

Zoning Update Committee

July 30, 2003

Michael Lighty, Chair
 Nicole Franklin
 Anne E. Mudge

Location:	Citywide
Proposal:	To revise the Joint Working Living Quarter (JWLQ) regulations as part of the Zoning Code Update
General Plan:	Citywide
Applicant:	City Planning Commission
Staff recommendation:	Review and discuss preliminary recommendations for the Category I Live/Work and Category II Work/Live, and review a proposal to encourage the legalization of non-permitted joint working living quarters which have been in existence for more than 5 years.
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ZONING UPDATE PROCESS

This is one of a series of monthly meetings that will be held by the Zoning Update Committee to discuss the proposed revisions to the Oakland Planning Code. The revisions to the code are necessary for conformance with the land use policies that were adopted in the *Land Use and Transportation Element* of the General Plan in March 1998.

Each Zoning Update Committee meeting will be devoted to a specific topic in the zoning code. Upon completion of specific sections of draft text and the relevant zoning maps, staff will conduct a series of community meetings. The City will be divided into geographic areas and public meetings will be conducted in each area. There will be extensive community outreach to solicit input on the draft maps, and there will be further opportunity at that time to discuss the draft zoning code provisions. Staff will return to the Zoning Update Committee for consideration of the comments received during the community outreach process. Proposed amendments to the existing zoning code will be brought to the City Council for adoption after the public has reviewed both the maps and the code, and the Planning Commission has held hearings.

A new workplan for the Zoning Update was presented to the ZUC on July 16, 2003 which reduced the original scope of the project per City Council direction. Staff is currently preparing preliminary text and maps, per the direction of the ZUC at its January 22nd, 2003 and April 30th 2003 meetings, on the Business and Housing Mix districts and the Industrial zoning districts for Central and East Oakland. Mailing lists for community notification of the community meetings are currently being prepared and staff anticipate being ready to conduct community meetings on these subjects by early fall 2003. The comments from the community meetings will be compiled and the final draft text and

maps will be presented to the full Planning Commission by January 2004. Thereafter, staff will be working citywide to update the zoning based on the General Plan designations, using the current code with recommended amendments being made per the direction of the ZUC during the course of the year. (See July 16, 2003 report for full details of the proposed work program). It is expected that the Zoning Code Update Project will not be completed until the end of 2004.

INTRODUCTION

Joint Working Living Quarters (hereafter generally referred to as JWLQ) facilities are important urban building types which address a need for small scale office or production space for artists and entrepreneurs as an alternative to the separate leasing or purchase of commercial or light industrial space while also providing an accessory on-site residential use of the property. A variety of cities in California have recently amended their zoning code to allow these types of units to provide opportunity for additional choice in workplace, to acknowledge increasing public interest in working at home, and to take advantage of incremental reduction in vehicle trips that these units provide by combining workplace and residence. San Luis Obispo provides such an example (see Attachment C). This building type has been especially valuable in Oakland, where artists and entrepreneurs have fled, pushed out of the market for warehouse spaces in San Francisco during the escalation of the real estate market there. Vacant and underused properties in the City of Oakland have been converted in the past two decades to such facility types thereby answering a need for housing while revitalizing parts of the urban industrial fringe and older commercial areas of Oakland.

JWLQ facilities also can pose a threat to the industrial component of the City's economic base. The construction of residentially oriented new lofts in areas proximate to industrial activities can threaten the continuance of such uses by escalating resident complaints regarding truck activity, noise, and pollution. The location of such residential uses in proximity to industrial uses poses health concerns for residents. This inherent conflict between a residential use of a property and adjacent industrial activity has raised questions about the appropriateness of the City's current regulations, which allow JWLQ conversions throughout the industrial zones with a conditional use permit.

The success of JWLQ development has also given rise to a new type of residentially-oriented Live/Work product, essentially a residential product with an expanded "home occupation" component. Certain "Work/Live" projects have become Live/Work, as tenants have made their space more of a home and less of a work space. Developers have found that development of this type of Live/Work, also known as "lifestyle lofts" is strongly desired in the marketplace, offering a new housing type that suits a certain type of buyer. There are currently no definitive code regulations for this type of product; and new construction (as opposed to conversion of an existing building) is only allowed in the S-16 zone in West Oakland. Other mixed use areas such as Housing & Business Mix call for JWLQ but code provisions do not exist to guide their development. This report forwards staff recommendations for new regulation; and make the recommendation that these new standards forwarded to the full Planning Commission along with the proposed new Business & Housing Mix District later this year.

