



**Zoning Update Committee**

*Michael Lighty, Chair  
Nicole Franklin  
Anne E Mudge*

**July 30, 2003  
Regular Meeting**

*Notice – Staff reports are available on-line. See web site and download instructions below.*

**CONVENE**

**4:12 pm  
Hearing Room 3, City Hall,  
One Frank H. Ogawa Plaza**

**ROLL CALL**

Present: Lighty, Mudge, Franklin (4:15)  
Staff: Gould, Stanzone, Lederer-Prado- CEDA, Planning and Zoning  
Truxaw, City Attorney’s Office

**WELCOME BY THE CHAIR**

**APPROVAL OF MINUTES** No minutes were presented.

**CORRESPONDENCE**

A letter was received regarding the status of the Laney College field by Ms Cayn King. All correspondence related to the items on the agenda.

**OPEN FORUM**

No one addressed the Commission

**DISCUSSION**

**Margot Lederer-Prado, Strategic Planner**, presented the staff report. She explained that the purpose of the meeting was to establish regulations for joint working living quarters, and gave an introduction on the origination of the background of the existing provisions in the Building Code for conversion of buildings to live/work. Staff explained that the only place in the City where the zoning code allows new construction of work/live facilities is in the Industrial Residential Transition District (S-16) and that the current proposal attempts to develop broader regulations for development of these type of units in other districts, as well as to allow new live/work as residential units with an expanded form of home occupation. The proposal clearly separates the two types of units by the degree to which the work portion of the unit dominates, thus allowing both types of units in commercial and mixed use districts, while limiting the type of units in light industrial areas to work/live only. The proposed new regulation also is intended to protect existing industrial users from nuisances caused by the intrusion of residential uses in industrial areas. Therefore, the proposal also recommends prohibiting any type of joint working living quarters in all General Industrial areas, including conversions of existing buildings.

Staff proposed to amend Section 17.102.090 of the zoning code regarding Joint Working Living Quarters (JWLQ). Two new “facility type” definitions were being proposed: “Live Work Category I,” a residential JWLQ facility, and “Work Live Category II,” a commercial JWLQ facility. The former would be allowed in any high density residential, commercial or mixed use

zone; and the latter would be considered a commercial/light industrial facility and would be allowed only in commercial, mixed use or light industrial zones with a conditional use permit. Design Review will be required for all new development.

### **General Comments**

Chair Lighty asked for general comments from the public prior to a review of the recommendations. As in other recent ZUC sessions, the Chair suggested a more informal discussion approach to the meeting. Staff announced an amendment to the Table shown on Page 8 of the staff report and circulated an Errata Sheet with this correction. Several speakers made general comments on the recommendations, shown below. Ms King spoke about a mapping issue, whereby part of the Laney College field had been mapped with the Housing & Business Mix designation. She discussed her objections to the use of that land for any work/live facilities. Staff clarified later to Ms. King that this had been done in error (“scrivener’s error) in the 1998 mapping process, and that this error had been corrected already in the official City General Plan map.

### **Public Comments**

The following people provided written and/or oral comments or yielded their time to others:

Tom Dolan, Architect

Phillip Banta, Architect

Sanjiv Honda, East Bay News Service

George Burttt, WOCA

Marianne Dreisbach, Industry and Labor Alliance of Oakland (ILAO)

Cayrn King, Resident

### Creation of Category I Live/Work

Tom Dolan commented that the existing “Residentially-oriented live work” classification, also known as urban core residential conversions, has rarely been used (Sears Loft is the single case in downtown) , and might be used during a slow period in the office real estate market. He supports the creation of two distinct categories: Work/Live and Live/Work and stated that there is no “Live/Work” zone currently. The market is actively developing such units and clarity as to where they can locate by right is clearly needed.

Commissioner Mudge asked about the types developed in Jack London. The majority of these units are residential, with loft-style architectural characteristics. While they are suited for conducting activities consistent with the Home Occupation regulations, such units cannot allow expanded business opportunities such as accommodating employees and public visits because they were constructed as residential units. The proposed Classification I Live/Work proposed allows for these expanded business opportunities.

Commissioner Franklin asked about the land use impacts if these facilities are located in residential areas. She also asked about Commercial & Industrial Performance Standards and how they would apply to these units relative to the health and safety of neighbors. Staff responded that currently non-residential structures in residential areas can be converted through a building code process only, and this would still occur, but such facilities do not allow walk-in, non-appointment trade. Therefore, the regulations still protect the strictly residential areas from the parking impacts of a commercial activity, the intensity of a walk-in trade and employee-based businesses. The existing citywide Performance Standards would be enforced at the commercial

level for the Classification I Live/Work units. Work/Live units could operate at the industrial levels of the performance standards if located within (light) industrial zoning districts.

