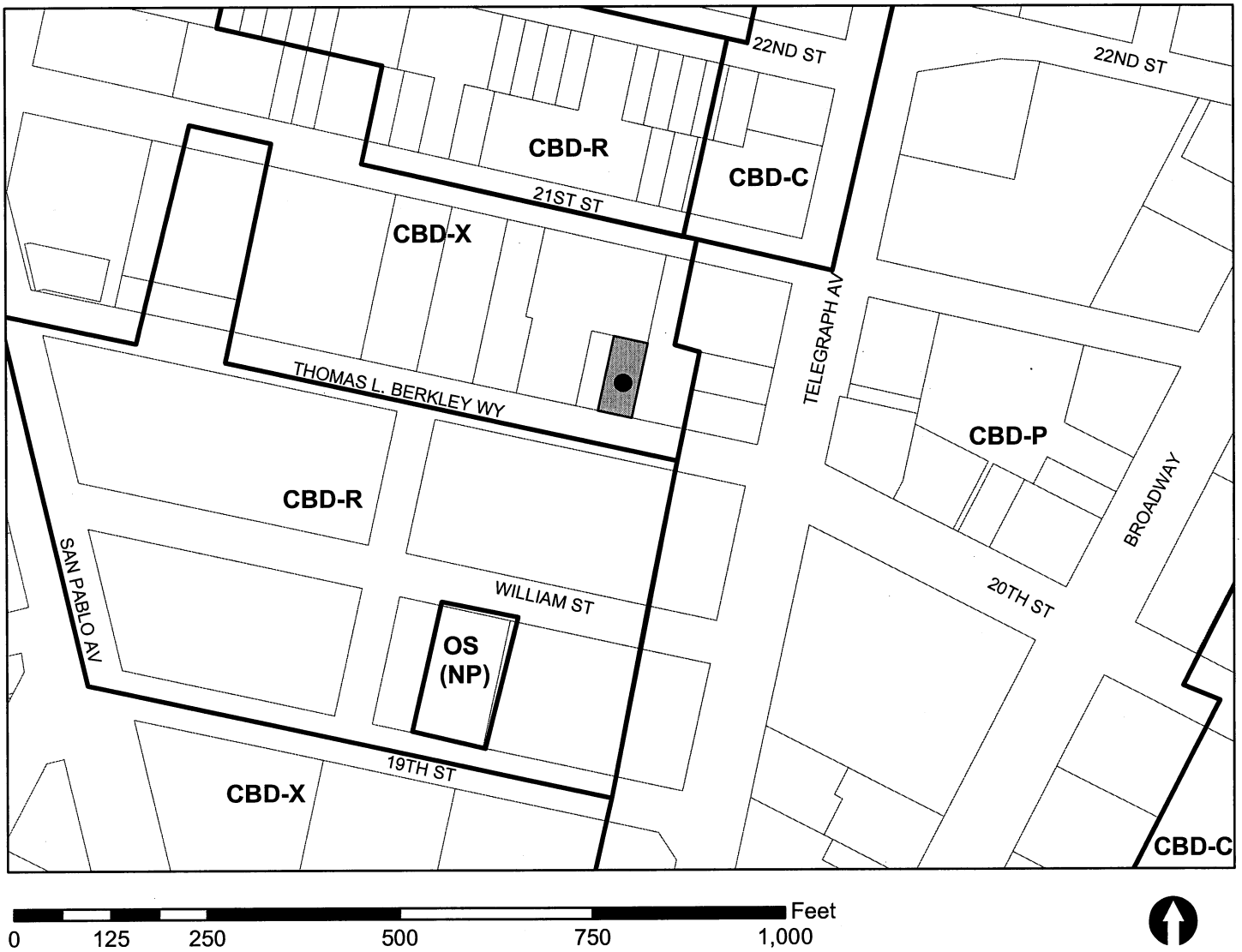
Case File No. CV10116

Location:	**522-20th Street (Thomas Berkley Way) (APN 08-0645-006-00)**
Assessors Parcel Number:	
Proposal:	Temporary surface auto-fee parking (four years), with up to 49 parking spaces
Applicant:	Terra Linda Development Services, LLC
Owner:	Patrick White
Planning Permits Required:	Minor Conditional Use Permit for Auto-Fee Parking with fewer than 50 parking spaces; Minor Variance for a surface parking lot where the zoning provisions require auto-fee parking lots to be enclosed or in structured garages.
General Plan:	Central Business District
Zoning:	CBD-X
Environmental Determination:	Exempt, CEQA sections: 15304, Minor Alterations to land; 15311, Accessory Structures; 15332-Infill Development Projects.
Historic Status:	Not a PDHP; vacant
Service Delivery District:	I – Downtown/West Oakland/Harbor
City Council district	3
Date Filed:	May 7, 2010
Staff Recommendation	Decision based on staff report
Finality of Decision:	Appealable to City Council within 10 days of final action on the project.
For further information:	Contact case planner **Catherine Payne** at (510) 238-6168 or **cpayne@oaklandnet.com.**

SUMMARY

Terra Linda Development Services, LLC., on behalf of Patrick White, has submitted an application for a minor variance to allow a surface auto-fee parking lot for up to 49 spaces at 522-20th Street (also known as Thomas Berkley Way), in the Central Business District (CBD). The use is proposed on a temporary basis (four years) on a site that is currently entitled for highrise residential development (Project Case REV070014). Auto fee parking requires a conditional use permit in the CBD, but only if in a multi-story garage or underground. Therefore, a variance is also required to allow for a surface parking lot.

CITY OF OAKLAND PLANNING COMMISSION



Case File: V10-116 (related to REV07-0014)
Applicant: Terra Linda Development Services, LLC
Address: 522- 20th Street
Zone: CBD-X

Case File No. CV10116

PROJECT SITE AND SURROUNDING AREA

The 4,500 square foot site is located in downtown Oakland on 20th Street between San Pablo and Telegraph Avenues (across from the Uptown project) and is currently vacant. The site was most recently used as a surface parking lot for 40 spaces. The parking lot was improved without necessary permits. The site was previously developed with a commercial building and used as retail until it was demolished in 2000. The recently constructed Uptown residential project is located directly across the street from the subject property. Additional surrounding land uses include small retail businesses, offices, and residential facilities that vary in height from 2 to 23 stories. The project is located within a few blocks of the 19th Street BART station and is served by multiple AC Transit lines. The General Plan designation for the site is Central Business District (as described in more detail in this staff report), which anticipates a mix of high-density, urban, residential uses with business oriented development.

BACKGROUND

The 4,500 square foot site is located in downtown, immediately north of the Uptown site. The site was previously developed with a commercial building and contained retail uses until the building was demolished in 2000. Since that time, the site has been used for auto-fee parking. In 2005, the property was entitled for a 5-story building with up to 20 residential units located above 20 parking spaces and 1,700 square feet of ground floor commercial space. The project was revised to include only 18 units in 2005 and permits are extended through December 31, 2011.

Temporary Conditional Use Permit Proposal

The application considered in this report is part of a growing interest in temporary activities in Oakland. This interest has triggered research into and development of a temporary use permit proposal already considered by the Planning Commission and discussed later in this report (and Planning Commission report attached to this report as Attachment E). This applicant, however, is interested in pursuing a temporary permit in advance of any decision by the Planning Commission and/or City Council regarding the larger regulatory framework (a proposal may not be in front of the City Council for several months). The City of Oakland does not currently restrict temporary permits; however, until regulations for temporary permits are adopted, there is no consistent method for considering and regulating temporary uses on the whole, and for ensuring their removal after a specified period of time.

PROJECT DESCRIPTION

The proposed project is a temporary surface auto-fee parking lot at 522-20th Street in the CBD. The project includes up to 20 marked spaces and can accommodate up to 49 vehicles with valet services. The proposal is to accommodate the surface parking lot for up to four years on the

expectation that the economy will improve enough to allow investment into a residential project similar to the one approved by the Planning Commission in 2005. The site is currently paved and fenced, and has one curb cut providing site ingress and egress. The proposed new features would include restriping (paint) and a pay station for when valet services are not available.

GENERAL PLAN ANALYSIS

Land Use and Transportation Element

The proposed project site is located within the Central Business District (CBD) land use designation of the Land Use and Transportation Element (LUTE). The intent of the CBD classification is "to encourage, support and enhance the downtown area as a high density mixed use urban center of regional importance and a primary hub for business, communications, office, government, high technology, retail, entertainment, and transportation in Northern California." Although auto-fee parking is a necessary land use in a densely developed business district, the LUTE specifically discourages surface parking (see below). Specific policies that relate to the proposed project include the following (staff analysis of application to project is in indented, italicized text following each policy):

- **Policy D3.2: Incorporating Parking Facilities**: New parking facilities for cars and bicycles should be incorporated into the design of any project in a manner that encourages and promotes safe pedestrian activity.
    - *The project relies on existing curb cuts and ingress and egress points located on 20th Street.*
- **Policy D6.1: Developing Vacant Lots**: Construction on vacant land or to replace surface parking lots should be encouraged throughout downtown, where possible.
    - *The proposed project would be temporary and would not impede planned development of the site. The site was previously entitled for a moderate-density residential project; however, due to the poor economy, the applicant is not able to finance the planned project at this time. Although the proposed surface parking lot is antithetical to the goals of the LUTE, the use would be temporary and consistent with previous but unauthorized use of the site.*
- **Policy D9.1: Concentrating Commercial Development**: Concentrate region-serving or "destination" commercial development in the corridor around Broadway between 12th and 21st streets, In Chinatown, and along the Jack London Waterfront. Ground floor locations for commercial uses that encourage a pedestrian-friendly environment should be encouraged throughout the downtown.
    - *Extending use of the proposed project site as surface parking would not contribute to concentrating region-serving and destination commercial development in the Broadway corridor. However, the use would be temporary during an economic time when few other land use activities are actively supporting this goal.*

ZONING ANALYSIS

The proposed project is located in the CBD-X zoning district. Auto fee parking is conditionally permitted in the district and is required to be in a parking structure that is a minimum of three stories high or below grade. Accordingly, the proposed temporary *surface parking lot* requires both a minor conditional use permit (for auto-fee parking with fewer than 50 parking spaces) and a minor variance (from zoning limitations and additional criteria that require auto-fee parking to be enclosed or below grade).

ENVIRONMENTAL REVIEW

The California Environmental Quality Act (CEQA) does not apply to denial of a project, pursuant to CEQA Guidelines Section 15270. Therefore, no environmental review is required should the Planning Commission deny the proposed 522-20th Street surface auto-fee parking lot proposal.

However, based on the size and location of the project site, staff has concluded that the auto-fee parking project also satisfies the infill exemption allowed under CEQA Section 15332. The infill exemption criteria follow with a brief summary of staff's analysis included in bold text:

a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;
   As demonstrated in the General Plan Analysis section of this report, the application is generally consistent with all applicable General Plan policies and the Central Business District designation. The Zoning Analysis and Required Findings sections demonstrate that, with approval of the CUP and Variance, the project would be consistent with the Planning Code.

b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
   The project occupies less than one-half acre (0.1 acre). The site is located within a developed neighborhood in Oakland and is currently occupied by a vacant surface parking lot. The project is surrounded by commercial and urban residential land uses.

c) The project site has no value as habitat for endangered, rare or threatened species;
   The project site hosts no known endangered, rare, or threatened species and is currently occupied by a paved parking lot.

d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality;

This project would generate a maximum of 49 hour peak-hour trips distributed through multiple (three, at a minimum) intersections. The project would not result in any measurable change to level of service at any of the affected intersections.

e) The site can be adequately served by all required utilities and public services.
The project site is located in a highly urbanized area within Oakland. The site can be served by utility and public services.

KEY ISSUES AND IMPACTS

Recommendation

Staff recommends denial of the 522-20th Street surface parking lot application. However, because the Planning Commission has discretion to make findings for approval, staff has included alternative findings for approval and conditions of approval, in addition to findings for denial. This allows the Planning Commission the option of either denying or approving the project. This project is very similar to a recent application at 1331 Harrison Street, which deadlocked at the Planning Commission meeting of June 16, 2010 and was subsequently approved by the City Council on July 20, 2010.

Site Previously Used as Surface Auto-Fee Parking

The proposed project is the renewed use of the 522-20th Street site as a surface parking lot. The parking lot has existed on the site since 2000 (although it was never subject to a required conditional use permit or variance for the auto-fee parking use). The site is paved and has an existing curb cut to provide site access and egress.

The project would be temporary, involve minimal improvements and would provide tax revenue for the City of Oakland. At the same time, a surface parking lot contributes to a blighted and under-utilized appearance in the Central Business District.

- *Staff recommendation: If the Planning Commission wishes to consider approval of the proposed project, staff recommends requiring a landscape buffer along the perimeter of the site adjacent to 20th Street, and temporary lighting of the site during the evening hours. The buffer should include taller plants (such as attractive vines on the existing chain link fencing) to reduce the appearance of the surface parking use. In addition, plant containers should be of high quality materials and construction and should be attractive. This would reduce the appearance of blight and enhance safety.*

- *Staff recommendation: Staff recommends including strict conditions of approval ensuring a limited, four year timeframe for the use, and guaranteeing removal of the use upon termination of the permit.*

No Surface Auto-Fee Parking in CBD

The current Central Business District (CBD) zoning regulations allow auto-fee parking in the downtown subject to a conditional use permit; however, limitations and additional criteria require auto-fee parking to be enclosed in a structure of at least three stories or to be located below grade. In summary, *surface* auto-fee parking is not permitted. Although the conditional use permit and variance application is the appropriate tool for seeking an approval in this instance, the CBD regulations were adopted recently and were closely crafted and vetted by key decision makers and the community. The restriction on surface parking is a specific, contemporary objective of the current regulations.

The proposed project is inconsistent with the Planning Code, and approval of the project would contradict the regulations contained in the Planning Code. However, the use would be temporary and would not ultimately restrict development of a higher and better use for the site.

- *Staff recommendation: If the Planning Commission wishes to consider approval of the proposed project, staff recommends including strict conditions of approval ensuring a limited, four year timeframe for the use, and guaranteeing removal of the use upon termination of the permit.*

Temporary Uses

The Planning Commission recently reviewed and discussed a proposed Planning Code Amendment that would allow temporary use permits in Oakland (see Attachment E) and has asked staff for more information before making a recommendation to the City Council. Currently, temporary permits are processed on a case-by-case basis and conditions of approval are included to control the timeframe. There is no consistent process to consider, approve and terminate temporary uses. In addition, the City Attorney's Office has advised staff that failure to diligently and timely enforce requirements to eliminate uses may result in the uses becoming permanent through a property owner's acquisition of vested rights. As a result, contrary to the Commission's, and even a current applicant's intention, such uses could run with the land to future owners. Although the Planning Commission has reviewed proposed temporary use regulations, there is currently no consensus regarding support for such regulations.

- *Staff recommendation: If the Planning Commission wishes to consider approval of the proposed project, staff recommends including strict conditions of approval ensuring a limited, four year timeframe for the use, and a method and means for guaranteeing removal of the use upon termination of the permit.*

RECOMMENDATION

Staff believes that the proposed project is inconsistent with adopted land use policy, as noted throughout this report. However, as previously mentioned, the proposed project is consistent with the recently approved 1331 Harrison Street project (case file CV09197). Staff recommends denial of the project application due to the inconsistencies with policy; however, staff is providing the Planning Commission with the option to approve or deny the application (and, as such, staff has provided findings for either approval or denial and conditions of approval for Planning Commission consideration). Staff recommends that the Planning Commission:

1) Hold a public hearing and receive public testimony regarding the proposed project;
2) Affirm staff's environmental determination that either:
    i. Denial of the project is not subject to CEQA, pursuant to CEQA Guidelines Section 15270, Projects Which are Disapproved; or
    ii. Approval of the project is subject to an exemption from CEQA, relying on sections: 15304, Minor Alterations to land; 15311, Accessory Structures, and 15332, Infill Development Projects.
3) Consider approval or denial of the Minor Conditional Use Permit and the Minor Variance, as per one (1) of the attached two (2) sets of Findings. The Commission shall adopt either Attachment B (for Denial) OR Attachment C (for Approval). If Findings for Approval are made, the Conditions of Approval (Attachment D) should also be adopted.

Prepared by:

Catherine Payne, Planner III

Respectfully submitted:

SCOTT MILLER
Zoning Manager, Planning and Zoning Division

Approved for Forwarding to the
Planning Commission:

ERIC ANGSTADT
Deputy Director, Community and Economic Development Agency

Attachments:

A. Project Plans
B. Findings for Denial
C. Findings for Approval
D. Conditions of Approval
E. Proposed TCUP Staff Report, dated October 20, 2010, inclusive
F. Public Comment (email correspondence)

ATTACHMENT A: PROJECT PLANS

Case File No. CV10116

ATTACHMENT B: FINDINGS FOR DENIAL

Staff believes the 522-20th Street temporary surface parking lot proposal does not meet the required findings for compliance with Oakland Planning Code Sections 16.136.050B (Regular Design Review Criteria for Non-Residential Facilities), 17.134.050 (Conditional Use Permit), and 17.148.050 (Variance Criteria), as set forth below. Required findings are shown in **bold** type; explanations as to why these findings can or cannot be made are in normal type. The project's conformance with the following findings is not limited to the discussion below, but is also included in all discussions in this report and elsewhere in the record.

Planning Code Section 17.136.050B (Regular Design Review Criteria for Non-Residential Facilities and Signs):

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

The proposed surface parking would potentially prolong the blighted appearance of the property. Although staff recommends the inclusion of design features to reduce blight and improve the aesthetic quality of the site, this site would continue to be vacant a building—an important massing tool for ensuring the presence and arrangement of buildings designed to promote and enhance the downtown area.

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

The proposed surface parking would potentially prolong the blighted appearance of the property. Surface parking, with no architectural mass, would not complement the surrounding buildings and investment in the Uptown area.

3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

As demonstrated in the administrative record, this project does not conform to the General Plan, Planning Code and design objectives for the CBD zoning district. Although auto-fee parking is permitted, surface parking is not allowed in the CBD.

Planning Code Section 17.134.050 (Conditional Use Permit)

A CUP is required for auto-fee parking located in the CBD zoning districts.

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development.

Although the operating characteristics of the proposed auto-fee parking lot are compatible with the intensive development of the Central Business District, the design is not compatible. A surface parking lot results in an underutilized, potentially blighted appearance in an area that should appear densely and attractively developed.

B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant.

Although the proposed auto-fee parking lot is convenient and functional in the context of the intensive development of the Central Business District, the appearance of the use is not attractive. A surface parking lot results in an underutilized, potentially blighted appearance in an area that should appear densely and attractively developed.

D. That the proposal conforms to all applicable design review criteria set forth in the design review procedure at Section 17.136.050.

The proposed project does not conform to all applicable design review criteria (see findings for Section 17.136.050.B above).

Section 17.148.050 (Minor Variance from Zoning Limitations and Additional Criteria):

1. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation.

The CBD zoning regulations require new auto-fee parking activities to be enclosed in a three-story (minimum) structure or located below grade. Because the proposal is for temporary auto-fee parking, it is unreasonable to expect structured parking. However, surface parking can contribute to blight, especially in the downtown area, and the CBD regulations are intended to limit blight. In summary, the proposed project could prolong a blighted condition, inconsistent with the intent of the zoning regulations and inconsistent with current Planning and Zoning Division practice of denying temporary permits, in part because there is no mechanism for ensuring their removal after a specified time period.

2. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy.

The CBD zoning regulations require auto-fee parking to be enclosed in a three-story (minimum) structure or located below grade. Because the proposal is for temporary auto-fee parking, it is unreasonable to expect structured parking. However, surface parking can contribute to blight, especially in the downtown area, and the CBD regulations are intended to limit blight. In summary, the proposed project could prolong a blighted condition, inconsistent with the intent of the zoning regulations and inconsistent with current Planning and Zoning Division practice of denying temporary permits.

BOUNDARY AND TOPOGRAPHIC SURVEY

PORTION OF MAP OF OAKLAND AND VICINITY BY
W. F. BOARDMAN CITY AND COUNTY SURVEYOR (17 M 14)
LOCATED AT 520 AND 522–532 20TH STREET
CITY OF OAKLAND, COUNTY OF ALAMEDA, CALIFORNIA

JUNE 27, 2006 SCALE: 1" = 8'

GENERAL NOTES

HORIZONTAL AND VERTICAL CURVES EXIST WITHIN 300 FEET OF THE PROPOSED DRIVEWAY.

NO PROTECTED TREES EXIST ON THIS SITE.

UTILITY LOCATIONS ARE BASED UPON SURFACE STRUCTURES AND PAINTED MARKINGS. VERIFY UNDERGROUND UTILITIES.