BACKGROUND

Joint Working Living Quarters (“JWLQ”) has been a permitted/conditionally permitted use in the City of Oakland since the passage of State of California Senate Bill SB 812, which allowed cities to relax some building code standards, and the subsequent passing of City Ordinance CMS 68516 in 1991. In particular, the passage of SB812 allowed the City to apply the State Historical Building Code to work/live conversion projects. The City ordinance affirmed Oakland’s commitment to develop comprehensive public policies regarding work/live space for artists that encourages the development and availability of affordable, safe work/live spaces for artists. Oakland followed by amending its Building Code to provide a regulatory system for the legalization of the accessory residential use of commercial buildings. In 1999 the City adopted another ordinance, CMS 12148, which allowed Residentially-oriented Live/Work within the Downtown and Jack London areas only, permitting conversion of underutilized commercial space in order to encourage housing in the Central Business District. This form of Residentially-oriented Live/Work allows conversion to Live/work without requiring two-thirds work and one-third live floor area, and without the additional burden of meeting current parking and open space requirements. It only applies to existing commercial structures. This interim ordinance recently expired, and is being considered for permanent inclusion in the Zoning Code.

Existing Regulations

Since 1991 joint working living quarters (JWLQ) have been allowed only through the conversion process offered by the Building Code, Section 15.04.740. There are only two types of facilities described: “residentially-oriented live work” (R-7) and the commercially-oriented work/live (F-7). Both are allowed only through conversion of existing structures. The principal difference between these two types is in the building code requirements for floor loads, sound insulation, and tolerance for storage and use of hazardous materials. Unless specifically treated as commercial units and provisions are made for ADA compliance, live/work (R-7) are assumed to have residential occupancy, but in some cases could provide “B” occupancy if the bathrooms are made ADA accessible etc. Work/live is assumed to have either an “F” industrial code occupancy type or a “B” office occupancy.

In October 2002 a new zoning district was created and mapped only in West Oakland (Industrial Residential Transition Zone “S-16”) which allowed new construction Work/Live for the first time in the City of Oakland. (See map on Attachment B). Recently, new loft style units have been approved in Jack London and the areas of the city designated as “Business & Housing Mix” in the General Plan, however those units have been generally approved as residential units in the loft-style construction and are not necessarily following the floor area restrictions and other guidelines of the current Joint Working Living Quarters building code regulation. The new Work/Live offered in the S-16, has floor area restrictions which are the same as those required for conversions (66% work/ 33% live), but also includes requirements for parking, open space, and landscaping. The activities allowed in the S-16 Work/Live units include those permitted and conditionally permitted in the base zone and the overlay district.

Zoning Update Policy Framework

JWLQ was the subject of a year 2000 Issue Paper (see excerpt -Attachment A) which was presented for discussion at the Planning Commission. The May 24, 2000 Issue Paper on JWLQ report recommended the creation of two categories of Live/Work: Class I Live/Work which is a residential activity that includes adequate working space for commercial or industrial use and regularly used for such purposes by one or more persons residing in the unit with cooking space and sanitary facilities in conformance with applicable building standards. The second, Class II Work/Live, was recommended with no more than 30 percent of the floor area reserved for and primarily used for living space and with a minimum unit size of 1,200 square feet. The Report also recommended that the City should modify its existing home occupation requirements to retain or enhance standards for home occupations for the Class I Live/Work facilities in mixed use and higher residential areas, while imposing a floor area restriction on the percentage devoted to work. The Report recommends that non-resident employees be permitted in such facilities, but provided no further research as to how the Building Code would address this.

Staff met with a focus group (“Work Group”) of 12 persons on three occasions during the past three months to prepare the present report for the July 30th session of the ZUC. The Work Group included representatives of the City staff (Planning & Zoning, Housing, Building Services, Cultural Arts, Economic Development, Councilmember’s office), the non-profit sector (non-profit affordable housing developers and arts advocacy organizations) and the private sector (architects, developers). The group discussed the options for new JWLQ classifications, the associated development standards for each, and potential details for allowing the legalization of existing non-permitted JWLQ facilities within the general industrial areas. The Group did not reach consensus on all recommendations, but staff greatly benefited from these discussions and have tried to identify in this report those issues with divergent opinions.

GENERAL PLAN POLICIES IN SUPPORT OF JWLQ

Policy N5.2 Supporting Live/Work Development

The City should support and encourage residents desiring to live and work at the same location when neither the residential use nor the work occupation adversely affects nearby properties or the character of the surrounding area.

Policy I/C2.2 Reusing Abandoned Buildings

The reuse of abandoned industrial buildings by non-traditional activities should be encouraged where the uses are consistent with, and will assist in the attainment of, the goals and objectives of all elements of the Plan.

Policy D10.7 Developing Live-Work Spaces

Locational and performance criteria should be developed for live-work developments.

