

Comment Letters Received Prior to the May 6th Landmarks Preservation Advisory Board Meeting



May 6, 2024

By electronic transmission

City of Oakland Landmarks Preservation Advisory Board
c/o Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Subject: Downtown Oakland Specific Plan (DOSP) and related zoning amendments—Item #1 on 5-6-24 LPAB agenda.

Dear LPAB members:

Oakland Heritage Alliance (OHA) has not yet completed its review of the latest versions of the DOSP and related zoning amendments so the following comments are preliminary and subject to modification. We have also been unable to complete our review and responses to the highly informative and well-thought-out staff report that responds in detail to our previous comments and which we were only able to access on May 4.

Most of the following comments are based on or follow up those submitted to the LPAB on August 28, 2022 and to the City Planning Commission (CPC) on November 6, 2019 (sent to you on May 3, 2024) but are more focused, reflecting recent changes to the Draft DOSP and zoning amendments. Here we made an effort to address only the most significant comments.

We thank staff for modifying the drafts to incorporate many of our previous comments, especially regarding the transferable development rights (TDR) provisions. But there are still some significant loose ends. The following primarily addresses these issues/loose ends.

- 1. We request a continuance of the May 6, 2024 LPAB DOSP consideration to either the next LPAB meeting on June 3, 2024 prior to the CPC's June 5 meeting or to a special meeting earlier than June 3.** The draft DOSP and related zoning changes have the potential to have the greatest impact on downtown Oakland's historic properties since the problematic 2009 upzonings. It is unlikely that one meeting will be sufficient for the LPAB to adequately review these extremely important documents, especially given their voluminousness. Since the CPC will be focusing on the DOSP in their May 15 meeting and the zoning changes on June 5, the LPAB could address the DOSP May 6, and the zoning changes on June 3 or a special meeting before that.

2. **The base intensities are probably too high for either the Zoning Incentive Program (ZIP) or Transferable Development Rights (TDR) program to incentivize developers to use them. There must be strategic downzoning, not just more upzonings.** The Specific Plan provides an opportunity to correct the mistakes of the 2009 rezoning. It provided excessive by-right height limits and FARs, which appear to have eliminated the need to induce developers to use TDRs, the ZIP, or other incentives to proceed with their projects. For example, much of downtown Oakland was provided with by-right 14.0, 17.0 and 20.0 FARs in the 2009 rezoning. Unfortunately, these heights are mostly retained in the Draft Specific Plan. This is especially disappointing given such statements in the 2016 Plan Alternatives Report as the following on page 4.7: “Rezone areas with unnecessarily excessive height limits to allow for more flexibility with density bonuses and other developer incentives”.

By comparison, the maximum by-right FAR in San Francisco, resulting from its 1985 Downtown Specific Plan, is 9.0, which can be increased up to 18.0 (higher at some locations, such as the Salesforce Tower) in exchange for TDRs and other community benefits. “Overzoning,” such as in downtown Oakland, tends to artificially inflate land values and creates more barriers to providing affordable housing and encourages owners to “land bank” their property while waiting for a major development project that will pay them top dollar. Ironically this can **discourage** development, rather than encourage it, as intended by overzoning. Land banking also tends to encourage a slumlord mentality, with building owners reluctant to spend money to properly maintain their buildings and refusing long-term leases that could include major tenant improvements. This discourages high-quality tenants.

See also a 2014 white paper on Public Benefit Zoning, prepared for the Association of Bay Area Governments, Metropolitan Transportation Commission and Eastbay Housing Organizations available at: http://ebho.org/wp-content/uploads/2011/09/LVR-White-Paper-ExecSum_141113.compressed.pdf

Page 266 of the Draft DOSP acknowledges this challenge by stating:

Because of the generous zoning allowances that already exist for most areas downtown, there are limited areas where a Transfer of Development Rights (TDR) program might be effective. Most of the areas that would be candidates for a TDR program are also being considered for the development incentive program. Further analysis will determine how the two programs can work in coordination and avoid undermining the other’s intent.

The solution is: DO NOT OVERZONE!

We appreciate the staff report’s responses to the above concerns. See attachment 1 for replies to these and other staff responses to O HA concerns.

3. Transferable Development Rights. (TDR).

We would again like to thank staff for incorporating much of the San Francisco's TDR program into the similar proposed Oakland program. However, there are still some details that need to be addressed:

- a. There appear to be typos and/or misplaced words at the bottom of page 30 of the zoning amendments that significantly impact the meaning of the section. Here is a redline showing what we believe to be the correct version, which is the version we have been recommending:

G. Characteristics of the sending and receiving sites.

1. *Both the receiving and sending sites must be within a D-DT Zone.*
2. *The sending site must be: 1) either a Designated Historic Property (DHP); ~~rated "A" or "B" by the Office of Cultural Heritage Survey~~; or 2) any Potentially Designated Historic Property (PDHP) either rated "A" or "B" by the Office of the Cultural Heritage Survey or that contributes to an Area of Secondary Importance (ASI) or Area of Primary Importance (API).*

- b. We are concerned that limiting the TDR receiving sites to those within the ZIP area will provide insufficient TDR demand for the program to succeed. One alternative would cap the amount of TDR per eligible site outside of the ZIP, similar to San Francisco's approach. That alternative allows FAR up to 9.0 without TDR and up to 18.0 with TDR. Staff has been very accommodating in working out these kinds of details. We hope that staff will continue to work with us on these remaining issues.
- c. As noted in the staff report, the DOSP zoning amendments do not include some detailed procedural provisions from the San Francisco program, and proposes that these provisions be included in an administrative document that would be separate from the zoning text. These provisions address such topics as: (1) documentation that the planning department has issued a certificate verifying how many TDRs a property has a right to (Section 128(e)(1), etc.); and (2) a notice of restriction stating that the transfer of TDRs from the sending site permanently reduces the development potential of the site by the amount of TDRs transferred. (Section 128 (g)(4)(A)(iii)). Staff should ask the City Attorney how to handle this if staff has not already done so.

If the revisions will be memorialized in an administrative document, there should be a reference to the document in the zoning text. The administrative document should also be included at least in the final package provided to the City Council. In that way the administrative document can be effective immediately after the TDR program becomes effective. If the administrative document is not available at that time, it may get put on the back burner and forgotten. That could lead to

problems and delay when the first TDR requests are submitted. Staff will then have to scramble to prepare all of the documents to be executed by the TDR applicant. If this happens, important provisions could fall through the cracks. Applicants may become discouraged by the program, since all of the documents they must execute are not immediately available. The San Francisco Planning Code TDR provisions are attached for your reference.

- d. If staff has not already done so, we recommend that they talk to Fortress Real Estate Advisors in San Francisco to get their review of the proposed Oakland TDR program, especially regarding limiting the use of TDR on receiving sites to 50% of the additional intensity allowed by the ZIP and the design review requirement. Fortress has acted as a TDR broker in San Francisco and has played a key role in the success of the San Francisco program.

4. Maximum intensity map for projects not participating in the ZIP.

- a. **Do not increase height/FAR limits for APIs and ASIs.** These limits should either stay as-is or be reduced, such as: (i) on 15th Street between Broadway and Harrison, and 17th Street between Franklin and Harrison; (ii) the Victorian residential neighborhoods on 22nd Street (Telegraph-MLK), 18th Street (Jefferson-MLK) and MLK (7th-11th Streets); (iii) the produce market; and (iv) much of the Lake Merritt residential area (“Gold Coast”) bounded by 14th, Harrison and the Lake. These height/FAR increases could threaten API/ASI contributors with demolition or adverse alteration and promote intrusive new development. See attached photos of at-risk buildings within APIs/ASIs and examples of intrusive new development.
- b. **Reduce existing height/FAR limits in some APIs/ASIs,** such as Old Oakland and portions of the Downtown Oakland National Register District that were inappropriately upzoned in 2009. OHA’s specific recommendations for these reductions are shown on the attached 11-6-19 height map.

See Attachment 1 for further discussion.

5. Maximum intensity map for ZIP areas.

- a. **Delete APIs/ASIs and freestanding PDHPs such as the following from the ZIP area map:** Telegraph Avenue north of 23rd Street, the First Christian Science Church and Wakefield Building at the northwest corner of 17th and Franklin and the Downtown National Register District.
- b. **Expand the ZIP area to include and/or upzone portions of the areas bounded by Franklin, 14th, 19th and Harrison and west of Telegraph.** The ZIP expansion and/or zoning would offset downzoning elsewhere to satisfy SB

330/SB8 as discussed in Comment 4b above. See Attachment 1 for further discussion.

6. We greatly appreciate staff's thorough and conscientious responses to the comments in our 8/28/22 letter. Our replies to some of those responses are in Attachment 1. Some of the replies only involve correction of what we believe are errors and ambiguities. These simply need to be clarified. We hope to resolve these points through follow up discussions with staff.

We have replies to some of the other responses, but do not have enough time before the May 6 meeting to provide them in the attachment.

7. We are very pleased with the EIR mitigation measures listed on pages 27–30 of the staff report, especially those promoting use of the California Historical Building Code and facilitating relocation of buildings that would otherwise be demolished. Implementation of some of these is subject to “when funding becomes available” and using vague words such as “encourage,” “consider,” and so on. Can the EIR and/or DOSP establish a DOSP Implementation Committee consisting of staff and interested outside stakeholders to help ensure that these initiatives are seriously pursued so they aren't eventually forgotten?

Thank you for the opportunity to comment. Please contact Christopher Buckley at (510) 523–0411 or cbuckleyaicp@att.net or Naomi Schiff at (510) 835–1819 or Naomi@17th.com if you would like to discuss these comments.

Sincerely,

Daniel Levy
President

Attachments:

1. Selected OHA replies to 5/6/24 staff report responses to OHA 8/28/2 comments
2. San Francisco Planning Code TDR provisions
3. 11/6/19 OHA recommended height map

By electronic transmission:

cc: Planning Commissioners Shirazi, Sugrue, Renk, Ahrens, Randolph, Sandoval,
William Gilchrist, Ed Manasse, Laura Kaminski, Joanna Winter, DOSP staff and
consultants, Catherine Payne, Heather Klein, Neil Gray, Pete Vollmann, Betty Marvin,
Aaron Lehmer, Bureau of Planning/Zoning
Councilmember Carroll Fife, District 3
Councilmembers Kaplan, Kalb, Fortunato-Bas, Gallo, Jenkins, Ramachandran, Reid

Attachment 1: Selected OHA Replies to 5-6-24 Staff Report Responses to OHA 8-28-22

DOSP Letter

May 6, 2024

The OHA responses are shown in red italics.

Fire Alarm Building (FAB)

The original proposal to increase the FAB height limit from 55' to 90' has been revised down to 65'. The 65' height would allow redevelopment of the site, potentially as a Jazz Museum or as an expansion of the Main Library. This height is consistent with the permitted height for the neighboring Oakland Museum of California, Oakland Public Library, County Courthouse, and the adjacent BAMBD along 14th Street. Additionally, the City owns the land and will have control over design review of this site. This site is not currently under consideration for market-rate housing, as some commentators have feared; it is in the early stages of review to be used for public purposes, as desired by the City and community members.

We are confused by this. We believe that the original proposal was a base height of 45' rather than 55' with 90' using the ZIP. Reduction of the proposed increase to 65' and taking the site out of the ZIP area as discussed by staff below is appreciated, but the OHA recommendation was to retain the 45' height limit. (Although not directly related to the zoning amendments, we should note that the Fire Alarm Building is a PDHP, which should be retained intact as part of the proposed Jazz Museum or any other project, even if additions are made on site. The Jazz Museum renderings that we have seen appear to show a retention of only a small part of the building.) The Fire Alarm Building site height limit should be lower than the Lakeside/Gold Coast neighborhood, since the site partially functions as open space and as a transition from the library and courthouse to Lakeside Park.

Lakeside/Gold Coast Area

The original proposal to increase the height limit from the existing 55' limit to 90' has been revised down to 65' due to concerns about an appearance of a solid wall of buildings along Lake Merritt blocking views of downtown. Although many of the existing lakefront buildings are already taller than 65', this reduced height limit will allow for desired infill that is consistent with many of the area's existing beautiful 4- to 6- story multifamily residential buildings.

Staff does not recommend lowering the interior of the residential area, which is at HIA 6 (65') and includes many existing beautiful 4- to 6-story multifamily residential buildings.

Thank you, but we continue to recommend the existing 55'. The existing 55' height limit allows new residential development height that could be 85' or more with a state density bonus. We appreciate staff's proposed reduction of the new maximum height from 90' to 65', but increasing the height to 65' exacerbates the density bonus scenario. And yes there are two or three attractive older buildings with height

Targeted Height Reductions to Protect Historic Character

- 17th Street between Franklin and Harrison: Reducing the northeast half of the block between Broadway and Franklin (office building at 426 17th St. and church at 1701 Franklin) from HIA 18 (No Limit) to HIA 6 (65').

Thank you for this height reduction, but 426 17th St. and 1701 Franklin St. are on 17th St. between Broadway and Franklin, not between Franklin and Harrison. In addition, the height reductions are not reflected in the intensity maps. Regarding the portion of 17th St. that is actually between Franklin and Harrison, the existing 55 foot height limit is proposed to be increased to 65 feet. The 55 foot height limit should be retained. The existing 55' height limit should be retained. Regarding 17th St., between Franklin and Webster Street, this is one of downtown Oakland's most admired groupings of two and three story early 20th century commercial buildings. See attached photo. The existing 55 foot height limit should be retained, but is proposed to be increased to 65 feet to allow space for a 1 to 2 story vertical additions. The existing buildings are about 50 feet in height maximum. We don't understand why vertical additions that could disrupt downtown Oakland's relatively limited number of well-integrated architectural ensembles are considered desirable along with disruptive, significantly taller new buildings. These especially well-integrated ensembles are among Downtown Oakland's most important urban design assets. There are vast portions of the DOSP area outside APIs/ASIs that lack these ensembles and where substantially larger and taller buildings would not have adverse urban design impacts.

~~15th Street between Broadway and Harrison:~~ Heights are already proposed to be reduced from the existing "No Limit" to HIA 10 (90') to be consistent with the other buildings along 15th Street. *This area and other portions of the Downtown National Register District along with APIs/ASIs and freestanding PDHPs should not be included in the ZIP area. As we have noted elsewhere, the ZIP area can be expanded elsewhere to compensate.*

The existing height limit between Franklin and Harrison Streets is 85' rather than unlimited. Existing buildings are 35' or lower, except for the former YWCA which is about 65'. OHA's concern regarding 15th St. is limited to the portion between Broadway and Webster Street plus the south side of 15th Street between Webster and Harrison, where the White

Building and Coit Hotel are located. We therefore continue to recommend that the height limit for these frontages be 55', except for the Coit hotel and adjacent vacant parcel where the existing 85' height limit appropriately reflects the height of the hotel.

- Victorian residential neighborhood on 22nd St. (Telegraph-MLK): Changing HIA 6 (65') to HIA 5 (55') where there is a consistent height context in the Area of Primary Importance (API) on the south side of 22nd and the north side near MLK. Staff does not recommend reducing the remainder of the block. The HIA 10 (90') area is auto garage and postal facility that should be redeveloped; it is not part of an API. *Although staff advises that the 65 foot height area will be changed to 55 feet and which is appreciated, this is not reflected on the intensity maps. Moreover, 55' is the existing height limit and it is already excessive and allows new residential development height that could be 85' or more with a state density bonus. See the out of scale new building at 570-602 21st Street/585 22nd Street, which is a major disruption to the Cathedral Neighborhood API and shown in the attached photo. Buildings that are even more massive and disruptive can be developed using the state density bonus law.*

As stated elsewhere, the maximum height in APIs/ASIs should be no greater than the predominant maximum height of contributing buildings, which for 22nd St. are wall heights of about 30' and roof heights of about 40'. We therefore continue to recommend 30'/40' here as well as in the similar areas discussed below.