LEGEND

- FOUND CITY MONUMENT
- FOUND CROSS
- SET P.K. NAIL WITH TAG, LS 4951

A/C	ASPHALT
B/W	BASE OF WALL
CONC.	CONCRETE
D.I.	DRAIN INLET
D/W	DRIVEWAY
E.P.	EDGE OF PAVEMENT
F.H.	FIRE HYDRANT
F/L	FLOW LINE
J.P.	JOINT POLE
L.H.	LAMP HOLE
M.H.	MAN HOLE
OHW	OVERHEAD WIRES
S.S.	SANITARY SEWER
S/W	SIDEWALK
T.C.	TOP OF CURB
T/W	TOP OF WALL
W.M.	WATER METER
W.V.	WATER VALVE

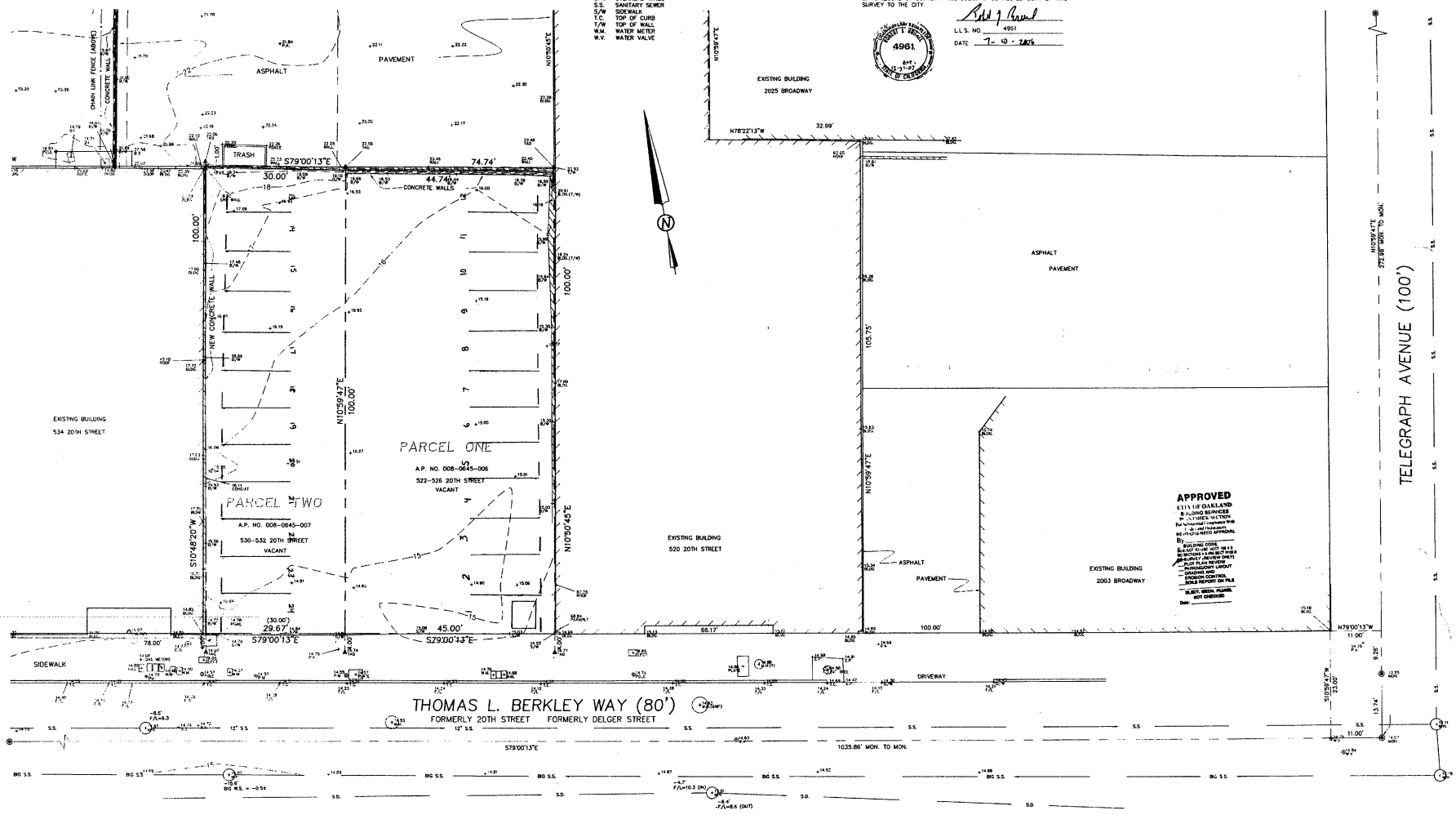
SURVEYOR'S CERTIFICATE:
THIS MAP CORRECTLY REPRESENTS A FIELD SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE LAND SURVEYOR'S ACT AT THE REQUES" OF PATRICK WHITE ON JUNE 27, 2006

I HEREBY STATE THAT ALL EXISTING GRADES AND CONTOURS DELINEATED UPON THIS PLAT ARE BASED UPON CITY OF OAKLAND DATUM.

I FURTHER STATE THAT THE PARCELS DELINEATED UPON THIS SURVEY ARE THE SAME AS THAT SHOWN ON THE CURRENT EQUALIZED COUNTY ASSESSMENT ROLL AS CONTIGUOUS UNITS.

I FURTHER STATE THAT IN ACCORDANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT THE PERFORMANCE OF THIS SURVEY REQUIRES THAT A RECORD OF SURVEY BE FILED WITH THE ALAMEDA COUNTY SURVEYOR AND I WILL FILE SAME IN A TIMELY MANNER; AND IF CHANGES ARE NECESSARY TO THIS SURVEY SUBMITTED TO THE CITY OF OAKLAND DUE TO PROCESSING OF A RECORD OF SURVEY I WILL SUBMIT A CORRECTED COPY OF THIS SURVEY TO THE CITY.

L.L.S. NO. 4951
DATE: 7-10-2006



MORAN ENGINEERING, INC.
CIVIL ENGINEERS \ LAND SURVEYORS
1930 SHATTUCK AVENUE, SUITE A
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(510) 848-1930

F.B. NO. 982/1112 WHITE BERKLEY WAY BPS.DWG JOB NO. 06-5849.1

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10% SITE

ATTACHMENT C:
ALTERNATIVE: OPTIONAL FINDINGS FOR APPROVAL

The Planning Commission finds that the 522-20th Street temporary surface parking lot proposal meets the required findings for compliance with Oakland Planning Code Sections 16.136.050B (Regular Design Review Criteria for Non-Residential Facilities), 17.134.050 (Conditional Use Permit), and 17.148.050 (Variance Criteria), as set forth below. Required findings are shown in **bold** type; explanations as to why these findings can or cannot be made are in normal type. The project's conformance with the following findings is not limited to the discussion below, but is also included in all discussions in this report and elsewhere in the record.

Planning Code Section 17.136.050B (Regular Design Review Criteria for Non-Residential Facilities and Signs):

1. That the proposal will help achieve or maintain a group of facilities which are well related to one another and which, when taken together, will result in a well-composed design, with consideration given to site, landscape, bulk, height, arrangement, texture, materials, colors, and appurtenances; the relation of these factors to other facilities in the vicinity; and the relation of the proposal to the total setting as seen from key points in the surrounding area. Only elements of design which have some significant relationship to outside appearance shall be considered, except as otherwise provided in Section 17.136.060;

The proposed conditions of approval require art panels or other attractive buffering features along 20th Street that would soften the appearance of the surface parking and would provide an aesthetically appealing street frontage on a temporary basis for the duration of the project.

2. That the proposed design will be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area;

The proposed conditions of approval require art panels or other attractive buffering features along 20th Street that would soften the appearance of the surface parking and would provide an aesthetically appealing street frontage on a temporary basis for the duration of the project.

3. That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.

The project includes auto-fee parking, a conditionally permitted use in the Planning Code and consistent with the Oakland General Plan. In addition, the proposed conditions of approval require features intended to provide an aesthetically pleasing frontage along the public Right-of-Way, consistent with the objectives of the design review criteria.

Planning Code Section 17.134.050 (Conditional Use Permit)

A CUP is required for auto-fee parking located in the CBD zoning districts.

A. That the location, size, design, and operating characteristics of the proposed development will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;

The proposed surface auto-fee parking use is temporary and would not hinder future and long-term development compatible with the existing and desired neighborhood character.

B. That the location, design, and site planning of the proposed development will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the use and its location and setting warrant;

The proposed surface auto-fee parking use is temporary and would not hinder future and long-term development of convenient, functional and attractive development. In addition, the temporary parking use enhances convenient access to nearby shopping and work opportunities, and conditions of approval require an attractive buffer to reduce the appearance of the surface parking use.

C. That the proposed development will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region;

The proposed surface auto-fee parking use is temporary and would not hinder future and long-term development that would enhance the surrounding area and provide community functions and essential services. In addition, the temporary parking use is a community function and essential service.

D. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.136.050;

Consistent with the findings of Section 17.136.050, the proposed surface auto-fee parking complies with the applicable design review criteria (see above).

i. That the proposal conforms in all significant respects with the Oakland General Plan and with any other applicable guidelines or criteria, district plan or

development control map which has been adopted by the Planning Commission or City Council. (Ord. 12376 § 3 (part), 2001: prior planning code § 9204)

The proposed surface auto-fee parking use is temporary and would not hinder future and long-term development consistent with the Oakland General Plan. In addition, the temporary parking use will serve essential services.

Section 17.148.050 (Minor Variance from Zoning Limitations and Additional Criteria):

A. With the exception of variances for adult entertainment activities or sign facilities, a variance may be granted only upon determination that all of the following conditions are present:

1. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution improving livability, operational efficiency, or appearance.

The proposed surface auto-fee parking use is temporary. It is unrealistic to expect a temporary use to be enclosed in a three-story structure or to be located below grade. The surface parking design solution allows the site to be both useful to the community and retain value during difficult economic times. The conditions of approval require elements to be incorporated into the proposed plan that will improve the appearance of the surface parking lot.

2. That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property; or, as an alternative in the case of a minor variance, that such strict compliance would preclude an effective design solution fulfilling the basic intent of the applicable regulation;

The proposed surface auto-fee parking use is temporary. It is unrealistic to expect a temporary use to be enclosed in a three-story structure or to be located below grade. The surface parking design solution allows the site to be both useful to the community and retain value during difficult economic times. The conditions of approval require elements to be incorporated into the proposed plan that will improve the appearance of the surface parking lot.

3. That the variance, if granted, will not adversely affect the character, livability, or appropriate development of abutting properties or the surrounding area, and will not be detrimental to the public welfare or contrary to adopted plans or development policy;

The proposed surface auto-fee parking use is temporary. It is unrealistic to expect a temporary use to be enclosed in a three-story structure or to be located below grade. The surface parking design solution allows the site to be both useful to the community and retain value during

difficult economic times. The conditions of approval require elements to be incorporated into the proposed plan that will improve the appearance of the surface parking lot.

4. That the variance will not constitute a grant of special privilege inconsistent with limitations imposed on similarly zoned properties or inconsistent with the purposes of the zoning regulations;

The proposed project, a temporary surface auto-fee parking lot, is somewhat unique in Oakland. Because the proposed use would be temporary, the grant of any privilege is short-term and should not affect long-term satisfaction of the objectives of the Planning Code and zoning regulations for this site.

5. That the elements of the proposal requiring the variance (e.g., elements such as buildings, walls, fences, driveways, garages and carports, etc.) conform with the regular design review criteria set forth in the design review procedure at Section 17.136.050.

The proposed project conforms to the design review criteria, as demonstrated above. The proposed conditions of approval require an aesthetic treatment facing the public Right-of-Way that would both reduce any appearance of blight related to the surface parking, and would provide an aesthetically appealing street frontage.

ATTACHMENT D:
CONDITIONS OF APPROVAL

522-20th Street (case file V10116)

Approved Use

Ongoing

a) The project shall be constructed and operated in accordance with the authorized use as described in the application materials, **staff report dated January 19, 2011**, and the plans dated **June 27, 2006** and submitted on **May 7, 2010**, and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

II.b) This action by the **City Planning Commission** ("this Approval") includes the approvals set forth below. This Approval includes: **Minor Conditional Use Permit and Minor Variance for 522-20th Street, under Municipal Code Sections 17.134.050 and 17.148.050, respectively.**

1. Effective Date, Expiration, Extensions and Extinguishment

Ongoing

Unless a different termination date is prescribed, this Approval shall expire **two years** from the approval date, unless within such period all necessary permits for construction or alteration have been issued, or the authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any necessary building permit for this project may invalidate this Approval if the said extension period has also expired.

2. Scope of This Approval; Major and Minor Changes

Ongoing

The project is approved pursuant to the **Planning Code** only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

3. Conformance with other Requirements

Prior to issuance of a demolition, grading, P-job, or other construction related permit

b) The project applicant shall comply with all other applicable federal, state, regional and/or local laws/codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshal, and the City's Public Works Agency. Compliance with other applicable requirements may require changes to the approved use and/or plans. These changes shall be processed in accordance with the procedures contained in Condition of Approval 3.

c) The applicant shall submit approved building plans for project-specific needs related to fire protection to the Fire Services Division for review and approval, including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access, and vegetation management for preventing fires and soil erosion.

4. <u>Conformance to Approved Plans; Modification of Conditions or Revocation</u>

Ongoing

a) Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.

b) The City of Oakland reserves the right at any time during construction to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification, stop work, permit suspension or other corrective action.

c) Violation of any term, **Conditions of Approval,** or project description relating to the Approvals is unlawful, prohibited, and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and/or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these **Conditions of Approval** if it is found that there is violation of any of the **Conditions of Approval** or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it limit in any manner whatsoever the ability of the City to take appropriate enforcement actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

5. <u>Signed Copy of the Conditions of Approval</u>

With submittal of a demolition, grading, and building permit

A copy of the approval letter and **Conditions of Approval** shall be signed by the property owner, notarized, and submitted with each set of permit plans to the appropriate City agency for this project.

6. Indemnification

Ongoing

a) To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and its respective agents, officers, and employees (hereafter collectively called City) from any liability, damages, claim, judgment, loss (direct or indirect)action, causes of action, or proceeding (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The City may elect, in its sole discretion, to participate in the defense of said Action and the applicant shall reimburse the City for its reasonable legal costs and attorneys' fees.

b) Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the applicant shall execute a Letter Agreement with the City, acceptable to the Office of the City Attorney, which memorializes the above obligations. These obligations and the Letter of Agreement shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the applicant of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the City.

7. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

8. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions, and if one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

9. Job Site Plans

Ongoing throughout demolition, grading, and/or construction

At least one (1) copy of the stamped approved plans, along with the Approval Letter and Conditions of Approval, shall be available for review at the job site at all times.

10. <u>Special Inspector/Inspections, Independent Technical Review, Project Coordination and Management</u>

Prior to issuance of a demolition, grading, and/or construction permit

The project applicant may be required to pay for on-call third-party special inspector(s)/inspections as needed during the times of extensive or specialized plancheck review or construction. The project applicant may also be required to cover the full costs of independent technical review and other types of peer review, monitoring and inspection, including without limitation, third party plan check fees, including inspections of violations of Conditions of Approval. The project applicant shall establish a deposit with the Building Services Division, as directed by the Building Official, Director of City Planning or designee.

11. <u>Compliance with Temporary Permit Timeframe</u>

Within 45 days of project approval, and final agreement approved by City and applicant required prior to commencement of any operation of approved land use

The project applicant shall provide the following to the City of Oakland: for its review and approval:

a. Plans indicating the design and accommodation of a sign to be posted on the front property line throughout the life of the permit, with a minimum size of 3 feet wide by 3 feet tall, indicating the permit case file number and termination date of the permit.

b. Revisions to plans dated June 27, 2006, to indicate the specific art feature(s) to be provided on the art panels facing 20th Street.

c. Plans for restoration of the affected site to its original condition. and a cost estimate for such prepared by a qualified professional.

d. An agreement, on a form prescribed by the City of Oakland and signed by the land owner and all project operators and to be binding upon all heirs successors and assigns of the foregoing as well as recorded against the property;:

    1. Acknowledging the temporary nature of the permit for a four-year duration from the effective date of this permit;
    2. Agreeing to only improve the site with temporary furnishings and to limit investment into the property in accordance with the approved plans;
    3. Agreeing to immediate and unconditional removal of the approved land use and related improvements upon permit expiration;
    4. Agreeing that the permit, and the right to continue the uses authorized by the permit shall be extinguished immediately and automatically upon expiration of the permit and shall not be subject to any requirement for further notice, public hearing or appeal;

5. Agreeing that the applicant, the property owner and any project operator(s) (including any heirs, successors or assigns) waives any right to such notice or hearing;
6. Agreeing that any violation of the terms and conditions of this permit shall be subject to assessment and penalties, as specified in OMC Chapter 1.12;
7. Acknowledging that no permit extensions shall be allowed and, under no circumstances, shall the approved use continue beyond the termination date of this permit; and
8. Agreeing not to contest any code enforcement actions taken if the land use is not immediately discontinued and/or related improvements are not immediately removed in accordance with the approved plan, or there is any other violation of terms and conditions relating to the limited duration of this permit.

e. Provision of a bond or other financial security in a for and amount, acceptable to the City of Oakland, to ensure removal of the permitted use and improvements upon permit termination, which security shall be a minimum of $40,000, but which may be increased as determined necessary by the City (e.g., to reflect engineer's estimates for removal or other increased costs) .

ATTACHMENT E:
Proposed TCUP Staff Report, dated October 20, 2010, inclusive

Oakland City Planning Commission STAFF REPORT

Case File No. ZT100007 **October 20, 2010**

Location:	**Citywide**
Proposal:	Planning Code Amendment to include Temporary Conditional Use Permit regulations
Project sponsor(s):	Planning Commission
Owner(s):	NA
Case File Number(s):	**ZT100007**
Planning Permits Required:	Planning Code Amendment
General Plan:	All
Zoning:	All
Environmental Determination:	The proposal relies on the previously certified Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the EIR for the 1998 Amendment to the Historic Preservation Element of the General Plan; the Housing Element Update Initial Study/Mitigated Negative Declaration (2004); and CEQA Guidelines Section 15183, "Projects Consistent with a Community Plan, General Plan or Zoning"
Historic Status:	All, including Areas of Primary Importance (APIs), Areas of Secondary Importance (ASIs), landmark properties, and other historically rated properties.
Service Delivery District:	All
City Council District:	All
Status:	Proposal forwarded to the Planning Commission without ZUC recommendation
Action to be Taken:	Consider recommendation to City Council
Finality of Decision:	Decision by City Council
For further information:	Contact case planner **Catherine Payne** at **(510) 238-6168** or by email at **cpayne@oaklandnet.com**

SUMMARY

The proposed Planning Code amendment addressed in this report would provide a coordinated framework for the City of Oakland to consider conditional use permits for temporary land uses throughout the city. The proposal would provide standards and procedures for temporary uses and responds to an economic climate that has hindered permanent and highest-use development of sites in Oakland. The proposed text amendment is summarized in this report. Please see Attachment A for the proposed zoning text amendments. The Planning Commission is asked to make a recommendation to the City Council regarding the proposed Temporary Conditional Use Permit regulations (TCUP). The Planning Commission voted to continue this item from the September 1, 2010 Planning Commission agenda to the October 20, 2010 Planning Commission agenda.

PROJECT SITE AND SURROUNDING AREA

The proposed TCUP regulations would apply citywide. However, staff has outlined variants of the proposal for Planning Commission consideration that apply only to the Central Business District and/or exclude the Central Business District (see "Project Description" section, below, for discussion of variants).

BACKGROUND

During this current economic downturn, Oakland land owners with vacant or underutilized parcels are interested in maintaining the economic viability of the land and yet are not able to finance permanent development of the highest and best use. In particular, Oakland hosts a large inventory of vacant or underutilized lots with no current entitlements as well as vacant lots that are entitled for permanent development yet are not able to secure financing for said development. In order to reduce the blight of vacant lots and promote economic development in this challenging economic climate, staff proposes consideration of regulations that would allow short-term uses of vacant and underutilized properties with relaxed standards to reduce blight and promote economic development in a realistic manner.

Zoning Update Committee

The Zoning Update Committee of the Planning Commission (ZUC) reviewed the TCUP proposal twice, on February 17 and April 21, 2010. Although the ZUC forwarded the proposal to the Planning Commission for consideration, the ZUC did not, as a body, support the proposal. In summary, the ZUC expressed concerns about diluting recently adopted zoning regulations, hindering development of higher and better uses of affected parcels, and the ability to enforce the regulations. A complete list and analysis of ZUC concerns is provided in the "Key Issues and Impacts" section of this report.

Community Input

Community members voiced their opinions regarding the proposed TCUP regulations at both the February 17 and April 21, 2010 ZUC hearings. In summary, community members expressed opinions both for and against the proposed regulations. A complete list and analysis of community opinions expressed to date is provided in the "Key Issues and Impacts" section of this report.

PROJECT DESCRIPTION

The proposed project is a Planning Code amendment (amendment) defining and regulating the application of temporary conditional use permits in Oakland. The amendment would allow currently permitted and conditionally permitted activities on a site, with relaxed limitations and

standards and without affecting underlying entitlements. One example of this would be allowing surface auto-fee parking lots in the Central Business District for a three-year period; the existing CBD Planning Code regulations allow auto-fee parking, but limitations require the parking to be enclosed and above the ground floor. Under the proposed amendment, the CBD limitations could be relaxed and surface parking would be allowed only on a short-term temporary basis. This would allow an economically viable, though not necessarily the highest and best, use of a site that might otherwise be undeveloped in this economy. The short timeframe would not hinder development of a permanent and better use for the site should the economy improve in the near future.