Policy W9.1 Defining Mixed-Use Along the Estuary

...Live-work units are appropriate mixed-use developments and unique residential opportunities for the waterfront.

In addition, *General Plan Policies W10.4 and 10.5* both emphasize the compatibility of live/work units in the Jack London Square and Produce Market areas, as echoed in the Estuary Plan. In addition to the Jack London area, the General Plan mentions the Embarcadero Cover, Kennedy Tract and West Oakland areas as appropriate for artist and/or live/work communities. In particular, the Housing & Business Mix areas of the General Plan are appropriate for these facilities.

OUTLINE OF THE CURRENT PROPOSAL

Staff proposes to adopt two classifications of joint working living quarters, while retaining the current residentially-oriented Live Work (R-7) classification that applies to Downtown and Jack London districts only:

1) *Category I Live Work*. A mixed-use unit which allows an unrestricted percentage of floor area in residential activities and which is not allowed in any industrial area; and

2) *Category II Work Live*. A conversion of an existing building or the construction of a new building in the Industrial Residential Transition Zone (S-16), to a commercial unit with residential activity limited to no more than one-third the floor area conditionally permitted in light industrial areas and prohibited in the general industrial areas. Category II Work/Live is the same as what is currently allowed as Joint Working Living Quarters. The only change is the prohibition in general industrial areas.

The difference between Category II Work/Live and Category I Live/Work facilities is that the “work component” of the former occupies no less than two-thirds (66%) of the floor area and is the predominant activity; while the “work” and “residential” component of the Category I Live/Work facility have equal value and both can operate without floor area restrictions. Staff assumes, based on project experience that the residential portion of the Live/Work will dominate. Nevertheless, Live/Work must be designed to meet all building code requirements for the commercial uses which will occupy the site in general (non-industrial) commercial areas, including adaptability to ADA requirements, in order to accommodate employees and clients and must also provide the amenities of a higher density residential unit such as open space. Category II Work/Live facilities are prohibited from reverting to a residential use; while a Category I Live/Work facility unit could functionally revert to an entirely residential use without conflict with the neighboring uses.

Category II Work/Live requires tenants and owners industrial nuisance agreement and allowable activity disclosures. Work/Live also must show a floor plan with no less than 66% of the floor area in commercial use, which emphasizes that the work component of the Work/Live facility is the primary use, to which the residential use is secondary. The clear distinction is further emphasized by location criteria, which allows Category II Work/Live facilities to locate within Light Industrial zones with an approved conditional use permit. Category I Live/Work facilities are allowed only within zones which allows both general commercial and residential uses. Allowable uses therefore vary between the two types of facilities. Heavier commercial and light industrial uses are permitted in Category II Work/Live facilities, based on the underlying zoning district. Certain commercial activities which are incompatible with any aspect of residential use will be

prohibited from both Category I and Category II facilities, including adult uses and all auto-related activities.

Conversions

There continues to be a demand for the conversion of underutilized commercial buildings throughout the older residential and commercial areas of Oakland. The City has received no complaints over the past decade from adjoining residential neighbors since the conversion ordinance has been in effect, thereby affirming that activities conducted in such facilities have been respectful of the environment in which they are located. However, there have been community complaints about the lack of design review for such facilities in the residential and commercial areas.

There does not appear to be a need to restrict the residential aspects of the converted JWLQ unit in areas where residential activities are permitted. Therefore staff proposes to amend the JWLQ conversion regulations to allow conversions of vacant or underutilized commercial structures in residential, mixed use or commercial areas, to be consistent with the proposed Category I Live/Work classification as commercial units with unrestricted floor area for residential use, as long as proposed uses are permitted in the underlying zoning district. In industrial areas, staff proposes to continue to conditionally permit conversions to Category II Work Live in light industrial areas, and to further prohibit any conversion to JWLQ in the general industrial areas of the City.

New Construction

The interest from the market for new JWQL is evident from the number of project applications received by the City over the past two years. Many of these have been formally approved as residential loft-style projects since there is no regulation in the code to allow new JWQL outside of the S-16 district. Some have been JWLQ conversions that were in essence a more residential project. One new construction Work/Live project was recently approved in Mandela Parkway in the S-16 zone.

Staff proposes that only Category I Live/Work be allowed as new construction for the following reasons:

- The City is unable to strictly enforce the 66% work/33% live ratio, which argues for the acceptance of this more relaxed regulatory policy in the mixed use and commercial areas, while adhering to the minimum building code standards which allow commercial activities within a mixed use space
- The City wishes to encourage new Live/Work as facilities that will function as work space for artists and small business owners.
- New Live/Work facilities with unrestricted residential floor areas, are projects attractive to the market, and can bring revitalization to older commercial corridors;
- Experience with recent development applications indicates a strong market demand for a new commercial Category I Live/Work classification, based on the nature of current project applications and their proposed locations.

