

<b>Location:</b>	<b>Citywide</b>
<b>Proposal:</b>	Amend Table 2 of the <i>Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations</i> to include an interpretive footnote for Drive-Through Facilities in the Neighborhood Center Mixed Use land use which establishes a special “integrated mixed-use” case of Drive-Through facilities whose conformity with the General Plan is “not clear”
<b>Applicant:</b>	City Planning Commission
<b>Case File Number:</b>	<b>REV-050029</b>
<b>General Plan:</b>	Neighborhood Center Mixed Use
<b>Zoning:</b>	Various
<b>Environmental Determination:</b>	The requirements of the California Environmental Quality Act (CEQA) have been met through previous certification of the Environmental Impact Reports accompanying the Land Use and Transportation Element of Oakland’s General Plan in 1998. Pursuant to Section 15183 of the State CEQA Guidelines, the proposed amendment is a project consistent with the development density established by an existing general plan for which an EIR was certified, and does not require additional environmental review
<b>Historic Status:</b>	N/A
<b>Service Delivery Districts:</b>	1-6
<b>City Council Districts:</b>	1-7
<b>Status:</b>	Pending
<b>Action to be Taken:</b>	Decision on recommendation forwarded by the Zoning Update Committee
<b>Staff Recommendation:</b>	Recommend approval of an amendment to the <i>Guidelines</i> that interprets a sub-set of “integrated mixed-use” Drive-Through Facilities in the Neighborhood Center Mixed Use land use designation whose conformity with the General Plan is determined to be “not clear”
<b>Finality of Decision:</b>	Amendments to the Guidelines are final subject to City Planning Commission approval and appealable to the City Council
<b>For Further Information:</b>	Contact <b>David Ralston</b> at <b>510-238-2970</b> or <a href="mailto:dralston@oaklandnet.com">dralston@oaklandnet.com</a>

## SUMMARY

Staff seeks input regarding a proposed amendment to the *Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations* (the *Guidelines*), originally adopted by the City Planning Commission on May 6, 1998, to indicate by footnote for the Neighborhood

Center Mixed Use land use classification in Table 2 a sub-set of “integrated mixed-use” Drive-Through Facilities whose conformity with the General Plan is determined to be “not clear.” This amendment represents an additive definitional distinction to the current “standard” Drive-Through facility listed in the *Guidelines* as “clearly not conforming” to the Neighborhood Center Mixed Use (NCMU) land use designation. The present status in the *Guidelines* for Drive-Through facilities – essentially a protective “over” interpretation done seven years ago as an interim control measure – presents unreasonable limitations on the full range of entitlement opportunities that might normally be available for property owners under the Zoning Code where the extenuating context can be taken into account and further does not adequately acknowledge the potential ancillary orientation of Drive-Through facilities in mixed-use projects. While this issue surfaced in discussions with a particular project applicant, staff believes in the interests of providing greater capacity for interpreting mixed-use projects which might contain small nonresidential facilities as part of larger otherwise conforming developments, amending the interim *Guidelines* here is an appropriate action.

## **BACKGROUND**

The City adopted its *General Plan Land Use and Transportation Element* (LUTE) in 1998 but is still in the process of updating the Zoning Ordinance and zoning maps to be consistent with the adopted General Plan. Because there are many areas in the City where the LUTE and the Zoning Ordinance are inconsistent, an interim document - *Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations* (the *Guidelines*) – was specifically established to deal with expressed conflicts between the Zoning Code and General Plan. The *Guidelines* were last amended and extended by the Planning Commission on May 21, 2003 and subsequently adopted by the City Council in ordinance number 12514 C.M.S.

The *Guidelines* provide a General Plan land use conformity interpretation of all activities and facilities contained in the Zoning Code and also describe how the City should proceed when inconsistencies occur between a particular land use conformity interpretation and the Zoning regulation. Table 2 (see Attachment A) of this document contains a matrix list of all the land use activities and facilities in the Zoning Ordinance and indicates whether: a) an activity/facility does not conform to the land use designation; b) an activity/facility clearly conforms to the land use designation; or c) it is unclear whether the activity/facility conforms to a land use designation.

