

**Zoning Update Committee**

**May 21, 2003**

Michael Lighty, Chair  
 Nicole Franklin  
 Suzie W. Lee

<b>Location:</b>	<b>Citywide</b>
<b>Proposal:</b>	(1) A Report Regarding the Status of the Zoning Code Update Project and Consideration of Alternative Strategies for Completing the Project, and (2) An Ordinance Amending the Oakland Planning Code to Extend the Expiration Date of the Interim Controls for the Implementation of the Oakland General Plan to December 31, 2005; and revising Sections 17.01.070 and 17.01.120 Pertaining to the Conformity Requirements and the Interpretation of the Land Use Diagram by the Director or Planning and Zoning
<b>Applicant:</b>	City Planning Commission
<b>Case File Number:</b>	<b>REV 03-0012</b>
<b>Staff recommendation:</b>	(1) Recommend to the Planning Commission approval of the proposed Ordinance to the City Council, and (2) Recommend approval of amendments to the <i>Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations</i> subject to City Council approval of the above cited Ordinance amendment the Oakland Planning Code.
<b>Finality of Decision:</b>	Recommendation to Planning Commission and City Council approval of proposed Ordinance to the City Council; Amendments to the <i>Guidelines</i> are final subject to the approval of the proposed Ordinance by the City Council
<b>For further information:</b>	Contact Strategic Planner <b>Margaret Stanzione</b> at 510-238-4932 or <a href="mailto:mstanzione@oaklandnet.com">mstanzione@oaklandnet.com</a>

**SUMMARY**

The “Land Use and Transportation Element” (LUTE) of the General Plan was adopted on March 24, 1998. The new General Plan LUTE called for substantive zoning changes for approximately 20 to 30% of parcels in the City. Staff was directed to prepare new Citywide zoning maps, and to prepare a comprehensive rewrite of the entire Zoning Code. At the time the LUTE was adopted, it was anticipated that the Planning Code and Zoning Map would be updated within three years. To address the potential inconsistencies between the new General Plan and the existing zoning that could arise in the interim; the City Council adopted Ordinance No. 12054 C.M.S. setting forth a procedure to follow when there are land use conflicts between the existing zoning and the new General Plan. The City Planning Commission adopted more specific guidelines (*Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations*). These interim controls were adopted for a three-year period and expired on May 12, 2001. In June 2001 the City Council approved the extension of the interim controls until

June 30, 2003. Staff is now requesting that the *Guidelines* be further extended to December 31, 2005. Staff is requesting the extension in order to complete the zoning code update project.

Because it does not appear that a comprehensive revision of the zoning code will be feasible due to reduced staff and budget constraints, staff is requesting to scale down the project, to complete the zoning maps, and conduct public meetings throughout the city on the proposed map changes. Zoning Code changes will only be proposed in instances where the existing code does not include land use categories called for in the General Plan (e.g., Housing and Business Mix), or where major substantive code issues arise during review of the zoning maps. This is likely to be the last request to extend the interim controls because the project is expected to be completed within this time frame.

Finally, staff is proposing amendments to the Zoning Code and interim *Guidelines* which address an issue that has surfaced since the interim controls were adopted. In some situations, the General Plan land use classification is “incorrect” because the land use boundaries are so broadly applied. In these situations, the zoning designation is appropriate, but the General Plan classification does not make sense. Staff is recommending a method whereby an applicant can request a General Plan conformity determination from the Director of Planning and Zoning without having to apply for a General Plan Amendment. The Director would have to make certain findings in the written General Plan conformity determination to approve the request. The determination would be noticed and could be appealed to the City Planning Commission.

## **BACKGROUND**

In 1999, the consultant team of Dyett and Bhatia, Thomas Cooke, Kahn & Mortimer, Tom Doctor, and Barry Miller was selected to prepare a comprehensive revision of the Planning Code. The team conducted a thorough study of existing conditions and developed a series of options in a document released in August 1999, titled *Framework for Zoning: Issues and Options*.