There is also an interest in new construction of Category II Work/Live facilities, which could be conditionally permitted in light industrial zones. Preliminary discussion of this alternative took place at the earlier Industrial zoning policy discussions before the ZUC. Additional discussion took place at the Work Group meetings. Staff is concerned that new construction brings a more residentially oriented expectation for facility residents than would a conversion development and increases land values thereby pricing out industrial uses. Full discussion on this alternative can be found in Question #4 following the table of proposed and existing standards.

Live/Work as a Commercial Facility

It is proposed that Category I Live/Work be defined within the building code as appropriate for commercial occupancy with adaptability allowances for ADA requirements and floor loads accounting for this. Category I will allow residential activities and an unregulated percentage of commercial or residential floor area. As commercial units, Category I Live Work development can therefore accommodate employees and business customers, allow the storage of merchandise through adequate floor loads, and allow commercial activities.

S-16 Industrial Residential Transition District

Staff recommends continuing the present regulations which allow Category II Work/Live new construction in the areas of West Oakland in which this overlay district is mapped. (See attachment B). The nature of the West Oakland industrial zoning districts is under discussion and staff wish to defer any decisions regarding the location of new Work/Live new construction in that area until the recommendations for industrial zoning for West Oakland are made to the ZUC. For the purposes of this report, "Light Industrial" refers only to those identified as Central and East Oakland "IBX" in the industrial reports of March 19, April 16, and April 30th of this year.

Residentially-Oriented Live Work (R-7 facilities)

Staff proposes to discontinue the existing classification of "Residentially-oriented Live/Work" and to allow such conversions through the Category I Live/Work facility type in general commercial areas including Downtown and the Jack London district. This would encourage additional residential uses in commercial and mixed use districts, a stated goal in the General Plan, especially for Downtown. Allowable uses would be those permitted and conditionally permitted in the underlying zoning district, but would prohibit those uses which are non compatible with residential uses such as adult uses, liquor stores and uses involving hazardous materials.

New JWLQ Proposal 7/30

	<u>BHX Mixed Use Zones</u>	<u>General Commercial</u>	<u>Light Industrial (Central & East Oakland only)</u>	<u>Industrial Residential Transition Zone (S-16)</u>	<u>General Industrial</u>
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	No	No	CUP	CUP	No
Work/Live Cat II- New Construction	No	No	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.*

**DEFINITIONS OF LIVE/WORK AND WORK/LIVE
 Facility Type: Joint Living and Working Quarters (JWLQ)**

An integrated working space and residential space occupied and utilized by a single household in a structure, either in single unit or multi-unit, that has been designed or structurally modified to accommodate joint residential occupancy and work activity and which includes:

- 1. Is regularly used for such purpose by one or more persons residing in the unit;*
- 2. Includes complete kitchen space and sanitary facilities in compliance with the Building Code;*
- 3. Allows employees with associated required amenities as consistent with the building code; and*
- 4. Includes working space reserved and regularly used by one or more occupants of the unit.*

“Category I Live/Work Unit. A “mixed use” unit, that allows both commercial and residential use as a joint and equal use of the property. Category I allows an unregulated percentage of residential space, while allowing working space reserved for commercial activities that are otherwise permitted or conditionally permitted in the underlying zoning district and which are consistent with the approval of such use for the building type;

Category II – Work/Live Unit. A commercial unit, with incidental residential accommodations and which is in accordance with the restriction of no less than two-thirds (66%) of the floor area devoted to work activities.

- A. “New Construction” A Category II Work/Live Facility is a newly constructed building which is in accordance with the restriction of no less than two-thirds (66%) floor area devoted to work space, and all other standards within the S-16 district for JWLQ..***
- B. “Conversion” The rehabilitation of an existing non-residential structure, including commercial and civic buildings, and which is in accordance with the restriction of no less than two-thirds (66%) floor area devoted to work space.***

COMPARISON BETWEEN THE EXISTING CODE AND PROPOSED REGULATION

The principal changes between current practice and the new proposed code amendments, are discussed below. New Category II Work construction is currently only allowed in the S-16 Industrial Residential Transition Zone, which is mapped in over portions of the light industrial areas of West Oakland. Staff has used the current development standards in the S-16 zoning district as guidelines for the creation of the new proposed regulation