The amendment includes the following key components:

1. *Limited duration*: The amendment includes a permit life of three years. The regulations allow a one-time, one year extension with no other options for extending the life of the original permit. In summary, a permit could have a maximum active life of up to four years, including the one-time extension.
2. *Relaxation of Planning Code "Limitations" and "Additional Criteria"*: The amendment would generally require that the proposed land use be permitted or conditionally permitted in the underlying zoning district (with a few exceptions, as noted below); however, the amendment would authorize a temporary CUP to relax limitations and criteria that apply to the proposed land use in the underlying zoning district. This would protect the compatibility of land uses in the underlying zoning district while allowing flexibility to allow use locations and design that are viable in an economically challenging climate on a temporary basis. In some cases, where a permitted use would otherwise require a minor variance to waive "limitations" and "additional criteria", the use could be processed through the TCUP process as a temporary use, and would thereby allow a use that otherwise would not be contemplated by the Planning Code.
3. *Provisions for removal of use upon permit expiration*: The proposed amendment includes requirements for a site restoration plan, financial security, and a recorded agreement to ensure termination of any permitted use or improvement upon permit expiration. The proposed amendment also would require that any improvements be of a temporary nature, as determined by the City. The proposed regulations additionally cite the City's existing ability to penalize any violations of the terms of a temporary conditional use permit.
4. *No effect on existing land use entitlements*: Any permit *granted under the amendment would not terminate or* otherwise affect any existing land use entitlements. In this way, a site can host a temporary use while maintaining any existing entitlement for a higher and better use in the future.
5. *Included Activities and Facilities*: The following uses could be considered under the proposed regulations, regardless of whether or not they are currently permitted or conditionally permitted in the underlying zoning district: Active Mini-Park; Passive Mini-Park; Special Use Park; Nonassembly Cultural Civic; Recreational Assembly

Civic; Crop and Animal Raising; and Plant Nursery Agricultural. These uses are generally beneficial and community-serving uses that do not necessarily require extensive improvements of result in substantial impacts to the community.

6. *Excluded Activities or Facilities*: Alcoholic Beverage Sales Commercial, Tobacco-oriented Uses, Adult Entertainment, and Check Cashier and Check Cashing Activity are excluded under the proposed regulations. These activities typically involve substantial impacts to the communities in which they are located and are not consistent with the nature of the TCUP proposal.

Project Variants

Staff has included various options of the draft amendment for consideration by the Planning Commission. The following discussion and matrix outline the options and their benefits and disadvantages:

No Action

Taking no action on a temporary use permit proposal would retain the status quo. Currently, there are a small number of active (and unabated) temporary permits on file in Oakland (generally, these are conditional use permits issued with a condition for termination of the use by a date certain). Should the City receive future applications for temporary uses (CUP, variance or DA applications), there are a few existing options for considering such proposals: the City could deny the application or approve the application with conditions of approval to limit the duration of the use and impose conditions such as those specified in this proposal to avoid future claim that the use has become vested.

This approach does not contradict the existing Planning Code. However, this approach provides less land use flexibility, on a comprehensive basis, to address a fluctuating economy than would the proposed amendment, and it provides no systematic formula for considering or terminating temporary uses.

Citywide TCUP

A Citywide TCUP, which embodies staff's requirements, as fully described above and in Attachment A to this report, would establish a standardized regulatory process for considering temporary use applications. The proposed regulations allow for a wide variety of uses currently permitted or conditionally permitted in the underlying zoning district. Relaxation of development standards, however, would allow site design that would otherwise not be permitted (surface parking would be allowed in districts where auto fee parking is permitted but development standards restrict surface parking).

Relaxation of standards, in some cases, would potentially contradict the intent of the Planning Code. However, the intent of the Planning Code is to establish standards and requirements for

permanent uses. With respect to the proposed amendment, the temporary nature of the uses may lessen the concern about allowing uses that might be considered undesirable on a permanent basis. Temporary use permits, in general, would potentially discourage development of higher and better permanent land uses, extending blighted conditions into the future. Nonetheless, a consistent permitting process ensures consistent application of regulations and conditions of approval, and better controls the termination of the temporary uses.

Trial Citywide TCUP

A trial Citywide TCUP program would include the regulations proposed in Attachment A (and described above); however, the trial program would sunset on a date certain. This would allow the City to test the benefits and disadvantages of the TCUP concept during the current economic downturn. By extinguishing the trial on a date certain, the City can control termination of any uses permitted during the trial period. In addition, a trial program would allow the City to consider whether to cease, continue and/or alter the regulations on an extended or permanent basis.

Trial TCUP-CBD

A trial TCUP program in the Central Business District (CBD) would generally include the regulations proposed in Attachment A; however, application would be limited to the CBD. In this way, the trial TCUP-CBD program would specifically address the current, active interest in temporary uses, as the current applications are for surface parking in the downtown area. The trial program would allow the City to consider the advantages and disadvantages of such regulations on a limited basis with the most controversial uses.

Trial TCUP-no surface parking

A trial TCUP that does not allow surface parking would generally include the regulations proposed in Attachment A and would apply Citywide; however, surface parking would not be allowed as a temporary use. A trial Citywide TCUP that does not allow any surface parking may be desirable in terms of the allowable land uses. It should be noted, however, that this proposal would not address actual demand for temporary permits, all of which are for surface parking.

Development Agreement

Whether or not the City of Oakland adopts any specific policy, the City has the ability, on a case-by-case basis, to adopt DAs to extend the life of existing land use entitlements in exchange for the placement of desirable temporary land uses on entitled sites during the interim period. This approach would be specific to currently entitled properties and would require City Council consideration on a case-by-case basis. The City can dictate the appropriate interim uses and the

extent and quality of improvements, accessibility and other design features, as the approach would be incentive-based.

Minor and Major Permit Procedures

The current proposal includes a two-tiered procedure to process both major and minor temporary conditional use permit applications (based on the major and minor conditional use permit definitions included in Planning Code Section 17.134.020). In the proposed regulations, uses that are outright permitted or are subject to a minor conditional use permit procedure would be subject to the minor procedure (staff-level approval, with no required public hearing, appealable to the Planning Commission); uses that are subject to a major conditional use permit procedure would continue to be subject to a major permit procedure (subject to a public hearing before the Planning Commission, appealable to the City Council). This approach would ensure broader public participation and scrutiny in the review of more extensive temporary use proposals, but would also potentially take a longer time to complete review than would specifying that all temporary CUPs are processed as minor CUPs.

Design standards that would potentially trigger a minor or major variance (such as "limitations" or "additional criteria" that require a use to be enclosed, located above the ground floor or located below grade) would not affect whether a TCUP application is considered major or minor.

The Planning Commission has the option of alternatively considering a minor permit process for all temporary conditional use permit applications to simplify and streamline the process for temporary uses.

TEMPORARY CUP OPTIONS MATRIX

Option	Benefits	Disadvantages	Additional Notes
No Action	• Does not contradict Planning Code; • Allows uses for a limited timeframe	• No land use flexibility to address fluctuating economy • No systematic formula for considering temporary use proposals; • No systematic approach to terminating approved temporary uses; • Difficult to ensure removal of uses (politically and in terms of City ability to monitor); • Temporary uses can become vested, permanent;	• Could amend SCOA to allow temporary uses on case-by-case basis with consistent conditions • Temporary use proposals would be considered under existing CUP, variance or DA procedures
Citywide TCUP	• Allows uses for a limited timeframe • Provides consistent formula for processing temporary use proposals; • Responds to economic reality by allowing more land use flexibility • Provides similar permitting opportunity throughout Oakland • Ensures uses do not become vested	• Difficult to remove from Planning Code if regulations prove to be problematic • In some cases, allows uses that contradict permanent controls in Planning Code; • May discourage development of permanent higher and better use;	• To adopt permanently, would need to go to Council for approval
Trial Citywide	• Same advantages as "Citywide TCUP"	• May discourage development of permanent higher and better use;	• To adopt would need to go to ZUC, Planning Commission

TCUP	• Sunset controls termination of permits • Sunset allows evaluation of effectiveness of regulations	• In some cases, allows uses that contradict permanent controls in Planning Code;	and Council for recommendation and approval
Trial TCUP-CBD	• Addresses actual demand at this time for temporary permits • Limits area to where greatest demand exists • Sunset controls termination of permits • Sunset allows evaluation of effectiveness of regulations • Allows uses for a limited timeframe • Provides consistent formula for processing temporary use proposals; • Responds to economic reality by allowing more land use flexibility • Ensures uses do not become vested	• Does not cover the current demand located outside of downtown (e.g., near West Oakland BART) • May discourage development of permanent higher and better use; • In some cases, allows uses that contradict permanent controls in Planning Code;	• To adopt would need to go to ZUC, Planning Commission and Council for recommendation and approval
Trial TCUP-no surface parking	• Addresses community concerns regarding surface parking • • Sunset controls termination of permits • Sunset allows evaluation of effectiveness of regulations • Allows uses for a limited timeframe • Allows uses for a limited timeframe • Provides consistent formula for processing temporary use proposals; • Responds to economic reality by allowing more land use flexibility • Ensures uses do not become vested	• Does not address actual demand at this time for temporary permits • Limits financial benefit for City • Does not consider that use could be acceptable on temporary basis • May discourage development of permanent higher and better use; • In some cases, allows uses that contradict permanent controls in Planning Code;	• To adopt would need to go to ZUC, Planning Commission and Council for recommendation and approval
Development Agreement	• Incentive-based • Limited to entitled properties • City can require extensive improvements, maintenance, insurance • Allows uses for a limited timeframe	• Limited to entitled properties • Does not address actual demand at this time for temporary permits • May discourage development of permanent higher and better use; • No systematic formula for considering other types of temporary use proposals;	• Could negotiate specific terms and conditions for temporary use proposals • DA requires no new policy adoption
Minor and Major Permit Procedures	• Consistent with Planning Code procedures for consideration; • Allows uses for a limited timeframe • Allows public input and scrutiny of extensive uses	• Potential longer timeframe for consideration of extensive uses	

GENERAL PLAN ANALYSIS

The proposed Planning Code amendment would be consistent with the General Plan in that it would only allow uses currently permitted or conditionally permitted in the underlying zoning districts. This amendment would not conflict with any goals or objectives of the General Plan. It might be argued that allowing temporary uses that are not the highest and best use of a site would potentially hamper or slow achievement of General Plan goals and objectives. On the other hand, the proposal would allow productive use of vacant or underutilized sites during

times of economic hardship, and the proposal would allow development with the highest and best land use following the termination of any temporary use permit.

ZONING ANALYSIS

The proposed Planning Code amendment would be consistent with the Planning Code in that it would only allow those uses currently permitted or conditionally permitted in the underlying zoning districts. However, the amendment would also allow the relaxation of development standards that might otherwise apply to a proposed use. An example of this is surface parking lots in the Central Business District (CBD). Although "auto-fee parking" is a conditionally permitted use in the CBD, "limitations" and "additional criteria" require the use to be enclosed in a thee-story (minimum) structure or located below-grade, thereby requiring a variance from said "limitations". Under the proposed amendment, surface auto-fee parking, otherwise prohibited in the CBD by the Planning Code, would be permitted on a temporary basis. Although the design of the proposed land use, even on a temporary basis, conflicts with the Planning Code, the site would continue to be subject to the base (existing) Planning Code regulations upon termination of any temporary permit.

ENVIRONMENTAL REVIEW

The proposal relies on the previously certified Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the EIR for the 1998 Amendment to the Historic Preservation Element of the General Plan; the Housing Element Update Initial Study/Mitigated Negative Declaration (2004); and CEQA Guidelines Section 15183, "Projects Consistent with a Community Plan, General Plan or Zoning". No further environmental review is required.

KEY ISSUES AND IMPACTS

Community Comments

The ZUC considered the proposed regulations and received public testimony at their regularly scheduled meetings on February 17 and April 21, 2010. The ZUC and community members made comments regarding the proposal at both meetings. The following is a summary of the comments and staff response and/or analysis (in indented italics below each comment):

ZUC Comments

- The ZUC forwards this proposal to the Planning Commission without a recommendation.

- *The ZUC met twice to consider the TCUP regulation proposal and did not come to consensus regarding a recommendation. ZUC opinions range from support for establishing a procedure to consider temporary uses to concerns about temporary uses either becoming permanent or hindering permanent development of higher and better uses.*

- Include penalties to provide applicant incentive to remove use upon termination of permit.
  - *The Oakland Municipal Code (OMC Chapter 1.12) authorizes assessment and penalties for violations of the Planning Code (OMC Title 17), including fines and liens. In addition to the proposed deed restrictions, improvement security and signed and notarized acknowledgement of temporary permit, existing penalties should ensure a high degree of self-enforcement of the proposed regulations. In addition, the proposal includes a requirement for project signage indicating the temporary nature of the permit and expiration date, informing neighbors and visitors of the terms of the permit and supporting the identification of any violations.*
- Do we want surface auto-fee parking in downtown when it is currently not permitted? Even on temporary basis?
  - *The only active interest in the proposed regulations thus far has been from applicants interested in conducting surface parking. Accordingly, staff recommends including this use. The Planning Commission has the option of recommending a trial period for the regulations to determine the benefits and disadvantages based on actual experience.*
- The proposal goes against current regulations (specifically, the newly adopted Central Business District regulations do not allow surface parking, and the proposed regulations would allow surface parking on a temporary basis).
  - *This is the intent of the regulations: only allow land uses that are currently outright or conditionally permitted, but relax development standards to allow for the use to exist on a temporary basis. The Planning Code currently has no option for considering temporary permits; therefore, by definition, the proposal will contradict existing standards that require permanent improvements.*
- This proposal allows land owners to continue to own land purchased at too high a value; this land will be difficult to develop at the inflated value. If the land remains vacant, then the owners may be forced to sell at a lower (current) value; at a lower value, new owners may be able to develop the highest and best use.
  - *This viewpoint supports the option to recommend no action regarding temporary conditional use permits. With this option, the City would have no legally defensible method or established standards for addressing desirable temporary uses.*
- Alcoholic beverage sales should be included in the proposal.
  - *It is recommended that the following activities be excluded from the TCUP provisions: alcoholic beverage sales, tobacco-oriented uses, adult entertainment, check cashier and check cashing. These uses have*

characteristics that would generally make them unsuitable for temporary periods, or otherwise would have adverse impacts.

- The security amount should be determined by cost-benefit analysis to ensure that it is fair and achieves the goal of limiting use to approved timeframe.
  - *The purpose of the security is to enable the City to ensure (or, if the permittee fails to perform, to undertake) removal of the use/improvements upon permit expiration; that is the nexus that needs to be made. The City's financial benefit from the use comes from business, property and other taxes and not from fee or the security amount required to ensure removal of the temporary improvements. In addition, the required deed restriction, agreement to the terms of the permit, and established violation process are designed to ensure the removal of the use upon permit termination.*
- It will be difficult to remove community-serving uses (such as community gardens and public art installations) upon permit expiration. People will fight to keep these uses.
  - *Although people may argue to keep temporary uses beyond the life of the permit, the regulations are drafted to both ensure compliance with the established time limits and alert the public to the temporary nature of the use (the proposed regulations include a requirement for site signage indicating that the use is temporary and that the use shall be removed by a date certain). There should be no misunderstanding about the temporary life of the use under the proposed regulations; however, the regulations cannot control any desire there may be to extend the use.*
- Would this proposal comply with Senate Bill (SB) 375? (Greenhouse Gas Reduction)
  - *This proposal does not directly relate to SB375. However, it could be argued that increasing parking possibilities in downtown Oakland and thereby temporarily limiting housing and office development opportunities directly encourages driving, and indirectly supports sprawl. At the same time, it should be noted that where the proposed regulations would allow surface parking, auto fee parking is already permitted on a permanent basis.*
- Tier application fees so that more lucrative uses pay higher fees than more financially modest and/or community-serving uses.
  - *The City can set different fees by permit type but cannot charge different fees based on proposed land use or potential value of use. The City establishes fees based on the reasonable cost of providing the permitting services and cannot charge based on the profitability of the use that is the subject of the permit.*
- Consider allowing a one-time, one-year extension with no option to renew the permit.
  - *Staff agrees that this would be an effective way to help ensure that temporary uses remain temporary. The proposed regulations reflect this comment.*
- Consider limiting the number of cars allowed for surface parking and/or portable lifts.
  - *There are currently no restrictions on portable car lifts in the City of Oakland. The Planning Commission could consider limiting parking to 49 or fewer parking spaces, consistent with the threshold for minor conditional use permits.*
- Consider a trial period to test regulations.

- *This staff report includes an optional proposal for a trial period in order to determine the benefits and disadvantages of temporary permits based on actual experience.*

Public Testimony (At ZUC public hearings on February 17 and April 21, 2010, respectively)

- The Temporary Conditional Use Permit concept is acceptable for community-serving uses; however, some seasonal sales currently operate without any permit--this permit process, including the security requirement, would be prohibitive for these short-term uses (3-4 months per year);
  - *The permit process could be used to provide approval of seasonal temporary uses throughout the life of the permit. For example, a land owner could submit an application for seasonal sales from September through December every year for three years.*
- Temporary Conditional Use Permits should be minor and not major permits.
  - *The current proposal is for applications to be processed with a two-track approach, similar to how conditional use permits are currently processed. Applications for projects that fit the minor or administrative definition would be subject to a minor permit process. Applications for projects that fit the major definition would be subject to a major permit process.*
- Allow temporary uses that would otherwise require a variance.
  - *This is an option that would facilitate increased use of currently vacant properties in the near term; the proposal would allow only permitted and conditionally permitted uses, and would relax the zoning "limitations" and "additional criteria" that require permanent or unrealistic design and improvements for a temporary use. Staff recommends keeping the current proposal narrow to monitor the success of the regulations. In the future, should there continue to be interest in allowing uses that would otherwise require a variance, the City could consider expanding the regulations.*
- How would vehicular food vendors be addressed by this proposal?
  - *The activity is currently considered within the "fast food" classification and, as such, would be permitted under the proposed regulations wherever "fast food" is currently permitted or conditionally permitted.*
- The lack of current investment in Oakland necessitates permitting land uses that are not ideal.
  - *This viewpoint supports an option to adopt the proposed regulations or a trial, and to include both permitted and conditionally permitted uses (without limitation).*
- Vacant lots can be a nuisance; there is current parking demand in CBD, and such activity would generate revenue for the City.

- *This viewpoint supports an option to adopt the proposed regulations or a trial, and to include both the permitted and conditionally permitted uses (without limitation).*

- The proposal weakens the Planning Code by allowing uses that were never intended to be permitted (surface parking in CBD).
  - *The proposal would only allow land uses that are currently permitted or conditionally permitted in the underlying zoning district. However, the proposal would relax development standards to allow for the use to exist on a temporary basis. The Planning Code currently has no option for temporary permits; therefore, by definition, the proposal will contradict existing standards that require permanent improvements.*
- Surface parking is ugly, and causes hazards for pedestrians and bicyclists.
  - *This is an argument to exclude surface parking from any recommendation to move the proposed regulations forward. However, it should be noted wherever surface parking would be permitted as part of this proposal, auto fee parking is already permitted or conditionally permitted. Surface and above-grade auto-fee parking generally have the same access and egress conditions in terms of number of driveways.*

Testimony Submitted in Writing

- The life of the permit should be four years (rather than three).
  - *The current life of a land use entitlement in Oakland is two years and an additional one year extension. The proposed three-year timeline for the Temporary Conditional Use Permit is consistent with current practice.*
- There should be no limit on the number of permit renewals.
  - *The proposed three-year time period is consistent with the current life of a land use entitlement in Oakland. This approach ensures that temporary uses are, in fact, temporary and do not become long-term or permanent.*
- The security should be reduced to $20,000.
  - *The purpose of the security is for removal of any improvements upon permit expiration should the property owner not comply with the terms of the permit. The proposed regulations generally require up to $40,000 for the security (more or less at the discretion of the Planning Department); however, some proposed uses with minimal improvements may have a much lower security requirement. It should be noted that that the proposed $40,000 security would include any required demolition permit fee and the actual costs of removing improvements (such as temporary fencing, planters, and other temporary structures).*
- Surface parking should include a landscaping or public art buffer, or combination thereof.
  - *Staff supports this recommendation, and the proposed regulations are revised accordingly.*

- Surface parking should incorporate storm water runoff diversion to protect Lake Merritt and the San Francisco Bay.
    - *The proposed regulations require all improvements to be temporary. For those projects that would be required to meet existing storm water runoff requirements, they would need to demonstrate that they could do so with only temporary improvements; otherwise, such proposals would be denied.*

San Francisco's Approach

The City of San Francisco is currently working with owners of entitled properties to allow temporary uses. The approach in San Francisco is to use the Development Agreement (DA) process to extend the life of existing land use entitlements in exchange for the placement of community benefit uses on entitled sites during the interim period. Through the DA process, San Francisco will allow community benefit uses such as gardens, parks and public art displays on a temporary basis. In addition, San Francisco will require extensive (although temporary) improvements, maintenance, insurance and other features designed to allow public access and ensure high quality projects. Again, the incentive to land owners is extending valuable land use entitlements. This approach is specific to currently entitled properties and would not allow surface parking.