Although technically not part of the API, these locations are at the center of the API. Overscaled new buildings on these sites will be an integral part of the 22nd Street streetscape and will significantly disrupt the API.

- Produce Market: Removing two already-developed parcels from the boundary and then revising the height proposal for this area from HIA 5 (55', FAR 3.5) to HIA 3 (45', FAR 2.5), which includes modest change from the existing FAR 1.0 to allow building owners to add second story additions that might help improve the economic viability of maintaining the market buildings; adding design standards for the Produce Market to include a step-back for upper floor additions. *Thank you for the reduction, but a doubling of the existing FAR is not "modest", especially with a 45' height limit that is about triple the existing predominant building heights. If the intent is to allow second-story additions, why is 45' even proposed, when 25' should be sufficient? Providing the increase as a 15-20 foot stepback is a good strategy, but we can't find it in the actual zoning amendments.*

The following OHA recommendations were considered and not adopted:

Maintain or Reduce Heights/FARs in APIs and ASIs:

- Old Oakland API: Staff does not recommend lowering the existing HIA 5 (55') in the interior of the district or the HIA 6 (65') along 7th St., which allows minor height increases to existing buildings and also allows for the redevelopment of a vacant parking lot. In addition, if heights were lowered, buildings in the area would be less likely to be able to take advantage of the TDR program. *The existing contributing buildings in Old Oakland are all about 45' or less, so the existing 55' height limit (which resulted from the misguided 2009 upzoning) is already too high. Being a full story higher than the tallest contributing buildings it is hardly a "minor" increase. The height limit should reflect the predominant maximum height of existing contributing buildings. Again, the interplay with density bonus projects needs to be considered.*

And yes, the TDR program is intended for historic buildings that are less than the by-right height, but height limits in APIs/ASIs should not be purposely set above the maximum prevailing height of contributing buildings just to generate TDR opportunities for historic buildings. Instead, the prevailing maximum height of contributing buildings should be the major factor in determining the height limit in APIs/ASIs. The height limit itself should be considered the major preservation tool, with TDR as a backstop for buildings that are below the prevailing height of contributing buildings, and therefore below the height limit, even if lower by only one or two stories. But for freestanding DHPs and PDHPs, TDR should be considered the primary preservation tool.

- Downtown Oakland National Register District: Staff does not recommend changes to the urban core of Downtown Oakland. Served by BART and extensive bus connections; there is no character-defining height context, and it is one of the most appropriate locations in the city for high rise, dense development. Heights in the draft amendments are reduced from the highest heights in the areas to the west, north and east of Frank H. Ogawa Plaza. Staff does propose to reduce the height of the property adjacent to City Hall to 95' to maintain the architectural significance and primacy of City Hall. *Thank you for the height reduction to 95'*

The downtown urban core consists of subareas, including the historic core defined by the Downtown National Register District as well as other subareas such as around Kaiser Center. The maximum building height should be customized for consistency with the desired future development character of each subarea. In the case of the Downtown National Register District and other APIs/ASIs, the future development character should retain the architectural predominance of the contributing buildings, especially in APIs as important as the National Register District. Increasing the allowed height beyond the predominant maximum height of

contributing buildings invites taller intrusive new buildings that can visually overwhelm the contributing buildings and disrupt or destroy the sense of time and place and the architectural consistency that currently exists. The OHA-recommended height limit range of 35' to 150' within the National Register District seeks to reflect the predominant height of contributing buildings within the various portions of the District.

- Increase by-right intensity in some areas & reduce base intensities in other areas: OHA's recommendation is intended to achieve "no net loss" under SB 330, however the locations proposed are not appropriate for lower intensity. These reductions would remove a large section of the most potentially incentivizing areas from the ability to participate in the ZIP, hampering the viability of the ZIP to provide meaningful benefits to the community. The changes would also limit development intensity exactly where it is needed most to meet the City's sustainability, housing and employment goals; within the most transit and service-rich area of the City.

Increase intensity in the following areas to allow decreasing it elsewhere:

- The area roughly bounded by Lake Merritt, Grand Avenue, 20th St. and Broadway
- Much of the area bounded by 14th, 11th, Jefferson and Broadway

This proposal from OHA was intended to increase by-right intensity in some locations to reduce base intensities in other areas to achieve "no net loss" under SB 330, but still be able to require developers to "buy back" their capacity to develop to the same level allowed under current zoning. However, the locations are not appropriate for lower intensity than originally proposed for two reasons: 1) The proposed increases to the base zoning would remove a large section of the most potentially incentivizing areas (i.e. able to add intensity while maintaining the same building type) from the ability to participate in the ZIP, seriously hampering the viability of the ZIP to be able to provide meaningful benefits to the community; and 2) The proposed decreases would also limit intensity of development in exactly where it is needed most to meet the City's environmental sustainability, housing and employment goals, by limiting development in the most transit-rich and service-rich area of the City. This would be inconsistent with Oakland's Equitable Climate Action Plan ("ECAP"), Oakland's Housing Element and State Housing Laws and policy.

There has been a miscommunication on this. The two listed areas are already appropriately in the ZIP. Additional areas that we recommended for upzoning and/or included in the ZIP are: those bounded by Franklin, 14th, 19th and Harrison and much of the area west of Telegraph and north of 17th.

Comment Letters
Received Prior to
the May 15th
Planning
Commission
Meeting



East Bay Housing Organizations

VIA E-MAIL

November 8, 2019

Oakland City Planning Staff
250 Frank H Ogawa Plaza, 3rd Floor
Oakland, CA 94612

RE: Comments on Draft DOSP.

Dear City Planning Staff:

I am writing on behalf of East Bay Housing Organizations. EBHO is a member-driven organization working to preserve, protect, and create affordable housing opportunities for low-income communities in the East Bay by educating, advocating, organizing, and building coalitions.

Thank you for the opportunity to comment on the Downtown Oakland Specific Plan's (DOSP) Draft Plan and DEIR. These comments restate and supplement comments we have made verbally at various stakeholder meetings and public hearings, and as part of the letter from the Downtown Oakland Specific Plan Working Group that was submitted on November 5, 2019.

EBHO supports more intensive development in downtown Oakland, particularly close to transit, in a way that promotes sustainability, inclusion and equity, and that moves us into the future while protecting existing residents from displacement.

We want to thank City staff for the work they have put into the development of this plan, including the numerous community forums, stakeholder meetings, and other efforts to solicit public input as the plan is being developed. We particularly support the focus on racial and economic equity, the disparity analyses that have been done, and the substantial amounts of data that have been collected and presented in the various plan-related documents that have been published to date. The City should be commended for these efforts.

As the same time, we have a number of concerns about this draft, and hope that these comments will be useful to the City as it moves forward with development of the Final Plan, expected to be published in 2020. Regrettably, many of these comments have been made previously, particularly in regard to the Preliminary Draft Plan, but have not been incorporated into the Draft Plan.

General Comments

- 1. The Plan needs to address equity issues and close the disparities, not just analyze them.** The Plan contains a lot of very useful introductory material and framing that among other things focuses specifically on racial and economic disparities. However, the Plan itself, particularly the affordable housing strategies and policies, falls short of providing concrete equity solutions. Consistently throughout this process, the community has repeatedly cited issues of housing affordability, displacement of existing residents and businesses, and homelessness as some of the most urgent concerns they want the plan to address. And as the Plan notes, these issues in particular have a very clear racial disparity dimension to them. Without specific, concrete strategies and policies to address those issues, the Plan will not accomplish its stated goals to advance racial and economic equity. **We strongly recommend that each chapter explicitly address and demonstrate how the implementation actions will close racial disparities. We further recommend that the City prepare an equity assessment that formally analyzes whether the Plan's actions will in fact accomplish its stated objectives.**
- 2. A primary concern is that the Plan goals for affordable housing are far too low.** As noted in the Plan documents themselves, currently, 20% - 25% of the housing in downtown is deed-restricted affordable housing for very low and low income households. The plan presents a range of goals, from 15% to 25% of new development, for future affordable housing construction. This will result in a reduction in the percentage of downtown housing that is affordable. Coupled with vacancy decontrol requirements in rent control and the threat of loss of housing from condo conversion, demolition, and other causes, this will result in less diversity downtown, not more. And because there is a disparate impact on people of color, seniors, people with disabilities and other protected classes, it raises significant concerns about fair housing and the potential for exclusion rather than inclusion. This is inconsistent with the City's stated vision for a diverse downtown and a Plan that is informed by issues of racial and economic equity.

In addition, these goals fall far short of what the City needs to do to meet its Regional Housing Needs Allocation targets by income level. As noted in the City's Housing Element, the RHNA numbers for the 2015-23 Planning Period allocate 28% of the City's housing need to the very low and low income categories, and an additional 19% to moderate income. A housing production target of 15%-25% falls short of this ratio, which is of particular concern given the current imbalance in what has been permitted to date (see comment below under "Measures of Success"). The Plan should help advance the Housing Element's goals.

3. **Prioritizing housing affordability is all the more critical because the City has failed to meet its RHNA needs for very low, low and moderate income housing but has greatly exceeded its need for above moderate income housing.** Since 2015, the City's building permit activity has yielded more than 92% above-moderate income housing units (not affordable to the vast majority of the City's existing renters and first-time homebuyers) and less than 8% affordable units. The "housing balance" is even worse in the downtown area.
4. **The Housing section needs to be specific and concrete.** We need something more than just an inventory of existing programs and policies. Language like "explore" and "consider" are not a plan – they are what is supposed to happen in the course of developing the plan. As the City develops the Draft Plan and in particular the implementation section, specific policies, strategies and potential resources should be identified and the City should commit to pursue those to the maximum extent possible. We believe the Plan should set ambitious targets that more closely align with actual needs, calculate the gap in resources and policies needed to achieve those targets, and then lay out a plan to fill those gaps. A simple continuation of existing policies will not achieve this, since to date existing policies have yielded only 8% affordable housing compared to 92% higher end market-rate housing.
5. **The Plan must incorporate the principle of value capture.** Public actions such as upzoning and more liberal development standards, as well as investments in infrastructure and transportation, create a significant increment to land value that is captured by private land owners through no efforts of their own. A portion of this publicly created value needs to be recaptured in the form of public benefits, including affordable housing.

This is all the more critical since in the past the City has failed to do so, particularly in the downtown, where height and FARs were increased substantially and parking requirement were reduced or eliminated, without any requirement for inclusion of affordable units or other community benefits. Given the severity of the housing crisis and the strength of the development environment for market-rate housing that is unaffordable to the vast majority of existing renters and first-time homebuyers, the City can no longer afford to give away publicly created value to land owners.

As many commenters and Planning Commissioners have noted, the pending Zoning Incentives Study is critical to the final Plan and how it is implemented. **While we appreciate that the study will be considered by the Zoning Update Committee, we think it is essential that this discussion take place with the entire Planning Commission, and that it focus not only on the study itself, but on how to include a zoning incentive plan into the Final Plan.**

6. **To make bonuses and incentives effective tools, the City should seriously assess the extent to which current zoning does or does not encourage the use of density bonus.** If existing zoning already permits more density or height than the market will support, then density bonuses will not be sought. Similarly, if increasing density would require switching construction techniques from wood frame to more expensive steel and concrete, then density bonuses will not be workable. The City should look strategically at different areas of the downtown and see where a recalibration of base zoning would incentivize the use of density bonuses that would provide affordable housing and yield development at the desired intensities. Alternatively, the City could maintain existing zoning but require a Conditional Use Permit that allows building to the maximum intensity only when affordable housing and other benefits are provided.

While we appreciate that the City is currently conducting a Zoning Incentives Study, In the context of a zoning incentive program, it is not sufficient to examine how increasing intensity from current by-right levels can be structured. The study needs to examine where the “sweet spots” are for zoning incentives, and whether the existing base zoning lends itself to an effective incentive program, or whether it needs to be recalibrated.

We have heard concerns that such downzoning is not legal. We disagree. It is a long and well established principle in case law that downzoning is not in itself an illegal taking, provided such action does not result in a loss of substantially all economically viable uses. Recently enacted legislation – Senate Bill 330 – provides restrictions on downzoning, but only where such downzoning is not offset but upzoning. In the context of the DOSP, which will create a substantial net increase in development intensity, targeted downzoning in specific places will not violate SB 330.

We also want to clarify the points that we have been making repeatedly over the past three years. EBHO advocates consideration of “strategic downzoning” in order to enhance the economic feasibility of an incentive program. This is entirely different from a general call for downzoning, often for exclusionary purposes, which we do not support. Our goal is to encourage more intensive development in the downtown, but to do so in a way that allows for provision of public benefits.

It is essential that these issues be given a full hearing before the entire Planning Commission prior to development of the Final Plan, and not just the Zoning Update Committee. The Final Plan must include a concrete zoning incentives program and not just assurances that such a program may be adopted in the future.

7. **Prevention of displacement needs to extend to preservation of cultural assets and small, locally owned businesses, particularly those rooted in communities of color.**

The loss of these uses also acts to catalyze displacement of residents as the amenities and services they rely on are lost to more expensive retail and entertainment uses that are out of reach to existing residents. Prevention of displacement needs to focus not just on individual households but on vulnerable communities as well.

8. **The Plan contains almost no actions to address current homelessness or prevent further homelessness from taking place.** The issue of homelessness in the downtown has been raised in numerous public forums and comments throughout the development of the plan, and is one of the major concerns cited. The chapter on Housing and Affordability must include strategies and policies to address this issue. We recommend the addition of a fourth outcome and set of supportive policies that are explicitly focused on better assistance for the current unhoused population – including strategies that provide permanent housing and not just temporary or transitional housing – and measures to prevent further homelessness.
9. **Given the inadequacy of the affordable housing strategy and the disproportionate amount of higher-end market-rate housing called for in the plan, there is a significant likelihood of an increase in displacement and homelessness resulting from the Plan. Neither the Draft Plan nor the DEIR adequately address this.** The policies listed on pages 588-589 of the DEIR are not adequate nor sufficiently concrete to prevent or mitigate displacement. Many of those policies are simply continuations of existing citywide policies that have demonstrably failed to halt the tide of displacement in Oakland. Others are aspirational without specific funding sources identified. Given the low percentages of housing for very low and low income that are called for in the Plan, new development cannot be seen as adequately preventing displacement or providing sufficient replacement housing for households that may be displaced.

Comments on Specific Policies and Actions (Plan pages 90–93)

H-1.2: This policy should more explicitly reference policies already established by the City Council with respect to surplus public land. **Specifically, this policy should read “Leverage the city’s inventory of publicly-owned land by adopting an ordinance to implement the policies in the City’s adopted public land policy, Resolution Number 87483 C.M.S. adopted on December 11, 2018.**

H-1.5: **We support increasing the jobs–linkage fee**, including consideration of expanding the fee to cover other non-residential uses not currently covered.

H-1.6: This policy should refer to **creation of multiple new revenue streams** dedicated to supporting construction and preservation of affordable housing. While EIFDs are one such

approach, it is not the only one. We support the use of a range of value-capture approaches, and these should be called out in addition to EIFDs.

H-1.7: We are not in agreement with the proposed target breakdown of new affordable units by income category. See comments below under Measures of Success.

H-1.12: We support studying an inclusionary housing policy as an addition to rather than a replacement for the existing impact fee. However, If the City is considering replacing the impact fee with an inclusionary zoning requirement, it must ensure that **any inclusionary requirement produce the same number of units, and at the same depth of affordability as the fee would yield.** If an inclusionary requirement is adopted, the City should provide enough flexibility to allow this to be met not just by affordable units within a market-rate building, but also through subdividing larger parcels to permit adjacent market-rate and 100% affordable projects, and allowing the affordable units to be built on adjacent or nearby parcels.

H-2.3: We strongly support expediting the review and approval of 100% affordable projects. The City has on numerous occasions committed to such action but in practice this has not always been the case. We recommend adopting provisions for ministerial approval of affordable housing projects that conform to current zoning (including any density bonuses provided). At a minimum, this should include adoption of procedures and training of staff on the applicability of SB 35 streamlining and other State laws, but we urge the City to consider streamlining measures that go beyond basic State requirements.