When an activity conforms to the General Plan, the activity is either permitted or conditionally permitted depending on the zoning regulations for the site. When Table 2 indicates that the General Plan is unclear regarding whether an activity is consistent with the General Plan, an activity reverts to the regulations contained in the Zoning Ordinance. Conversely, when an activity does not conform to the General Plan land use designation but allowed in the Zoning Regulations (an “expressed conflict”), the activity is not permitted but in the case of mapping questions may be reviewed pursuant to the General Plan Determination procedures also outlined in the *Guidelines* and in the Zoning Code (Section 17.01). There are also cases where an activity or facility is not permitted in the Zoning regulations and deemed not to conform to the General Plan. In these cases, per the *Guidelines*, no further consideration of a project will be allowed including any option of seeking a variance.

The *Guidelines* are based on interpretations of conformity ostensibly derived from a thorough assessment of the adopted General Plan elements (especially the LUTE) and weighed against the status of activities and facilities in the identified "best-fit" zones.<sup>1</sup> Unlike the Zoning regulations however, interpretations to the conformity of activities and facilities are more broadly prescribed and there is no variance processes or other ultimate process for discretionary findings and review (except the process set up for mapping "errors" in the 2003 amendment) for atypical or contextual interpretations regarding the conformity of a given project. For example, certain ancillary activities or nonresidential facilities which are small parts of larger conforming hybrid projects may have no recourse for consideration if any of the components are listed as nonconforming. Normally, this has not been much of an issue, but with the increased emphasis on mixed-use projects in the commercial corridors there are development scenarios in which staff believes more contextual discretion and review should reasonably be allowed. Often it is a specific case that brings to attention a need for considering amendments to the *Guidelines* to fine-tune how the interpretations are established and employed given realities on the ground.

This past fall Economic Development and Planning staff participated in preliminary discussions with an applicant in the Laurel District (C-31 zone) proposing an integrated mixed-use pedestrian-oriented project which highlighted a specific need for amending the *Guidelines* regarding interpreting Drive-Through facilities in the Neighborhood Center Mixed Use land use. The intent of the NCMU land use clearly supports such mixed-use pedestrian oriented developments for this location and the all the proposed project activities would clearly conform to the General Plan per the *Guidelines*. The project, uniquely situated on a heavily trafficked corner half a block from the I-580 Freeway, also calls for including a Drive-Through facility at the back of the project site, shielded completely from the street, and fully integrated into the footprint and structure of the three-story building. The economics of the project would allow the inclusion of a specialty grocery store and various public amenities such as a pedestrian plaza, widened sidewalks and shell space for a public library.

Because the C-31 zone does not allow Drive-Through facilities and given the Guideline's interpretations that Drive-Through facilities "clearly do not conform" to the NCMU land use (Table 2, p.14) there is no option for the applicants to pursue entitlement consideration normally allowed by zoning –e.g. bring this project as defined to a public hearing for consideration of a variance – even for projects that otherwise conform to General Plan. Although staff believes the proposed Drive-Through is distinctly atypical in its integration to the larger project and would not create the negative impacts to the pedestrian-oriented street and building frontage commonly associated with stand-alone single story drive-through facilities, there is no existing avenue in the Zoning Code or *Guidelines* for making a determination of conformity for such a hybrid project.

Furthermore, staff believes a General Plan Amendment would not be appropriate in this case because it is felt that the NCMU land use is the correct designation for this area. Nor would rezoning to an "auto-oriented" zone (e.g. C-30) be appropriate in this case because such a zone might open this block-long site to undesired automotive uses now and in the future. While the

---

<sup>1</sup> No clear methodology as to how the interpretations were actually made is discerned from the *Guidelines*, the Zoning Code or available staff report records.

straight forward conclusion for the applicant is to change their project, there is a larger issue raised here of the *Guidelines* not being sufficiently calibrated to allow consideration of the extenuating development context of projects such as this, particularly when the issue is around the conformity of nonresidential facility types. Ironically, page 9 of the *Guidelines* states: “[f]or nonresidential uses, the primary concern is the activity type, since the Land Use Classifications do not generally address the form of nonresidential structures.”

Based on the issues highlighted from this project, staff felt that making an amendment to the *Guidelines* to address either the general issue of interpreting the conformity of integrated projects or the specific issue of interpreting Drive-Through facility conformity in the NCMU would be an appropriate action for the Planning Commission to consider at this time.