TOPIC	PROPOSED STANDARD	EXISTING STANDARD
#1 CREATION OF A NEW CLASSIFICATION OF LIVE/WORK	Allow Category I Live/Work to serve as an expanded form of home occupation, allowing small scale retail/walk-in services; light commercial; some minor wholesaling; and custom manufacturing.	Home occupation is the only form of commercial activity allowed in residential facilities, with no employees, no major storage and only incidental outside visitors to the site.
#2 JOINT WORKING LIVING QUARTERS (JWLQ) AS A FACILITY TYPE	Create Category I and Category II as “Facility Types” and regulate allowable activities accordingly per the base zoning district.	Currently JWLQ is not listed as a facility type or an activity type in the code, but is described in a separate section of the code.
#3a. LOCATIONS FOR NEW CONSTRUCTION CATEGORY I- LIVE/WORK	Allow New Construction Category I Live/Work in mixed use and general commercial areas (Housing & Business Mix, (BHX) and general commercial (C-30-60) with the exception of C-36. Prohibit Category I Live Work throughout industrial districts.	New construction of the Category I Live/Work type is not currently allowed.
#4a. WORK/LIVE WITHIN LIGHT INDUSTRIAL AREAS and CONDITIONS OF APPROVAL FOR W/L IN LIGHT INDUSTRIAL	Option 1: Allow new construction and conversions to Category II Work Live in light industrial areas. Option 2: Prohibit new construction Category II Work Live in Light Industrial areas, except in S-16. Standard. Conditions of Approval required. Allow conversions through a CUP.	New construction of JWLQ facilities is only allowed in the Industrial Residential Transition Zone (S-16) in West Oakland. Conversions to Work/Live may occur in anywhere in the Light Industrial areas now with a CUP. New Construction only allowed in S-16. CUP is now required in S-16, but specific conditions are not standardized.
#4b. WORK/LIVE WITHIN GENERAL INDUSTRIAL AREAS	Prohibition on all forms of Live/Work (Category I) and Work/Live (Category II) including prohibition on all conversions within the General Industrial.	Conversions to Work/Live may occur in the General Industrial areas now with a CUP. No new construction of Work/Live currently allowed outside of S-16.

TOPIC	PROPOSED STANDARD	EXISTING STANDARD
#5. ALLOWABLE ACTIVITIES WITHIN CATEGORY I LIVE/WORK AND CATEGORY II WORK/LIVE	Allow activities which would otherwise be permitted in the underlying district, with the prohibition of activities which are specifically incompatible with residential activities, including but not limited to adult uses, automotive and other heavy vehicle related activities.	Category I does not exist in the current code. Category II Work/Live- activities allowed in the base zone or as restricted by the overlay zone.
#6. DESIGN REVIEW	Require DR for new construction Category I and Category II and for conversions to Work/Live in residential and commercial areas.	DR not currently required for conversions unless a CUP is required
#7. PARKING REQUIREMENTS FOR NEW CONSTRUCTION ONLY	1.2 per 1,000 sf of floor area (0.2 is to accommodate employee/visitor parking).	S-16 requires 1 space /1,000 sf on an aggregated basis- no separate formula for employees or visitors.
#8. OPEN SPACE	Open Space of 75 sf per unit. Yard Setbacks required per residential requirements of underlying zoning district.	No current open space requirement for conversions. S-16 requires 75 sf open space/unit, which may be provided in rooftops.
#9. MIN/MAX UNIT SIZE	660 sf minimum. No max size. Average of 1,000 sf for Category II Work/Live.	660 sf min size. No max size
#10a. FLOOR AREA RESTRICTIONS: New Construction Category I Live/Work	No specific percentage of either use required.	Does not exist in current code
#10b. FLOOR AREA RESTRICTIONS: Conversions Category II Work/Live	Light Industrial areas: Min 66% in work-related, non-residential use. Max of 33% in residential use, and inhabited by at least one of the operators of the work-related activity.	Same as existing Code.

<p>#11. TENANT/BUYER DISCLOSURES</p>	<p>Require Nuisance Agreements; Permitted Activity Disclosures and require a Business Tax Certificate for all JWLQ.</p>	<p>No current policy. Has been used in practice on some cases, mirroring Emeryville’s model language.</p>
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SIGNIFICANT ISSUE AREAS AND STAFF RECOMMENDATIONS

#1. *Should we create a Category I Live/Work classification that is distinct from Work/Live Category II?*

Staff’s current recommendation is to encourage creation of new JWLQ through the Category I Live/Work facility type that will allow additional opportunities for small business and artistic enterprises while providing additional residential opportunities. Category I Live/Work is compatible in mixed use and general commercial districts. It provides a contemporary form of urban architecture, which is in proliferation in Oakland, as evidenced by new residential loft projects recently approved and constructed in West Oakland, the Kennedy Tract and Jack London Square. Work Live facilities contribute to the revitalization of older commercial areas, while helping to reduce auto trips by allowing an expanded form of home occupation. Staff recommends that Category I be allowed to locate in mixed use areas and general commercial areas, (C-30 through C-55 zoning districts but excluding C-36 and C-60) and the new BHX zoning districts).