Tom Dolan asserted that these two classifications make clear the occupants “right to work,” without suffering nuisance complaints from neighbors. Tom said these Live/Work units were most appropriate in mixed use zones (such as the proposed Housing & Business Mix zone). They serve to create areas of the City which are hospitable to home-based enterprises and allow room for business expansion by not limiting the floor area devoted to the work activity, thereby allowing live/work activities to flourish. The new standards would prevent imported NIMBYs (“not in my backyard” sentiment) by requiring nuisance easements for both Classification I and II facilities. The requirement of a business license is not as important for Classification I as some occupants may be conducting activities that are not intended to generate income. It was recommended that the Home Occupation regulations not change as they provide a unique opportunity in the City for home-based businesses.

Staff further noted that the Classification I units can revert to a residential use without further permission needed from Building or Zoning without conflict from either department, as they can only locate where residential uses are permitted by right.

#### Joint Working Living Quarters as a “facility” type

The ZUC agreed that JWLQ be classified as a “facility” type rather than as a “land use activity” and further distinguishes them as Category I Live/Work and Category II Work/Live facilities. The building code occupancy type for each would be different, and therefore would allow different uses. Mr. Dolan commented on the commercial standards required for Category I per the Building Code, such as a 7-foot x 9-foot handicap accessible bathroom on a 4<sup>th</sup> floor, 660 sf unit, if it is to be classified as a commercial space. He expressed his support of work/live in the proposed Business and Housing Mix zone and commercial districts, and the new zoning district currently being prepared for West Oakland where conversions by right and new construction are being proposed with a CUP. He supports the approval of structures that could be pre-approved for either commercial or residential use. Commissioner Franklin also supports the effort to create buildings types that are more adaptable in changing market conditions. The Building Services division has not yet reviewed or discussed these concepts in depth.

#### Locations for New Construction

The following Errata Sheet was circulated as an amendment to Page 8 in the staff report. The ZUC made the following amendments to the location table:

<b>New JWLQ Proposal 7/30</b>					
	BHX Mixed Use Zones	General Commercial	Light Industrial (Central & East Oakland only)	Industrial Residential Transition Zone (S-16)	General Industrial
Residential Facilities	Yes	Yes	No	No	No
Residentially- oriented L/W Conversions Building Code F-7	No*	No	No	No	No
Live/Work Cat I: Conversions	Yes	Yes	No	No	No
Live/Work Cat I: New Construction	Yes	Yes	No	No	No
Work/Live-Cat II Conversions	<del>No</del> Yes	<del>No</del> Yes	CUP	CUP	No
Work/Live Cat II- New Construction	<del>No</del> Yes	<del>No</del> Yes	Option 1: CUP Option 2: No	CUP	No

\* Staff recommends the elimination of the residentially-oriented live-work (R-7) which is currently under consideration for extension in order to reduce redundancy, because the Category I Live Work allows the same type of conversion to take place.

Work Live in Industrial Areas

Phil Banta, Architect, addressed the topic of non-conforming conversions and spoke in support of an amnesty program, saying that such existing artistic enclaves need to be supported and allowed to expand with additional units added to some degree. He and others are preparing an inventory of how many units would be involved. Mr. Banta questioned the suggestion that a different kind of user inhabits newly constructed units versus the converted units. He mentioned that fully renovated converted units are generally more expensive and could reflect a higher price unit than new construction.

Chair Lighty reiterated support in favor of the existing recommendation to prohibit work/live in the General Industrial areas in the future, but that the ability to build new work/live in Light Industrial districts was a question for discussion. Leslie Gould commented that if new construction work/live became prevalent in light industrial areas, it could change the character of those areas to a mixed use zone, similar to the proposed Housing & Business Mix zones.

Marianne Dreisbach, ILAO, spoke in favor of work/live in the HBX zones, and both conversions and new construction in light industrial areas, but that support of this concept is contingent upon adoption of the prohibitions of the same in the General Industrial zone. She also recommended changes to the proposed zoning maps. She stated that the Light Industrial IBX zone is not likely to attract industrial users because a) lots are smaller; b) they generally have poor access to major truck and rail routes; and c) they are close to residential areas. She supports the amnesty program to encourage the legalization of existing units. ILAO prefers no work/live units in general industrial areas, however accepts the existence of those existing units which are sensitive to businesses in the East Oakland industrial corridor.

Sanjiv Honda commented that when work/live was first envisioned, it was assumed to be a business activity but has since transgressed into “lifestyle lofts.” He mentioned that with the changing market favorable to residential uses, it became a residential lifestyle choice, and one which could avoid the payment of impact fees for certain amenities to the cities. Since they provide urban living environments there are tradeoffs, such as noise, and they may lack appropriate amenities such as waste services. Parking is of principal concern for those facilities in urban neighborhoods or city centers.

#### Conditional Use Permit for New Work Live in Light Industrial

George Burt commented that the measures for meeting the Conditional Use Permit findings could tip in the favor of large projects, and that some suggested CUP findings (e.g. #a Industrial Viability) were a hard test to meet. The question was raised if we should allow conversions in light industrial areas under some maximum floor area by right.

Leslie Gould answered to test industrial viability staff would look at the nature of activity being conducted next door. This discretion is allowed under the CUP process. Ms. Dreisbach pointed out that this would be crucial, for example in the case of a conversion of the “soap factory” at 77<sup>th</sup> Ave and Spencer, where heavy container storage and trucking occurs with direct access to rail facilities next door.