H-2.4: We are opposed to replacement of the current condominium conversion ordinance that would change its basic purpose. The condominium conversion ordinance was not adopted to provide enhanced opportunities for homeownership. It is intended to protect the city's rental housing stock from being diminished. Revisions to the condominium conversion ordinance must continue its basic objective, to ensure that there is no net loss of rental housing as a result of conversions.

As Planning staff are aware, we have been working for several years on changes to the condominium ordinance that would extend coverage to 2-4 unit buildings, strengthen the requirements for "conversion rights" to ensure that genuine replacement units are added to the rental housing supply before conversions can take place, provide for better noticing, and ensure that tenants get adequate relocation assistance and priority for the replacement units. Planning staff has been consulted on this language and we are surprised to see a different proposal here. This language should be deleted and replaced with language that is consistent with the efforts already underway.

Note that amendments to the condo ordinance are scheduled to be heard by the City Council prior to Plan adoption, so this action may not be needed in the Final Plan.

H-2.9: Provision of supportive services is important for affordable housing and critical for SROs and housing targeted to people with special needs. This Policy needs to be more specific. **The City should pro-actively work with Alameda County and other entities to provide multi-year funding for services.** Currently most services are funded only annually even though the housing is restricted to these populations for at least 55 years. This poses particular challenges for SROs and other special needs housing.

H-2.10: The City's affordable housing regulatory agreements already require prioritization of units for people who were displaced by "no-fault" evictions. **The City should consider expanding the definition of displacement to include persons who were forced to move due to an unaffordable rent increase or series of rent increases** (with appropriate documentation).

H-2.14: We strongly support measures to ensure that housing meets, at a minimum, basic habitability standards. At the same time, **any pro-active inspections and enforcement must include provisions to protect residents from both direct displacement due to the rehabilitation work needed and economic displacement from the pass-through of the costs of that work** in the form of higher rents that may be unaffordable to low income tenants.

Measures of Success (pages 94 and 95)

1. A target of 15% to 25% affordable housing will result in a reduction of the percentage of housing affordable to lower income households in the downtown area. This is likely to reduce the percentage of persons of color in the downtown and contradicts the stated goals.

We are not in favor of using relative RHNA proportions to target affordability levels when the RHNA proportions for above-moderate versus other categories are being ignored. The RHNA itself calls for 47% of new housing to be affordable to moderate income and below, while the Plan calls for a goal of 15%–25%. Even at 25% "affordable", the result would be as follows:

Income Level	RHNA	Draft Plan
Above Moderate	53%	75%
Moderate	19%	10%
Low	14%	7.5%
Very Low	7%	3.75%
Extremely Low	7%	3.75%

If the overall targets for affordable housing cannot match the RHNA, affordable housing targets must prioritize those with the most pressing needs— households with lowest incomes.

2. The measure of success for cost burden should be disaggregated by income level. Replacing low income households with above-moderate income households may result in lower average cost burden across all income levels as a whole, but it will not reduce cost burden for those households who are currently cost-burdened or severely cost-burdened, as those are concentrated in the very low and extremely low income categories in particular. We need to see measures of cost burden by both race and income level.

Additional Comments

The Plan currently contains no controls to prevent the demolition of existing rental housing to make way for new development. The DEIR's assertion on page 587 that any housing units that might be demolished to make way for new development would be replaced by a greater number of units fails to take into account that the new units will be far more expensive than the units being lost, and thus would not mitigate the loss of existing and more affordable housing. **The City should either prohibit development on sites that currently have rental housing units or did so within the past 10 years, or condition approval of such projects on provision of full 1-for-1 replacement with units comparable in size and affordability.**

The City needs to incorporate the impacts of climate change, including but not limited to sea level rise. For example, while the Plan includes discussion of sea level rise as a Community Health concern, dealing with sea level rise is not integrated into the land use plan. The map on page 237 of the Draft Plan indicates significant inundation projected for the Jack London and Victory Court areas. Despite this risk, the land use plan targets significant new development, including residential development, in these areas. Without specific mitigation measures identified, it makes no sense to call for intensive development in areas that are known to be at risk.

In addition, the **City must consider the impact of climate change on existing and planned infrastructure**, including streets, sewage treatment plants, and storm water management, when assessing the ability of that infrastructure to support new development. If these systems are impacted by climate change, then the capacity to support new development will be significantly reduced.

We appreciate the opportunity to comment and the City's efforts to solicit community comment and input. We hope that this will be followed by a meaningful discussion of how these comments can be incorporated into the Plan. **We urge staff to return to the Planning Commission prior to completion of the Final Plan with a summary of comments received and staff responses to those comments.**

We look forward to a robust community engagement process as the Final Plan is developed.

Sincerely,



Jeffrey P. Levin
Policy Director

cc: Oakland City Planning Commissioners



East Bay Housing Organizations

May 14, 2024

By electronic transmission

City of Oakland Planning Commission
c/o Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

RE: Downtown Oakland Specific Plan (DOSP), Item #1 on 5-15-24 Planning Commission agenda.

Dear Chair Shirazi and Planning Commissioners:

I am writing on behalf of East Bay Housing Organizations. EBHO is a nonprofit, membership-based organization working to produce, preserve and protect affordable housing opportunities for low-income communities throughout the East Bay. First founded in 1984, EBHO has grown to 400+ individual and organizational members fighting for an economically and racially just world where everyone has a safe, stable, and affordable home.

Thank you for the opportunity to comment on the Final Draft of the Downtown Oakland Specific Plan. These comments focus only on the Plan itself; we will submit separate comments on the zoning amendments, and particularly the Zoning Incentive Program, in advance of your June 5 meeting when those items will be considered.

For more than eight years, EBHO has been deeply involved in the preparation of this latest specific plan, having attended numerous meetings, commented on multiple drafts and preliminary documents, and been an active member of the Community Advisory Group (CAG).

We want to thank City staff for the work they have put into the development of this plan, including the numerous community forums, stakeholder meetings, and other efforts to solicit public input as the plan is being developed. We particularly support the focus on racial and economic equity, the disparity analyses that have been done, and the substantial amounts of data that have been collected and presented in the various plan-related documents that have been published to date. The City should be commended for these efforts.

EBHO supports more intensive development in downtown Oakland, particularly close to transit, in a way that promotes sustainability, inclusion and equity, and that moves us into the future while protecting existing residents from displacement. The Plan aspires to these goals, and we want to see the City succeed in making this vision a reality.

At the same time, we have a number of concerns about the Final Draft Plan, and hope that these comments will be useful to the City as it moves forward toward adoption and implementation. Regrettably, many of these comments are unchanged from those we submitted in November 2019 in response to the Public Review Draft Plan, and we find that most of our comments were not incorporated into this latest version. A copy of our 2019 comments is attached for your reference, particularly as there have been many changes to the Commission's makeup and only one Commissioner remains from when those comments were first submitted.

General Comments

Equity and Affirmatively Furthering Fair Housing

Since the inception of the planning process, the approach to the Plan was restructured to explicitly include a racial equity framework, which we fully support. However, in important ways we think the Plan still falls short of the mark, at least with respect to policies and programs regarding housing. The City has prepared an excellent disparity study describing existing inequities such as racial disparities in tenure, housing cost burden, displacement, and homelessness. And it has solicited a large amount of community input including outreach to communities and populations whose voices have often been marginalized in past planning processes. The City is to be commended for this extensive effort. **But it is not clear to what extent analytical work has translated into a concrete plan of action, with goals, policies and programs that will demonstratively reduce disparities and remove institutional and structural barriers to equitable outcomes.**

The Plan states:

“An Equity Framework describes the Plan’s overarching equity goal, the key disparities the Plan addresses, and how the Plan will be used to advance equitable outcomes.”
(p. 11).

In many respects the Plan appears to confuse metrics/indicators for assessing equity impacts (or more specifically, measuring continuing disparities), versus concrete actions that explicitly and intentionally eliminate disparities and structural inequities. **The Plan needs to demonstrate how each policy will reduce or eliminate identified racial disparities and patterns of segregation. This is all the more true when most of the housing policies are either a restatement of existing policies and programs, which to date have not eliminated these disparities, or are aspirations to further study and possibly implement some kind of policy in the future.**

AB 686, passed by the California Legislature and signed into law in 2018, explicitly requires all cities to Affirmatively Further Fair Housing, not just in their Housing Elements, but in all of a city's housing and community development activities and programs:

"Affirmatively furthering fair housing" means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development." [emphasis added]

To the extent that the housing actions in the DOSP fall short of specific actions that demonstratively will reduce and eliminate racial disparities by addressing the historic, systemic, and institutional factors that give rise to these disparities, the DOSP fails to fully comply with the requirement to Affirmatively Further Fair Housing.

The Plan's housing strategy demonstrates a great deal of intentionality, but not necessarily a firm commitment to specific actions. As we have commented before and note below, **a substantial number of the housing policies are in fact little more than recommendations that the City "study," "evaluate," or "consider" new policies and programs.** We raised concerns about this in our comments on the Public Review Draft, and similar comments regarding the public review draft of the recently adopted Housing Element were made by public commenters and the State Department of Housing and Community Development. We are greatly discouraged to see that language here, particularly after 8 years of planning efforts during which the recommended studies, evaluations, and considerations could actually have taken place so that new programs could be included and launched concurrently with Plan adoption.

Measures of Success

Housing Production Goals

The principal housing affordability goal stated in the Plan is that 15% to 25% of all new housing should be affordable housing. It does not clearly state what is meant by affordable housing. Sometimes this term can refer specifically to extremely low, very low-, and low-income households. Other times it includes moderate income households, for whom rental

housing affordability is much less of a problem, but who do face significant barriers to attaining homeownership and who require a distinct set of housing strategies from low-income renters.

Our principal objection has been, and continues to be, that this goal is far too low and would result in continuing and worsening disparities. The City's Regional Housing Need Allocation (RHNA) for the current housing element cycle (2023-31) is as follows:

Very Low	25%
Low	14%
Moderate	17%
Above Moderate	44%

By comparison, the Plan would target 75% - 85% of new housing to above moderate-income households. **It does not aspire to match the RHNA, and in fact would continue the longstanding imbalance between market-rate production and affordable housing production.**

Moreover, the Plan does not set specific performance goals for production for extremely low, very low-, and low-income housing. There is an extended discussion of past performance in the award of City housing funds, including the City's past success in funding deeply affordable housing for extremely low-income households and permanent supportive housing, but there are no forward-looking goals. The Public Review Draft did provide goals for how affordable housing should be allocated among different economic levels. We found the methodology for doing so to be deeply flawed and commented as such, rather than correcting this methodology, the Final Draft simply omits any discussion of goals for each income level. **Since people of color, and Black people in particular, are disproportionately represented among the lowest income tiers and consequently have disproportionately high rates of housing cost burden and insecurity, there is a need for the City to be intentional and deliberate in setting firm policies to prioritize those with the greatest needs.** As drafted the Plan provides no assurance of such prioritization.

Performance Metrics

While we appreciate a performance metric that looks to a reduction in the percentage of households with cost burden, without further refinement this metric is insufficient. Reductions in cost burden could be achieved simply by disproportionately adding more units that are affordable to and occupied by high income households, who generally experience cost burden at much lower rate. **The performance metric needs to look specifically at changes in cost burden within each income group (extremely low, very low, low, moderate and above moderate) and further disaggregated by race and tenure.**

It would be advantageous to track not only “cost burden,” defined as paying more than 30% of a household’s gross (pre-tax) income on housing (including utilities), but also “severe cost burden” – paying more than 50% of gross income, a problem particularly concentrated among those with the lowest incomes. It should be noted that some higher income households may choose to pay more than 30% of their income on housing, which has an entirely differently meaning for households earning in excess of \$150,000 per year than it does for households earning less than \$50,000 per year for whom cost burden entails having insufficient income to pay for other basic necessities including food, child care, health care and transportation.

Another measure of success should be closing racial disparities in homeownership rates.

The City should track and report regularly on trends in these measures, looking specifically at the DOSP area and not just the City as a whole.

We would particularly like to see detailed tracking of housing units approved, permitted, and completed within the Plan area, by income level, housing type and unit size (by number of bedrooms), and in particular distinguishing 100 percent affordable developments from market rate developments including those with a relatively small number of affordable units on site.

Much of this data is already collected and reported for the Annual Progress Reports for the Housing Element, but only at a citywide level. Previous requests for information on housing production in each of the City’s specific plan areas, including data on what percentage of housing units are affordable, have been met with a response that **the City does not actually track or compile this data for any of its specific plan areas:**

For this request you can refer to our Housing Element Annual Progress Report (APR) data. The APR data is posted on the website here, but it is only available as an excel spreadsheet, not a GIS shapefile. The address for each project creating new housing is included in Table A and A2 of the APR documents posted on our website. For example, see the excel spreadsheet for the 2022 APR here. You'll find the street address in Column C of both Tables A and A2. (email from Planning staff to EBHO staff dated Nov 7, 2023).

For this Plan, such data tracking and analyses must explicitly be part of the Implementation Plan, with annual reporting on progress.

Lack of New Concrete Policies, Programs and Actions

To the extent that there are concrete policies, for the most part these are simply recitations of existing citywide policies and programs, not new initiatives, and not specific to the Downtown Plan area. EBHO made this comment four years ago in response to the Public Review Draft, but little seems to have changed. This is despite that fact that during the Housing Element process, EBHO and other groups again noted the preponderance of actions that involved further study and consideration rather than a firm commitment to policies and actions, and this was also one of the changes required by the State Department of Housing and Community Development before it could certify that the City's Housing Element was in compliance with State law.

It is extremely discouraging that more than four years after first making these recommendations, few of these studies, evaluations and considerations have taken place. This issue is discussed in further detail below in the analysis of individual implementing policies.

Data Needed

A lot of the data is out date, much of it going back nearly 10 years (2011-2015 ACS, for example). More recent data is available – the most recent Census data release includes 5-year data for 2018-2022. This is particularly a problem for housing production data since we have very specific data for the 2015-2022 5th Cycle Housing Element period.

Given the amount of time that has passed since the DOSP planning process was initiated, it would be useful to have information on how much development activity has taken place in the Plan area during that period. This should include specific information on the number of projects and units that were entitled, started construction, or completed, as well as information on projects currently in the pipeline. Information on the extent to which State Density Bonus was used, and in what circumstances, could clarify whether existing zoning lends itself to incentive programs. These kinds of data might shed light on how much of the desired growth has occurred or is in the pipeline, and the extent to which those policies are sufficient to move the needle on closing racial disparities in outcomes.

Detailed Comments on Specific Housing Policies and Implementation Actions

H-1.1 Unit Size Monitoring:

Monitor the number of bedrooms included in new housing units approved and built in downtown.

- While this would be a useful performance metric, **absent specific policies or programs to ensure a mix of unit sizes including larger, family-serving units, this is not an effective action.**

Over the 8+ years since the planning process began, thousands of units have been constructed. A look at the mix of unit sizes (and distinguishing between unassisted and assisted, 100% affordable projects) could be based on production since 2015. Had the City collected and analyzed such data, it would be in a position to enact policies now rather than waiting for more units to be built and assessed.

The Plan does not state what changes are needed to the City's permit tracking system to gather data on unit sizes in addition to data already collected on building type and affordability level.

H-1.2 High-Intensity, Mixed-Use Neighborhoods:

As part of updates to zoning and a development incentive program, adjust the zoning in identified areas of opportunity to create new high-intensity, mixed-use neighborhoods

- The City should pay particular care when zoning to create high intensities that encourage multifamily development. Over-zoning for too much intensity can make affordable housing more difficult and expensive, increase land costs, and encourage holding land off the market until higher housing costs justify the higher land costs. We also note the need to distinguish between encouraging mixed-use neighborhoods with zoning for a mix of commercial and residential buildings, and zoning for mixed-use buildings. For example, requirements for ground-floor commercial can make housing development more challenging unless there is a sufficient market for those commercial spaces.