An alternative to the creation of the current proposal for Category I Live/Work would be to allow the structural aspects of the “lifestyle loft” as a primarily residential use of the property and consistent with other multi-family residential standards in the existing building code, but allow for an expanded home occupation through a conditional use permit process, which would allow employees and small-scale consumer activities, small scale wholesaling and other compatible activities to occur in a predominantly residential setting. However, the Building Code requires particular sanitary facilities where employees are involved, which could be provided as “adaptable” to ADA conformity. Residential code may not provide for more than incidental storage of goods unless the floor loads are adequate. Therefore buildings must be built to be adaptable to the required ADA access and floor loads which the Building Services Division required in order to allow employees and public customers and viable storage opportunities.

Staff Recommendation #1: Create two classifications of facilities:
 1) Category I Live/Work defined as adaptable for commercial uses, and which allows residential activities as a joint and equal use of space, while allowing working space reserved for commercial activities; and

2) Category II Work/Live, defined as a commercial unit with incidental and limited residential accommodations and which is in accordance with the restriction of no less than two-thirds (66%) of the floor area devoted to work activities.

#2 Should JWLQ be defined as facility types as they may allow many different types of land use activities within any one unit?

Live/Work and Work/Live are not land uses. Any of one of a number of uses allowed per the base district might occupy these units- residential, commercial, light industrial. Live/Work and Work/Live are appropriately classified as Joint Working Living Quarter facility types, because they are a building type that allows a unique combination of living and working quarters. Staff recommends they be listed as facility types in the zoning code, and so that they are listed in each base district it is listed as permitted, or conditionally permitted. Currently JWLQ is described in a special code section (Section 17.102.190) and standards for new construction Work Live are spelled out in the S-16 district in West Oakland, Section 17.101.090. Currently JWLQ is not listed in any of the base districts.

Staff recommendation #2: Create Category I Live/Work and Category II Work/Live as a Facility Types, subject to the accompanying recommended conditions and standards for their development and regulation

#3. Where Should New Construction Live/Work facilities be located?

Staff recommends that New Construction Category I Live/Work facilities be concentrated in Housing & Business Mix (BHX) and in general commercial zones where higher density residential uses are also permitted. This new type of Live/Work facility will serve as a revitalization tool on the older commercial corridors where an infusion of increased residential density would aid in the revitalization of other business ventures in the area. It will provide initial first time homeowner opportunities for those starting out in independent businesses, while allowing the opportunity for these businesses to have a limited number of employees, which a residential unit could not allow. Staff recognizes the inability of the city to strictly enforce the use of such a facility for working activities and see no conflict if an unintended reversion to residential uses occurs in Category I Live/Work as they are already located in areas which permit higher density residential uses.

Staff recommendation #3: Allow Category I in mixed use and general commercial districts only. Limit New Construction of Category II to S-16 only. (See #4 below)

#4. Should Live/Work and Work/Live be permitted or conditionally permitted in light industrial zones? Should Work/Live be allowed in general industrial areas?

The ZUC has preliminarily discussed the location of Work/Live facilities in industrial zoning districts at the April 16, 2003 Zoning Update meeting and recommended that work/live facilities should be conditionally allowed in the light industrial districts only (IBX) and prohibited in the general industrial districts (IG), based on the underlying general plan designation. The ZUC deferred full discussion on the topic to the July 30th meeting. Staff recommends that Category I Live/Work be prohibited in the Light Industrial areas (IBX) because it is more primarily a

residential use, and recommends that Category II Work/Live (new construction as well as conversions) require a conditional use permit. Staff recommends this policy with some hesitancy, therefore presents two options in the final recommendation. Members of the Work Group agree with the prohibition of new construction of Category I Live Work in general light industrial zones, and argue that Category II Work/Live (both new construction and conversions) should be conditionally permitted throughout all light industrial districts, including the proposed "IBX" in Central and East Oakland.

Converted Work/Live facilities are present in the industrial districts of Oakland, and historically have not posed a major concern in their present numbers. Staff believes that new construction of any JWLQ facility in an industrial area will limit and possibly eliminate over time the viability of the adjacent industrial uses due to nuisance complaints by residents. In addition, the creation of new JWLQ drives the land prices up, thereby deterring new industrial businesses from developing. New construction Work/Live lofts in areas proximate to industrial activities can pose a much greater threat to the continuation of such uses by attracting a different type of resident based on the much higher investment made. Complaints by such new residents regarding truck activity, noise, and pollution can follow, and the requirement for nuisance agreements and permitted activity disclosures is not enough to prevent this occurrence. The location of such residential uses in proximity to industrial uses can pose health concerns for residents. Nevertheless, staff believes that the conditional use permit process can gauge the appropriateness of a specific proposal for Work/Live development in the light industrial areas, and the use permit process can be used to prevent a development does not meet the Category II standards for commercial predominance.