The City Council directed staff to work with a committee of the Planning Commission to prepare the draft Zoning Code. Because there had been a well-represented General Plan Congress which met over a six year period to advise with the preparation of the General Plan, the City Council believed that the desires of the community were already known, and that another citizen’s advisory committee did not have to be created. Policy issues, however, were to be discussed in a public forum through community workshops.

The consultants held eight public workshops over a 10-week period, with each workshop devoted to a specific subject. In addition to the community-at-large, specific guests were invited to participate. The invited guests represented various groups and organizations that were designated by the City Council. A position paper was written on each topic. Upon completion of the public workshops, preferred options were identified and approved by the Planning Commission upon the recommendation of the Zoning Update Committee.

An Administrative Draft of the Planning Code was presented to staff in October 2000. At the same time, three key staff members who had been working on the project left the City. New staff was hired and the review of the Administrative Draft resumed in February 2001.

The consultant's contract was then extended to include preparation of the zoning maps. While staff was reviewing the Administrative Draft of the Planning Code, the consultant was preparing a new zoning map consistent with the General Plan Land Use Map and revised zoning text

Staff returned to the Planning Commission in April 2001 to request an extension of the Interim Implementation Guidelines and to discuss completion dates for the project. Staff requested a maximum of three years to complete the zoning update with an anticipated completion date of June 2004. The Planning Commission recommended an extension for two years only, until June 2003, which the City Council approved.

Over the past 18 months, staff has been reviewing the Administrative Draft of a new zoning code prepared by the consultant team. To date, staff has been working with the Zoning Update Committee on the following draft zoning districts: Industrial, Business Mix, Housing and Business Mix, Commercial, and the land use classifications for the Residential zones. Drafts have also been prepared for the proposed Health and Safety Protection Overlay Zone, revised buffering requirements, performance standards, and proposed operating standards. New land use classifications have also been created to update the existing code.

The Code, however, has been taking longer to review than previously anticipated. Due to budget constraints in FY 02-03, four of the nine positions in Strategic Planning were eliminated. The proposed budget for FY 03-05 does not include a General Fund allocation for the Strategic Planning Unit. Therefore, it is necessary to scale back the scope of project and complete the zoning update with available resources.

Also, staff is finding that re-writing the Zoning Code is a huge task. As each section was reviewed and analyzed, more and more policy issues were raised based on staff's experiences to date. Staff believes that it may be better to proceed incrementally, rather than to make so many changes at once. Staff's recommendation is to revise the existing Zoning Code as needed and to concentrate on the substantive issues that are most important to the community.

## **PROJECT DESCRIPTION**

Staff has considered four alternatives for the zoning code update project. Each alternative is summarized below with a short description of the advantages and disadvantages of each approach.

1) Put the entire project on hold and continue to use the Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations

Pros: the project is taking too long; requires too many staff resources

Cons: there is still too much uncertainty for property owners and developers; prolongs project review; creates more opportunities for errors at the zoning counter; certain stakeholders want the project to continue

2) Review and amend zoning code one General Plan category at a time, both text and maps

Pros: one category at a time becomes more manageable

Cons: difficult to amend one category at a time because the land use pattern is interlinked

- 3) Revise the zoning map only using the existing zoning districts. Work on a new zoning code slowly over time, starting with top priority issues/areas. Do more of a rewrite of the existing code than a complete new code.

Pros: people are much more able to understand the maps than the zoning text; zoning map will be finished first and will be consistent with the General Plan; certainty for property owners and developers; more time to flush out issues when preparing zoning amendments

Cons: continue to use a zoning code that is old and somewhat outdated; will be preparing more zoning amendments over the next couple of years; redoing the zoning maps will still be a time-consuming task and a controversial process

- 4) Revise the zoning map and change residential densities only; move on to commercial and industrial zoning districts later; use existing zoning code for now, with a few amendments to address priority issues.

Pros: same advantages as #2 and #3 above

Cons: too difficult to do by one category at a time; people want to look at entire districts and understand all land uses around them

Staff recommends option #3:

Revise the zoning map only using the existing zoning districts. Work on a new zoning code slowly over time, starting with top priority issues/areas. Do more of a rewrite of the existing code than a complete new code.