### **PROJECT DESCRIPTION**

Staff has considered three alternative approaches for addressing the issue of lack of contextual interpretations in the *Guidelines*, one more general and two more specific:

- 1) Amend the *Guidelines* (e.g. overview section) to specifically allow an interpretive process with required findings for determining conformity in cases where the activity or facility is ancillary to or integrated into larger otherwise conforming projects;
- 2) Amend the interpretations in Table 2 of the *Guidelines* to indicate that the conformity of Drive Through facilities in the NCMU General Plan land use is “silent” or “unclear.”
- 3) Amend Table 2 of the *Guidelines* to include a footnote to the Drive-Through facilities for the Neighborhood Center Mixed Use land use which would define a special “integrated mixed-use” case of ancillary Drive-Through facilities (e.g. Drive-Through facilities and associated activities that are integrated into the footing pad of a larger conforming mixed-use projects and which in their orientation do not negatively impact the pedestrian street front or adjacent residential areas) whose conformity to the General Plan is determined to be unclear or silent;

Option 1 is potentially useful in that it provides for a general conformity interpretation process and set of findings (e.g. reviewed by the Planning Commission) not presently allowed by the *Guidelines* for cases of projects not foreseen by the *Guidelines* and beyond just the issues pertaining to Drive Through facilities addressed in this report. As a general approach it would require more scrutiny and study as to how it should be implemented and would require concurrent amendments to the Section 17.01 of the Zoning Code to establish a determination process for questions of conformity aside from land use mapping errors.

Option 2 provides a straight-forward re-interpretation to the status of Drive-Through facilities in the NCMU. By asserting Drive Through facilities are silent or unclear in their conformity to the NCMU; this option reverses the assumed “conservative” interpretation and seeks to reflect a

more explicit interpretation.<sup>2</sup> This option would bring greater consistency for Drive-Through facilities between the NCMU and another fairly similar pedestrian mixed-use oriented land uses, the Urban Residential where the conformity of Drive-Through facilities is presently silent. The option also would bring consistency with the other two auto-oriented nonresidential facilities in the NCMU, Drive-In facilities and Shopping Center facilities which are both presently silent in the NCMU. On the other hand, this approach affects all the wide-spread NCMU areas along many commercial districts Citywide and potentially leaves them open to applications for new Drive-Through facilities. This threat is mitigated by the fact most entitlements (in best-fit zones) would still have to go through a major variance. However, for the scattered non-best fit zones in the NCMU (e.g. along portions of International Blvd., MacArthur Blvd. between Mills College and High St., Foothill Blvd./Fruitvale Ave. area) this option would essentially lift what has been in *de facto* moratorium on Drive-Through facilities in the NCMU.

Option 3 is the most surgical approach to the Drive-Through issues raised in this report and addresses the fact staff has identified a specific type of Drive-Through that does not fit standard interpretations. Establishing and defining in the *Guidelines* a special sub-set of “integrated mixed-use” Drive Through facilities allows a new and separate conformity interpretation to be made while the original interpretation for “standard” Drive-Through facilities in the NCMU is not altered. This option recognizes in the existent interpretation of Drive-Through facilities not conforming to the NCMU is based on typical stand alone single-story Drive-Through configurations and that the development context of Drive Through facilities, when an ancillary part of a otherwise conforming mixed-use project, may successfully mitigate negative impacts on the desired pedestrian character of the land use (see Attachment B). The footnote approach is very limited but appropriate for this commercial corridor mixed use land use.<sup>3</sup>

After considering these three options, staff feels option #3 – adding a footnote for “integrated mixed-use” Drive-Through facilities whose conformity would be interpreted to be “silent” in the NCMU - is the simplest and most straight-forward course of action given the issues raised here. Any zone in the NCMU land use where Drive-Through facilities are presently not allowed could pursue a project with the defined “integrated mixed-use” Drive Through facility but such entitlement efforts would have to be publicly noticed and go through a major variance for consideration. Standard Drive-Through facilities will continue to be not allowed in the Neighborhood Centre Mixed Use land use. Although this approach may be seen as rather piecemeal, any larger approach to amending the Guidelines may not be worth effort for the limited

---

<sup>2</sup> The General Plan, (e.g. the LUTE) details the general intent and the density and intensity. While the intent is clear on the pedestrian character of the land use, there is no explicit reference to Drive Through facilities. Certainly there was a reason the nonconforming interpretation was made based on the typical negative impacts to pedestrian character and negative appearances associated with Drive-Through facilities and a reasonable desire, especially for the purposes of the interim controls, to prevent more from being established. It can be argued though that stating Drive-Through facilities to be “*clearly* nonconforming” in the NCMU is an interpretive over-reach.