In addition, staff recommends that Live/Work or Work/Live facilities be prohibited in the General Industrial areas (IG) as reflected in the underlying general plan classification of General Industrial and Transportation. This is a major policy change and one which initiates the question of the legalization of existing non-permitted units within those areas.

Specific Findings for the Approval of Conditional Use Permits for Category II Work/Live in Light Industrial Areas:

- a) Construction of a new W/L facility in Light Industrial shall not remove from the stock a viable industrial facility which could continue use within the guidelines of the General Plan, and that proposed use of each Work/Live unit is a genuine commercial or industrial activity;
- b) The establishment of Work/Live will not interfere or inhibit any industrial or commercial use in the area where the project is located;
- c) Any changes proposed to the exterior of the building will be compatible with adjacent commercial and industrial uses;
- d) The building proposed for Work/Live has been designed to ensure that they will function predominantly as work spaces with incidental residential accommodations meeting basic habitability requirements in compliance with applicable regulations; and
- e) A Phase I Environmental Assessment for the proposed site shall be performed to determine whether lead paint and asbestos hazards exist, in order to see if there will be any health risks to residents. If so, a Phase II shall be performed.

Staff Recommendation #4

a) OPTION 1: Conditionally allow both conversion and new construction Category II Work/Live in Light Industrial areas, and create standards of approval.

OPTION 2: Allow conversions to Work/Live in the light industrial areas with a CUP but not new construction, and prohibit any conversions or new construction in the general industrial zone.

b) All new construction and all future conversions should be prohibited in the General Industrial areas. (Policy to be implemented after the expiration of any program which encourages the legalization of existing units in the General Industrial area). Continue existing policy which allows new construction of Category II Work/Live in the S-16 Zoning District of West Oakland only.

#5 Are there any land use activities that should be prohibited in facilities with Category I Live/Work and Category II Work/Live?

Because of the commercial occupancy type of the building, the City can allow commercial activities which are otherwise permitted or conditionally permitted in the underlying base district for Category I Live/Work. This would be true for Category II as well. Staff recommends allowing all activities allowed in the commercial and underlying base (light industrial) district except as follows:

Prohibited activities with any Category I or Category II building should include: adult businesses or any vehicles maintenance or repair (including detailing, painting, upholstery).

Prohibited activities within Category I Live/Work should also include: storage of flammable liquids, hazardous materials beyond that normally associated with a residential use; welding, machining or any open flame work; any use designated as Light, General or Heavy Manufacturing.

#6. Should Design Review be required for both new construction and for conversions?

While Design Review for new construction was consistently recommended during Workgroup discussion, there are mixed opinions about the requirement for design review during conversions. There is a desire to encourage Work/Live conversions for buildings which have been vacant or underutilized in traditional commercial activities. However, there have been community complaints about the current practice in which design review findings are not required as part of staff's review of conversions proposals.

Staff Recommendation #6: Design Review should be required for conversions in the residential, mixed use and commercial areas as well as for all new construction Live/Work and Work/Live, based upon the concerns of the community for the lack of aesthetic improvements to such commercial facilities, which can typically be in a blighted state at the time of conversion. No design review should be required for conversions in industrial areas.

7. What should the parking requirements be for new construction of Live/Work and Work/Live?

Staff anticipates that additional research will be needed to clarify what the true parking needs are for Live/Work and Work/Live facilities in general. However, in the interim, staff recommends that a standard of 1.2 spaces per 1,000 square feet be required.

The City of Emeryville found that larger unit sizes generate requirements for more than one parking space per unit. The S-16 district currently requires 1 parking space per 1,000 square feet of floor area. A study conducted for the development of residential and live/work units in the Jack London district established a need for at least 1.16 parking spaces per unit. The creation of commercial Category I Live/Work units would generate more public activity than is typically found in the residential lofts of Jack London. Therefore staff recommends a ratio of .2 per 1,000 square feet of floor area to cover the need for employee and visitor parking for these units, based on the total floor area. Creating the ratio of 1.2 based on aggregate floor area rather than per unit allows for shared parking, and could accommodate the use of City CarShare.

Staff Recommendation #7: Continue the present practice of requiring the retention of existing parking and loading facilities for conversion projects. Require 1.2 spaces per 1,000 square feet of aggregated floor area for new construction projects.