As we will elaborate when we provide comments on the proposed zoning amendments, the City has failed to seriously consider the extent to which existing zoning in the Downtown area provides more height and density than the market supports, which does not encourage developers to seek zoning incentives by including affordable housing. From the outset of the DOSP planning process, EBHO and other groups have consistently called for the City to strategically downzone some parts of the

Downtown to provide base zoning that would make incentives more attractive, but staff has consistently refused to consider such actions.

H-1.3 Condominium Conversion Ordinance Improvements:

As part of citywide efforts, implement requirements of Oakland's condominium conversion ordinance (updated February 2020) to promote affordability, prevent displacement, and reduce racial disparities in homeownership.

- **The citywide condominium conversion ordinance was updated in 2020 to strengthen tenant notice and protection requirements, extend coverage to 2-4 unit buildings, and increase relocation benefits, and is already in force. There is no new policy or action here.**

We note that the City's previous 2005 Guide to Condominium Conversion has apparently been removed from the City website but has not been updated and published. Instead, the City website now includes only a link to the ordinance and a copy of the flowchart from the old conversion guide, which is now out of date and inaccurate in many respects.

A more effective action would be a requirement that the City update and publish a new guide to Condominium Conversion explaining the current requirements. This should be completed within one year of Plan adoption.

Finally, we note that **the Plan mischaracterizes the objective of the City's condominium conversion ordinance**. The condominium ordinance is not, and never has been, a strategy to promote homeownership. As clearly reflected in the extensive findings that were included in the 2020 ordinance, the stated policy objectives are to protect against the loss of rental housing from the City's housing stock and protect vulnerable tenants from displacement. The ordinance does make exceptions and provide incentives for conversions where existing tenants are purchasing the units, but this is a special exception and not the purpose of the ordinance.

H-1.4 Inclusionary Housing Policy and Impact Fees:

Study an inclusionary housing policy for downtown and potential changes to existing affordable housing impact fees as part of re-assessing the City's current impact fee and the existing option for developers to provide affordable housing units on-site in lieu of paying the impact fee. As appropriate, incorporate inclusionary housing requirements or fees specific to Downtown Oakland, and consider dedicating a portion of fee revenue toward use in Downtown Oakland.

- **This action calls only for a study and consideration of possible actions but doesn't require any specific action.** The City's current study of potential changes to the existing

affordable housing impact fee, including consideration of an inclusionary requirement, was originally scheduled to be completed by December 2021, but was postponed multiple times. It now appears that City staff may be considering recommending that the existing fee be suspended or reduced. It is unclear what inclusionary options will be recommended. This is a far cry from early representation that the City would look at an inclusionary requirement in addition to the existing impact fees.

Another action needed is to adopt policies that would make impact fees available sooner. The City must either allow the advance award and commitment of fees due on projects already under construction (because half the fee is deferred until completion), or it should require that the entire impact fee be paid on building permit issuance – the marginal cost to do so is less than \$5,000 per unit. The sooner such fees are collected, the sooner they can be made available for funding commitments to the many projects that are in the pipeline for funding.

H-1.5 Jobs/Housing Impact Fee Increases:

Study increasing the City's Jobs/Housing Linkage Impact Fee for nonresidential development.

- **Once again, this calls for further study** (which as stated above is already 2-1/2 years behind schedule). Increase the Jobs/Housing Impact Fee is not the only option being considered – the study is also looking at expanding the uses covered by the fee to include more than office and warehouse/distribution. Timing of payments should also be revised as this has only a minimal impact on overall project development costs. This should be more explicitly stated in the Plan itself.

H-1.6 Enhanced Infrastructure Financing District:

Explore the creation of a new downtown value-capture mechanism, such as an Enhanced Infrastructure Financing District (EIFD), with a significant portion of this new long term revenue stream dedicated to affordable housing retention and production. Value-capture mechanisms such as an EIFD reinvest growth in property tax revenue above a baseline amount.

- **This calls for further study and is not a specific action.** Any such study should consider how long it would take for an EIFD to generate significant revenue and what opportunities for affordable housing might be lost (including the loss of potential development sites to market-rate development)

As we noted in our comments on the Public Review Draft in 2019, rather than focusing on a particular revenue source, the Plan should better identify existing revenue sources as well as a larger range of potential new revenue sources. And after so many years of planning, it is not acceptable that identification, creation, and commitment of new

funding sources is put off to the future and not incorporated into the Plan itself.

We find it surprising that while the sidebar discussion on pages 103-104 mentions the \$100 million in funding obtained from the Measure KK bond approved by voters in 2016, there is no mention of the \$350 million obtained from the Measure U bond passed in 2022 – most of which is still uncommitted, the tens of millions of dollars in affordable housing impact fees that have been assessed but not yet collected – including the near-certain payment of amounts due upon completion of projects already under construction, or the \$765 million that would flow directly to Oakland should the \$20 Billion regional bond be approved by voters in November 2024.

H-1.7 Citywide Affordable Housing Strategy:

Review the City's affordable housing strategy and update periodically.

- **This is not in itself a strategy or action. The City's affordable housing strategy is already updated periodically**, including the recently adopted Housing Element (2023), the 5-year Consolidated Plan for Housing and Community Development (2020) and Annual Action Plans, and the Department of Housing and Community Development's five-year Strategic Action Plan (2023), none of which appear to be referenced in the DOSP.

While the DOSP does mention the Permanent Access to Housing (PATH) plan, last updated in 2019, this is not an affordable housing strategy though it does recommend considering increasing the share of City affordable housing funds dedicated to extremely low income housing. The PATH plan is the City's plan for serving the needs of homeless individuals and families and was drafted in alignment with Alameda County's EveryOne Home Plan for addressing homelessness.

H-1.8 Public/Private Partnerships for Affordable Housing:

Support private housing efforts and explore public/ private partnerships with philanthropic organizations and major employers to supplement government funds for affordable housing.

- **This is a largely aspirational goal with no specific target or anticipated outcome.**

H-1.9 Directing Affordable Housing Funds Downtown:

Explore tools and policies to prioritize some portion of new affordable housing funds for use in downtown to maintain downtown as a mixed-income community, especially as downtown generates additional housing funds through accelerated development activity or increased impact fees.

- This is an action we recommended in our comments on the Public Review Draft, though we would favor reserving a portion of funds generated in the Downtown area not just

for housing in the Downtown, but also for affordable housing in “high resource” area that are more competitive for housing funding.

H-1.10 Leveraging Publicly Owned Land for Housing:

Leverage the City’s inventory of publicly owned land in a manner that supports housing affordability for Oakland residents and is consistent with the City’s strategy for public land and the California Surplus Land Act.

- **This is insufficiently vague and ignores comments we made previously that the City needs to follow through in adopting an ordinance to implement the public land policy framework approved by the City Council in 2018.** The ordinance was supposed to have been drafted and brought back to City Council for approval within 6 months. Five years later we still do not have a draft ordinance. The Plan should call for drafting and adopting such an ordinance by the end of 2024 at the latest.

Such a policy would be even more effective if it included a commitment to **providing surplus public land to affordable housing developers at deeply discounted lease rates.**

H-1.11 Co-Locate Affordable Housing and Public Facilities:

Establish public/private partnerships between libraries, recreation centers, county properties and affordable housing providers aimed at co-locating public facilities with affordable housing above.

- We generally support such synergies in co-location and note that the City could use Measure U funds earmarked for public facilities, as well as Community Development Block Grant (CDBG) funds for this purpose. We note also that the City has past experience locating Head Start centers in affordable housing.

H-1.12 Goals for Affordable Housing Production:

Ensure that a mix of market-rate and income-restricted housing is produced in downtown. Target production of between 4,365 and 7,275 affordable housing units, including units designed to accommodate larger families, out of a total housing production target of 29,100 new units.

- **We have already noted above that this goal is inadequate and inconsistent with the City’s RHNA numbers.**

H-1.13 Expedited Approvals for Affordable Housing:

Develop a process to expedite the review and approval of planning and building permits for 100% affordable housing projects.

- **This was already implemented as part of the zoning changes adopted in connection with the Housing Element and is therefore unnecessary and redundant.** 100% affordable housing projects are now approvable by right through a ministerial process subject only to design review based on objective standards.

The City should take concrete steps to ensure that building permit plan check is genuinely prioritized and expedited for 100% affordable housing projects. Also, for several years, developers have urged the City to defer payment of building permits until project completion, which would reduce costs. While these are citywide actions, they could be very beneficial for DOSP projects.

H-1.14 Habitability Standards:

Ensure habitability standards for residents of affordable and market rate housing developments.

- **Affordable housing is already subject to periodic inspections for housing quality standards as part of the City's ongoing monitoring.** As noted in our comments on the Public Review Draft, **a more aggressive and pro-active inspection program for market-rate housing must include strong safeguards against direct and economic displacement from existing units.**

H-1.15 Increased Accessibility Requirements:

Investigate passage of policies requiring a high standard of accessibility retrofits during remodels of existing buildings/units, and/or adjust requirements for new residential development in order to strengthen accessibility. This change could potentially include creation of a citywide universal design ordinance or amendment of existing citywide zoning/building codes to strengthen accessibility requirements (consider using the City of Alameda's visitability and universal design ordinance as a model).

- **Again, this is not a program, it is a call for further study.** We support efforts to increase the accessibility of new and existing housing. This should have been considered as part of the Plan rather than something to be adopted separately.

H-1.16 Family-Friendly Design:

Explore opportunities to implement revised design standards that support design and amenities targeted to families with children, such as including family-friendly common areas or public playgrounds in developments of a certain size.

- See comments above on H-1.15

Additional Policies and Programs for Consideration

There are a few additional policies and programs, which the City has previously implemented or is currently considering, that should be explicitly included in the Final Plan:

- Using a portion of Measure U bond funds to do **land banking** by purchasing available sites in the Downtown and then making them available through a competitive process consistent with the Surplus Land Act.
- Alternatively, the City could re-establish its **Site Acquisition Loan Program** that provides financing to nonprofit developers, community land trusts, etc. to purchase both vacant land and existing housing, effectively taking them off the market and reserving them for future affordable housing development once full funding is leveraged.
- The Plan lacks any strategies for **preserving existing deed restricted or rent-controlled properties**, though the Department of Housing and Community Development has operated such programs in the past. One such strategy would be **adoption of a Tenant Opportunity to Purchase Act (TOPA) and Community Opportunity to Purchase Act (COPA)**. These measure require owners who are selling their rental properties to provide tenants, land trusts and eligible affordable housing developer with a first opportunity to purchase, and if agreement is not reached and another buyer is identified, the original affordable housing developer would then have a first right of refusal to match price and terms.
- Strong measures are needed to prevent displacement of vulnerable extremely low-income renters. Tenant advocates have long noted that a critical resource would be **expanded funding to provide tenants facing eviction with a right to counsel**.

Oakland Planning Commission

May 14, 2024

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Thank you for the opportunity to comment on the Final Draft Plan. We hope you will find these comments useful to ensure that the DOSP truly provides new strategies, policies and tools that prioritize preservation and new production of housing affordable to the most vulnerable residents and eliminate racial disparities in cost burden, tenure, eviction and other identified in the City's own studies.

Please feel free to contact me if you have any questions. I can be reached via email at jeff@ebho.org, or by phone at 510-663-3830 x316.

Sincerely,

Jeffrey P. Levin
Senior Director of Policy

Attachment: EBHO Comments on Preliminary Draft Plan, Nov 6, 2019


cc: Planning Commissioners Shirazi, Sugrue, Renk, Ahrens, Randolph, Sandoval,
William Gilchrist, Ed Manasse, Laura Kaminski, Joanna Winter, Catherine Payne, Heather Klein,
Neil Gray, Pete Vollmann, Betty Marvin, Audrey Lieberworth
Councilmembers Fife, Kaplan, Kalb, Fortunato-Bas, Gallo, Jenkins, Ramachandran, Reid

OAKLAND HERITAGE ALLIANCE

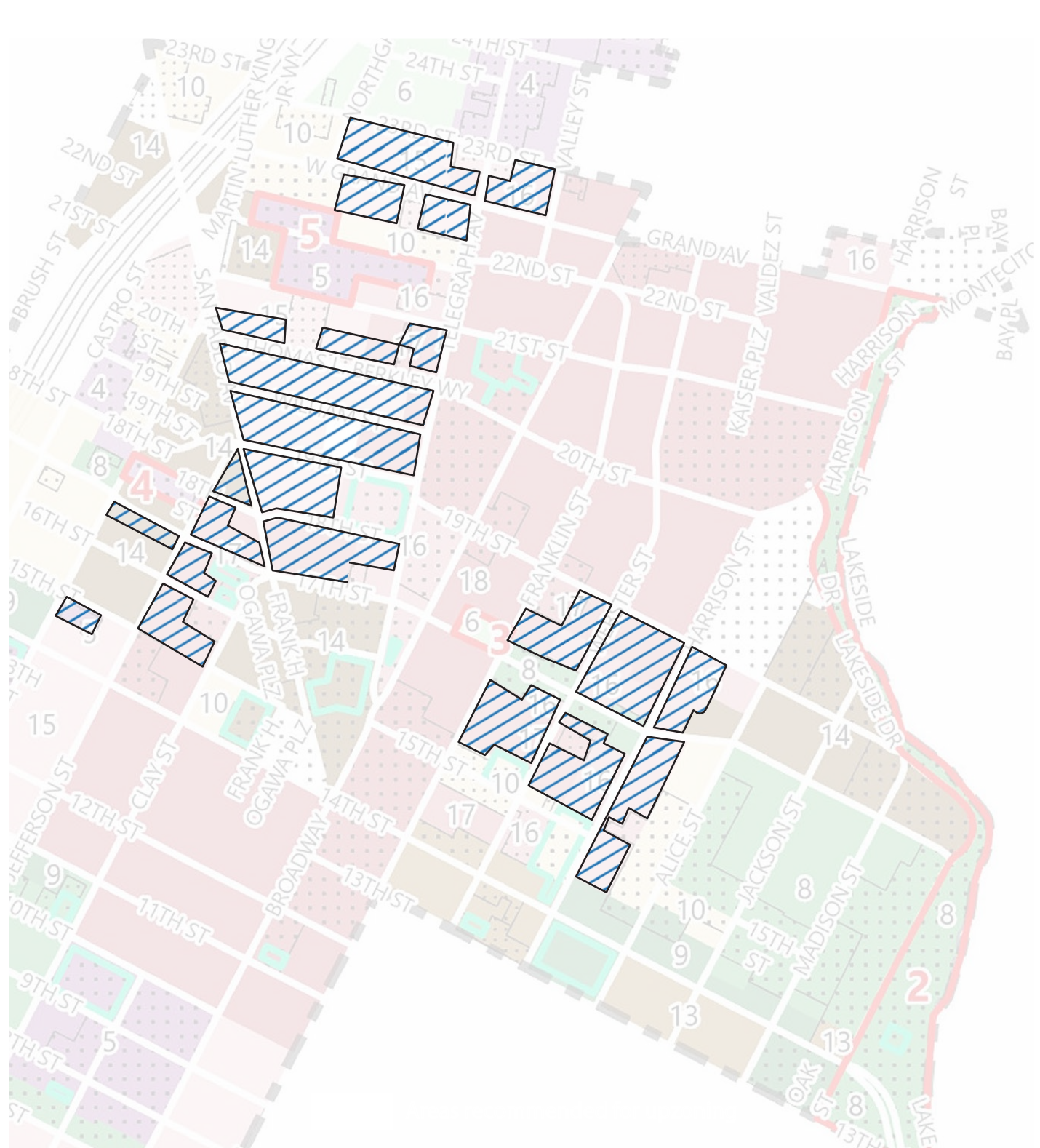
DOSP Areas Recommended for Upzoning and/or Addition to the ZIP Area

The upzoned areas are intended to provide additional development intensity (height, floor area ratio, and residential density) to offset the reduced development intensity resulting from OHA-recommended downzonings elsewhere in the DOSP area. The intensity offsets are intended to allow the downzonings to conform with the “no net loss” of development intensity required by SB 330/SB8.

