustrative” it does suggest in the subsequent text that there should be a correlation of this mapped diagram with the transportation infrastructure improvements, changes in density, activity use, etc. Based on this text, it might be expected that the scope of changes that are called for with the rezoning of existing commercial corridors would be reflected in the “Growth and Change” diagram, especially those corridor sections that would have substantial changes such as Martin Luther King and mid-MacArthur Blvd. Of significance for this type of designation is the relationship and consistency of redevelopment activity to what is in the General Plan. For the most part, the scope of changes envisioned along many of these corridors by the year 2015, imply the type of catalytic efforts that need redevelopment support.

#### **3.2 Relationship of an Urban Residential Mixed Use Corridor Zoning District to the Transit Corridor Designation**

In many ways, the City’s transportation diagram, which defines the major arterial streets and transit corridors, has a very important relationship to zoning districts. The relationship to regional and local transit corridors obviously plays a key role in how Urban Residential land uses have been applied and how the proposed new corridor mixed-use zone would be designated. Unfortunately, the transportation map in the LUTE (p.126) has a few inconsistencies and ambiguities which should be adjusted for the sake of accuracy. For the purposes of consistency with the intent of the Urban Residential land use, there should be a correlation between streets that are designated as transit corridors and those that are targeted for substantial rezoning with an Urban Residential Mixed Use classification. Martin Luther King Jr. Blvd., while it has large stretches of existing commercial, is not a designated transit corridor. What should be clarified, for the case of Urban Residential, is whether consistency with the General Plan Transportation diagram needs to be maintained. If so, than the commercial sections of Martin Luther King Blvd. should either be rezoned to a standard residential zone or be designated as a Local Transit street.

**Fig 5. Corridors with proposed rezoning from commercial to urban residential mixed-use.**

<b>Designated Growth and Change Areas</b>	<b>Corridor Type*</b>	<b>Not Designated Growth and Change</b>	<b>Corridor Type*</b>
San Pablo Ave	<b>RT</b>	Martin Luther King, Jr. Blvd.	<b>A</b>
Telegraph Ave.	<b>RT</b>	40 <sup>th</sup> St.	<b>LT</b>
West MacArthur	LT (not clear)	Park Blvd.	<b>LT</b>
International	<b>RT</b>	Mid MacArthur	<b>LT</b>
East Foothill	<b>RT</b>	Near Foothill	<b>RT</b>
East MacArthur	<b>RT</b>	Mid Foothill Blvd.	<b>RT</b>

\*Key: **RT**= Regional Transit, **LT**=Local Transit, **A**=Arterial

3.3 Does there need to be a zoning distinction for Urban Residential between Regional Transit Corridor and Local Transit Corridors?

The previous Zoning Update Committee (2000) discussed the option of applying a “transit corridor overlay.” A Transit Corridor Overlay would be a tool to provide distinctions in uses or standards for the heavy-trafficked Regional corridors (Telegraph Ave., San Pablo Ave., Foothill Blvd. International Blvd.) for example, allowing greater heights, allow less parking, allowing auto-servicing with a CUP, establishing greater streetscape development standards around transit plazas, public art, signage etc. A Transit Corridor Overlay would most likely be applied to all land uses (primarily commercial and residential) on a corridor and be a means to tie these together more cohesively.

**RECOMMENDATIONS**

1. Affirm staff’s analysis of existing zones consistent with the Urban Residential land use designation: The existing R-60, R-70, and R-80 zones remain consistent with the Urban Residential land use. An additional zone, an “RUX,” should be

- created which would designate mixed-use areas primarily along key transit corridors. This proposed zoning district would be consistent with the Urban residential General Plan land use designation.
2. Review and comment on the new “RUX” zone. Hold a series of community review meetings in order to get feedback and bring back to the Planning Commission as an ordinance for consideration of approval.
  3. Review and comment on the re-zoning map with the proposed areas to consider applying the new Urban Residential Mixed-Use zone.

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Approved for forwarding to the  
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**ATTACHMENTS:**

- A. Proposed Areas for a New Urban Residential Mixed-Use Zone
- B. Draft Proposed Urban Residential Corridor Mixed-Use Zoning District