8. What should the open space requirements be for Live/Work and Work/Live?

Staff has based the proposed requirement for outdoor open space on current requirements for new Work/Live in S-16. Some members of the Work Group recommended the substitution of indoor open space on urban corridors based on a CUP in order to allow the maximum amount of quality group interaction for the units. Staff believes that the provision of a minimum amount of outdoor open space is essential for any unit which has a residential activity.

Staff Recommendation #8: Continue the present S-16 regulation of 75 sf/unit open space for Category I Live/Work and allow for provision through rooftop gardens and shared courtyards.

9. Should we continue the minimum unit size of 660 square feet?

Some members of the Workgroup recommended a reduction of the minimum unit size from the present regulation of 660 square feet/unit to 440 square feet per unit. Staff believe that 440 square feet is too small a space to allow both residential and work activities to take place and that these units would unintentionally provide a developer incentive for a small residential option with all the incentives of the joint working living quarters building code without actually adding a usable work facility. Staff recommends the continuation of the 660 square foot minimum unit size for both Live/Work and Work/Live units.

Staff Recommendation #9: Continue the present minimum unit size of 660 square feet for both Live/Work and Work/Live units.

10. How should maximum density be established?

Floor Area Ratio (FAR) should be used for all Live/Work and Work/Live projects because these are not purely residential structures, and they are being built to commercial standards. However, the projects should not be allowed to exceed the residential density of the base zone for Category I Live/Work projects because that would be contrary to the density standards of the base district. Applying the residential yard setback and height limits of the base district will govern the

ultimate bulk of the facility. Several members of the Work Group advocate for a pure application of FAR for both Category I and Category II units.

Staff Recommendation #10: Allow the application of FAR versus a residential density requirement. However the base district density for maximum number of units per land area may not be exceeded for Category I Live/Work in mixed use and commercial zones.

#11. Should we require Nuisance Easements, Permitted Activity Disclosures and a City Tax Certificate for each tenant/owner of all Category II units in industrial areas?

Several cities in California have used Nuisance Disclosures successfully to protect the interests of industrial owners against complaints against adjacent residents of Work/Live facilities. Such disclosures do not *stop* the incoming complaints, but can be used as a response to them. Staff recommends the creation of a standards Nuisance Easement form, reviewed by the City Attorney, and such a disclosure shall be submitted to the City upon the transfer or sale of units. In addition, a City Business License is required, and an Industrial Activities Disclosure shall be posted in the public entry of each Live/Work unit that is within the general commercial area and within each Work/Live unit that is within the general commercial and light industrial area

Staff Recommendation #12: Require Nuisance Easements, Permitted Activity Disclosures and a Current City Tax Certificate for each tenant/owner for Category II Work/Live units in industrial areas.

#12. Should there be an amnesty program for existing illegal JWLO in the general industrial areas?

Staff have included as Attachment C a proposal for a Work/Live amnesty program, based on the assumption that the ZUC still recommends the prohibition of any type of Work/Live facility (whether a conversion or new construction) in all General Industrial & Transportation designated areas. The main reason for an amnesty program is to encourage and facilitate legalization of units so health, safety and building codes are met, and appropriate conditions can be applied. Staff recommendation is not to allow any additional units for these facilities and to encourage legalization before the opportunity to do so lapses.

Staff recommends allowing a minimal amount of additional floor area to the existing facility (maximum of 10% addition, added to total aggregate floor area) as needed to meet building code requirements (for example to provide exit corridors, stairways, ADA access etc).

The Workgroup was split in its recommendation. Some members endorse Alternative, #2, which would allow substantial increase in units based on the FAR allowance for the underlying zoning district. Staff fear that this will lead to a great disruption of the continuity of industrial activities in the surrounding area, since new construction Work/Live is a much larger threat to the existing land values and tends to inevitably generate nuisance complaints against adjacent and nearby industrial users. Some representatives of the Work Group will present more information regarding the potential number of existing non-permitted facilities and an inventory of the uses adjacent to those facilities, as well as more information regarding Alternative 2 at the ZUC meeting on July 30th.

RECOMMENDATIONS:

Staff recommends that the Zoning Update Committee review the preliminary Joint Working Living Quarters (JWLQ) regulations and proposed Amnesty Program and give direction regarding the 12 identified issues, and other issues which the Committee may identify. Staff will then use this direction in preparing draft zoning text for the Business and Housing Mix and new Industrial districts, and to revise the relevant code sections related to Joint Working Living Quarters.

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Approved for forwarding to the Zoning Update
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Attachments:

Attachment A: Year 2000 Zoning Update Issue Paper Excerpt

Attachment B: Map of S-16 Industrial Residential Zoning District.

Attachment C: Draft Guidelines for San Luis Obispo- Joint Working Living Quarters