The upzoned areas could also be used for expansion of the Zoning Incentive Program (ZIP) area to offset OHA’s recommended removal of the ZIP from Areas of Primary and Secondary Importance (APIs and ASIs).

 areas recommended for upzoning

May 14, 2024



From: [Jeffrey Levin](#)
To: [Oakland Planning Commission](#)
Cc: [Shahar Shirazi](#); [jahrensopec@gmail.com](#); [alexrandolph.oak@gmail.com](#); [jrenkopc@gmail.com](#); [nataliesandovalopc@gmail.com](#); [vsugrueopc@gmail.com](#); [MRobbOPC@gmail.com](#); [Gilchrist, William](#); [Manasse, Edward](#); [Kaminski, Laura](#); [Winter, Joanna](#); [Payne, Catherine](#); [Klein, Heather](#); [Gray, Neil D.](#); [pvollman@oaklandca.gov](#); [Lieberworth, Audrey](#); [Marvin, Betty](#); [Fortunato Bas, Nikki](#); [Lin, Amaya Jennifer](#); [Kalb, Dan](#); [ODoherty, Keara](#); [Fife, Carroll](#); [Love, Tonya](#); [Ramachandran, Janani](#); [Gallo, Noel](#); [Jenkins, Kevin](#); [Reid, Treva](#); [Kaplan, Rebecca](#)
Subject: Downtown Oakland Specific Plan - EBHO Comments on Final Draft
Date: Tuesday, May 14, 2024 1:42:02 PM
Attachments: [Final Draft DOSP - EBHO Comments 2024-05-14.pdf](#)
[Draft Plan and DEIR - EBHO comments 2019-11-08.pdf](#)

Dear Planning Commissioners -

Attached please find EBHO's comments on the Final Draft of the Downtown Oakland Specific Plan, Item #1 on your May 15 agenda.

Also attached for your reference are our previous comments from Nov 2019 on the Public Review Draft. As you will see, unfortunately many of these comments are equally applicable today.

Please feel free to contact me if you have any questions.

Thank you.



Jeff Levin (he/him)

Senior Director of Policy

EAST BAY HOUSING ORGANIZATIONS (EBHO)

538 9th Street, Suite 200 | Oakland, CA 94612

510-663-3830 x316 | jeff@ebho.org

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Advisory Board
Meeting

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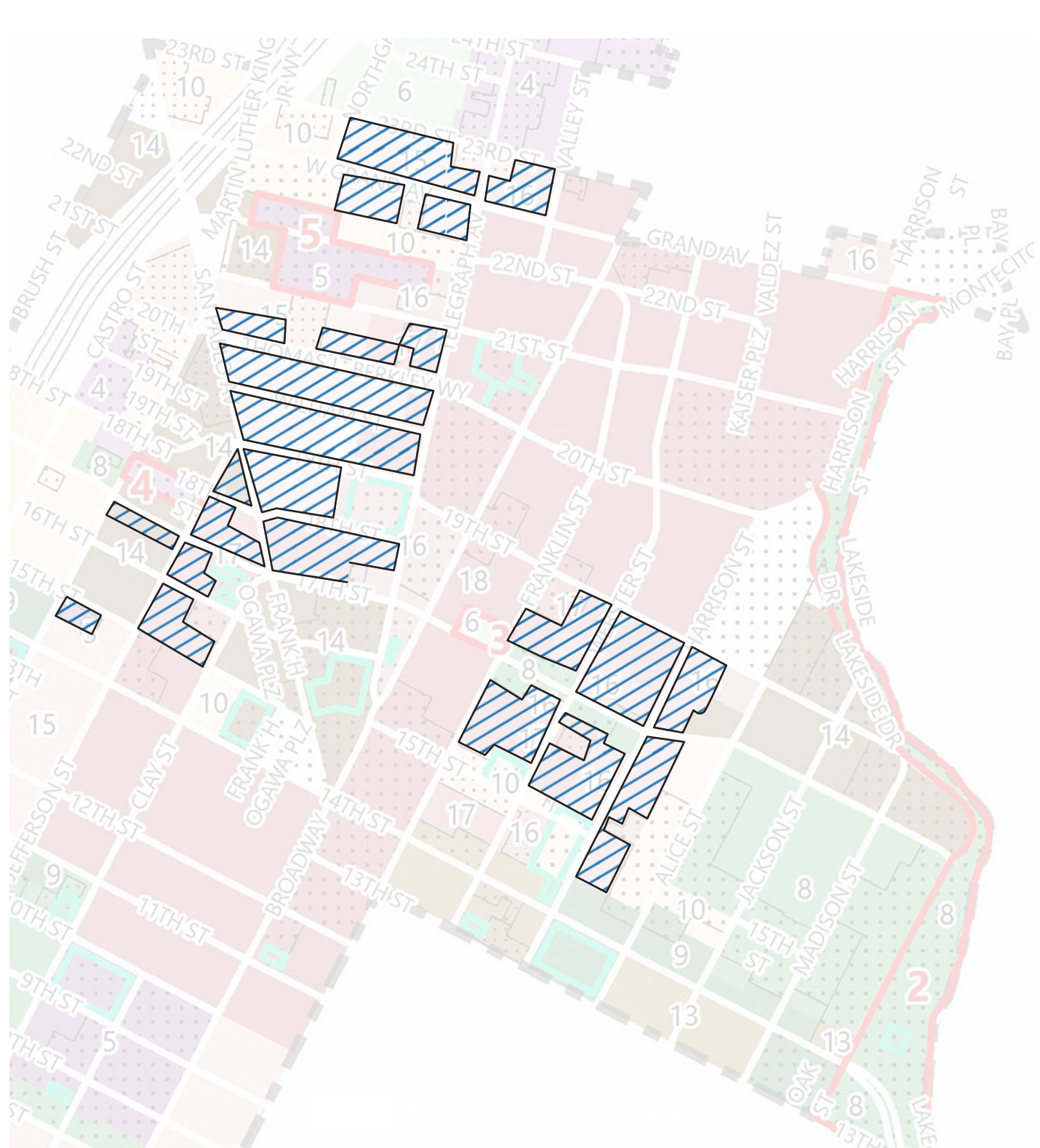
DOSP Areas Recommended for Upzoning and/or Addition to the ZIP Area

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The upzoned areas could also be used for expansion of the Zoning Incentive Program (ZIP) area to offset OHA’s recommended removal of the ZIP from Areas of Primary and Secondary Importance (APIs and ASIs).

 areas recommended for upzoning

May 14, 2024



DRAFT 5-30-24

INCREASE THE FRONT YARD SETBACKS IN THE FOUR LATE 19TH-EARLY 20TH CENTURY APIS - --- GROVE STREET/LAFAYETTE SQUARE; 19TH STREET/GROVE STREET; CATHEDRAL NEIGHBORHOOD; AND 7TH STREET/HARRISON SQUARE.

The proposed 0' minimum and 10' maximum front setbacks in these four APIs are significantly less than the contributing historic building setbacks in most cases. This is the case even for the 6' front setback required by Regulation 3 for Table 17.101K.04 when the ground floor contains residential units adjacent to the principal street. The proposed setbacks will promote new construction that will literally stick out from the street wall established by the contributing historic buildings, and erode the API's integrity.

RECOMMENDATION:

1. Increase the front yard setback proposed for the D-DT-R and D-DT-RX zones, so it is more consistent with the setbacks of the API contributing buildings. But allow a reduced setback for new buildings if the adjacent building has a shallower setback using the method prescribed in the RD, RM and RU Zones, e.g. see Regulation 4 for Table 17.17.03 for the RM zones. In the specific recommendations below, the minimum setback is recommended to be increased to 15 feet and the maximum setback to 20', except for the southern portion of the Grove Street/Lafayette Square API. One way to do this would be to change the minimum setback in the D-DT-R zone to 15 feet and to place all of the APIs except for the Grove Street/Lafayette Square API's southern portion into the D-DT-R Zone. Alternatively, there could be a carveout for the increased API setbacks within the D-DT-R and D-DT-RX zones provided as an additional Regulation for Table 17.17.03.
2. Apply the increased setbacks to **all buildings** within these APIs, not just those containing ground floor residential units adjacent to the principal street.

SPECIFIC RECOMMENDATIONS FOR THE FOUR APIS:

Cathedral Neighborhood API:

Total contributing properties: 33

Front setback breakdown for contributing properties:

6 ½-10': 6 Properties 18%

10-15': 14 Properties 42%

15-20': 13 Properties 39%

TOTAL: 33 Properties 100%

Recommendation: Since 81% of the contributing properties have front setbacks between 10' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 20'.

19th and Grove Street API:

Total contributing properties: 22

Front setback breakdown for contributing properties:

0': 2 Properties 9%

7 1/2': 6 Properties 27%

10': 7 Properties 32%

17 1/2': 1 Properties 5%

20': 6 Properties 27%

TOTAL: 22 Properties 100%

Recommendation: Since 64% of the contributing properties have front setbacks between 10' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 20'.

Grove Street/Lafayette Square API – North block bounded by 10th, 11th, and Castro Streets and Martin Luther King Way.

Total contributing properties: 13

Front setback breakdown for contributing properties:

0':	2 Properties	15%
9':	2 Properties	15%
12':	1 Properties	8%
15':	3 Properties	23%
18':	2 Properties	15%
20':	2 Properties	15%
<hr/>		
TOTAL:	22 Properties	100%

Recommendation: Since 61% of the contributing properties have front setbacks between 12' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 20'.

Grove Street/Lafayette Square, API – South two blocks bounded by 8th, 10th, and Castro streets and Martin Luther King Way and portions of adjacent blocks.

Total contributing properties: 41

Front setback breakdown for contributing properties:

0':	19 Properties	46%
7':	2 Properties	5%
5':	3 Properties	7%
10':	7 Properties	17%
15':	7 Properties	17%
20':	3 Properties	7%
<hr/>		
TOTAL:	41 Properties	100%

Recommendation: Since 68% of the contributing properties have front setbacks between 0' and 10', provide a 6' minimum setback as required by Regulation 3 for Table 17.101K.04, but for all buildings, not just those where the ground floor contains residential units adjacent to the principal street. Retain the maximum 10' setback.

7th Street/Harrison Square API.

Total contributing properties within the DOSP area: 72

Front setback breakdown for contributing properties:

0':	15 Properties	21%
5':	4 Properties	6%
10':	10 Properties	14%
12':	2 Properties	3%
15':	13 Properties	18%
16':	23 Properties	32%
20':	5 Properties	7%
<hr/>		
TOTAL:	72 Properties	100%

Recommendation: Since 74% of the contributing properties have front setbacks between 10' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 10'.



June 3, 2024

By electronic transmission

City of Oakland Landmarks Preservation Advisory Board
c/o Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

**Subject: Downtown Oakland Specific Plan (DOSP) and related zoning amendments—
Item #1 on 6-3-24 LPAB agenda.**

Dear LPAB Members:

The following comments refine and supplement those in our attached 5/9/24 letter to the City Planning Commission (CPC). We are still reviewing the latest draft zoning amendments released last Friday, May 31, so the following comments may be incomplete and subject to further refinement and expansion.

1. Transferable development rights (TDR). We would like to thank staff for incorporating most of the TDR comments in our 5/9/24 letter into the latest draft zoning amendments. This satisfies our major concerns regarding the TDR proposal. The major loose end is that some detailed procedural provisions from the San Francisco program still need to be included. Staff is proposing that these provisions be incorporated into an Administrative Instruction (AI) that would be separate from the zoning text and would be issued within a year after the zoning amendment adoptions. **OHA recommends that issuance of the AI within a year after adoption be memorialized in the ordinance adopting the zoning amendments** to help ensure that the AI is actually issued within a year.

In addition, we remain concerned that the base intensities are too high for developers to use the TDR program or the Zoning Incentive Program (ZIP). See item 1 in our 5/9/24 letter for further discussion.

2. DOSP areas recommended for upzoning and/or addition to the ZIP area. See item 5 in our 5/9/24 letter and the Attachment 2 map.

The upzoned areas are intended to provide additional development intensity (height, floor area ratio, and residential density) to offset the reduced development intensity resulting from the OHA-recommended downzonings elsewhere in the DOSP area. The intensity offsets are intended to allow the downzonings to conform with the “no net loss” of residential development intensity required by SB 330 and SB8.

The upzoned areas could also be used for expansion of the Zoning Incentive Program (ZIP) area to offset OHA's recommended removal of the ZIP from Areas of Primary and Secondary Importance (APIs and ASIs).

3. Increase the front yard setbacks in the four late 19th-early 20th century residential APIs: Grove Street/Lafayette Square; 19th Street/Grove Street; Cathedral Neighborhood; and 7th Street/Harrison Square.

The proposed 0' minimum and 10' maximum front setbacks in these four APIs are significantly less than the contributing historic building setbacks in most cases. This is the case even for the 6' front setback required by Regulation 3 for Table 17.101K.04 when the ground floor contains residential units adjacent to the principal street. The proposed setbacks will promote new construction that will literally **stick out** from the street wall established by the contributing historic buildings, and erode the API's integrity. See example below, which also illustrates the negative impacts on APIs and ASIs of new buildings that are taller than the tallest contributing buildings to the API/ASI.



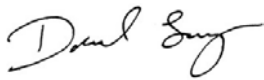
RECOMMENDATION:

1. Increase the front yard setback proposed for the D-DT-R and D-DT-RX zones, so it is more consistent with the setbacks of the API contributing buildings. But allow a reduced setback for new buildings if the adjacent building has a shallower setback using the method prescribed in the RD, RM and RU Zones, e.g. see Regulation 4 for Table 17.17.03 for the RM zones. In the specific recommendations for the four APIs, the minimum setback is recommended to be increased to 15 feet and the maximum setback to 20', except for the southern portion of the Grove Street/Lafayette Square API, which could remain as currently proposed, since 58% of the existing front setbacks are 7' or less.
2. Apply the increased setbacks to **all buildings** within these APIs, not just those containing ground floor residential units adjacent to the principal street.

See Attachment 3 for detailed proposals and methodology.

Thank you for the opportunity to comment. Please contact Christopher Buckley at (510) 523-0411 or cbuckleyaicp@att.net or Naomi Schiff at (510) 835-1819 or Naomi@17th.com if you would like to discuss these comments.

Sincerely,



Daniel Levy
President

Attachments:

1. OHA 5/9/24 letter to CPC.
2. Map showing OHA-recommended areas for upzoning and/or addition to the ZIP area.
3. OHA proposal for increased front setbacks for the four late 19th-early 20th century residential APIs.

By electronic transmission:

cc: William Gilchrist, Ed Manasse, Laura Kaminski, Joanna Winter, Catherine Payne, Heather Klein, Neil Gray, Pete Vollmann, Betty Marvin, Audrey Lieberworth, Bureau of Planning/Zoning

ATTACHMENT 1: OHA 5/9/24 LETTER TO CITY PLANNING COMMISSION.



May 9, 2024

By electronic transmission

City of Oakland Planning Commission
c/o Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

**Subject: Downtown Oakland Specific Plan (DOSP) and related zoning amendments—
Item #1 on 5-15-24 Planning Commission agenda.**

Dear Chair Shirazi and Planning Commissioners:

Oakland Heritage Alliance (OHA) has not yet completed its review of the latest versions of the DOSP and related zoning amendments so the following comments are preliminary and subject to modification. We continue to refine our review and responses to the informative and well-thought-out May 6, 2024 Landmarks Preservation Advisory Board (LPAB) staff report responding in detail to our previous comments, but which we were only able to access on May 4.

Most of the following comments are based on or follow up those submitted to the LPAB on August 28, 2022 and to the City Planning Commission (CPC) on November 6, 2019 but are more focused, reflecting recent changes to the Draft DOSP and zoning amendments. Here we made an effort to address only the most significant points. These comments plus some others were also sent to the LPAB.