Mr. Banta said that the CUP process is a risk for the applicant. Tom Dolan suggested that a distance criterion be used for the CUP findings, so that work/live facilities would not locate next door to truck terminals or recycling businesses. Commissioner Mudge agreed, and suggested that some facilities could be permitted with Design Review only, depending upon the surrounding uses and context. Chair Lighty had concerns that allowing smaller converted facilities “by right” could have a cumulative impact.

#### Allowable Activities Category I & Category II

There was discussion about the value of such facilities as business incubators. Commissioner Mudge asked about the ability of staff to identify and enforce the provisions of the floor plan ratios mandated for Work/Live Category II units. Discussion continued on whether other standards could be used to identify and reinforce the work-orientation of such units, including the requirements for meeting a commercial occupancy type by building code. Tom Dolan clarified the distinction that Category II provides for *blue-collar* type of activities, whereas Category I will tend to attract *white collar* activities unless the units are specifically designed to meet heavier commercial occupancy, including the provision of commercial floor loads. Staff will continue to meet with the Building Services Division to help clarify these distinctions. Mr. Dolan also expressed support for the legalization of “congregate” shared living lofts.

#### Design Review

Mr. Dolan made initial remarks about supporting the “checklist” approach for design review for new Category I and Category II facilities rather than by “findings.” There is general support for having a list of design review standards specific to joint working living facilities, and that projects be reviewed through a “checklist” approach for new construction work/live in mixed use and general commercial areas. He believes that such facilities should encourage innovative design; staff review should not necessarily encourage architectural uniformity to the discouragement of innovative design solutions. Chair Lighty agreed that quality and innovation is important, and agrees that a fixed requirement for open space does not necessarily produce a

quality product. Ms. Gould noted that maintaining consistency can be difficult with a checklist approach.

#### Parking Requirements

Staff recommends that more than one parking space be required for each unit in order to accommodate visitors and employees, and that this amount be calculated as one space per unit plus an additional amount based on the aggregate floor area of the development. More research is needed to confirm if the staff recommendation for 0.2 is adequate to cover this additional need. Mr. Dolan agreed that more than one space per unit for new construction is needed, but that conversions should not require additional parking.

#### Open Space

The discussion was directed towards discussion of the open space requirements for new work live facilities. Commissioner Mudge suggested retaining the 75 square feet of outdoor open space requirement, which still allows the ability to apply for a reduction through a variance. Commissioner Franklin agreed. Tom Dolan advocated for allowing a reduction of this outdoor open space if quality “interactive” open space is provided, and suggested that staff create findings that support these revisions.

#### Minimum Unit Size

The ZUC recommended retaining the current minimum unit size of 660 square feet.

#### Floor Area Restrictions

The ZUC accepted staff’s recommendation not to have a floor area restriction for Category I units, and to retain the current restriction of Work/Live units to two-thirds work, and one-third live.

#### Nuisance Easements/ Disclosures

There was discussion on the topic of requiring a disclosure regarding permitted industrial activities. City Attorney John Truxaw commented that nuisance disclosures could not prevent complaint calls and response and investigation action from the City, but that the disclosures tend to discourage such action. The ZUC agreed that this should be a requirement in both Category I and Category II units, and that they should list those activities permitted in the underlying zoning district which are permitted to occur within and adjacent to the property.

#### Amnesty Program/ Existing Work Live Facilities

Chair Lighty and staff commented on the illegal non-conforming status of work/live facilities in general industrial areas after adoption of the new industrial zoning districts. There are several facilities in these areas without the benefit of building or planning permits. Staff believes that an “amnesty program” is not an appropriate term, as there are no incentives the City can currently offer to assist owners in the permitting and rehabilitation of their facilities. Staff does want to encourage owners of non-permitted work/live facilities in the general industrial areas to come forward for permits; however this has to be a voluntary effort based on the fact that future zoning changes will further increase their nonconforming status. George Burt described the creation of the “Un-reinforced Masonry Program” (URM) that also sought to create conformity and a legal status for such facilities with concern for life safety issues. He mentioned that some units would never be able to legalize due to exorbitant costs, like some URM structures. He also mentioned that such a program would have to be “advertised” to invite participation.

Phillip Banta spoke about allowing owners to construct additional (new) units to existing facilities in the general industrial areas as part of the application for legalization. He noted that this expansion would be limited to the immediate parcel occupied by existing units, and could be designed to provide a distance buffer between the property line adjacent to existing industrial users, and any proposed new units. Several owners and representatives are working on an inventory of existing units for review by the ZUC and staff. Tom Dolan mentioned that the only real incentive the City could offer is the allowing the property owner to add new units. He mentioned that the tenants will be the victims of this new policy, in that they may be forced to move during improvement or could be priced out due to the costs of the improvement. He argued that adding units by creating additional floor area within the same building footprint (e.g. mezzanines) should not be considered a non-conforming expansion for existing facilities in industrial areas.

**ADJOURNMENT 7:05 p.m.**

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Margaret Stanzione, Project Manager  
Zoning Code Update Project