The City of San Francisco currently permits temporary uses on non-entitled properties through the Conditional Use Permit process, with specific conditions of approval controlling the temporary timeline and features of the proposal. In addition, the City of San Francisco generally restricts new proposals for surface parking.

Although San Francisco has a very different economic and development climate than Oakland (fewer vacant lots and parcels with more valuable and complex entitlements, for example), the DA approach provides advantages for Oakland, as well. This approach applies to limited properties (those with land use entitlements) and ensures a beneficial use until such time as development is feasible. In addition, the DA can control the quality of improvements and removal of the use based on the incentive of extended entitlements. This is an option for Oakland to consider in developing an approach to permitting temporary uses.

Surface Parking

The only active interest in temporary permits is for surface parking. Surface parking may be considered an undesirable land use, even on a temporary basis. However, the demand for the use should trigger a meaningful discussion about the appropriateness of the use in certain cases: Is surface parking acceptable on a short-term, and not long-term, basis? Is the use acceptable near the West Oakland BART station but in the Central Business District? The Planning Commission could consider taking a position on surface parking in Oakland. Any temporary use regulation proposal would be informed by such direction.

At this time, actual interest in temporary permits for surface parking includes four permit applications for a total of over 200 spaces, including sites in West Oakland, the Central Business District, and near the Oakland International Airport. In addition, one potential applicant has contacted staff regarding the possibility of temporary surface parking in the Fruitvale District of Oakland. It should be noted that the Oakland Redevelopment Agency (ORA) owns 2159 auto-fee parking spaces (surface and structured) throughout Oakland.

Prohibition on Temporary Conditional Use Permit Activities

It is recommended that the following activities be excluded from the TCUP provisions: alcoholic beverage sales, tobacco-oriented uses, adult entertainment, and check cashier and check cashing. These uses have characteristics that would generally make them unsuitable for temporary periods, or otherwise would have adverse impacts.

Community Benefit Uses

At the previous ZUC meetings where temporary permits were considered, the ZUC expressed concern about temporary community benefit uses becoming permanent due to community and possible political will. This same question might apply to any use for which there is support. The revised proposal includes measures designed to ensure that uses remain temporary and do not become permanent. Revisions include limitations on permit extension and the required site signage to inform the public about the temporary nature of the use. In addition, this staff report outlines options that would allow for a trial of any adopted regulations to determine the outcome of the program and ensure removal of all uses at the end of the trial program.

RECOMMENDATION

Staff believes that the proposed regulations are appropriate and responsive to the issues that have been raised throughout the review process. The proposed regulations would provide a process for regulating temporary uses where none exists. The proposed regulations are not in conflict with the General Plan. Thus, staff recommends that the Planning Commission:

1) Hold a public hearing and receive public testimony regarding the proposed project;
2) Affirm staff's environmental determination; and
3) Recommend adoption of a Planning Code Amendment to the City Council based on the attached findings.

Prepared by:

Catherine Payne, Planner III

Approved for forwarding to the
City Planning Commission by:

Scott Miller

SCOTT MILLER
ZONING MANAGER

Scott Miller, for

ERIC ANGSTADT
DEPUTY DIRECTOR, CEDA

ATTACHMENTS:

A. Proposed Planning Code Amendment
B. Draft City Council Ordinance
C. ZUC Staff Report dated February 17, 2010
D. ZUC Staff Report dated April 21, 2010

Planning Commission Action on Commission or Landmarks Board Proposal (Planning Code Section 17.144.080)

The existing zone or regulations are inadequate or otherwise contrary to the public interest. The existing Conditional Use Permit regulations do not currently contain procedures for considering temporary uses, for which there is currently increased interest due to the weak economy. The proposed Temporary Conditional Use Permit regulations would allow approved and conditionally approvable land uses on vacant and underutilized properties subject to a procedure that would guarantee that said uses remain temporary and would provide the City of Oakland with procedures for controlling temporary uses. This would be consistent with the regulations contained in the Planning Code and would reduce the quantity of vacant and blighted properties in Oakland.

Planning Code Amendment (Rezone) Findings (Planning Code Section 17.07.030):

A. **To promote the achievement of the proposals of the Oakland Comprehensive Plan.** The proposed TCUP regulations would allow approved and conditionally approved land uses on vacant properties on a temporary basis. This would be consistent with the regulations contained in the Planning Code and would reduce the quantity of vacant and blighted properties in Oakland.

To advance Oakland's position as a regional center of commerce, industry, recreation and culture. NA.

B. **To protect residential, commercial, industrial, and civic areas from the intrusion of incompatible uses, and to provide opportunities for establishments to concentrate for efficient operation in mutually beneficial relationship to each other and to shared services.** The proposed TCUP regulations would only allow approved and conditionally approved land uses. In addition, approvals would be temporary and allow an affected property to be developed permanently with a higher and better use following the temporary use.

C. **To provide for desirable, appropriately located living areas in a variety of dwelling types and at a wide range of population densities, with adequate provision for sunlight, fresh air, and usable open space.** NA.

D. **To ensure preservation of adequate space for commercial, industrial, and other activities necessary for a healthy economy.** The proposed TCUP regulations would only allow approved and conditionally approved land uses and would not impact development of economically viable land uses.

E. **To promote safe, fast, and efficient movement of people and goods, and the provision of adequate off-street parking and loading.** NA.

F. **To achieve excellence and originality of design in all future developments and to preserve the natural beauty of Oakland's setting.** The proposed TCUP regulations would only allow approved and conditionally approved land uses and would not impact permanent design and aesthetics in Oakland.

G. **To promote the growth of productivity of the Oakland economy.** The proposed TCUP regulations would affect vacant and underutilized properties, allowing those sites to contribute to growth and productivity during times when permanent, higher and better development is not viable.

H. **To stabilize expectations regarding future development of Oakland, thereby providing a basis for wise decisions with respect to such development.** The proposed TCUP regulations would affect vacant and underutilized properties on a temporary basis. The regulations would allow present-time use of a site (generally consistent with Planning Code allowances) until such time as permanent development fully meeting the expectations laid out in the General Plan and Planning Code could occur. The proposed regulations would not conflict with current expectations for land use development as prescribed by the General Plan and Planning Code.

I. **To secure equity among individuals in the utilization of their property.** One of the objectives of the proposed TCUP regulations is to allow use of private property during economic hardship.

J. **To promote an attractive urban environment which will enhance the city's economic potential and encourage decisions to make investments, do business, shop, and live in Oakland.** The proposed TCUP regulations would affect vacant and underutilized properties on a temporary basis. The regulations would allow present-time use of a site (generally consistent with Planning Code allowances) until such time as permanent development fully meeting the expectations laid out in the General Plan and Planning Code could occur. The proposed regulations would not conflict with current expectations for land use development as prescribed by the General Plan and Planning Code. Temporary uses would be subject to review to ensure that they do not further any blighted appearance and contribute to the aesthetic quality of the surrounding area, to the degree feasible.

K. **To especially protect and improve the appearance and orderliness of major trafficways and transit lines and views there from, thereby increasing the enjoyment of travel, reducing traffic hazards, and enhancing the image of Oakland derived by residents, businesspeople, commuters, visitors, and potential investors.** Temporary uses would be subject to review to ensure that they do not further any blighted appearance and contribute to the aesthetic quality of the surrounding area, to the degree feasible.

L. **To protect the very substantial public investment in, and the character and dignity of, public buildings, open spaces, thoroughfares, and rapid transit lines.** The proposed TCUP regulations would affect vacant and underutilized properties on a temporary basis. The regulations would allow present-time use of a site (generally consistent with Planning Code allowances) until such time as permanent development fully meeting the expectations laid out in the General Plan and Planning Code could occur. The proposed regulations would not conflict with current expectations for land use development as prescribed by the General Plan and Planning Code. Temporary uses would be subject to review to ensure that they do not further any blighted appearance and contribute to the aesthetic quality of the surrounding area, to the degree feasible.

M. **To encourage a maximum of planting and other amenities, and a minimum of excessively intrusive signs, overhead utility lines, and other environmental clutter.** Temporary uses would be subject to review to ensure that they do not further any blighted appearance and contribute to the aesthetic quality of the surrounding area, to the degree feasible.

N. **To encourage Signs which are in scale and harmony with surrounding uses, which are visually subordinate to the on-site and nearby buildings, which are themselves well designed, and which have good spacing and design relationships to other Signs.** Temporary uses would be subject to review to ensure that they do not further any blighted appearance and contribute to the aesthetic quality of the surrounding area, to the degree feasible.

O. **To prevent the unnecessary destruction or impairment of structures, other physical features, sites, and areas of special character or special historical, cultural, educational, architectural, aesthetic, or environmental interest or value and to achieve the following purposes:**

1. The protection, enhancement, perpetuation, and use of structures and other physical features, sites, and areas that are reminders of past eras, events, and persons important in local, state, or national history, or which provide significant examples of architectural styles of the past or are landmarks in the history of architecture, or which are unique and irreplaceable assets to the city and its neighborhoods, or which provide for this and future generations examples of the physical surroundings in which past generations lived;
2. The development and maintenance of appropriate settings and environment for such structures, and other physical features, on such sites, and in such areas.
3. The enhancement of property values, the stabilization of neighborhoods and area of the city, the increase of economic

and financial benefits to the city and its inhabitants, and the promotion of tourist trade and interest.

4. The preservation and encouragement of a city of varied architectural styles, reflecting the distinct phases of its cultural, social, economic, political, and architectural history.
5. The enrichment of human life in its educational and cultural dimensions in order to serve spiritual as well as material needs, by fostering knowledge of the living heritage of the past.

The proposed TCUP regulations would affect vacant and underutilized properties on a temporary basis and, in-as-much, would generally not physically affect properties of major cultural or other importance to Oakland. In order to ensure the uses remain temporary, major property investment, including development and demolition, would be strictly limited. Demolition of structures that are Potentially Designated Historic Properties or contribute to an Area of Primary or Secondary Importance would not be authorized. The regulations would allow present-time use of a site (generally consistent with Planning Code allowances) until such time as permanent development fully meeting the expectations laid out in the General Plan and Planning Code could occur. The proposed regulations would not conflict with current expectations for land use development as prescribed by the General Plan and Planning Code. Temporary uses would be subject to review to ensure that they do not further any blighted appearance and contribute to the aesthetic quality of the surrounding area, to the degree feasible.

Attachment A: Proposed Planning Code Amendment

Chapter 17.133

TEMPORARY CONDITIONAL USE PERMIT PROCEDURE

Sections:

17.133.010 Title, purpose, and applicability.
17.133.020 Definition of temporary conditional use permits.
17.133.030 Application.
17.133.040 Procedures for consideration.
17.133.050 General temporary conditional use permit criteria.
17.133.060 Appeal to Planning Commission.
17.133.070 Expiration of temporary conditional use permits.
17.133.080 Security for Improvements.
17.133.090 Extension of temporary conditional use permits.
17.133100 Reinstatement of temporary conditional use permits.
17.133.110 Adherence to approved plans.
17.133.120 Limitation on resubmission.

17.133.010 Title, purpose, and applicability.

The provisions of this chapter shall be known as the temporary conditional use permit procedure. The purpose of these provisions is to prescribe the procedure for the accommodation of temporary uses with special considerations, such as site or design requirements, operating characteristics, or potential adverse effects on surroundings, through review and, where necessary or appropriate, the imposition of special conditions of approval. This procedure shall apply to proposals for limited duration activities or facilities as specified in this chapter; or limited duration activities or facilities that are otherwise permitted or conditionally permitted as permanent land uses in the applicable zoning district. This procedure shall not apply to limited duration uses addressed elsewhere in the Oakland Municipal Code.

17.133.020 Definition of temporary conditional use permits.

A temporary conditional use permit allows for the operation of specified activities or facilities on private property for limited time duration.

A. Temporary Conditional Use Classifications.

1. A temporary conditional use permit may be issued for any conditionally permitted activity or facility in the applicable zoning district, with the following exceptions (for which a temporary conditional use permit may not be issued):

a. Alcoholic Beverage Sales Commercial;
b. Tobacco-oriented Uses;
c. Adult Entertainment;
d. Check Cashier and Check Cashing.

2. A temporary conditional use permit may also be issued for the following additional activities or facilities, whether or not permitted or conditionally permitted in the applicable zoning district: Active Mini-Park; Passive Mini-Park; Special Use Park; Nonassembly Cultural Civic; Recreational Assembly Civic; Crop and Animal Raising; and Plant Nursery Agricultural.

B. Definition of major and minor temporary conditional use permits. Whether an application is for a major or minor temporary conditional use permit shall be determined according to the definitions provided in Planning Code Section 17.134.020 Definition of Major and Minor Conditional Use Permits.

C. Limited Duration. A temporary conditional use permit generally has a limited duration of a maximum of three (3) years from the effective date of final decision to the date of permit expiration unless otherwise specified.

D. Relief of Zoning Limitations and Application of Additional Criteria. A temporary conditional use permit may relieve limitations and additional criteria relating to the activity or facility otherwise required in the applicable zoning district. Such relief may only be afforded for permitted or conditionally permitted uses in such zoning district, except as specified in 17.133.020A(1) or for uses specified in 17.133.020A(2). Consistent with all other requirements in this Chapter, a temporary conditional use permit may relieve limitations and additional criteria only upon making the following additional finding: Activity and facility limitations and additional criteria otherwise required in the Planning Code or applicable zoning district would prohibit the proposed temporary land use, and relief from such limitations or additional criteria would not undermine or compromise health or safety.

E. Temporary Improvements. All proposed site improvements shall be temporary in nature and design, as required by Section 17.133.050.E. Any proposed demolition would be subject to the regulations contained in OMC Section 15.36, Chapter 17.136, and any other applicable regulations.

F. Demolition of Existing Structures. A temporary conditional use permit generally shall not be issued for a use that would require demolition or removal of any existing, on-site facilities. The City Planning Department, at its discretion, may allow demolition of accessory structures that are neither Potentially Designated Historic Properties nor contribute to an Area of Primary or Secondary Importance (as defined in the Oakland General Plan Historic Preservation Element Appendix A: Definitions).

G. Issuance of a temporary conditional use permit shall not restrict or otherwise invalidate, extend, or alter any land use entitlements for the subject property valid at the time of permit issuance.

17.133.030 Application.

An application for a temporary conditional use permit shall be made by the owner of the affected property, or his or her authorized agent, on a form prescribed by the City Planning Department and shall be filed with such Department.

A. The application shall be accompanied by such information including, but not limited to, site and improvement plans, drawings and elevations, and operational data, as may be required to enable the pertinent criteria to be applied to the proposal, and the fee prescribed in the fee schedule in Chapter 17.150 for a minor permit. In the OS zone, the application shall also include the most recent open space balance calculated pursuant to the no net loss provisions in Section 17.135.060, and any additional information deemed necessary by the City Planning Department.

1. Plans shall indicate all existing site features proposed to remain, existing features proposed to be demolished, and all proposed improvements. Plans shall demonstrate that all improvements are temporary in nature and design.

2. Plans shall include design and accommodation of a sign to be posted on the front property line throughout the life of the permit, with a minimum size of 3 feet wide by 3 feet tall, indicating the permit case file number and termination date of the permit.

3. Plans for any surface parking proposal shall indicate a three-foot wide landscape or public art buffer along the public frontage of the site. Plans shall include the design of the landscape or public art feature and demonstrate that the features can be installed on a temporary basis (e.g., raised planter boxes).

B. The application shall be accompanied by plans for restoration of the affected site to its original condition. The restoration plan shall include a schedule for restoration that demonstrates the applicant will be able to completely restore the original condition of site (including a schedule for obtaining any necessary permits necessary to restore the site) no later than the date of the expiration of the permit. Such plans shall be submitted prior to permit issuance and are subject to review and consideration by the Planning Director or Planning Commission, as applicable.

C. The application shall be accompanied by an agreement, on a form prescribed by the City of Oakland and signed by the land owner, and to be recorded against the property upon permit issuance, acknowledging the temporary nature of the permit, agreeing to only improve the site with temporary furnishings and to limit investment into the property, agreeing to removal of the approved land use(s) and related improvements upon permit expiration, and agreeing that the permit, and the right to continue the uses authorized by the permit shall be

extinguished immediately and automatically upon expiration of the permit and shall not be subject to any requirement for further notice, public hearing or appeal. The agreement shall further specify that the applicant (including any heirs, successors or assigns) waives any right to such notice or hearing.

D. Permit issuance shall generally be subject to a bond or other financial security, as required under Section 17.133.080, to ensure removal of the permitted use(s) and improvements upon permit termination.

17.133.040 Procedures for consideration.

Procedures for considering minor and major temporary conditional use permit applications shall rely upon the procedures for minor and major Conditional Use Permits contained in Planning Code Section 17.134.

17.133.050 Temporary conditional use permit criteria.

In addition to any criteria prescribed elsewhere in the zoning regulations, a temporary conditional use permit shall be granted only if the proposal conforms to all of the following temporary conditional use permit criteria, as well as to any and all other applicable additional use permit criteria:

A. That the location, size, design, and operating characteristics of the proposed temporary use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;

B. That the location, design, and site planning of the proposed temporary use will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the proposed use and its location and setting warrant;

C. That the proposed temporary use will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region;

D. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.136.050 with consideration given to the temporary nature of the proposal;

E. That all proposed improvements are temporary and/or removable, with no permanent alterations to the existing site;

F. That the benefits of temporarily allowing the proposal outweigh the benefits of allowing the parcel to remain vacant or underutilized awaiting a potential permanent use that conforms to the limitations set forth in the applicable zone;

G. That the economic climate, either in general or pertaining to the affected site specifically, is adverse and the proposed temporary use and/or relaxation of Planning Code standards would contribute to economic and land use vitality in Oakland; and

H. That the proposal conforms in all significant respects to the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.

I. That the proposed use and site improvements generally do not require or result in substantial impairment or demolition of any Potentially Designated Historic Properties or otherwise negatively affect an Area of Primary or Secondary Importance, consistent with Section 17.133.030.E.

17.133.060 Appeal to Planning Commission—Temporary conditional use permits.

Appeals for minor and major applications shall be considered and processed according to the procedures for minor and major Conditional Use Permits contained in Planning Code Section 17.134.

17.133.070 Expiration of Temporary conditional use permits

A temporary conditional use permit shall generally expire three (3) years from the effective date of approval of such permit. The use activity permitted by such Temporary conditional use permit shall terminate on or prior to this date.

1. An application for a new temporary conditional use permit for essentially the same use that was authorized under an expired temporary conditional permit on the same property shall not be approved.

2. Any violation of the terms of a temporary conditional use permit shall be subject to all rights and remedies provided in the Oakland Municipal Code, including without limitation, assessment and penalties, as specified in OMC Chapter 1.12 and/or permit revocation as specified in OMC 17.152. The failure of an owner to comply fully with a provision of this Chapter shall be a separate violation which shall be immediately subject to enforcement, penalty, and collection actions provided in the Oakland Municipal Code, including, without limitation, OMC Chapter 1.12.

17.133.080 Security for Improvements

A. Issuance of a temporary conditional use permit shall generally be accompanied by the approved and signed agreement required under Section 17.133.030.C, and a bond (or other financial security acceptable to the City of Oakland) for the value of any proposed improvements, as determined by the City, or for $40,000 (whichever is greater) to ensure removal of the permitted use(s) and improvements upon permit termination. This requirement may be waived if the applicant can demonstrate that the proposed use will not generate any financial profit and will provide a benefit communitywide. In addition, the City of Oakland can decrease or increase the amount of security required if the City ermines that the actual cost to remove all improvements and fully restore the site would be less than or would exceed $40,000.

B. Only upon expiration of the permit and timely termination of the approved use activity in accordance with all the terms and conditions specified in the permit and the requirements of this Chapter, shall any amount of security that is unused shall be returned to the applicant.

C. Should the approved use activity not be terminated in accordance with all the terms and conditions specified in the permit and the requirements of this Chapter, the City of Oakland may, in its discretion, use said security for the purpose of terminating the uses authorized by the temporary conditional use permit, restoring the site or pursuing other such remedies as may be necessary or appropriate.

17.133.090 Extension of Temporary conditional use permits

A temporary conditional use permit can generally be extended one time, only, for one year from the termination date of the initial permit.

17.133.100 Reinstatement of Temporary conditional use permits

A temporary conditional use permit generally cannot be reinstated. However, the City Planning Department may, at its' discretion, reinstate a temporary conditional use permit upon demonstration of full compliance with the Oakland Planning Code and with the conditions of approval for said permit.

17.133.110. Adherence to approved plans.

A temporary conditional use permit shall be subject to the plans and other conditions upon the basis of which it was granted. Unless a different termination date is prescribed, the permit shall terminate three (3) years from the effective date of its granting.