We thank staff for modifying the drafts to incorporate many of our previous comments, especially regarding the transferable development rights (TDR) provisions. But there are still some significant loose ends. The following primarily addresses these issues.

- 1. The base intensities are probably too high for either the Zoning Incentive Program (ZIP) or Transferable Development Rights (TDR) program to incentivize developers to use them. There must be strategic downzoning, not just more uponings.** The Specific Plan provides an opportunity to correct the mistakes of the 2009 rezoning. It provided excessive by-right height limits and FARs, which appear to have eliminated the need to induce developers to use TDRs, the ZIP, or other incentives to proceed with their projects. For example, much of downtown Oakland was provided with by-right 14.0, 17.0 and 20.0 FARs in the 2009 rezoning. Unfortunately, these heights are mostly retained in the Draft Specific Plan. This is especially disappointing given such statements in the 2016 Plan Alternatives Report as the following on page 4.7:

“Rezone areas with unnecessarily excessive height limits to allow for more flexibility with density bonuses and other developer incentives”.

By comparison, the maximum by-right FAR in San Francisco, resulting from its 1985 Downtown Specific Plan, is 9.0, which can be increased up to 18.0 (higher at some locations, such as the Salesforce Tower) in exchange for TDRs and other community benefits. “Overzoning,” such as in downtown Oakland, tends to artificially inflate land values and creates more barriers to providing affordable housing and encourages owners to “land bank” their property while waiting for a major development project that will pay them top dollar. Ironically this can **discourage** development, rather than encourage it, as intended by overzoning. Land banking also tends to encourage a slumlord mentality, with building owners reluctant to spend money to properly maintain their buildings and refusing long-term leases that could include major tenant improvements. This discourages high-quality tenants.

See also a 2014 white paper on Public Benefit Zoning, prepared for the Association of Bay Area Governments, Metropolitan Transportation Commission and Eastbay Housing Organizations available at: http://ebho.org/wp-content/uploads/2011/09/LVR-White-Paper-ExecSum_141113.compressed.pdf

Page 266 of the Draft DOSP acknowledges this challenge by stating:

Because of the generous zoning allowances that already exist for most areas downtown, there are limited areas where a Transfer of Development Rights (TDR) program might be effective. Most of the areas that would be candidates for a TDR program are also being considered for the development incentive program. Further analysis will determine how the two programs can work in coordination and avoid undermining the other's intent.

The solution is: DO NOT OVERZONE!

We appreciate the 5/6/24 LPAB staff report's responses to the above recommendations, which are presented in more detail in Items 4 and 5 below. See Attachment 1 for replies to these and other staff responses to OHA concerns.

2. Transferable Development Rights. (TDR).

We would again like to thank staff for incorporating much of the San Francisco's TDR program into the similar proposed Oakland program. However, there are still some details that must be addressed:

- a. There appear to be typos and/or misplaced words at the bottom of page 30 of the zoning amendments that significantly impact the meaning of the section. Here is a redline showing what we believe to be the correct version, which is the version we have been recommending:

G. Characteristics of the sending and receiving sites.

- 1. Both the receiving and sending sites must be within a D-DT Zone.*
 - 2. The sending site must be: 1) either a Designated Historic Property (DHP); ~~rated "A" or "B" by the Office of Cultural Heritage Survey~~; or 2) any Potentially Designated Historic Property (PDHP) either rated "A" or "B" by the Office of the Cultural Heritage Survey or that contributes to an Area of Secondary Importance (ASI) or Area of Primary Importance (API).*
- b. We are concerned that limiting the TDR receiving sites to those within the ZIP area will provide insufficient TDR demand for the program to succeed. One alternative would cap the amount of TDR per eligible site outside of the ZIP, similar to San Francisco's approach. That alternative allows FAR up to 9.0 without TDR and up to 18.0 with TDR. Staff has been very accommodating in addressing these kinds of details with us. We hope that staff will continue to work with us on these remaining issues.
- c. As noted in the 5/6/24 LPAB staff report, the DOSP zoning amendments do not include some detailed procedural provisions from the San Francisco program, and proposes that these provisions be included in an administrative document that would be separate from the zoning text. These provisions address such topics as: (1) documentation that the planning department has issued a certificate verifying how many TDRs a property has a right to (Section 128(e)(1), etc.); and (2) a notice of restriction stating that the transfer of TDRs from the sending site permanently reduces the development potential of the site by the amount of TDRs transferred. (Section 128 (g)(4)(A)(iii)). Staff should ask the City Attorney how to handle this if staff has not already done so.

If the revisions will be memorialized in an administrative document, there should be a reference to the document in the zoning text. The administrative document should also be included at least in the final package provided to the City Council. In that way the administrative document can be effective immediately after the TDR program becomes effective. If the administrative document is not available at that time, it may get put on the back burner and forgotten. That could lead to problems and delay when the first TDR requests are submitted. Staff will then have to scramble to prepare all of the documents to be executed by the TDR applicant. If this happens, important provisions could fall through the cracks. Applicants may become discouraged by the program, since all of the documents they must execute are not immediately available. The San Francisco Planning Code TDR provisions are attached for your reference.

- d. If staff has not already done so, we recommend that they talk to Fortress Real Estate Advisors in San Francisco to get their review of the proposed Oakland TDR program, especially regarding limiting the use of TDR on receiving sites to

50% of the additional intensity allowed by the ZIP and the design review requirement. Fortress has acted as a TDR broker in San Francisco and has played a key role in the success of the San Francisco program.

4. Maximum intensity map for projects not participating in the ZIP.

- a. **Do not increase height/FAR limits for APIs and ASIs.** These limits should either stay as-is or be reduced, such as: (i) on 15th Street between Broadway and Harrison, and 17th Street between Franklin and Harrison; (ii) the Victorian residential neighborhoods on 22nd Street (Telegraph-MLK), 18th Street (Jefferson-MLK) and MLK (7th-11th Streets); (iii) the produce market; and (iv) much of the Lake Merritt residential area (“Gold Coast”) bounded by 14th, Harrison and the Lake. These height/FAR increases could threaten API/ASI contributors with demolition or adverse alteration and promote intrusive new development. See Attachment 1 photo of an example of intrusive new development within an API.
- b. **Reduce existing height/FAR limits in some APIs/ASIs,** such as Old Oakland and portions of the Downtown Oakland National Register District that were inappropriately upzoned in 2009. OHA’s specific recommendations for these reductions are shown on the 9-22-19 height map included in Attachment 1.

See Attachment 1 for further discussion.

5. Maximum intensity map for ZIP areas.

- a. **Delete APIs/ASIs and freestanding PDHPs such as the following from the ZIP area map:** Telegraph Avenue north of 23rd Street, the First Christian Science Church and Wakefield Building at the northwest corner of 17th and Franklin and the Downtown National Register District.
- b. **Expand the ZIP area to include and/or upzone portions of the areas bounded by Franklin, 14th, 19th and Harrison and west of Telegraph. The ZIP expansion and/or zoning would offset downzoning elsewhere to satisfy SB 330/SB8 as discussed in Comment 4b above.**

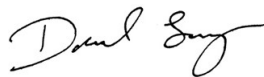
See Attachment 1 for further discussion.

6. We greatly appreciate staff’s thorough and conscientious responses to the comments in our 8/28/22 letter. Our replies to some of those responses are in Attachment 1. Some of them only involve correction or clarification of what we believe are errors and ambiguities. We hope to resolve these points through follow up discussions with staff.
7. We are very pleased with the EIR mitigation measures listed on pages 27–30 of the 5/6/24 LPAB staff report, especially those promoting use of the California Historical Building

Code and facilitating relocation of buildings that would otherwise be demolished. Implementation of some of these is subject to “when funding becomes available” and using vague words such as “encourage,” “consider,” and so on. Can the language be more firm? Can the EIR and/or DOSP establish a DOSP Implementation Committee consisting of staff and interested outside stakeholders to help ensure that these initiatives are seriously pursued so they aren’t eventually forgotten?

Thank you for the opportunity to comment. Please contact Christopher Buckley at (510) 523–0411 or cbuckleyaicp@att.net or Naomi Schiff at (510) 835–1819 or Naomi@17th.com if you would like to discuss these comments.

Sincerely,



Daniel Levy
President

Attachments:

1. Selected OHA replies to 5/6/24 LPAB staff report responses to OHA 8/28/22 comments
2. San Francisco Planning Code TDR provisions

By electronic transmission:

cc: Planning Commissioners Shirazi, Sugrue, Renk, Ahrens, Randolph, Sandoval,
William Gilchrist, Ed Manasse, Laura Kaminski, Joanna Winter, DOSP staff and
consultants, Catherine Payne, Heather Klein, Neil Gray, Pete Vollmann, Betty Marvin,
Audrey Lieberworth, Bureau of Planning/Zoning
Councilmember Carroll Fife, District 3
Councilmembers Kaplan, Kalb, Fortunato-Bas, Gallo, Jenkins, Ramachandran, Reid
Landmarks Preservation Advisory Board members Rice, Bomba, Katticaran, Lenci, Matheny

Attachment 1: Selected OHA Replies to 5-6-24 Staff Report Responses to OHA 8-28-22 DOSP Letter

May 9, 2024

Oakland Heritage Alliance (OHA) is still reviewing the Draft DOSP and the related zoning amendments presented at the 5/6/24 LPAB meeting and in the 5/6/24 staff report. **The following replies are therefore preliminary and subject to expansion and modification.** Item 9 is the most significant. The original OHA height recommendations are shown on the attached map dated 9/22/19.

The staff responses are shown as standard text, while the OHA replies are shown in *red italics*.

Note: OHA and staff reached agreement on some of the 8/28/22 comments, especially those concerning Transferable Development Rights (TDRs). These agreements are therefore not reflected in this document. OHA would like to thank staff for diligently working with us on these agreements.

- 1. Fire Alarm Building (FAB).** The original proposal to increase the FAB height limit from 55' to 90' has been revised down to 65'. The 65' height would allow redevelopment of the site, potentially as a Jazz Museum or as an expansion of the Main Library. This height is consistent with the permitted height for the neighboring Oakland Museum of California, Oakland Public Library, County Courthouse, and the adjacent BAMBD along 14th Street. Additionally, the City owns the land and will have control over design review of this site. This site is not currently under consideration for market-rate housing, as some commenters have feared; it is in the early stages of review to be used for public purposes, as desired by the City and community members.

We are confused by staff's response. We believe that the original proposal was a base height of 45', rather than 55', with 90' using the Zoning Incentive Program (ZIP). Reduction of the proposed increase to 65' and taking the site out of the ZIP area is appreciated, but the OHA recommendation was to retain the existing 45' height limit. The Fire Alarm Building site height limit should be lower than the Lakeside/Gold Coast neighborhood, since the site partially functions as open space and as a transition from the library and courthouse to Lakeside Park.

(Note: Although not directly related to the zoning amendments, the Fire Alarm Building is a PDHP, which should be retained intact as part of the proposed Jazz Museum or any other project, even if additions are made on site. The Jazz Museum renderings that we have seen appear to show a retention of only a small part of the building.)

2. **Lakeside/Gold Coast Area.** The original proposal to increase the height limit from the existing 55' limit to 90' has been revised down to 65' due to concerns about an appearance of a solid wall of buildings along Lake Merritt blocking views of downtown. Although many of the existing lakefront buildings are already taller than 65', this reduced height limit will allow for desired infill that is consistent with many of the area's existing beautiful 4- to 6- story multifamily residential buildings.

Thank you for reducing the proposed height limit increases from 90' to 65'. But we continue to recommend the existing 55' height limit, which allows new residential development height that could be 85' or more with a state density bonus.

Staff does not recommend lowering the interior of the residential area, which is at HIA 6 (65') and includes many existing beautiful 4- to 6-story multifamily residential buildings.

Yes, there are two or three attractive older buildings with height between 55' and 65' within the subject area, but these are outliers and the interplay with the state density bonus law needs to be considered.

TARGETED HEIGHT REDUCTIONS TO PROTECT HISTORIC CHARACTER

3. **17th Street between Franklin and Harrison.** Reducing the northeast half of the block between Broadway and Franklin (office building at 426 17th St. and church at 1701 Franklin) from HIA 18 (No Limit) to HIA 6 (65').

Thank you for this height reduction, but 426 17th St. and 1701 Franklin St. are on 17th St. between Broadway and Franklin, not between Franklin and Harrison and are still in ZIP area.

*Regarding the portion of 17th St. that is actually between Franklin and Harrison, the existing 55 foot height limit is proposed to be increased to 65 feet "to allow space for a 1 to 2 story vertical addition". **The existing 55' height limit should instead be retained,** especially between Franklin and Webster Street, which is one of Downtown Oakland's most admired groupings of two and three story early 20th century commercial buildings. See photo below.*



The existing buildings are about 50 feet in height maximum. These especially well-integrated architectural ensembles are among Downtown Oakland's most important urban design assets. Given the small portion of the DOSP area occupied by these ensembles, we do not understand why the DOSP is so focused on promoting vertical additions and significantly taller new construction that could disrupt Downtown Oakland's limited number of these ensembles. There are vast portions of the DOSP area outside APIs/ASIs that lack these ensembles and where substantially larger and taller buildings would not have adverse urban design impacts.

4. 15th Street between Broadway and Harrison.

Heights are already proposed to be reduced from the existing "No Limit" to HIA 10 (90') to be consistent with the other buildings along 15th Street.

This area and other portions of the Downtown National Register District along with APIs/ASIs and freestanding PDHPs should not be included in the ZIP area. As we have noted in Item 9 below and in other correspondence, the ZIP area can be expanded elsewhere to compensate.

*The existing height limit between Franklin and Harrison Streets is 85' rather than unlimited. Existing buildings are 35' or lower, except for the former YWCA which is about 65'. OHA's concern regarding 15th St. is limited to the portion between Broadway and Webster Street plus the south side of 15th Street between Webster and Harrison, where the White Building and Coit Hotel are located. **We therefore continue to recommend that the height limit for these frontages be 55', except for the Coit Hotel and adjacent vacant parcel, where the existing 85' height limit appropriately reflects the height of the hotel.***

5. Victorian residential neighborhood on 22nd St. (Telegraph-MLK)—Cathedral Neighborhood API). Changing HIA 6 (65') to HIA 5 (55') where there is a consistent height context in the Area of Primary Importance (API) on the south side of 22nd and the north side near MLK.

We appreciate the proposed reduction of the height limit from 65' to 55', but 55' is the existing height limit, is already excessive and allows new residential development height that could be 85' or more with a state density bonus. See the out of scale new building at 570-602 21st Street/585 22nd Street which is a major disruption to the Cathedral Neighborhood API.



Buildings that are even more massive and disruptive can be developed using the state density bonus law.

*As stated in Items 7 and 8 below, **the maximum height in APIs/ASIs should be no greater than the predominant maximum height of contributing buildings**, which for 22nd St. are wall heights of about 30' and roof heights of about 40'. We therefore continue to recommend 30'/40' here as well as in the similar areas discussed below.*

Staff does not recommend reducing the remainder of the block. The HIA 10 (90') area is auto garage and postal facility that should be redeveloped; it is not part of an API.

Although technically not part of the API, these locations are at the center of the API. Overscaled new buildings on these sites will be an integral part of the 22nd Street streetscape and will significantly disrupt the API.

6. **Produce Market.** Removing two already-developed parcels from the boundary and then revising the height proposal for this area from HIA 5 (55', FAR 3.5) to HIA 3 (45', FAR 2.5), which includes modest change from the existing FAR 1.0 to allow building owners to add second story additions that might help improve the economic viability of maintaining the market buildings; adding design standards for the Produce Market to include a step-back for upper floor additions.