This option solves the biggest problem that currently exists for property owners and developers, namely that when they inquire about zoning regulations affecting their property, they cannot have certainty about what can be built on the property. Property owners rely on this information to make major financial decisions. This also allows the project to be completed with the very limited staff resources that are available.

Under this proposal, staff would rely on the existing zoning text and make modifications where necessary. Where there are no corresponding zoning districts, staff will write new zoning districts and adopt as a new section of the existing code. For example, Housing and Business Mix is a new General Plan category with no corresponding zoning district. Staff has already drafted the Business and Housing Mix zoning district. The mapping for this district has also been completed. Public hearings can be scheduled and the text and zoning map for this category can be adopted within a few months.

The zoning map can be updated using most of the existing zoning districts. No changes need to be made to the map where the General Plan and zoning are currently consistent. Where the General Plan and zoning are different, staff will propose that either the General Plan designation

or the zoning be changed. When the draft maps are completed, staff will hold public meetings in each of the City Council districts to discuss the proposed map changes. It is estimated that this process will take 18 to 24 months.

### **KEY ISSUES AND IMPACTS**

Staff believes that the approach summarized above will save time and staff resources. The existing code can be updated in sections over the next several years (i.e., some of the use classifications need to be modernized, new ones need to be added, and clarifications to existing ones may be warranted). Revisions and updates can be made when needed.

Over the past year and a half staff has been working with stakeholders in the industrial community. Some of these property and business owners, particularly those in the east Oakland industrial areas, do not want to use the current zoning designations and prefer the zoning districts that they have helped write. Staff recommends that these new zoning districts be adopted in place of the existing M- Manufacturing zones. The East Oakland industrial community has been working diligently for over a year on the district regulations and prefers the new ones over the existing ones. The West Oakland industrial community is working toward consensus on the regulations for industrial districts in that area.

Staff recommends that the citywide zoning map be adopted first. Bringing the zoning map into conformance with the General Plan will eliminate the confusion that is currently being experienced at the zoning counter. The consultant has almost completed a draft of the map using the new zoning districts. Staff can work with the consultant and restore many of the existing zoning districts to the maps.

Once a citywide map is drafted, staff will hold community meetings to discuss the proposed zoning maps. It is anticipated that the maps will be adopted one area at a time, so certain areas can be completed earlier in the two year period. Meetings will be held in each City Council district. Once the comments are collected, they will be summarized and presented to the Zoning Code Update Committee and the Planning Commission. The Planning Commission will hold a public hearing and make a recommendation to the City Council. It is estimated that this process will take 18 to 24 months.

As discussed, staff will be amending the zoning map consistent with the General Plan. In some situations, however, the consultant is recommending amendments to the General Plan land use categories. The mapping consultant is reviewing the entire City and comparing every block and parcel to the General Plan designation. He has indicated to us that in some areas the General Plan designation is not realistic for the horizon year of the General Plan (2015), does not accurately reflect the majority of the land uses on the ground, and that the "general" boundaries encroach into areas that are inappropriate. This presents a problem for property owners and developers who want to build something that is not consistent with the General Plan.

The interim *Guidelines* interpret the General Plan boundaries quite literally. If the zoning of a specific property or small area is zoned for a use that does not comply with the General Plan land use, the property owner is being told to apply for a General Plan Amendment. In some cases, it does not make sense to apply for a General Plan Amendment when the proposal clearly is consistent with the existing zoning, with buildings in the surrounding area, and conforms to other

goals and policies in the General Plan. For example, there are neighborhoods which contain mainly apartments, but the General Plan designates the area Detached Unit Residential. A property owner who wants to build multifamily housing consistent with other housing in the area is being told that it is not allowed and that the project must be revised or a General Plan Amendment would have to be approved.

Until the citywide zoning map is completed, and “errors” to the General Plan map are corrected or revised, staff is recommending that the interim *Guidelines* be amended to accommodate the situation described above without having to prepare a General Plan Amendment. Amendments can be made to the interim *Guidelines* which explain that the General Plan map is “general” that the land use designation represents the predominant land use in the area which may not be appropriate for an individual parcel or small area.