17.133.120 Limitation on resubmission.

Whenever an application for a temporary conditional use permit has been denied by the Director of City Planning or Planning Commission, and the applicant fails to file a timely appeal, no such application for essentially the same proposal affecting the same property, or any portion thereof, shall be filed within one (1) year after the date of denial. This section shall not apply in instances where the applicant can show, on the face of any subsequent application, changed circumstances sufficient to justify a rehearing. Applications for hearing pursuant to this section shall be considered by the Director of City Planning. A determination by the Director shall become final ten (10) calendar days after the date of decision unless appealed to the City Planning Commission. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Any such decision by the City Planning Commission shall be final.

ATTACHMENT B: DRAFT CITY COUNCIL ORDINANCE

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER

_____

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO._____C.M.S.

AN ORDINANCE ADOPTING A PLANNING CODE TEXT AMENDMENT TO REGULATE TEMPORARY LAND USES TO BE CALLED: CHAPTER 17.133 TEMPORARY CONDITIONAL USE PERMIT PROCEDURE.

WHEREAS, during this current economic downturn, Oakland land owners with vacant or underutilized parcels are interested in maintaining economic viability of the land and yet are not able to finance permanent development of the highest and best use; and

WHEREAS, regulations that would allow short-term uses of vacant and underutilized properties with relaxed standards would reduce blight and promote economic development in a realistic manner; and

WHEREAS, allowing short-term uses of vacant and underutilized properties would not hinder future development of higher and better uses on said properties; and

WHEREAS, adopting regulations to control short-term uses provides a systematic means of monitoring and enforcing said uses; and

WHEREAS, the proposed regulations includes a three-year permit life with an allowance for a one-time, one-year extension with no other options for extending the life of the original permit; and

WHEREAS, the proposed regulations would generally require that the proposed land use be permitted in the underlying zoning district (with a few exceptions); however, the proposed

regulations would not require compliance with the "Limitations" and "Additional Criteria" that apply to the proposed land use in the underlying zoning district; and

WHEREAS, the proposed regulations include requirements for a site restoration plan, site signage regarding the terms of the permit, financial security, and a recorded agreement to ensure termination of any permitted use or improvement upon permit expiration; and

WHEREAS, the City can rely on existing regulations contained in Oakland Municipal Code Section 1.12 to enforce the terms of the temporary conditional use permit; and

WHEREAS, any permit granted under the proposed regulations, would not terminate or otherwise affect any existing land use entitlements for an affected parcel; and

WHEREAS, the proposed Temporary Conditional Use Permit Procedure (TCUP) meets the Planning Code Amendment (Rezone) Findings (Planning Code Section 17.144 as follows: The existing Conditional Use Permit regulations do not currently contain procedures for considering temporary uses, for which there is currently increased interest due to the weak economy. The proposed Temporary Conditional Use Permit regulations would allow approved and conditionally approvable land uses on vacant and underutilized properties subject to a procedure that would guarantee that said uses remain temporary and would provide the City of Oakland with procedures for controlling temporary uses. This would be consistent with the regulations contained in the Planning Code and would reduce the quantity of vacant and blighted properties in Oakland; and

WHEREAS, this Ordinance complies the California Environmental Quality Act (CEQA) for the reasons stated in the September 1, 2010 Planning Commission report and summarized below; and

WHEREAS, on April 21, 2010, at a duly noticed public meeting, the Zoning Update Committee of the Planning Commission recommended that the Planning Code Amendments be heard by the Planning Commission; and

WHEREAS, on September 1, 2010, at a regularly scheduled Planning Commission meeting, the Planning Commission heard public comment on the proposed Planning Code amendments; and

WHEREAS, on September 1, 2010, at a duly noticed public hearing, the Planning Commission voted to forward a recommendation to the City Council on the adoption of the proposed findings and approval of the proposed Planning Code amendments; and

WHEREAS, after a duly noticed public meeting on October [redacted], 2010, the Community and Economic Development Committee voted to recommend the proposal to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on [redacted], 2010 and [redacted], 2010 to consider the proposal; now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council finds and determines that the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

Section 2. Prior to adopting this Ordinance, the City Council independently finds and determines that this action complies with the California Environmental Quality Act (CEQA) because the City is relying on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan EIR (1998); the EIRS for the West Oakland Central City East, Coliseum and Oakland Army Base Redevelopment Areas and no further environmental review is required under CEQA Guidelines sections 15162 and 15163. On a separate and independent basis, this proposal is also exempt under Sections 15061(b)(3), 15183, and/or Section 15273 of the State CEQA Guidelines. The Environmental Review Officer is directed to cause to be filed a Notice of Exemption/Determination with the appropriate agencies.

Section 3. This Ordinance shall be effective 30 days from the date of final passage by the City Council, but shall not apply to (a) building/construction related permits already issued and not yet expired, or (b) to zoning applications approved by the City and not yet expired, or to (c) zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code amendments if the applicant chooses to do so.

Section 4. The Oakland Planning Code is hereby amended to include the zoning text amendments contained in ***Exhibit A***, attached hereto and hereby incorporated by reference.

Section 5. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 6. If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full effect.

Section 7. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the application, including all accompanying maps and papers;

2. all relevant plans and maps;

3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City;

4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application;

5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations.

Section 8. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

Attachment B: ZUC Staff Report dated February 17, 2010

ATTACHMENT B: DRAFT CITY COUNCIL ORDINANCE

APPROVED AS TO FORM AND LEGALITY

INTRODUCED BY COUNCILMEMBER

_____

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE NO._____C.M.S.

AN ORDINANCE ADOPTING A PLANNING CODE TEXT AMENDMENT TO REGULATE TEMPORARY LAND USES TO BE CALLED: CHAPTER 17.133 TEMPORARY CONDITIONAL USE PERMIT PROCEDURE.

WHEREAS, during this current economic downturn, Oakland land owners with vacant or underutilized parcels are interested in maintaining economic viability of the land and yet are not able to finance permanent development of the highest and best use; and

WHEREAS, regulations that would allow short-term uses of vacant and underutilized properties with relaxed standards would reduce blight and promote economic development in a realistic manner; and

WHEREAS, allowing short-term uses of vacant and underutilized properties would not hinder future development of higher and better uses on said properties; and

WHEREAS, adopting regulations to control short-term uses provides a systematic means of monitoring and enforcing said uses; and

WHEREAS, the proposed regulations includes a three-year permit life with an allowance for a one-time, one-year extension with no other options for extending the life of the original permit; and

WHEREAS, the proposed regulations would generally require that the proposed land use be permitted in the underlying zoning district (with a few exceptions); however, the proposed

regulations would not require compliance with the "Limitations" and "Additional Criteria" that apply to the proposed land use in the underlying zoning district; and

WHEREAS, the proposed regulations include requirements for a site restoration plan, site signage regarding the terms of the permit, financial security, and a recorded agreement to ensure termination of any permitted use or improvement upon permit expiration; and

WHEREAS, the City can rely on existing regulations contained in Oakland Municipal Code Section 1.12 to enforce the terms of the temporary conditional use permit; and

WHEREAS, any permit granted under the proposed regulations, would not terminate or otherwise affect any existing land use entitlements for an affected parcel; and

WHEREAS, the proposed Temporary Conditional Use Permit Procedure (TCUP) meets the Planning Code Amendment (Rezone) Findings (Planning Code Section 17.144 as follows: The existing Conditional Use Permit regulations do not currently contain procedures for considering temporary uses, for which there is currently increased interest due to the weak economy. The proposed Temporary Conditional Use Permit regulations would allow approved and conditionally approvable land uses on vacant and underutilized properties subject to a procedure that would guarantee that said uses remain temporary and would provide the City of Oakland with procedures for controlling temporary uses. This would be consistent with the regulations contained in the Planning Code and would reduce the quantity of vacant and blighted properties in Oakland; and

WHEREAS, this Ordinance complies the California Environmental Quality Act (CEQA) for the reasons stated in the September 1, 2010 Planning Commission report and summarized below; and

WHEREAS, on April 21, 2010, at a duly noticed public meeting, the Zoning Update Committee of the Planning Commission recommended that the Planning Code Amendments be heard by the Planning Commission; and

WHEREAS, on September 1, 2010, at a regularly scheduled Planning Commission meeting, the Planning Commission heard public comment on the proposed Planning Code amendments; and

WHEREAS, on September 1, 2010, at a duly noticed public hearing, the Planning Commission voted to forward a recommendation to the City Council on the adoption of the proposed findings and approval of the proposed Planning Code amendments; and

WHEREAS, after a duly noticed public meeting on October [redacted], 2010, the Community and Economic Development Committee voted to recommend the proposal to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on [redacted], 2010 and [redacted], 2010 to consider the proposal; now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. The City Council finds and determines that the foregoing recitals to be true and correct and hereby makes them a part of this ordinance.

Section 2. Prior to adopting this Ordinance, the City Council independently finds and determines that this action complies with the California Environmental Quality Act (CEQA) because the City is relying on the previously certified Final Environmental Impact Report (EIR) for the Land Use and Transportation Element of the General Plan (1998); the Oakland Estuary Policy Plan EIR (1998); the EIRS for the West Oakland Central City East, Coliseum and Oakland Army Base Redevelopment Areas and no further environmental review is required under CEQA Guidelines sections 15162 and 15163. On a separate and independent basis, this proposal is also exempt under Sections 15061(b)(3), 15183, and/or Section 15273 of the State CEQA Guidelines. The Environmental Review Officer is directed to cause to be filed a Notice of Exemption/Determination with the appropriate agencies.

Section 3. This Ordinance shall be effective 30 days from the date of final passage by the City Council, but shall not apply to (a) building/construction related permits already issued and not yet expired, or (b) to zoning applications approved by the City and not yet expired, or to (c) zoning applications deemed complete by the City as of the date of final passage. However, zoning applications deemed complete by the City prior to the date of final passage of this Ordinance may be processed under provisions of these Planning Code amendments if the applicant chooses to do so.

Section 4. The Oakland Planning Code is hereby amended to include the zoning text amendments contained in ***Exhibit A***, attached hereto and hereby incorporated by reference.

Section 5. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

Section 6. If any section, subsection, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional, the offending portion shall be severed and shall not affect the validity of the remaining portions which shall remain in full effect.

Section 7. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the application, including all accompanying maps and papers;

2. all relevant plans and maps;

3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City;

4. all oral and written evidence received by the City staff, Planning Commission and City Council before and during the public hearings on the application;

5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations.

Section 8. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES-

ABSENT-

ABSTENTION-

ATTEST:_____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION: _____

Attachment B: ZUC Staff Report dated February 17, 2010

Oakland City Planning Commission **STAFF REPORT**

Zoning Update Committee **February 17, 2010**

Location:	**Citywide** – unless otherwise stated
Item:	Discussion of a proposed text amendment to the Planning Code to allow consideration of temporary conditional use permits in Oakland.
Applicant:	City Planning Commission
Case File Number:	**ZT10-0007**
Staff recommendation:	Review and discuss
For further information:	Contact: **Catherine Payne** at (510) 238-6168 or cpayne@oaklandnet.com

PROPOSED ZONING TEXT AMENDMENT

The proposed Planning Code text amendment addressed in this report would allow the City of Oakland to consider conditional use permits for temporary land uses throughout the city. The proposal would provide standards and procedures for temporary uses and responds to an economic climate that has hindered permanent and highest-use development of sites in Oakland. The proposed text amendment is summarized in this report. Please see Attachment A for the proposed zoning text amendments.

BACKGROUND

During this current economic downturn, Oakland land owners with vacant or underutilized parcels are interested in maintaining the economic viability of the land and yet are not able to finance permanent development of the highest and best use. In particular, Oakland hosts a large inventory of vacant lots with no current entitlements as well as vacant lots that are entitled for permanent development yet are not able to secure funding for said development. In order to reduce the blight of vacant lots and promote economic development in this challenging economic climate, staff proposes consideration of regulations that would allow short-term uses of vacant and underutilized properties with relaxed standards to reduce blight and promote economic development in a realistic manner.

PROJECT DESCRIPTION

The proposed project is a Planning Code text amendment (amendment) defining and regulating the application of temporary conditional use permits in Oakland. The amendment would allow currently permitted and conditionally permitted activities on a site, with relaxed limitations and standards and without affecting underlying entitlements. An example of this would be allowing surface auto-fee parking lots in the Central Business District for a three-year period. The existing CBD Planning Code regulations allow auto-fee parking, but limitations require the parking to be enclosed and above the ground floor. Under the proposed amendment, the CBD limitations could be relaxed and surface parking would be allowed only on a temporary basis. This would allow an economically viable, though not the highest and best, use of a site that might otherwise be undeveloped in this economy. The short timeframe would not hinder development of a permanent and better use for the site should the economy improve in the near future.

The amendment includes the following key components:

1. *Limited duration and no extensions*: The amendment includes a permit life of three years. An applicant can apply for a new permit relying on public review and discretionary consideration two years after permit issuance. This would allow for public scrutiny and renewed consideration that can be responsive to a changing economic climate as well as other factors. Extensions would not be allowed.
2. *Relaxation of Planning Code Limitations" and "Additional Criteria"*: The amendment would generally require that the proposed land use be permitted in the underlying zoning district (with a few exceptions, as noted below); however, the amendment would not require compliance with the "Limitations" and "Additional Criteria" that apply to the proposed land use in the underlying zoning district. This would protect the compatibility of land uses in the underlying zoning district while allowing flexibility to allow use locations and design that are viable in an economically challenging climate on a temporary basis.
3. *Guarantee of removal of use upon permit expiration*: The amendment includes requirements for a site restoration plan, financial security, and a recorded agreement to ensure termination of any permitted use or improvement upon permit expiration.
4. *No effect on existing land use entitlements*: Any permit granted under the amendment would not terminate or otherwise affect any existing land use entitlements. In this way, a site can host a temporary use while maintaining any existing entitlement for a higher and better use in the future.

STAFF ANALYSIS

The proposed amendment includes features that have both advantages and disadvantages. The following discussion identifies key issues related to temporary conditional use permits:

1. *Should the amendment include variances (uses not otherwise permitted in the underlying zoning district)*? The amendment would allow outright and conditionally permitted uses on a short-term basis, and would relax the limitations and additional criteria established in the underlying zoning district. A variance is a permit for uses and/or facilities that are otherwise restricted in the underlying zoning district. To ensure that applications are limited to proposed uses that are likely to be generally compatible with the surrounding area and are generally consistent with the underlying zoning district, staff supports limiting the scope of the amendment to permitted and conditionally permitted uses. Under the existing Planning Code regulations, a property owner can apply for a variance for a use not otherwise permitted.

   It should be noted that the proposed amendment allows certain uses that may or may not be permitted in the underlying zoning district. Specifically, the amendment would allow the following use classifications: Active Mini-Park; Passive Mini-Park; Special Use Park; Nonassembly Cultural Civic; Recreational Assembly Civic; Crop and Animal Raising; and Plant Nursery Agricultural. In combination with the Essential Service Civic land use classification, currently permitted in every zoning district in Oakland, these land use classifications would allow desirable short-term uses such as outdoor recreation, cultural and community gathering areas, retail vending and gardens. These uses contribute to the vibrancy of neighborhoods and can be easily established (relying on pushcarts or trailers, awnings, planter boxes, moveable site furnishings and similar features).

2. *Should the temporary conditional use permit be a major or a minor permit?* There are three options to consider for processing temporary conditional use permits; they can be considered major or minor permits, or they can be considered based on the criteria of Oakland Municipal Code (OMC) Chapter 17.134.020 Definition of Major and Minor Conditional Use Permits. The amendment treats the temporary conditional use permit as a minor permit requiring administrative review and approval and public noticing (and no public hearing or consideration by the Planning Commission unless decided by the Planning Director). A major permit process would take more time, include a public hearing and consideration by the Planning Commission. Relying on OMC 17.134.020 would require applications to go through a lengthier or more streamlined process generally based on size, use, zoning district and other defining criteria. The more streamlined minor permit process allows permit applications to be considered more quickly, consistent with the intent of the amendment to address every-changing economic conditions on a short-term basis. However, the major permit process allows for more public review and scrutiny of proposals that might otherwise be limited in the underlying zoning district. Staff believes that all three approaches have merits (and disadvantages); however, the more streamlined minor-permit process is consistent with the short-term timeframe of the proposed permit.

3. *What is the appropriate timeframe for the temporary conditional use permit?* The proposed amendment includes a three-year timeframe with the possibility of applying for a new permit within the last year of the life of any existing permit. Staff believes that three years is long enough for an applicant to make a meaningful investment and receive a meaningful return for a temporary use while ensuring that the City has the opportunity to reevaluate the use as the economic cycles shift (on a global or even site-specific basis).

4. *Should extensions be allowed?* The proposed amendment would not allow permit extensions, but rather would allow a permit-holder to apply for a new permit. The existing Planning Code allows extensions without public review or input prior to expiration of the original permit. Staff's objective is to ensure that there is public review and discretionary decision-making regarding continuing a use that is intended and designed to be short-term and to respond to a current economic situation.

   Another option that would achieve the same objective would be to allow extensions but require Planning Commission consideration. In this alternative, an applicant would not need to apply for a new permit but, rather, would request an extension. The process would be more streamlined in terms of applicant submittal requirements, but consideration would involve a public hearing and decision by the Planning Commission.

5. *How can the City ensure removal of the use upon permit expiration?* As discussed earlier in this report, the proposed amendment includes three mechanisms for ensuring removal of the use and improvements upon permit expiration: a site restoration plan (to be considered and approved by staff), a financial security, and a recorded agreement to ensure termination of any permitted use or improvement upon permit expiration. Based on legal opinion, staff finds that these features would both ensure the temporary nature of the permit and protect the City against legal action for terminating any use permitted under the proposed amendment.

   It should be noted, however, that the City of Oakland does not have the tools in place to ensure staff monitoring of issued permits over a three-year period. There is no existing method to flag a permit case file or otherwise trigger review of permit compliance after the permit has been issued. At this time, if staff issues a permit, there is no guarantee that any staff will follow up on the permit in the future. The financial security discussed above would provide some incentive for the applicant to contact the City to verify compliance and return the security. In addition, the deed restriction would serve to notify staff of the permit status should a new application be submitted for the same site. These approaches are not necessarily timely and rely on the applicant taking responsibility.

6. *Is a $40,000 security reasonable*? The proposed amendment includes a minimum $40,000 security to ensure removal of any permitted use and/or facility upon permit termination. The annual premium for a security of $40,000 is typically less than $600. Staff believes that this is a reasonable fee expectation for the allowances provided by issuance of a temporary conditional use permit. In addition, $40,000 would be adequate for City staff to remove many temporary uses and, where temporary uses include improvements valued at greater than $40,000, the City would rely on a higher security per the proposed regulations. Finally, a significant security ensures that the permit holder would comply with the terms of the permit and contact the City to confirm compliance upon permit expiration in order to remove the security.

   It should be noted that the requirement for a $40,000 security is "general"; that is, the decision-making body could use discretion to reduce or waive the security. This would be an option for public benefit projects such as community gardens or passive parks, and would allow community groups to install a land use for the public good that would involve no profit without incurring unreasonable costs.

7. *Is the proposed amendment consistent with the City of Oakland General Plan*? The proposed amendment would not allow any uses that are not otherwise permitted or conditionally permitted in the underlying zoning district and would therefore not conflict with the General Plan. In addition, the proposed amendment would support the General Plan general policies of economic development and minimizing nuisances (Policy 1/C4.2) during a challenging economic climate.

8. *How would these regulations affect other temporary uses permitted in Oakland*? The City of Oakland currently allows some uses on a temporary basis, such as "vehicular food vending" and "pushcart food vending" via OMC Titles 8 and 5, respectively. These permits are for uses and do not run with the land. The currently proposed amendment would apply to OMC Title 17, run with the land, and would therefore not affect current temporary use permits in Oakland.

ACTION REQUESTED OF THE ZONING UPDATE COMMITTEE

Staff recommends that the Zoning Update Committee provide comments regarding the proposed Planning Code text amendment and address the questions and issues outlined in this report.

Prepared by:

Catherine Payne, Planner IV

Approved for forwarding to the
Zoning Update Committee of the
City Planning Commission by:

ERIC ANGSTADT, DEPUTY DIRECTOR, CEDA

ATTACHMENT:
A. Proposed Planning Code Amendment

ATTACHMENT A:
PROPOSED PLANNING CODE AMENDMENT

Zoning Update Committee of the Oakland Planning Commission
February 17, 2010

Chapter 17.133

TEMPORARY CONDITIONAL USE PERMIT PROCEDURE

Sections:

17.133.010 Title, purpose, and applicability.
17.133.020 Definition of temporary conditional use permits.
17.133.030 Application.
17.133.040 Procedures for consideration.
17.133.050 General temporary conditional use permit criteria.
17.133.060 Appeal to Planning Commission.
17.133.070 Expiration of temporary conditional use permits.
17.133.080 Security for Improvements.
17.133.090 Extension of temporary conditional use permits .
17.133100 Reinstatement of temporary conditional use permits.
17.133.110 Adherence to approved plans.
17.133.120 Limitation on resubmission.