Thank you for reducing the proposed height limits and FAR, but a doubling of the existing 1.0 FAR is not “modest”, especially with a 45' height limit that is about triple the existing predominant building heights. If the intent is to allow second-story additions, why is 45' even proposed, when 2" should be sufficient? Providing the increase with a 15–20-foot setback is a good strategy, but we can't find this provision in the actual zoning amendments.

THE FOLLOWING OHA RECOMMENDATIONS WERE CONSIDERED AND NOT ADOPTED:

Maintain or reduce heights/FARs in APIs and ASIs.

7. **Old Oakland API.** Staff does not recommend lowering the existing HIA 5 (55') in the interior of the district or the HIA 6 (65') along 7th St., which allows minor height increases to existing buildings and also allows for the redevelopment of a vacant parking lot.

The existing contributing buildings in Old Oakland are all about 45' or less, so the existing 55' height limit (which resulted from the misguided 2009 upzoning) is already too high. Being a full story higher than the tallest contributing buildings it is not a “minor” increase. The height limit should reflect the predominant maximum height of existing contributing buildings. Again, the interplay with density bonus projects needs to be considered.

In addition, if heights were lowered, buildings in the area would be less likely to be able to take advantage of the TDR program.

*Yes, the TDR program is intended for historic buildings that are less than the by-right height, but height limits in APIs/ASIs should not be purposely set above the maximum prevailing height of contributing buildings just to generate TDR opportunities for historic buildings. Instead, the prevailing maximum height of contributing buildings should be the major factor in determining the height limit in APIs/ASIs. **The height limit itself should be considered the major preservation tool, with TDR as a backstop for buildings that are below the prevailing height of contributing buildings, and therefore below the height limit, even if lower by only one or two stories.** But for freestanding DHPs and PDHPs, TDR should be considered the primary preservation tool.*

8. **Downtown Oakland National Register District.** Staff does not recommend changes to the urban core of Downtown Oakland. Serviced by BART and extensive bus connections; there is no character-defining height context, and it is one of the most appropriate locations in the city for high rise, dense development. Heights in the draft amendments are reduced from the highest heights in the areas to the west, north and east of Frank H. Ogawa Plaza. Staff does propose to reduce the height of the property adjacent to City Hall to 95' to maintain the architectural significance and primacy of City Hall.

Thank you for the height reduction to 95'

*The downtown urban core consists of subareas, including the historic core defined by the Downtown National Register District as well as other subareas such as around Kaiser Center. **The maximum building height should be customized for consistency with the desired future development character of each subarea. In the case of the Downtown National Register District and other APIs/ASIs, the future development character should retain the architectural predominance of the contributing buildings, especially in APIs as important as the National Register District.** Increasing the allowed height beyond the predominant maximum height of contributing buildings invites taller intrusive new buildings that can visually overwhelm the contributing buildings and disrupt or destroy the sense of time and place and the architectural consistency that currently exists. The OHA-recommended height limit range of 35' to 15' within the National Register District seeks to reflect the predominant height of contributing buildings within the various portions of the District.*

9. **Increase by-right intensity in some areas & reduce base intensities in other areas.** OHA's recommendation is intended to achieve "no net loss" under SB 330. However, the locations proposed are not appropriate for lower intensity. These reductions would remove a large section of the most potentially incentivizing areas from the ability to participate in the ZIP, hampering the viability of the ZIP to provide meaningful benefits to the community. The changes would also limit development intensity exactly where it is needed most to meet the City's sustainability, housing and employment goals; within the most transit and service-rich area of the City.

Increase intensity in the following areas to allow decreasing it elsewhere:

- **The area roughly bounded by Lake Merritt, Grand Avenue, 20th St. and Broadway**
- **Much of the area bounded by 14th, 11th, Jefferson and Broadway**

This proposal from OHA was intended to increase by-right intensity in some locations to reduce base intensities in other areas to achieve "no net loss" under SB 330, but still be able to require developers to "buy back" their capacity to develop to the same level allowed under current zoning. However, the locations are not appropriate for lower intensity than originally proposed for two reasons: 1) The proposed increases to the base

zoning would remove a large section of the most potentially incentivizing areas (i.e. able to add intensity while maintaining the same building type) from the ability to participate in the ZIP, seriously hampering the viability of the ZIP to be able to provide meaningful benefits to the community; and 2) The proposed decreases would also limit intensity of development in exactly where it is needed most to meet the City's environmental sustainability, housing and employment goals, by limiting development in the most transit-rich and service-rich area of the City. This would be inconsistent with Oakland's Equitable Climate Action Plan ("ECAP"), Oakland's Housing Element and State Housing Laws and policy.

There has been a major miscommunication on this. The two listed areas are already appropriately in the ZIP. The additional areas that OHA had recommended on 8-28-22 for upzoning and/or inclusion in the ZIP were: (a) portions of area the bounded by Franklin, 14th, 19th and Harrison; and (b) much of the area west of Telegraph and north of 17th.

We would like to review these areas with staff to determine if they are appropriate for: (a) Further upzoning to offset (as per SB 330) our recommended downzonings elsewhere; and (b) Inclusion in the ZIP to compensate for our recommended removal from the ZIP of various API and ASI parcels and other parcels containing DHPs and/or PDHPs.

Oakland Heritage Alliance

Preliminary Height Limit Recommendations: 9-22-2019

OHA Recommends

Intensity Area	Proposed Maximum Height	Proposed Maximum FAR	Proposed Maximum Density
1 - Lowest	45'/55'	2.0/3.5	300 SF/1,089 SF
2	65'	5	250 SF
3	85'	7.5	200 SF
4	175'	12	110 SF
5	275'	12.0/17.0	90 SF
6	450'	20	87 SF
7	No Limit	22	80 SF
8 - Highest	No Limit	30	65 SF

OHA NOTES:

- The recommended height limits apply to historic areas identified as Areas of Primary or Secondary Importance as defined in the Oakland General Plan and parcels in close proximity to these areas. The height limits are intended to reflect the prevailing height of individual historic buildings within these areas.

- 30/40** = First number refers to wall height limit. Second number refers to roof height limit available if using a

- gable or hip roof. All height limits subject to adjustment depending on:

- Continued refinement of the height

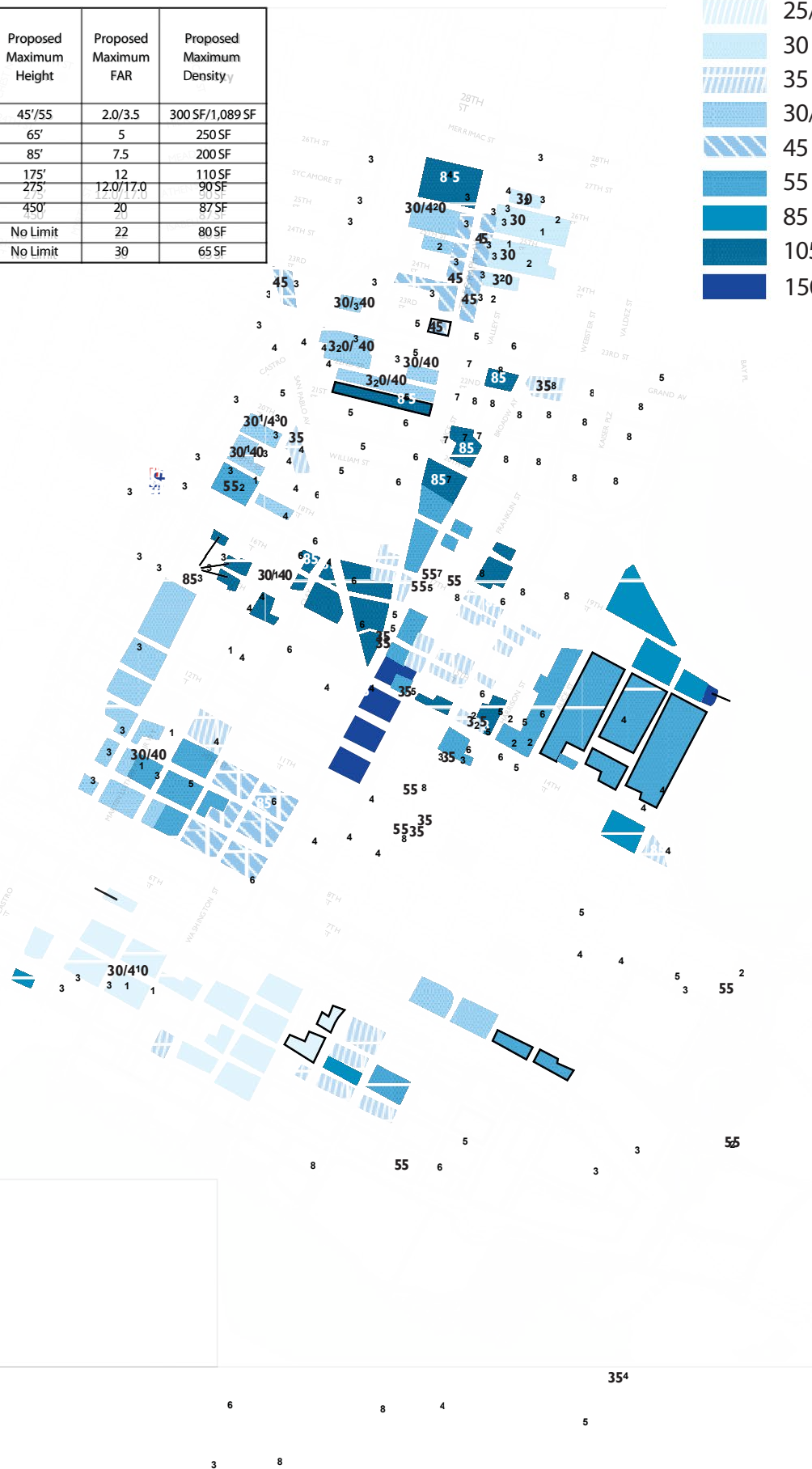
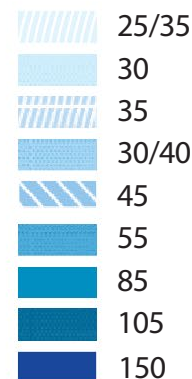
- limits based on further analysis of

- as-built conditions;

Strategy for addressing height

increases mandated by State

Density Bonus Law;



Floor area ratios;	Provision of	a	n	y	transf	era	ble	³ 3	30 ¹ /40 ¹	³
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Scatter plot showing the number of children per woman (Y-axis) versus the year of birth (X-axis). The data points are labeled with their corresponding year of birth. The plot shows a general downward trend, indicating a decrease in fertility over time.

Attachment 2: San Francisco Planning Code TDR provisions

SEC. 128. TRANSFER OF DEVELOPMENT RIGHTS IN C-3 DISTRICTS.

(a) Definitions.

(1) "Development Lot." A lot to which TDR may be transferred to increase the allowable gross floor area of development thereon beyond that otherwise permitted by the Zoning Control Table for the district in which the lot is located.

(2) "Owner of Record." The owner or owners of record in fee.

(3) "Preservation Lot." A parcel of land on which is either (A) a Significant or Contributory building (as designated pursuant to Article 11); or (B) a Category V Building that has complied with the eligibility requirement for transfer of TDR as set forth in Section 1109(c); or (C) a structure designated an individual landmark pursuant to Article 10 of this Code. The boundaries of the Preservation Lot shall be the boundaries of the Assessor's lot on which the building is located at the time the ordinance or, as to Section 1109(c), resolution, making the designation is adopted, unless boundaries are otherwise specified in the ordinance.

(4) "Transfer Lot." A Preservation Lot located in a C-3 District from which TDR may be transferred. A lot zoned P (public) may in no event be a Transfer Lot unless a building on that lot is (A) owned by the City and County of San Francisco; and (B) located in a P District adjacent to a C-3 District; and (C) designated as an individual landmark pursuant to Article 10 of this Code, designated as a Category I Significant Building pursuant to Article 11 of this Code, or listed on the National Register of Historic Places; and (D) the TDR proceeds are used to finance, in whole or in part, a project to rehabilitate and restore the building in accordance with the Secretary of Interior standards. For the purposes of Section 128(b), a lot zoned P that satisfies the criteria of this Subsection (4) to qualify as a "Transfer Lot" shall be deemed to have an allowable gross floor area of 7.5:1 under Section 124.

(5) "Transferable Development Rights (TDR)." Units of gross floor area that may be transferred, pursuant to the provisions of this Section and Article 11 of this Code, from a Transfer Lot to increase the allowable gross floor area of a development on a Development Lot.

(6) "Unit of TDR." One unit of TDR is one square foot of gross floor area.

(b) **Amount of TDR Available for Transfer.** The maximum TDR available for transfer from a Transfer Lot consists of the difference between (1) the allowable Gross Floor Area permitted on the Transfer Lot by the Zoning Control Table for the district in which the lot is located; and (2) the Gross Floor Area of the development located on the Transfer Lot.

(c) **Eligibility of Development Lots and Limitation on Use of TDR on Development Lots.** TDR may be used to increase the allowable gross floor area of a development on a Development Lot if the following requirements and restrictions are satisfied:

(1) Transfer of Development Rights shall be limited to the following:

(A) The Transfer Lot and the Development Lot are located in a C-3 Zoning District; or

(B) the Transfer Lot contains a Significant building and is located in the South of Market Extended Preservation District, as set forth in Section 819, and the Development Lot is located in a C-3 District; or

(C) the Transfer Lot is in a P District adjacent to a C-3 District and meets the requirements established in subsection (a)(4) above and the Development Lot is located in a C-3 District; or

(D) the Transfer Lot is located in any C-3 District and contains an individual landmark designated pursuant to Article 10 and the Development Lot is located in any C-3 District.

(2) TDR may not be transferred for use on any lot on which is or has been located a Significant or Contributory building; provided that this restriction shall not apply if the designation of a building is changed to Unrated; nor shall it apply if the Historic Preservation Commission finds that the additional space resulting from the transfer of TDR is essential to make economically feasible the reinforcement of a Significant or Contributory building to meet the standards for seismic loads and forces of the Building Code, in which case TDR may be transferred for that purpose subject to the limitations of this Section and Article 11, including Section 1111.6. Any alteration shall be governed by the requirements of Sections 1111 to 1111.6.

(3) Notwithstanding any other provision of this Section, development on a Development Lot is limited by the provisions of this Code, other than those on floor area ratio, governing the approval of projects, including the requirements relating to height, bulk, setback, sunlight access, and separation between towers, and any limitations imposed pursuant to Section 309 review applicable to the Development Lot. The total allowable gross floor area of a development on a Development Lot may not exceed the limitation imposed by Section 123(c).

(d) **Effect of Transfer of TDR.** Transfer of TDR from a Transfer Lot permanently reduces the development potential of the Transfer Lot by the amount of the TDR transferred, except as provided in Section 124(f). In addition, transfer of TDR from a Preservation Lot containing a Contributory building or an individual landmark designated pursuant to Article 10 causes such building to become subject to the same restrictions on demolition and alteration, and the same penalties and enforcement remedies, that are applicable to Significant Buildings Category I, as provided in Article 11.

(e) Procedure for Determining TDR Eligibility.

(1) In order to obtain a determination of whether a lot is a Transfer Lot and, if it is, of the amount of TDR available for transfer, the owner of record of the lot may file an application with the Zoning Administrator for a Statement of Eligibility. The application for a Statement of Eligibility shall contain or be accompanied by plans and drawings and other information which the Zoning Administrator determines is necessary in order to determine whether a Statement of Eligibility can be issued. Any person who applies for a Statement of Eligibility prior to expiration of the time for request of reconsideration of designation authorized in Section 1106 shall submit in writing a waiver of the right to seek such reconsideration.