It is suggested that applicants be permitted to develop these sites if the proposal is consistent with the zoning and the written goals and policies of the General Plan. A General Plan conformity determination would be made by the Director of Planning and Zoning. Where it can be demonstrated that a small area can be developed differently, and that the project complies with other General Plan goals and policies, no formal amendment to the General Plan land use map is necessary. Applicants would need to apply for a conditional use permit and demonstrate that the proposed project meets the basic findings (i.e., compatibility with surrounding neighborhood; appropriateness of location, design, and site planning; no adverse impacts on neighboring properties; enhancement of basic community functions; conforms to design review criteria, etc.). Written notification will be sent to all property owners within a 300 foot radius of the property. A decision by the Director of Planning and Zoning can be appealed to the City Planning Commission.

See Attachment A for the proposed Ordinance showing the amendments to the Oakland Planning Code; see Attachment B for the proposed amendments to the *Guidelines*.

## **ENVIRONMENTAL DETERMINATION**

Extension and Amendment of Interim Controls - The requirements of the California Environmental Quality Act (CEQA) of 1970 are satisfied because the interim controls are covered by the Environmental Impact Report for the Land Use and Transportation Element that was certified by the City Council on March 24, 1998.

Zoning Code Update - For the most part, staff will be able to rely on the Environmental Impact Report that was prepared for the General Plan. An addendum or Supplement to the EIR will have to be prepared because in some areas we have exceeded the growth projections analyzed in the EIR. This additional environmental review document would account for the changes in circumstances and the high levels of development in some areas beyond those anticipated in the General Plan EIR.

## **RECOMMENDATIONS**

(These recommendations are being made to the Planning Commission):

1. Affirm staff's Environmental Determinations
2. Recommend that the City Council approve the proposed Ordinance

a) extending the interim controls for the implementation of the Oakland General Plan to December 31, 2005. It is still necessary to have a procedure to follow when addressing inconsistencies between the new General Plan and the existing zoning regulations. The *Guidelines* have been working fairly well over the past several years. Because they have been so effective, it is recommended that they be extended until December 31, 2005, and

b) amending the Oakland Planning Code to provide greater flexibility in situations where the General Plan and zoning are inconsistent and authorizing the Director of Planning and Zoning to make a General Plan conformity determination in situations where the General Plan and Zoning are inconsistent, with written notification to the neighbors and appeals to the City Planning Commission, and

3. Approval of the proposed revisions to the *Guidelines* which set forth the criteria by which the Director of Planning and Zoning determines the appropriate course of action when the General Plan and zoning are inconsistent, subject to the approval of the proposal Ordinance by the City Council.

#### **ALTERNATIVE RECOMMENDATION(S)**

- 1) Do not extend the Interim Guidelines

Not extending the Interim Guidelines will contribute to more confusion at the zoning counter and less certainty for property owners and developers. The interim controls identify "best fit" zones when the General Plan designation and zoning classification are inconsistent. Staff and the development community have been relying on these controls over the past five years. Without the interim controls it will be very difficult to advise property owners and developers about a specific course of action for their development proposals.

- 2) Do not amend the Interim Guidelines

Not amending the Interim Guidelines is a hardship for property owners and developers whose property is zoned appropriately but who may have been assigned the wrong General Plan designation. Allowing the Director of Planning and Zoning to make a General Plan interpretation offers some relief to applicants who can demonstrate that their projects should be constructed according to the zoning and not the General Plan. Applicants will not have to apply for General Plan Amendments or wait until the zoning map is updated to have the General Plan designations corrected.

Prepared by:

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Margaret Stanzione, Planner IV  
Strategic Planning Coordinator

Approved for forwarding to the  
Zoning Update Committee:

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LESLIE GOULD  
Director of Planning and Zoning

**ATTACHMENTS:**

- A. Proposed Ordinance Amending the Oakland Planning Code
- B. Proposed Amendments to the *Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations* (Pages 1 through 12 only)