17.133.010 Title, purpose, and applicability.

The provisions of this chapter shall be known as the temporary conditional use permit procedure. The purpose of these provisions is to prescribe the procedure for the accommodation of temporary uses with special considerations, such as site or design requirements, operating characteristics, or potential adverse effects on surroundings, through review and, where necessary or appropriate, the imposition of special conditions of approval. This procedure shall apply to proposals for limited duration activities or facilities as specified in this chapter; or limited duration activities or facilities that are otherwise permitted or conditionally permitted as permanent land uses in the applicable zoning district. This procedure shall not apply to limited duration uses addressed elsewhere in the Oakland Municipal Code.

17.133.020 Definition of temporary conditional use permits.

A temporary conditional use permit allows for the operation of specified activities or facilities on private property for a limited time duration.

A. Temporary Conditional Use Classifications.

1. A temporary conditional use permit may be issued for any permitted or conditionally permitted activity or facility in the applicable zoning district.

2. A temporary conditional use permit may also be issued for the following additional activities or facilities, whether or not permitted or conditionally permitted in the

applicable zoning district: Active Mini-Park; Passive Mini-Park; Special Use Park; Nonassembly Cultural Civic; Recreational Assembly Civic; Crop and Animal Raising; and Plant Nursery Agricultural.

B. Limited Duration. A temporary conditional use permit generally has a limited duration of three (3) years from the effective date of final decision to the date of permit expiration.

C. Relief of Zoning Limitations and Application of Additional Criteria. A temporary conditional use permit may relieve limitations and additional criteria relating to the activity or facility otherwise required in the applicable zoning district, subject to the following findings:

1. Activity and facility limitations and additional criteria otherwise required in the Planning Code or applicable zoning district would prohibit the temporary land use.

2. Activity and facility limitations and additional criteria otherwise required in the Planning Code or applicable zoning district would require permanent improvements inconsistent with the temporary land use.

D. Temporary Improvements. All proposed site improvements shall be temporary in nature and design, as required by Section 17.133.050.E. Any proposed demolition would be subject to the regulations contained in OMC Section 15.36, Chapter 17.136, and any other applicable regulations.

E. Issuance of a temporary conditional use permit shall not restrict or otherwise invalidate, extend, or alter any land use entitlements for the subject property valid at the time of permit issuance.

F. No permit extension. A temporary conditional use permit shall not be extended. However, where a temporary conditional use permit has been approved, an application for essentially the same proposal affecting the same property, or any portion thereof, may be filed two (2) years or later after permit issuance. Such application shall be subject to the regulations contained in Planning Code Chapter 17.133.

17.133.030 Application.

An application for a temporary conditional use permit shall be made by the owner of the affected property, or his or her authorized agent, on a form prescribed by the City Planning Department and shall be filed with such Department.

A. The application shall be accompanied by such information including, but not limited to, site and improvement plans, drawings and elevations, and operational data, as may be required to enable the pertinent criteria to be applied to the proposal, and the fee prescribed in the fee schedule in Chapter 17.150 for a minor permit. In the OS zone, the application shall also include the most recent open space balance calculated pursuant to the no net loss provisions in Section 17.135.060, and any additional information deemed necessary by the City Planning Department.

B. The application shall be accompanied by plans for restoration of the affected site to its original condition. Such plans shall be submitted prior to permit issuance and are subject to review and consideration by the Planning Director or Planning Commission, as applicable.

C. The application shall be accompanied by an agreement, on a form prescribed by the City of Oakland and signed by the land owner, and to be recorded against the property upon permit issuance, acknowledging the temporary nature of the permit and agreeing to removal of the approved land use(s) and related improvements upon permit expiration.

D. Permit issuance shall generally be subject to a bond or other financial security, as required under Section 17.133.080, to ensure removal of the permitted use(s) and improvements upon permit termination.

17.133.040 Procedures for consideration.

A. In All Zones. An application for a temporary conditional use permit shall be considered by the Director of City Planning. However, the Director may, at his or her discretion, refer the application to the City Planning Commission for decision rather than acting on it himself or herself. In this case, the application shall be processed as a major permit pursuant to Chapter 17.134.040.A of the Planning Code. At his or her discretion, an administrative hearing may be held. Notice shall be given by posting an enlarged notice on premises of the subject property involved in the application; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing, if such is to be held, or, if not, for decision on the application by the Director. The Director shall determine whether the proposal conforms to the temporary conditional use permit criteria set forth in Section 17.133.050 and to other applicable use permit criteria, and may grant or deny the application for the proposed temporary conditional use permit or require such changes in the proposed use or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to said criteria. The determination of the Director of City Planning shall become final ten (10) calendar days after the date of decision unless appealed to the City Planning Commission in accordance with Section 17.133.060. In those cases which are referred to the Commission by the Planning Director, the decision of the Commission shall become final ten (10) days after the date of decision. In any event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal.

B. In the OS Zone. Applications for temporary conditional use permits in the OS zone shall be subject to the special use permit review procedure for the OS zone established in Chapter 17.135.

C. Alternative Notification Procedures. If the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement the procedures set forth in subsections A and B of this section.

17.133.050 Temporary conditional use permit criteria.

Except as different criteria are prescribed elsewhere in the zoning regulations, a temporary conditional use permit shall be granted only if the proposal conforms to all of the following temporary conditional use permit criteria, as well as to any and all other applicable additional use permit criteria:

A. That the location, size, design, and operating characteristics of the proposed temporary use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;

B. That the location, design, and site planning of the proposed temporary use will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the proposed use and its location and setting warrant;

C. That the proposed temporary use will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region;

D. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.136.050 with consideration given to the temporary nature of the proposal;

E. That all proposed improvements are temporary and/or removable, with no permanent alterations to the existing site;

F. That the benefits of temporarily allowing the proposal outweigh the benefits of allowing the parcel to remain vacant or underutilized awaiting a potential permanent use that conforms to the limitations set forth in the applicable zone;

G. That the economic climate, either in general or pertaining to the affected site specifically, is adverse and the proposed temporary use and/or relaxation of Planning Code standards would contribute to economic and land use vitality in Oakland; and

H. That the proposal conforms in all significant respects to the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.

17.133.060 Appeal to Planning Commission—Temporary conditional use permits.

Within ten (10) calendar days after the date of a decision by the Director of City Planning on an application for a temporary conditional use permit, an appeal from said decision may be taken to the City Planning Commission by the applicant or any other interested party. In the case of appeals involving one- or two-unit Residential Facilities, the appeal shall be considered by the Commission's Residential Appeals Committee. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director or wherein his or her decision is not supported by the evidence in the record. Upon receipt of the appeal, the Secretary of the City Planning Commission shall set the date for consideration thereof; which in the case of applications limited to one- or two-unit Residential Facilities, shall be the date of the Committee's next regularly scheduled meeting following the thirtieth day after the appeal is filed. Not less than seventeen (17) days prior to the date of the Commission's or Committee's consideration of the appeal, the Secretary shall give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Commission or, if applicable, the Committee shall determine whether the proposal conforms to the temporary use permit criteria set forth in Section 17.133.050 and to any other applicable additional use permit criteria, and may grant or deny a permit or require such changes in the proposed use or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The decision of the Commission or, if applicable, the Committee shall be final.

17.133.070 Expiration of Temporary conditional use permits

A Temporary conditional use permit shall generally expire three (3) years from the effective date of approval of such permit. The use activity permitted by such Temporary conditional use permit shall terminate on or prior to this date.

17.133.080 Security for Improvements

A. Issuance of a temporary conditional use permit shall generally be accompanied by a bond (or other financial security acceptable to the City of Oakland) for the value of any proposed improvements or for $40,000 (whichever is greater) to ensure removal of the permitted

use(s) and improvements upon permit termination. This requirement may be waived if the applicant can demonstrate that the proposed use will not generate any financial profit and will provide a benefit communitywide.

B. Upon expiration of the permit and timely termination of the approved use activity, said bond shall be returned to the applicant.

C. Should the approved use activity not be terminated upon expiration of the permit, the City of Oakland shall use said bond for the purpose of terminating the activity and/or facility.

17.133.090 Extension of Temporary conditional use permits

A temporary conditional use permit generally cannot be extended.

17.133.100 Reinstatement of Temporary conditional use permits

A temporary conditional use permit generally cannot be reinstated.

17.133.110. Adherence to approved plans.

A temporary conditional use permit shall be subject to the plans and other conditions upon the basis of which it was granted. Unless a different termination date is prescribed, the permit shall terminate three (3) years from the effective date of its granting.

17.133.120 Limitation on resubmission.

Whenever an application for a temporary conditional use permit has been denied by the Director of City Planning or Planning Commission, and the applicant fails to file a timely appeal, no such application for essentially the same proposal affecting the same property, or any portion thereof, shall be filed within one (1) year after the date of denial. This section shall not apply in instances where the applicant can show, on the face of any subsequent application, changed circumstances sufficient to justify a rehearing. Applications for hearing pursuant to this section shall be considered by the Director of City Planning. A determination by the Director shall become final ten (10) calendar days after the date of decision unless appealed to the City Planning Commission. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Any such decision by the City Planning Commission shall be final.

Attachment C: ZUC Staff Report dated April 21, 2010

Oakland City Planning Commission **STAFF REPORT**

Zoning Update Committee **April 21, 2010**

Location:	**Citywide** – unless otherwise stated
Item:	Discussion of a proposed text amendment to the Planning Code to allow consideration of temporary conditional use permits in Oakland.
Applicant:	City Planning Commission
Case File Number:	**ZT10-0007**
Staff recommendation:	Review and discuss
For further information:	Contact: **Catherine Payne** at (510) 238-6168 or cpayne@oaklandnet.com

PROPOSED ZONING TEXT AMENDMENT

The Zoning Updates Committee of the Planning Commission (ZUC) previously reviewed this proposal at their regularly scheduled meeting on February 17, 2010. The proposed revised Planning Code text amendment addressed in this report would allow the City of Oakland to consider conditional use permits for temporary land uses throughout the city. The proposal would provide standards and procedures for temporary uses and responds to an economic climate that has hindered permanent and highest-use development of sites in Oakland. The proposed text amendment is summarized in this report. Please see Attachment A for the proposed zoning text amendment. This staff report addresses ZUC and community comments and provides policy options for ZUC consideration.

BACKGROUND

During this current economic downturn, Oakland land owners with vacant or underutilized parcels are interested in maintaining the economic viability of the land and yet are not able to finance permanent development of the highest and best use. In particular, Oakland hosts a large inventory of vacant lots with no current entitlements as well as vacant lots that are entitled for permanent development yet are not able to secure financing for said development. In order to reduce the blight of vacant lots and promote economic development in this challenging economic climate, staff proposes consideration of regulations that would allow short-term uses of vacant and underutilized properties with relaxed standards to reduce blight and promote economic development in a realistic manner.

PROJECT DESCRIPTION

The proposed project is a Planning Code text amendment (amendment) defining and regulating the application of temporary conditional use permits in Oakland. The amendment would allow currently permitted and conditionally permitted activities on a site, with relaxed limitations and standards and without affecting underlying entitlements. One example of this would be allowing surface auto-fee parking lots in the Central Business District for a three-year period; the existing CBD Planning Code regulations allow auto-fee parking, but limitations require the parking to be enclosed and above the ground floor. Under the proposed amendment, the CBD limitations could be relaxed and surface parking would be allowed only on a temporary basis. This would allow an economically viable, though not necessarily the highest and best, use of a site that might otherwise be undeveloped in this economy. The short timeframe would not hinder development of a permanent and better use for the site should the economy improve in the near future.

The amendment includes the following key components:

1. *Limited duration*: The amendment includes a permit life of three years. The currently proposed regulations are revised to allow a one-time, one year extension with no other options for extending the life of the original permit. In summary, a permit could have a maximum active life of up to four years, including the one-time extension.
2. *Relaxation of Planning Code Limitations" and "Additional Criteria"*: The amendment would generally require that the proposed land use be permitted in the underlying zoning district (with a few exceptions, as noted below); however, the amendment would not require compliance with the "Limitations" and "Additional Criteria" that apply to the proposed land use in the underlying zoning district. This would protect the compatibility of land uses in the underlying zoning district while allowing flexibility to allow use locations and design that are viable in an economically challenging climate on a temporary basis.
3. *Guarantee of removal of use upon permit expiration*: The proposed amendment includes requirements for a site restoration plan, financial security, and a recorded agreement to ensure termination of any permitted use or improvement upon permit expiration. The currently proposed regulations additionally cite the City's existing ability to penalize any violations of the terms of a temporary conditional use permit.
4. *No effect on existing land use entitlements*: Any permit granted under the amendment would not terminate or otherwise affect any existing land use entitlements. In this way, a site can host a temporary use while maintaining any existing entitlement for a higher and better use in the future.

ZUC AND COMMUNITY COMMENTS

The ZUC considered the proposed regulations and received public testimony at their regularly scheduled meeting on February 17, 2010. At that time, the ZUC and community members made comments regarding the proposal. The following is a summary of the comments and staff response and/or analysis (in indented italics below each comment):

ZUC Comments

- Include penalties to provide applicant incentive to remove use upon termination of permit.
    - *The Oakland Municipal Code (OMC Chapter 1.12) authorizes assessment and penalties for violations of the Planning Code (OMC Title 17), including fines and liens. In addition to the proposed deed restrictions, improvement security and signed and notarized acknowledgement of temporary permit, existing penalties should ensure a high degree of self-enforcement of the proposed regulations. In addition, the revised proposal includes a requirement for project signage indicating the temporary nature of the permit and expiration date, informing neighbors and visitors of the terms of the permit and supporting the identification of any violations.*
- Do we want surface auto-fee parking in downtown when it is currently not permitted? Even on temporary basis?
    - *The only active interest in the proposed regulations thus far has been from applicants interested in conducting surface parking. If the ZUC is considering supporting an option for allowing temporary uses, staff recommends including this use. The ZUC has the option of recommending a trial period for the regulations to determine the benefits and disadvantages based on actual experience.*
- The proposal goes against current regulations (specifically, the newly adopted Central Business District regulations do not allow surface parking, and the proposed regulations would allow surface parking on a temporary basis).
    - *This is the intent of the regulations: only allow land uses that are currently outright or conditionally permitted, but relax development standards to allow for the use to exist on a temporary basis. The Planning Code currently has no option for temporary permits; therefore, by definition, the proposal will contradict existing standards that require permanent improvements.*
- This proposal allows land owners to continue to own land purchased at too high a value; this land will be difficult to develop at the inflated value. If the land remains vacant, then the owners may be forced to sell at a lower (current) value; at a lower value, new owners may be able to develop the highest and best use.
    - *This viewpoint supports the option to recommend no action regarding temporary conditional use permits. With this option, the City would have no legally defensible method or established standards for addressing desirable temporary uses.*

- Alcoholic beverage sales should be included in the proposal.
    - *Alcoholic beverage and tobacco sale permits are regulated by the State of California, and the City of Oakland cannot supercede state regulations.*
- The security amount should be determined by cost-benefit analysis to ensure that it is fair and achieves the goal of limiting use to approved timeframe.
    - *The purpose of the security is to facilitate removal of the use/improvements upon permit expiration; that is the nexus that needs to be made. The City's financial benefit from the use comes from business taxes and not from fees. In addition, the required deed restriction, agreement to the terms of the permit, and established violation process are designed to ensure the removal of the use upon permit termination.*
- It will be difficult to remove community-serving uses (such as community gardens and public art installations) upon permit expiration. People will fight to keep these uses.
    - *Although people may argue to keep temporary uses beyond the life of the permit, the regulations are drafted to both ensure compliance with the established time limits and alert the public to the temporary nature of the use (the revised regulations include a requirement for site signage indicating that the use is temporary and that the use shall be removed by a date certain). There should be no misunderstanding about the temporary life of the use under the proposed regulations; however, the regulations cannot control any desire there may be to extend the use.*
- Would this proposal comply with Senate Bill (SB) 375? (Greenhouse Gas Reduction)
    - *This proposal does not directly relate to SB375. However, it could be argued that increasing parking possibilities in downtown Oakland and thereby pushing housing and office development off directly encourages driving, and indirectly supports sprawl. At the same time, it should be noted that where the proposed regulations would allow surface parking, auto fee parking is already permitted on a permanent basis.*
- Tier fees so that more lucrative uses pay higher fees than more financially modest and/or community-serving uses.
    - *The City can set different fees by permit type but cannot charge different fees based on proposed land use or potential value of use. This would be discriminatory.*
- Consider allowing a one-time, one-year extension with no option to renew the permit.
    - *Staff agrees that this would be an effective way to ensure that temporary uses remain temporary. The proposed regulations are revised to reflect this comment.*
- Consider limiting the number of cars allowed for surface parking and/or portable lifts.
    - *There are currently no restrictions on portable car lifts in the City of Oakland. The ZUC could consider limiting parking to 49 or fewer parking spaces, consistent with the threshold for minor conditional use permits.*
- Consider a trial period to test regulations.
    - *This staff report includes a proposal for a trial period in order to determine the benefits and disadvantages of temporary permits based on actual experience.*

Public Hearing Comments

- The Temporary Conditional Use Permit concept is acceptable for community-serving uses; However, some seasonal sales currently operate without any permit--this permit process, including the security requirement, would be prohibitive for these short-term uses (3-4 months per year);
    - *The permit process could be used to provide approval of seasonal temporary uses throughout the life of the permit. For example, a land owner could submit an application for seasonal sales from September through December every year for three years.*
- Temporary Conditional Use Permits should be minor and not major permits.
    - *The current proposal is for applications to be processed as minor permits.*
- Allow temporary uses that would otherwise require a variance.
    - *This is an option that would facilitate increased use of currently vacant properties in the near term. Staff recommends keeping the current proposal narrow to monitor the success of the regulations. In the future, should there continue to be interest in allowing uses that would otherwise require a variance, the City could consider expanding the regulations.*
- How would vehicular food vendors be addressed by this proposal?
    - *The activity is currently considered within the "fast food" classification and, as such, would be permitted wherever "fast food" is currently permitted or conditionally permitted.*
- The lack of current investment in Oakland necessitates permitting land uses that are not ideal.
    - *This viewpoint supports an option to adopt the proposed regulations or a trial, and to include both permitted and conditionally permitted uses (without limitation).*
- Vacant lots can be a nuisance; there is current parking demand in CBD, and such activity would generate revenue for the City.
    - *This viewpoint supports an option to adopt the proposed regulations or a trial, and to include both the permitted and conditionally permitted uses (without limitation).*
- The proposal weakens the Planning Code by allowing uses that were never intended to be permitted (surface parking in CBD).
    - *The proposal would only allow land uses that are currently permitted or conditionally permitted in the underlying zoning district. However, the proposal would relax development standards to allow for the use to exist on a temporary basis. The Planning Code currently has no option for temporary permits; therefore, by definition, the proposal will contradict existing standards that require permanent improvements.*
- Surface parking is ugly, and causes hazards for pedestrians and bicyclists.
    - *This is an argument to exclude surface parking from any recommendation to move the proposed regulations forward. However, it should be noted wherever surface parking would be permitted as part of this proposal, auto fee parking is already permitted or conditionally permitted. Surface and above-grade auto-fee*

parking generally have the same access and egress conditions in terms of number of driveways.

Testimony Submitted in Writing

- The life of the permit should be four years (rather than three).
  - *The current life of a land use entitlement in Oakland is two years and an additional one year extension. The proposed three-year timeline for the Temporary Conditional Use Permit is consistent with this.*
- There should be no limit on the number of permit renewals.
  - *This proposal includes a narrower time period for land use activity. This approach ensures that temporary uses are, in fact, temporary and do not become long-term or permanent.*
- The security should be reduced to $20,000.
  - *The purpose of the security is for removal of any improvements upon permit expiration should the property owner not comply with the terms of the permit. The proposed regulations require up to $40,000 for the security; however, some proposed uses with minimal improvements may have a much lower security requirement.*
- Surface parking should include a landscaping or public art buffer.
  - *Staff supports this recommendation, and the proposed regulations are revised accordingly.*
- Surface parking should incorporate storm water runoff diversion to protect Lake Merritt and the San Francisco Bay.
  - *The proposed regulations require all improvements to be temporary. For those projects that would be required to meet existing storm water runoff requirements, they would need to demonstrate that they could do so with only temporary improvements; otherwise, such proposals would be denied.*

ISSUES AND DISCUSSION

San Francisco's Approach

The City of San Francisco is currently working with owners of entitled properties to allow temporary uses. The approach in San Francisco is to use the Development Agreement (DA) process to extend the life of existing land use entitlements in exchange for the placement of community benefit uses on entitled sites during the interim period. Through the DA process, San Francisco will allow community benefit uses such as gardens, parks and public art displays on a temporary basis. In addition, San Francisco will require extensive (although temporary) improvements, maintenance, insurance and other features designed to allow public access and ensure high quality projects. Again, the incentive to land owners is extending valuable land use entitlements. This approach is specific to currently entitled properties and would not allow surface parking.