<sup>3</sup> Another variation of this option is to add a new row for “integrated mixed-use Drive-Through facilities” (e.g. as already done with the inclusion of Shopping Centers facility types in Table 2) and mark this facility type as silent for the NCMU and continue with the same interpretations rendered for “standard” Drive Through facilities for all the other applicable land uses.

cases it would end up addressing. Conversely, a general approach may be more desirable if the Guidelines are to be in effect for a much longer time.

## **GENERAL PLAN ANALYSIS**

Areas mapped with the NCMU are located widely across the city at neighborhood serving commercial districts such as Dimond, Montclair, Grand Lake, Rockridge, Piedmont, Eastlake, Fruitvale/International, and around the MacArthur BART and the West Oakland BART stations. The intent of the NCMU designation is to “[c]reate, maintain and enhance mixed-use neighborhood commercial centers... typically characterized by smaller scale pedestrian-oriented, continuous street frontage with a mix of retail, housing, office, active open space, eating and drinking places, personal and business services, and smaller educational, cultural, or entertainment uses” (*Land Use and Transportation Element of the Oakland General Plan, 1998, p.49*.)” Aside from stating this intent, the LUTE additionally articulates only density (gross maximum of residential units/per acre) and intensity (commercial floor area ratio) for the NCMU. Although the *Guidelines*, as an extension of the General Plan, state that Drive Through facilities do not conform to the NCMU land use designation, none of the listed General Plan policies identified in the *Guidelines* directly pertain to Drive Through facilities.

## **ZONING ANALYSIS**

Section 17.10.770 of the Zoning Ordinance defines Drive-Through nonresidential facilities as:

“a vehicular access system designed to enable persons to receive a service or purchase goods by driving through the property and conducting the transaction while remaining within the vehicle. The system consists of a vehicular stacking/queuing lane(s) and one or more service locations/windows. Drive-Through Facilities are intended to accommodate Civic, Commercial, Manufacturing, Agriculture or Extractive Activities.”

Drive-Through facilities, although regulated independently as a facility type, are typically associated in their connection to a particular activity such as General Food Sales or Fast Food Sales which have their own requirements as far as being permitted in a given zone.

## **ENVIRONMENTAL DETERMINATION**

This proposed action is an amendment to the existing interim *Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations* and no change to land use configurations, intents, intensity, or density or policy are being undertaken or proposed by this action. Pursuant to Section 15183 of the State CEQA Guidelines, projects (including amendments to interim controls) that are consistent with the development density established by an existing general plan for which an EIR was certified do not require additional environmental review unless there are significant effects which are peculiar to the project. The requirements of the California Environmental Quality Act (CEQA) have been met through previous certification of the Environmental Impact Reports accompanying the Land Use and Transportation Element of Oakland’s General Plan in 1998 (certified by the City Council on March 24, 1998).

**KEY ISSUES AND IMPACTS**

The *Guidelines*, in their present state, although revised for mapped inconsistencies between the General Plan and Zoning (in 2003) present undue hardships for property owners who have no recourse for entitlements normally available in the Zoning Code – especially for projects that defy typical definition or have extenuating development circumstances. The specific case described above of an ancillary Drive Through facility integrated into a larger and otherwise conforming mixed-use project, presently cannot be considered for entitlements in this land use. With this proposed amendment such project could be considered with a major variance.

In proposing this amendment to the Guidelines staff has carefully sought to avoid opening any unintended doors to potential undesired Drive Through facilities in the NCMU land use. Staff asserts that the amended Guidelines will remain adequately strong to prevent unwanted Drive Through facilities (that do not meet the proposed sub-set definition) while not infringing on the possibility of atypical projects which may be desired and the rights of project applicants to have them heard.

- RECOMMENDATIONS:**
1. Affirm staff’s environmental determination.
  2. Support amendments to the *Guidelines* in Table 2 to include a footnote defining and interpreting an “integrated mixed-use” Drive-Through facility whose conformity with the Neighborhood Mixed Use General Plan land use should be considered as silent or unclear and recommend that the City Planning Commission approve the proposed amendment.

Prepared by:

---

David Ralston  
Urban Economic Analyst III

Approved by:

---

Gary Patton  
Deputy Planning Director

Approved for forwarding to the  
City Planning Commission:

---

Claudia Cappio  
Development Director

**ATTACHMENTS:**

- A. Table 2 of the *Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations* (with proposed amendment)
- B. Site Plan for sample integrated Drive-Through facility as part of a larger mixed use development project