The City of San Francisco currently permits temporary uses on non-entitled properties through the Conditional Use Permit process, with specific conditions of approval controlling the temporary timeline and features of the proposal. In addition, the City of San Francisco generally restricts new proposals for surface parking.

Although San Francisco has a very different economic and development climate than Oakland (fewer vacant lots and parcels with more valuable and complex entitlements, for example), the DA approach provides advantages for Oakland, as well. This approach applies to limited properties (those with land use entitlements) and ensures a beneficial use until such time as development is feasible. In addition, the DA can control the quality of improvements and removal of the use based on the incentive of extended entitlements. This is an option for Oakland to consider in developing an approach to permitting temporary uses.

Surface Parking

The only active interest in temporary permits is for surface parking. Surface parking may be considered an undesirable land use, even on a temporary basis. However, the demand for the use should trigger a meaningful discussion about the appropriateness of the use in certain cases. Is surface parking acceptable on a short-term, and not long-term, basis? Is the use acceptable near the West Oakland BART station but in the Central Business District? The ZUC could consider taking a position on surface parking in Oakland and could recommend that the Planning Commission do the same. Any temporary use regulation proposal would be informed by such direction.

Community Benefit Uses

At the previous ZUC meeting where temporary permits were considered, the ZUC expressed concern about temporary community benefit uses becoming permanent due to community and possible political will. This same question might apply to any use for which there is support. The revised proposal includes measures designed to ensure that uses remain temporary and do not become permanent. Revisions include limitations on permit extension and the required site signage to inform the public about the temporary nature of the use. In addition, this staff report outlines options that would allow for a trial of any adopted regulations to determine the outcome of the program and ensure removal of all uses at the end of the trial program.

OPTIONS FOR CONSIDERATION

Staff has revised the proposed draft Temporary Conditional Use Permit regulations and has included various options for ZUC considerations. The following discussion and matrix outline the options and their benefits and disadvantages:

No Action

Taking no action on a temporary use permit proposal would retain the status quo. Currently, there are a small number of active (and unabated) temporary permits on file in Oakland (generally, these are conditional use permits issued with a condition for termination of the use by a date certain). Should the City receive future applications for temporary uses (CUP, variance or DA applications), there are a few existing options for considering such proposals: the City could deny the application or approve the application with conditions of approval to limit the duration of the use and ensure the use does not become vested.

This approach does not contradict the existing Planning Code. However, this approach provides no land use flexibility to address a fluctuating economy, and provides no systematic formula for considering ore terminating temporary uses.

Citywide TCUP

A Citywide TCUP, fully described above and in Attachment A to this report, would commit the City to a standardized regulatory process for considering temporary use applications. The proposed regulations allow for a wide variety of uses currently permitted or conditionally permitted in the underlying zoning district. Relaxation of development standards, however, would allow site design that would otherwise not be permitted (surface parking would be allowed in districts where auto fee parking is permitted but development standards restrict surface parking).

Relaxation of standards, in some cases, would potentially contradict the intent of the Planning Code. However, the proposed uses are temporary which may lessen the opposition to an otherwise controversial use. Temporary use permits, in general, would potentially discourage development of higher and better permanent land uses, extending blighted conditions into the future. Nonetheless, a consistent permitting process ensures consistent application of regulations and conditions of approval, and better controls the termination of the temporary uses.

Trial Citywide TCUP

A trial Citywide TCUP program would include the regulations proposed in Attachment A (and described above); however, the trial program would sunset on a date certain. This would allow the City to test the benefits and disadvantages of the TCUP concept during the current economic downturn. By extinguishing the trial on a date certain, the City can control termination of any uses permitted during the trial period. In addition, a trial program would allow the City to consider whether to cease, continue and/or alter the regulations on an extended or permanent basis.

Trial TCUP-CBD

A trial TCUP program in the Central Business District (CBD) would generally include the regulations proposed in Attachment A; however, application would be limited to the CBD. In this way, the trial TCUP-CBD program would specifically address the current, active interest in temporary uses, as the current applications are for surface parking in the downtown area. The trial program would allow the City to consider the advantages and disadvantages of such regulations on a limited basis with the most controversial uses.

Trial TCUP-no surface parking

A trial TCUP that does not allow surface parking would generally include the regulations proposed in Attachment A and would apply Citywide; however, surface parking would not be allowed as a temporary use. A trial Citywide TCUP that does not allow any surface parking may be desirable in terms of the allowable land uses. It should be noted, however, that this proposal would not address actual demand for temporary permits, all of which are for surface parking.

Development Agreement

Whether or not the City of Oakland adopts any specific policy, the City has the ability, on a case-by-case basis, to adopt DAs to extend the life of existing land use entitlements in exchange for the placement of desirable temporary land uses on entitled sites during the interim period. This approach would be specific to currently entitled properties and would require City Council consideration on a case-by-case basis. The City can dictate the appropriate interim uses and the extent and quality of improvements, accessibility and other design features, as the approach would be incentive-based.

TEMPORARY CUP OPTIONS MATRIX			
Option	**Benefits**	**Disadvantages**	**Additional Notes**
No Action	• No risk of temporary uses becoming permanent; • Does not contradict Planning Code;	• No land use flexibility to address fluctuating economy • No systematic formula for considering temporary use proposals; • No systematic approach to terminating approved temporary uses;	• Could amend SCOA to allow temporary uses on case-by-case basis with consistent conditions • Temporary use proposals would be considered under existing CUP, variance or DA procedures
Citywide TCUP	• Allows uses for a limited timeframe • Provides consistent formula for processing temporary use proposals; • Responds to economic reality by allowing more land use flexibility • Provides similar permitting opportunity throughout Oakland • Ensures uses do not become vested	• Difficult to remove from Planning Code if regulations prove to be problematic • In some cases, allows uses that contradict Planning Code; • Difficult to ensure removal of uses (politically and in terms of City ability to monitor); • May discourage development of permanent higher and better use;	
Trial Citywide TCUP	• Same advantages as "Citywide TCUP" • Sunset controls termination of permits • Sunset allows evaluation of effectiveness of regulations	• May discourage development of permanent higher and better use;	• To adopt permanently, would need to go to ZUC, Planning Commission and Council for recommendation and approval
Trial TCUP-CBD	• Addresses actual demand at this time for temporary permits • Limits area to where greatest demand exists	• Does not cover the current demand located outside of downtown (e.g., near West Oakland BART)	• To adopt permanently, would need to go to ZUC, Planning Commission and Council for recommendation and approval
Trial TCUP-no surface parking	• Addresses community concerns regarding surface parking	• Does not address actual demand at this time for temporary permits • Limits financial benefit for City • Does not consider that use could be acceptable on temporary basis	• To adopt permanently, would need to go to ZUC, Planning Commission and Council for recommendation and approval
Development Agreement	• Incentive-based • Limited to entitled properties • City can require extensive improvements, maintenance, insurance	• Limited to entitled properties • Does not address actual demand at this time for temporary permits • May discourage development of permanent higher and better use; • No systematic formula for considering other types of temporary use proposals;	• Could amend SCOA to address other types of temporary use proposals • DA requires no new policy adoption

ACTION REQUESTED OF THE ZONING UPDATE COMMITTEE

Staff recommends that the Zoning Update Committee provide comments regarding the proposed Planning Code text amendment and address the options, questions and issues outlined in this report.

Prepared by:

Catherine Payne, Planner III

Approved for forwarding to the
Zoning Update Committee of the
City Planning Commission by:

SCOTT MILLER, ZONING MANAGER, PLANNING AND ZONING DIVISION

ERIC ANGSTADT, DEPUTY DIRECTOR, CEDA

ATTACHMENTS:

A. Proposed Planning Code Amendment (revised)
B. ZUC Staff Report dated February 17, 2010

ZUC APRIL 21, 2010

ATTACHMENT A:
PROPOSED PLANNING CODE AMENDMENT (REVISED)

ATTACHMENT A:
PROPOSED PLANNING CODE AMENDMENT

Zoning Update Committee of the Oakland Planning Commission
April 21, 2010

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Chapter 17.133

TEMPORARY CONDITIONAL USE PERMIT PROCEDURE

Sections:

17.133.010 Title, purpose, and applicability.
17.133.020 Definition of temporary conditional use permits.
17.133.030 Application.
17.133.040 Procedures for consideration.
17.133.050 General temporary conditional use permit criteria.
17.133.060 Appeal to Planning Commission.
17.133.070 Expiration of temporary conditional use permits.
17.133.080 Security for Improvements.
17.133.090 Extension of temporary conditional use permits .
17.133100 Reinstatement of temporary conditional use permits.
17.133.110 Adherence to approved plans.
17.133.120 Limitation on resubmission.

17.133.010 Title, purpose, and applicability.

The provisions of this chapter shall be known as the temporary conditional use permit procedure. The purpose of these provisions is to prescribe the procedure for the accommodation of temporary uses with special considerations, such as site or design requirements, operating characteristics, or potential adverse effects on surroundings, through review and, where necessary or appropriate, the imposition of special conditions of approval. This procedure shall apply to proposals for limited duration activities or facilities as specified in this chapter; or limited duration activities or facilities that are otherwise permitted or conditionally permitted as permanent land uses in the applicable zoning district. This procedure shall not apply to limited duration uses addressed elsewhere in the Oakland Municipal Code.

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17.133.020 Definition of temporary conditional use permits.

A temporary conditional use permit allows for the operation of specified activities or facilities on private property for a limited time duration.

A. Temporary Conditional Use Classifications.

1. A temporary conditional use permit may be issued for any conditionally permitted activity or facility in the applicable zoning district.

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2. A temporary conditional use permit may also be issued for the following additional activities or facilities, whether or not permitted or conditionally permitted in the applicable zoning district: Active Mini-Park; Passive Mini-Park; Special Use Park; Nonassembly Cultural Civic; Recreational Assembly Civic; Crop and Animal Raising; and Plant Nursery Agricultural.

B. Limited Duration. A temporary conditional use permit generally has a limited duration of three (3) years from the effective date of final decision to the date of permit expiration.

C. Relief of Zoning Limitations and Application of Additional Criteria. A temporary conditional use permit may relieve limitations and additional criteria relating to the activity or facility otherwise required in the applicable zoning district, subject to the following findings:

1. Activity and facility limitations and additional criteria otherwise required in the Planning Code or applicable zoning district would prohibit the temporary land use.

2. Activity and facility limitations and additional criteria otherwise required in the Planning Code or applicable zoning district would require permanent improvements inconsistent with the temporary land use.

D. Temporary Improvements. All proposed site improvements shall be temporary in nature and design, as required by Section 17.133.050.E. Any proposed demolition would be subject to the regulations contained in OMC Section 15.36, Chapter 17.136, and any other applicable regulations.

E. Issuance of a temporary conditional use permit shall not restrict or otherwise invalidate, extend, or alter any land use entitlements for the subject property valid at the time of permit issuance.

Deleted: F. . No permit extension. A temporary conditional use permit shall not be extended. However, where a temporary conditional use permit has been approved, an application for essentially the same proposal affecting the same property, or any portion thereof, may be filed two (2) years or later after permit issuance. Such application shall be subject to the regulations contained in Planning Code Chapter 17.133. ¶

17.133.030 Application.

An application for a temporary conditional use permit shall be made by the owner of the affected property, or his or her authorized agent, on a form prescribed by the City Planning Department and shall be filed with such Department.

A. The application shall be accompanied by such information including, but not limited to, site and improvement plans, drawings and elevations, and operational data, as may be required to enable the pertinent criteria to be applied to the proposal, and the fee prescribed in the fee schedule in Chapter 17.150 for a minor permit. In the OS zone, the application shall also include the most recent open space balance calculated pursuant to the no net loss provisions in Section 17.135.060, and any additional information deemed necessary by the City Planning Department.

1. Plans shall include design and accommodation of a sign to be posted on the front property line throughout the life of the permit, with a minimum size of 3 feet wide by 3 feet tall, indicating the permit case file number and termination date of the permit.

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2. Plans for any surface parking proposal shall indicate a three-foot wide landscape or public art buffer along the public frontage of the site. Plans shall include the design of the landscape or public art feature and demonstrate that the features can be installed on a temporary basis (e.g., raised planter boxes).

Comment: This will inform the public of the temporary nature of the permit; important especially for "feel good" uses such as community gardens.

B. The application shall be accompanied by plans for restoration of the affected site to its original condition. Such plans shall be submitted prior to permit issuance and are subject to review and consideration by the Planning Director or Planning Commission, as applicable.

C. The application shall be accompanied by an agreement, on a form prescribed by the City of Oakland and signed by the land owner, and to be recorded against the property upon permit issuance, acknowledging the temporary nature of the permit, agreeing to only improve the

site with temporary furnishings and to limit investment into the property, agreeing to removal of the approved land use(s) and related improvements upon permit expiration, and agreeing that the permit, and the right to continue the uses authorized by the permit shall be extinguished immediately and automatically upon expiration of the permit and shall not be subject to any requirement for further notice, public hearing or appeal. The agreement shall further specify that the applicant (including any heirs, successors or assigns) waives any right to such notice or hearing.

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D. Permit issuance shall generally be subject to a bond or other financial security, as required under Section 17.133.080, to ensure removal of the permitted use(s) and improvements upon permit termination.

17.133.040 Procedures for consideration.

A. In All Zones. An application for a temporary conditional use permit shall be considered by the Director of City Planning. However, the Director may, at his or her discretion, refer the application to the City Planning Commission for decision rather than acting on it himself or herself. In this case, the application shall be processed as a major permit pursuant to Chapter 17.134.040.A of the Planning Code. At his or her discretion, an administrative hearing may be held. Notice shall be given by posting an enlarged notice on premises of the subject property involved in the application; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing, if such is to be held, or, if not, for decision on the application by the Director. The Director shall determine whether the proposal conforms to the temporary conditional use permit criteria set forth in Section 17.133.050 and to other applicable use permit criteria, and may grant or deny the application for the proposed temporary conditional use permit or require such changes in the proposed use or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to said criteria. The determination of the Director of City Planning shall become final ten (10) calendar days after the date of decision unless appealed to the City Planning Commission in accordance with Section 17.133.060. In those cases which are referred to the Commission by the Planning Director, the decision of the Commission shall become final ten (10) days after the date of decision. In any event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal.

B. In the OS Zone. Applications for temporary conditional use permits in the OS zone shall be subject to the special use permit review procedure for the OS zone established in Chapter 17.135.

C. Alternative Notification Procedures. If the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement the procedures set forth in subsections A and B of this section.

17.133.050 Temporary conditional use permit criteria.

Except as different criteria are prescribed elsewhere in the zoning regulations, a temporary conditional use permit shall be granted only if the proposal conforms to all of the following temporary conditional use permit criteria, as well as to any and all other applicable additional use permit criteria:

A. That the location, size, design, and operating characteristics of the proposed temporary use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and

utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;

B. That the location, design, and site planning of the proposed temporary use will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the proposed use and its location and setting warrant;

C. That the proposed temporary use will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region;

D. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.136.050 with consideration given to the temporary nature of the proposal;

E. That all proposed improvements are temporary and/or removable, with no permanent alterations to the existing site;

F. That the benefits of temporarily allowing the proposal outweigh the benefits of allowing the parcel to remain vacant or underutilized awaiting a potential permanent use that conforms to the limitations set forth in the applicable zone;

G. That the economic climate, either in general or pertaining to the affected site specifically, is adverse and the proposed temporary use and/or relaxation of Planning Code standards would contribute to economic and land use vitality in Oakland; and

H. That the proposal conforms in all significant respects to the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.

17.133.060 Appeal to Planning Commission—Temporary conditional use permits.

Within ten (10) calendar days after the date of a decision by the Director of City Planning on an application for a temporary conditional use permit, an appeal from said decision may be taken to the City Planning Commission by the applicant or any other interested party. In the case of appeals involving one- or two-unit Residential Facilities, the appeal shall be considered by the Commission's Residential Appeals Committee. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director or wherein his or her decision is not supported by the evidence in the record. Upon receipt of the appeal, the Secretary of the City Planning Commission shall set the date for consideration thereof; which in the case of applications limited to one- or two-unit Residential Facilities, shall be the date of the Committee's next regularly scheduled meeting following the thirtieth day after the appeal is filed. Not less than seventeen (17) days prior to the date of the Commission's or Committee's consideration of the appeal, the Secretary shall give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Commission or, if applicable, the Committee shall determine whether the proposal conforms to the temporary use permit criteria set forth in Section 17.133.050 and to any other applicable additional use permit criteria, and may grant or deny a permit or require such changes in the proposed use or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The decision of the Commission or, if applicable, the Committee shall be final.

17.133.070 Expiration of Temporary conditional use permits

A Temporary conditional use permit shall generally expire three (3) years from the effective date of approval of such permit. The use activity permitted by such Temporary conditional use permit shall terminate on or prior to this date.

1. An application for a new temporary conditional use permit for essentially the same use on the same property shall not be approved.

2. Any violation of the terms of a temporary conditional use permit shall be subject to all rights and remedies provided in the Oakland Municipal Code, including without limitation, assessment and penalties, as specifed in OMC Chapter 1.12 and/or permit revocation as specified in OMC 17.152. The failure of an owner to comply fully with a provision of this Chapter shall be a separate violation which shall be immediately subject to enforcement, penalty, and collection actions provided in the Oakland Municipal Code, including, without limitation, OMC Chapter 1.12.

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17.133.080 Security for Improvements

A. Issuance of a temporary conditional use permit shall generally be accompanied by a bond (or other financial security acceptable to the City of Oakland) for the value of any proposed improvements or for $40,000 (whichever is greater) to ensure removal of the permitted use(s) and improvements upon permit termination. This requirement may be waived if the applicant can demonstrate that the proposed use will not generate any financial profit and will provide a benefit communitywide.

B. Upon expiration of the permit and timely termination of the approved use activity, said security shall be returned to the applicant.

C. Should the approved use activity not be terminated upon expiration of the permit, the City of Oakland shall use said security for the purpose of terminating the activity and/or facility.

Comment: Purpose of the security is for City removal of the use, and should be valued accordingly.

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17.133.090 Extension of Temporary conditional use permits

A temporary conditional use permit can generally be extended one time, only, for one year.

Deleted: generally cannot be extended

Comment: This revision responds to ZUC comments and limits the length of time for the temporary use so that it cannot become permanent.

17.133.100 Reinstatement of Temporary conditional use permits

A temporary conditional use permit generally cannot be reinstated.

17.133.110. Adherence to approved plans.

A temporary conditional use permit shall be subject to the plans and other conditions upon the basis of which it was granted. Unless a different termination date is prescribed, the permit shall terminate three (3) years from the effective date of its granting.

17.133.120 Limitation on resubmission.

Whenever an application for a temporary conditional use permit has been denied by the Director of City Planning or Planning Commission, and the applicant fails to file a timely appeal, no such application for essentially the same proposal affecting the same property, or any portion thereof, shall be filed within one (1) year after the date of denial. This section shall not apply in instances where the applicant can show, on the face of any subsequent application, changed circumstances sufficient to justify a rehearing. Applications for hearing pursuant to this section shall be considered by the Director of City Planning. A determination by the Director shall become final ten (10) calendar days after the date of decision unless appealed to the City Planning Commission. In event the last date of appeal falls on a weekend or holiday when city offices are

closed, the next date such offices are open for business shall be the last date of appeal. Any such decision by the City Planning Commission shall be final.

ZUC APRIL 21, 2010

ATTACHMENT B:
ZUC STAFF REPORT DATED FEBRUARY 17, 2010

Oakland City Planning Commission **STAFF REPORT**

Zoning Update Committee **February 17, 2010**

Location:	**Citywide** – unless otherwise stated
Item:	Discussion of a proposed text amendment to the Planning Code to allow consideration of temporary conditional use permits in Oakland.
Applicant:	City Planning Commission
Case File Number:	**ZT10-0007**
Staff recommendation:	Review and discuss
For further information:	Contact: **Catherine Payne** at (510) 238-6168 or cpayne@oaklandnet.com

PROPOSED ZONING TEXT AMENDMENT

The proposed Planning Code text amendment addressed in this report would allow the City of Oakland to consider conditional use permits for temporary land uses throughout the city. The proposal would provide standards and procedures for temporary uses and responds to an economic climate that has hindered permanent and highest-use development of sites in Oakland. The proposed text amendment is summarized in this report. Please see Attachment A for the proposed zoning text amendments.

BACKGROUND

During this current economic downturn, Oakland land owners with vacant or underutilized parcels are interested in maintaining the economic viability of the land and yet are not able to finance permanent development of the highest and best use. In particular, Oakland hosts a large inventory of vacant lots with no current entitlements as well as vacant lots that are entitled for permanent development yet are not able to secure funding for said development. In order to reduce the blight of vacant lots and promote economic development in this challenging economic climate, staff proposes consideration of regulations that would allow short-term uses of vacant and underutilized properties with relaxed standards to reduce blight and promote economic development in a realistic manner.

PROJECT DESCRIPTION

The proposed project is a Planning Code text amendment (amendment) defining and regulating the application of temporary conditional use permits in Oakland. The amendment would allow currently permitted and conditionally permitted activities on a site, with relaxed limitations and standards and without affecting underlying entitlements. An example of this would be allowing surface auto-fee parking lots in the Central Business District for a three-year period. The existing CBD Planning Code regulations allow auto-fee parking, but limitations require the parking to be enclosed and above the ground floor. Under the proposed amendment, the CBD limitations could be relaxed and surface parking would be allowed only on a temporary basis. This would allow an economically viable, though not the highest and best, use of a site that might otherwise be undeveloped in this economy. The short timeframe would not hinder development of a permanent and better use for the site should the economy improve in the near future.

The amendment includes the following key components:

1. *Limited duration and no extensions*: The amendment includes a permit life of three years. An applicant can apply for a new permit relying on public review and discretionary consideration two years after permit issuance. This would allow for public scrutiny and renewed consideration that can be responsive to a changing economic climate as well as other factors. Extensions would not be allowed.
2. *Relaxation of Planning Code Limitations" and "Additional Criteria"*: The amendment would generally require that the proposed land use be permitted in the underlying zoning district (with a few exceptions, as noted below); however, the amendment would not require compliance with the "Limitations" and "Additional Criteria" that apply to the proposed land use in the underlying zoning district. This would protect the compatibility of land uses in the underlying zoning district while allowing flexibility to allow use locations and design that are viable in an economically challenging climate on a temporary basis.
3. *Guarantee of removal of use upon permit expiration*: The amendment includes requirements for a site restoration plan, financial security, and a recorded agreement to ensure termination of any permitted use or improvement upon permit expiration.
4. *No effect on existing land use entitlements*: Any permit granted under the amendment would not terminate or otherwise affect any existing land use entitlements. In this way, a site can host a temporary use while maintaining any existing entitlement for a higher and better use in the future.

STAFF ANALYSIS

The proposed amendment includes features that have both advantages and disadvantages. The following discussion identifies key issues related to temporary conditional use permits:

1. *Should the amendment include variances (uses not otherwise permitted in the underlying zoning district)*? The amendment would allow outright and conditionally permitted uses on a short-term basis, and would relax the limitations and additional criteria established in the underlying zoning district. A variance is a permit for uses and/or facilities that are otherwise restricted in the underlying zoning district. To ensure that applications are limited to proposed uses that are likely to be generally compatible with the surrounding area and are generally consistent with the underlying zoning district, staff supports limiting the scope of the amendment to permitted and conditionally permitted uses. Under the existing Planning Code regulations, a property owner can apply for a variance for a use not otherwise permitted.

   It should be noted that the proposed amendment allows certain uses that may or may not be permitted in the underlying zoning district. Specifically, the amendment would allow the following use classifications: Active Mini-Park; Passive Mini-Park; Special Use Park; Nonassembly Cultural Civic; Recreational Assembly Civic; Crop and Animal Raising; and Plant Nursery Agricultural. In combination with the Essential Service Civic land use classification, currently permitted in every zoning district in Oakland, these land use classifications would allow desirable short-term uses such as outdoor recreation, cultural and community gathering areas, retail vending and gardens. These uses contribute to the vibrancy of neighborhoods and can be easily established (relying on pushcarts or trailers, awnings, planter boxes, moveable site furnishings and similar features).

2. *Should the temporary conditional use permit be a major or a minor permit?* There are three options to consider for processing temporary conditional use permits; they can be considered major or minor permits, or they can be considered based on the criteria of Oakland Municipal Code (OMC) Chapter 17.134.020 Definition of Major and Minor Conditional Use Permits. The amendment treats the temporary conditional use permit as a minor permit requiring administrative review and approval and public noticing (and no public hearing or consideration by the Planning Commission unless decided by the Planning Director). A major permit process would take more time, include a public hearing and consideration by the Planning Commission. Relying on OMC 17.134.020 would require applications to go through a lengthier or more streamlined process generally based on size, use, zoning district and other defining criteria. The more streamlined minor permit process allows permit applications to be considered more quickly, consistent with the intent of the amendment to address every-changing economic conditions on a short-term basis. However, the major permit process allows for more public review and scrutiny of proposals that might otherwise be limited in the underlying zoning district. Staff believes that all three approaches have merits (and disadvantages); however, the more streamlined minor-permit process is consistent with the short-term timeframe of the proposed permit.

3. *What is the appropriate timeframe for the temporary conditional use permit?* The proposed amendment includes a three-year timeframe with the possibility of applying for a new permit within the last year of the life of any existing permit. Staff believes that three years is long enough for an applicant to make a meaningful investment and receive a meaningful return for a temporary use while ensuring that the City has the opportunity to reevaluate the use as the economic cycles shift (on a global or even site-specific basis).

4. *Should extensions be allowed?* The proposed amendment would not allow permit extensions, but rather would allow a permit-holder to apply for a new permit. The existing Planning Code allows extensions without public review or input prior to expiration of the original permit. Staff's objective is to ensure that there is public review and discretionary decision-making regarding continuing a use that is intended and designed to be short-term and to respond to a current economic situation.

   Another option that would achieve the same objective would be to allow extensions but require Planning Commission consideration. In this alternative, an applicant would not need to apply for a new permit but, rather, would request an extension. The process would be more streamlined in terms of applicant submittal requirements, but consideration would involve a public hearing and decision by the Planning Commission.

5. *How can the City ensure removal of the use upon permit expiration?* As discussed earlier in this report, the proposed amendment includes three mechanisms for ensuring removal of the use and improvements upon permit expiration: a site restoration plan (to be considered and approved by staff), a financial security, and a recorded agreement to ensure termination of any permitted use or improvement upon permit expiration. Based on legal opinion, staff finds that these features would both ensure the temporary nature of the permit and protect the City against legal action for terminating any use permitted under the proposed amendment.

   It should be noted, however, that the City of Oakland does not have the tools in place to ensure staff monitoring of issued permits over a three-year period. There is no existing method to flag a permit case file or otherwise trigger review of permit compliance after the permit has been issued. At this time, if staff issues a permit, there is no guarantee that any staff will follow up on the permit in the future. The financial security discussed above would provide some incentive for the applicant to contact the City to verify compliance and return the security. In addition, the deed restriction would serve to notify staff of the permit status should a new application be submitted for the same site. These approaches are not necessarily timely and rely on the applicant taking responsibility.

6. *Is a $40,000 security reasonable*? The proposed amendment includes a minimum $40,000 security to ensure removal of any permitted use and/or facility upon permit termination. The annual premium for a security of $40,000 is typically less than $600. Staff believes that this is a reasonable fee expectation for the allowances provided by issuance of a temporary conditional use permit. In addition, $40,000 would be adequate for City staff to remove many temporary uses and, where temporary uses include improvements valued at greater than $40,000, the City would rely on a higher security per the proposed regulations. Finally, a significant security ensures that the permit holder would comply with the terms of the permit and contact the City to confirm compliance upon permit expiration in order to remove the security.

   It should be noted that the requirement for a $40,000 security is "general"; that is, the decision-making body could use discretion to reduce or waive the security. This would be an option for public benefit projects such as community gardens or passive parks, and would allow community groups to install a land use for the public good that would involve no profit without incurring unreasonable costs.

7. *Is the proposed amendment consistent with the City of Oakland General Plan*? The proposed amendment would not allow any uses that are not otherwise permitted or conditionally permitted in the underlying zoning district and would therefore not conflict with the General Plan. In addition, the proposed amendment would support the General Plan general policies of economic development and minimizing nuisances (Policy 1/C4.2) during a challenging economic climate.

8. *How would these regulations affect other temporary uses permitted in Oakland*? The City of Oakland currently allows some uses on a temporary basis, such as "vehicular food vending" and "pushcart food vending" via OMC Titles 8 and 5, respectively. These permits are for uses and do not run with the land. The currently proposed amendment would apply to OMC Title 17, run with the land, and would therefore not affect current temporary use permits in Oakland.

ACTION REQUESTED OF THE ZONING UPDATE COMMITTEE

Staff recommends that the Zoning Update Committee provide comments regarding the proposed Planning Code text amendment and address the questions and issues outlined in this report.

Prepared by:

Catherine Payne, Planner IV

Approved for forwarding to the Zoning Update Committee of the City Planning Commission by:

ERIC ANGSTADT, DEPUTY DIRECTOR, CEDA

ATTACHMENT:

A. Proposed Planning Code Amendment

ATTACHMENT A:
PROPOSED PLANNING CODE AMENDMENT

Zoning Update Committee of the Oakland Planning Commission
February 17, 2010

Chapter 17.133

TEMPORARY CONDITIONAL USE PERMIT PROCEDURE

Sections:

17.133.010 Title, purpose, and applicability.
17.133.020 Definition of temporary conditional use permits.
17.133.030 Application.
17.133.040 Procedures for consideration.
17.133.050 General temporary conditional use permit criteria.
17.133.060 Appeal to Planning Commission.
17.133.070 Expiration of temporary conditional use permits.
17.133.080 Security for Improvements.
17.133.090 Extension of temporary conditional use permits .
17.133100 Reinstatement of temporary conditional use permits.
17.133.110 Adherence to approved plans.
17.133.120 Limitation on resubmission.

17.133.010 Title, purpose, and applicability.

The provisions of this chapter shall be known as the temporary conditional use permit procedure. The purpose of these provisions is to prescribe the procedure for the accommodation of temporary uses with special considerations, such as site or design requirements, operating characteristics, or potential adverse effects on surroundings, through review and, where necessary or appropriate, the imposition of special conditions of approval. This procedure shall apply to proposals for limited duration activities or facilities as specified in this chapter; or limited duration activities or facilities that are otherwise permitted or conditionally permitted as permanent land uses in the applicable zoning district. This procedure shall not apply to limited duration uses addressed elsewhere in the Oakland Municipal Code.

17.133.020 Definition of temporary conditional use permits.

A temporary conditional use permit allows for the operation of specified activities or facilities on private property for a limited time duration.

A. Temporary Conditional Use Classifications.

1. A temporary conditional use permit may be issued for any permitted or conditionally permitted activity or facility in the applicable zoning district.

2. A temporary conditional use permit may also be issued for the following additional activities or facilities, whether or not permitted or conditionally permitted in the

applicable zoning district: Active Mini-Park; Passive Mini-Park; Special Use Park; Nonassembly Cultural Civic; Recreational Assembly Civic; Crop and Animal Raising; and Plant Nursery Agricultural.

B. Limited Duration. A temporary conditional use permit generally has a limited duration of three (3) years from the effective date of final decision to the date of permit expiration.

C. Relief of Zoning Limitations and Application of Additional Criteria. A temporary conditional use permit may relieve limitations and additional criteria relating to the activity or facility otherwise required in the applicable zoning district, subject to the following findings:

1. Activity and facility limitations and additional criteria otherwise required in the Planning Code or applicable zoning district would prohibit the temporary land use.

2. Activity and facility limitations and additional criteria otherwise required in the Planning Code or applicable zoning district would require permanent improvements inconsistent with the temporary land use.

D. Temporary Improvements. All proposed site improvements shall be temporary in nature and design, as required by Section 17.133.050.E. Any proposed demolition would be subject to the regulations contained in OMC Section 15.36, Chapter 17.136, and any other applicable regulations.

E. Issuance of a temporary conditional use permit shall not restrict or otherwise invalidate, extend, or alter any land use entitlements for the subject property valid at the time of permit issuance.

F. No permit extension. A temporary conditional use permit shall not be extended. However, where a temporary conditional use permit has been approved, an application for essentially the same proposal affecting the same property, or any portion thereof, may be filed two (2) years or later after permit issuance. Such application shall be subject to the regulations contained in Planning Code Chapter 17.133.

17.133.030 Application.

An application for a temporary conditional use permit shall be made by the owner of the affected property, or his or her authorized agent, on a form prescribed by the City Planning Department and shall be filed with such Department.

A. The application shall be accompanied by such information including, but not limited to, site and improvement plans, drawings and elevations, and operational data, as may be required to enable the pertinent criteria to be applied to the proposal, and the fee prescribed in the fee schedule in Chapter 17.150 for a minor permit. In the OS zone, the application shall also include the most recent open space balance calculated pursuant to the no net loss provisions in Section 17.135.060, and any additional information deemed necessary by the City Planning Department.

B. The application shall be accompanied by plans for restoration of the affected site to its original condition. Such plans shall be submitted prior to permit issuance and are subject to review and consideration by the Planning Director or Planning Commission, as applicable.

C. The application shall be accompanied by an agreement, on a form prescribed by the City of Oakland and signed by the land owner, and to be recorded against the property upon permit issuance, acknowledging the temporary nature of the permit and agreeing to removal of the approved land use(s) and related improvements upon permit expiration.

D. Permit issuance shall generally be subject to a bond or other financial security, as required under Section 17.133.080, to ensure removal of the permitted use(s) and improvements upon permit termination.

17.133.040 Procedures for consideration.

A. In All Zones. An application for a temporary conditional use permit shall be considered by the Director of City Planning. However, the Director may, at his or her discretion, refer the application to the City Planning Commission for decision rather than acting on it himself or herself. In this case, the application shall be processed as a major permit pursuant to Chapter 17.134.040.A of the Planning Code. At his or her discretion, an administrative hearing may be held. Notice shall be given by posting an enlarged notice on premises of the subject property involved in the application; notice shall also be given by mail or delivery to all persons shown on the last available equalized assessment roll as owning real property in the city within three hundred (300) feet of the property involved; provided, however, that failure to send notice to any such owner where his or her address is not shown in said records shall not invalidate the affected proceedings. All such notices shall be given not less than seventeen (17) days prior to the date set for the hearing, if such is to be held, or, if not, for decision on the application by the Director. The Director shall determine whether the proposal conforms to the temporary conditional use permit criteria set forth in Section 17.133.050 and to other applicable use permit criteria, and may grant or deny the application for the proposed temporary conditional use permit or require such changes in the proposed use or impose such reasonable conditions of approval as are in his or her judgment necessary to ensure conformity to said criteria. The determination of the Director of City Planning shall become final ten (10) calendar days after the date of decision unless appealed to the City Planning Commission in accordance with Section 17.133.060. In those cases which are referred to the Commission by the Planning Director, the decision of the Commission shall become final ten (10) days after the date of decision. In any event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal.

B. In the OS Zone. Applications for temporary conditional use permits in the OS zone shall be subject to the special use permit review procedure for the OS zone established in Chapter 17.135.

C. Alternative Notification Procedures. If the conditions as set forth in Section 17.130.020 apply, alternative notification procedures discussed therein may replace or supplement the procedures set forth in subsections A and B of this section.

17.133.050 Temporary conditional use permit criteria.

Except as different criteria are prescribed elsewhere in the zoning regulations, a temporary conditional use permit shall be granted only if the proposal conforms to all of the following temporary conditional use permit criteria, as well as to any and all other applicable additional use permit criteria:

A. That the location, size, design, and operating characteristics of the proposed temporary use will be compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding neighborhood, with consideration to be given to harmony in scale, bulk, coverage, and density; to the availability of civic facilities and utilities; to harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity of surrounding streets; and to any other relevant impact of the development;

B. That the location, design, and site planning of the proposed temporary use will provide a convenient and functional living, working, shopping, or civic environment, and will be as attractive as the nature of the proposed use and its location and setting warrant;

C. That the proposed temporary use will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region;

D. That the proposal conforms to all applicable regular design review criteria set forth in the regular design review procedure at Section 17.136.050 with consideration given to the temporary nature of the proposal;

E. That all proposed improvements are temporary and/or removable, with no permanent alterations to the existing site;

F. That the benefits of temporarily allowing the proposal outweigh the benefits of allowing the parcel to remain vacant or underutilized awaiting a potential permanent use that conforms to the limitations set forth in the applicable zone;

G. That the economic climate, either in general or pertaining to the affected site specifically, is adverse and the proposed temporary use and/or relaxation of Planning Code standards would contribute to economic and land use vitality in Oakland; and

H. That the proposal conforms in all significant respects to the Oakland General Plan and with any other applicable plan or development control map which has been adopted by the City Council.

17.133.060 Appeal to Planning Commission—Temporary conditional use permits.

Within ten (10) calendar days after the date of a decision by the Director of City Planning on an application for a temporary conditional use permit, an appeal from said decision may be taken to the City Planning Commission by the applicant or any other interested party. In the case of appeals involving one- or two-unit Residential Facilities, the appeal shall be considered by the Commission's Residential Appeals Committee. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Such appeal shall be made on a form prescribed by the City Planning Department and shall be filed with such Department. The appeal shall state specifically wherein it is claimed there was an error or abuse of discretion by the Director or wherein his or her decision is not supported by the evidence in the record. Upon receipt of the appeal, the Secretary of the City Planning Commission shall set the date for consideration thereof; which in the case of applications limited to one- or two-unit Residential Facilities, shall be the date of the Committee's next regularly scheduled meeting following the thirtieth day after the appeal is filed. Not less than seventeen (17) days prior to the date of the Commission's or Committee's consideration of the appeal, the Secretary shall give written notice to: the applicant; the appellant in those cases where the applicant is not the appellant; adverse party or parties, or to the attorney, spokesperson, or representative of such party or parties; other interested groups and neighborhood associations who have requested notification; and to similar groups and individuals as the Secretary deems appropriate, of the date and place of the hearing on the appeal. In considering the appeal, the Commission or, if applicable, the Committee shall determine whether the proposal conforms to the temporary use permit criteria set forth in Section 17.133.050 and to any other applicable additional use permit criteria, and may grant or deny a permit or require such changes in the proposed use or impose such reasonable conditions of approval as are in its judgment necessary to ensure conformity to said criteria. The decision of the Commission or, if applicable, the Committee shall be final.

17.133.070 Expiration of Temporary conditional use permits

A Temporary conditional use permit shall generally expire three (3) years from the effective date of approval of such permit. The use activity permitted by such Temporary conditional use permit shall terminate on or prior to this date.

17.133.080 Security for Improvements

A. Issuance of a temporary conditional use permit shall generally be accompanied by a bond (or other financial security acceptable to the City of Oakland) for the value of any proposed improvements or for $40,000 (whichever is greater) to ensure removal of the permitted

use(s) and improvements upon permit termination. This requirement may be waived if the applicant can demonstrate that the proposed use will not generate any financial profit and will provide a benefit communitywide.

B. Upon expiration of the permit and timely termination of the approved use activity, said bond shall be returned to the applicant.

C. Should the approved use activity not be terminated upon expiration of the permit, the City of Oakland shall use said bond for the purpose of terminating the activity and/or facility.

17.133.090 Extension of Temporary conditional use permits

A temporary conditional use permit generally cannot be extended.

17.133.100 Reinstatement of Temporary conditional use permits

A temporary conditional use permit generally cannot be reinstated.

17.133.110. Adherence to approved plans.

A temporary conditional use permit shall be subject to the plans and other conditions upon the basis of which it was granted. Unless a different termination date is prescribed, the permit shall terminate three (3) years from the effective date of its granting.

17.133.120 Limitation on resubmission.

Whenever an application for a temporary conditional use permit has been denied by the Director of City Planning or Planning Commission, and the applicant fails to file a timely appeal, no such application for essentially the same proposal affecting the same property, or any portion thereof, shall be filed within one (1) year after the date of denial. This section shall not apply in instances where the applicant can show, on the face of any subsequent application, changed circumstances sufficient to justify a rehearing. Applications for hearing pursuant to this section shall be considered by the Director of City Planning. A determination by the Director shall become final ten (10) calendar days after the date of decision unless appealed to the City Planning Commission. In event the last date of appeal falls on a weekend or holiday when city offices are closed, the next date such offices are open for business shall be the last date of appeal. Any such decision by the City Planning Commission shall be final.

ATTACHMENT F:
Public Comments (email correspondence)

Payne, Catherine

From: Val Tagawa [vtagawa@seiu-uhw.org]

Sent: Sunday, January 09, 2011 8:12 PM

To: Payne, Catherine; dboxer@gmail.com; veinvtruong@gmail.com; blake.huntsman@seiu1021.org; sgalvez@phi.org; michail.colbruno@gmail.com; mzmdesignworks@gmail.com; vincegibbs.opc@gmail.com

Subject: Douglas Parking 522 20th St. Oakland

Planning Commission, Thank you for giving me the opportunity to share with you my perspective on the possible parking lot closure on 533 20th St. I work in Oakland and use the parking lot for safety reasons. Due to the nature of my job, I consistently arrive early in the morning, consistently leave and return during the day, and consistently work late into the night. The attendant (Ron) who is employed by the current vendor has always been accommodating and has become a part of my safety network. This is an important factor. As I understand it, the crime levels in Oakland drastically rises, while OPD suffered a recent reduction of force. Hard working, law abiding citizens are more at risk of the criminal elements pervasive in Oakland. Having a safety network is key while working in Oakland. Having to walk (mostly alone) a longer distance is a threat to many who rely on this particular parking lot.
I hope you will seriously consider voting to issue the current vendor the permit required to remain open. Thank for your consideration on this matter. If you have any questions, please feel free to contact me at the number below.

Val M. Tagawa
(510) 915-4249