(2) The Zoning Administrator shall, upon the filing of an application for a Statement of Eligibility and the submission of all required information, issue either a proposed Statement of Eligibility or a written determination that no TDR are available for transfer and shall mail that document to the applicant and to any other person who has filed with the Zoning Administrator a written request for a copy, and shall post the proposed Statement of Eligibility or written determination on the Planning Department website. Any appeal of the proposed Statement of Eligibility or determination of noneligibility shall be filed with the Board of Appeals within 20 days of the date of issuance of the document. If not appealed, the proposed Statement of Eligibility or the determination of noneligibility shall become final on the 21st day after the date of issuance. The Statement of Eligibility shall contain at least the following information:

- (A) the name of the owner of record of the Transfer Lot;
- (B) the address, legal description and Assessor's Block and Lot of the Transfer Lot;
- (C) the C-3 use district within which the Transfer Lot is located;

(D) whether the Transfer Lot contains a Significant or Contributory building, a Category V building, or an Article 10 individually designated landmark;

(E) the amount of TDR available for transfer; and

(F) the date of issuance.

(3) Once the proposed Statement of Eligibility becomes final, whether through lack of appeal or after appeal, the Zoning Administrator shall record the Statement of Eligibility in the Office of the County Recorder. The County Recorder shall be instructed to mail the original of the recorded document to the owner of record of the Transfer Lot and a conformed copy to the Zoning Administrator.

(f) Cancellation of Eligibility.

(1) If reasonable grounds should at any time exist for determining that a building on a Preservation Lot may have been altered or demolished in violation of Articles 10 or 11, including Sections 1110 and 1111 thereof, the Zoning Administrator may issue and record with the County Recorder a Notice of Suspension of Eligibility for the affected lot and, in cases of demolition of a Significant or Contributory building, a notice that the restriction on the floor area ratio of a replacement building may be applicable and shall mail a copy of such notice to the owner of record of the lot. The notice shall provide that the property owner shall have 20 days from the date of the notice in which to request a hearing before the Zoning Administrator in order to dispute this initial determination. If no hearing is requested, the initial determination of the Zoning Administrator is deemed final on the twenty-first day after the date of the notice, unless the Zoning Administrator has determined that the initial determination was in error.

(2) If a hearing is requested, the Zoning Administrator shall notify the property owner of the time and place of hearing, which shall be scheduled within 21 days of the request, shall conduct the hearing, and shall render a written determination within 15 days after the close of the hearing. If the Zoning Administrator shall determine that the initial determination was in error, that officer shall issue and record a Notice of Revocation of Suspension of Eligibility. Any appeal of the determination of the Zoning Administrator shall be filed with the Board of Appeals within 20 days of the date of the written determination following a hearing or, if no hearing has been requested, within 20 days after the initial determination becomes final.

(3) If after an appeal to the Board of Appeals it is determined that an unlawful alteration or demolition has occurred, or if no appeal is taken of the determination by the Zoning Administrator of such a violation, the Zoning Administrator shall record in the Office of the County Recorder a Notice of Cancellation of Eligibility for the lot, and shall mail to the property owner a conformed copy of the recorded Notice. In the case of demolition of a Significant or Contributory Building, the Zoning Administrator shall record a Notice of Special Restriction noting the restriction on the floor area ratio of the Preservation Lot, and shall mail to the owner of record a certified copy of the Notice. If after an appeal to the Board of Appeals it is determined that no unlawful alteration or demolition has occurred, the Zoning Administrator shall issue and record a Notice of Revocation of Suspension of Eligibility and, if applicable, a Notice of Revocation of the Notice of Special Restriction, and shall mail conformed copies of the recorded notices to the owner of record.

(4) No notice recorded under this Section 128(f) shall affect the validity of TDR that have been transferred from the affected Transfer Lot in compliance with the provisions of this Section prior to the date of recordation of such notice, whether or not such TDR have been used.

(g) Procedure for Transfer of TDR.

(1) TDR from a single Transfer Lot may be transferred as a group to a single transferee or in separate increments to several transferees. TDR may be transferred either directly from the original owner of the TDR to the owner of a Development Lot or to persons, firms or entities who acquire the

TDR from the original owner of the TDR and hold them for subsequent transfer to other persons, firms, entities or to the owners of a Development Lot or Lots.

(2) When TDR are transferred, they shall be identified in each Certificate of Transfer by a number. A single unit of TDR transferred from a Transfer Lot shall be identified by the number "1." Multiple units of TDR transferred as a group for the first time from a Transfer Lot shall be numbered consecutively from "1" through the number of units transferred. If a fraction of a unit of TDR is transferred, it shall retain its numerical identification. (For example, if 5,000-1/2 TDR are transferred in the initial transfer from the Transfer Lot, they would be numbered "1 through 5,000 and one-half of 5,001.") TDR subsequently transferred from the Transfer Lot shall be identified by numbers taken in sequence following the last number previously transferred. (For example if the first units of gross floor area transferred from a Transfer Lot are numbered 1 through 10,000, the next unit transferred would be number 10,001.) If multiple units transferred from a Transfer Lot are subsequently transferred separately in portions, the seller shall identify the TDR sold by numbers which correspond to the numbers by which they were identified at the time of their transfer from the Transfer Lot. (For example, TDR numbered 1 through 10,000 when transferred separately from the Transfer Lot in two equal portions would be identified in the two Certificates of Transfer as numbers 1 through 5,000 and 5,001 through 10,000.) Once assigned numbers, TDR retain such numbers for the purpose of identification through the process of transferring and using TDR. The phrase "numerical identification," as used in this section, shall mean the identification of TDR by numbers as described in this Subsection.

(3) Transfer of TDR from the Transfer Lot shall not be valid unless (A) a Statement of Eligibility has been recorded in the Office of the County Recorder prior to the date of recordation of the Certificate of Transfer evidencing such transfer and (B) a Notice of Suspension of Eligibility or Notice of Cancellation of Eligibility has not been recorded prior to such transfer or, if recorded, has thereafter been withdrawn by an appropriate recorded Notice of Revocation or a new Statement of Eligibility has been thereafter recorded.

(4) Transfer of TDR, whether by initial transfer from a Transfer Lot or by a subsequent transfer, shall not be valid unless a Certificate of Transfer evidencing such transfer has been prepared and recorded. The Zoning Administrator shall prepare a form of Certificate of Transfer and all transfers shall be evidenced by documents that are substantially the same as the Certificate of Transfer form prepared by the Zoning Administrator, which form shall contain at least the following:

(A) For transfers from the Transfer Lot only:

(i) Execution and acknowledgement by the original owner of TDR as the transferor(s) of the TDR; and

(ii) Execution and acknowledgment by the Zoning Administrator; and

(iii) A notice, prominently placed and in all capital letters, preceded by the underlined heading "Notice of Restriction," stating that the transfer of TDR from the Transfer Lot permanently reduces the development potential of the Transfer Lot by the amount of TDR transferred, with reference to the provisions of this Section.

(B) For all transfers:

(i) The address, legal description, Assessor's Block and Lot, and C-3 use district of the Transfer Lot from which the TDR originates; and

(ii) The amount and sale price of TDR transferred; and

(iii) Numerical identification of the TDR being transferred; and

(iv) The names and mailing addresses of the transferors and transferees of the TDR; and

(v) Execution and acknowledgment by the transferors and transferees of the TDR; and

(vi) A reference to the Statement of Eligibility, including its recorded instrument number and date of recordation, and a recital of all previous transfers of the TDR, including the names of the transferors and transferees involved in each transfer and the recorded instrument number and date of recordation of each Certificate of Transfer involving the TDR, including the transfer from the Transfer Lot which generated the TDR.

(5) When a Certificate of Transfer for the transfer of TDR from a Transfer Lot is presented to the Zoning Administrator for execution, that officer shall not execute the document if a transfer of the TDR would be prohibited by any provision of this Section or any other provision of this Code. The Zoning Administrator shall, within five business days from the date that the Certificate of Transfer is submitted for execution, either execute the Certificate of Transfer or issue a written determination of the grounds requiring a refusal to execute the Certificate.

(6) Each duly executed and acknowledged Certificate of Transfer containing the information required herein shall be presented for recordation in the Office of the County Recorder and shall be recorded by the County Recorder. The County Recorder shall be instructed to mail the original Certificate of Transfer to the person and address designated thereon and shall be given a copy of the Certificate of Transfer and instructed to conform the copy and mail it to the Zoning Administrator.

(h) Certificate of Transfer of TDR for a Project on a Development Lot.

(1) When the use of TDR is necessary for the approval of a building permit for a project on a Development Lot, the Director of the Department of Building Inspection shall not approve issuance of the permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required number of TDR. When the transfer of TDR is necessary for the approval of a site permit for a project on a Development Lot, the Zoning Administrator shall impose as a condition of approval of the site permit the requirement that the Director of the Department of Building Inspection shall not issue the first addendum to the site permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required number of TDR.

(2) In order to obtain certification as required in Section 128(h)(1), the permit applicant shall present to the Zoning Administrator:

(A) Information necessary to enable the Zoning Administrator to prepare the Notice of Use of TDR, which information shall be at least the following:

- (i) The address, legal description, Assessor's Block and Lot, and zoning classification of the Development Lot;
- (ii) The name and address of the owner of record of the Development Lot;
- (iii) Amount and numerical identification of the TDR being used;
- (iv) A certified copy of each Certificate of Transfer evidencing transfer to the owner of the Development Lot of the TDR being used; and

(B) A report from a title insurance company showing the holder of record of the TDR to be used, all Certificate of Transfer of the TDR, and all other matters of record affecting such TDR. In addition to showing all such information, the report shall guarantee that the report is accurate and complete and the report shall provide that in the event that its guarantee or any information shown in the report is incorrect, the title company shall be liable to the City for the fair market value of the TDR at the time of the report. The liability amount shall be not less than \$10,000 and no more than \$1,000,000, the appropriate amount to be determined by the Zoning Administrator based on the number of TDR being used.

(C) An agreement whereby the owner of the Development Lot shall indemnify the City against any and all loss, cost, harm or damage, including attorneys' fees, arising out of or related in any way to the assertion of any adverse claim to the TDR, including any loss, cost, harm or damage occasioned by the passive negligence of the City and excepting only that caused by the City's sole and active negligence. The indemnity agreement shall be secured by a financial balance sheet certified by an auditor or a corporate officer showing that the owner has assets equal to or greater than the value of the TDR, or other security satisfactory to Planning Department and the City Attorney.

(3) If the Zoning Administrator determines that the project applicant has complied with the provisions of Subsection (h)(2) and all other applicable provisions of this Section, and that the applicant is the owner of the TDR, that officer shall transmit to the Director of the Department of Building Inspection, with a copy to the project applicant, written certification that the owner of the Development Lot owns the TDR. Prior to transmitting such certification, the Zoning Administrator shall prepare a document entitled Notice of Use of TDR stating that the TDR have been used and may not be further transferred, shall obtain the execution and acknowledgment on the Notice of the owner of record of the Development Lot, shall execute and acknowledge the Notice, shall record it in the Office of the County Recorder, and shall mail to the owner of record of the Development Lot a conformed copy of the recorded Notice. If the Zoning Administrator determines that the project applicant is not the owner of the TDR, or has not complied with all applicable provisions of this Section, that determination shall be set forth in writing along with the reasons therefore. The Zoning Administrator shall either transmit certification or provide a written determination that certification is inappropriate within 10 business days after the receipt of all information required pursuant to Subsection (h)(2).

(i) Cancellation of Notice of Use; Transfer from Development Lot.

(1) The owner of a Development Lot for which a Notice of Use of TDR has been recorded may apply for a Cancellation of Notice of Use if (A) the building permit or site permit for which the Notice of Use was issued expires or was revoked or cancelled prior to completion of the work for which such permit was issued and the work may not be carried out; or (B) any administrative or court decision is issued or any ordinance or initiative or law is adopted which does not allow the applicant to make use of the permit; or (C) a portion or all of such TDR are not used.

(2) If the Zoning Administrator determines that the TDR have not been and will not be used on the Development Lot based on the reasons set forth in subsection (i)(1), the Zoning Administrator shall prepare the Cancellation of Notice of Use of TDR. If only a portion of the TDR which had been acquired are not being used, the applicant may identify which TDR will not be used and the Cancellation of Notice of Use of TDR shall apply only to those TDR. The Zoning Administrator shall obtain on the Cancellation of Notice of Use of TDR the signature and acknowledgment of the owner of record of the Development Lot as to which the Notice of Use of TDR was recorded, shall execute and acknowledge the document, and shall record it in the office of the County Recorder.

(3) Once a Cancellation of Notice of Use of TDR has been recorded, the owner of the Development Lot may apply for a Statement of Eligibility in order to transfer the TDR identified in that document. The procedures and requirements set forth in this Section governing the transfer of TDR shall apply to the transfer of TDR from the owner of a Development Lot after a Notice of Use has been filed, except for the provisions of this Section permanently restricting the development potential of a Transfer Lot upon the transfer of TDR; provided, however, that the district or districts to which the TDR may be transferred shall be the same district or districts to which TDR could have been transferred from the Transfer Lot that generated the TDR.

(j) Erroneous Notice of Use; Revocation of Permit. If the Zoning Administrator determines that a Notice of Use of TDR was issued or recorded in error, that officer may direct the Director of the Department of Building Inspection to suspend any permit issued for a project using such TDR, in which case the Director of the Department of Building Inspection shall comply with that directive. The Zoning Administrator shall thereafter conduct a noticed hearing in order to determine whether the Notice of Use of TDR was issued or recorded in error. If it is determined that the Notice of Use of TDR was issued or recorded in error, the Director of the Department of Building Inspection shall revoke the permit; provided, however, that no permit

authorizing such project shall be revoked if the right to proceed thereunder has vested under California law. If it is determined that the Notice of Use of TDR was not issued or recorded in error, the permit shall be reinstated.

(k) **Effect of Repeal or Amendment.** TDR shall convey the rights granted herein only so long and to the extent as authorized by the provisions of this Code. Upon repeal of such legislative authorization, TDR shall there after convey no rights or privileges. Upon amendment of such legislative authorization, TDR shall thereafter convey only such rights and privileges as are permitted under the amendment. No Statement of Eligibility shall convey any right to use, transfer or otherwise utilize TDR if the maximum floor area ratio for the Transfer Lot is reduced after the Statement of Eligibility is issued.

(l) Preservation Rehabilitation, and Maintenance Requirements for Preservation Lots.

(1) In addition to the material required to be submitted with an application for a Certificate of Transfer for initial transfer from the Transfer Lot set forth in subsection 128(g), the owner of the Transfer Lot shall:

(A) Demonstrate that any and all outstanding Notices of Violation have been abated; and

(B) Submit for approval by the Department a Preservation, Rehabilitation, and Maintenance Plan that describes any proposed preservation and rehabilitation work and that guarantees the maintenance and upkeep of the Transfer Lot. This Plan shall include:

(i) a plan for the ongoing maintenance of the Transfer Lot;

(ii) information regarding the nature and cost of any rehabilitation, restoration or preservation work to be conducted on the Transfer Lot, including information about any required seismic, life safety, or disability access work;

(iii) a construction schedule; and

(iv) any other such information as the Department may require to determine compliance of this subsection 128(l).

All such work, shall comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The requirements of the approved Plan shall be recorded along with the final Certificate of Transfer in the Office of the County Recorder.

Notwithstanding the foregoing, the owner of the Transfer Lot may apply to the Department for a hardship exemption from the requirements of subsection (i). Such hardship exemption shall demonstrate to the satisfaction of the Department that sale of TDR is necessary to fund the work required to cure the outstanding Notice(s) of Violation on the Transfer Lot.

(2) Approval of the Certificate of Transfer for initial transfer from the Transfer Lot shall be conditioned on execution of the requirements described in subsection (l)(1). Once any TDR is transferred from the Transfer Lot, the Certificate of Transfer and conditions may not be withdrawn.

(3) Within one year of the issuance of the Certificate of Transfer for initial transfer from the Transfer Lot, the owner of the Transfer Lot shall submit a status report to the Department detailing how the requirements of subsection (l)(1) have been completed and describing ongoing maintenance activities. Such report shall include: (A) information detailing the work completed; (B) copies of all permits obtained for the work, including any Certificates of Appropriateness or Permits to Alter; (C) any inspection reports or other documentation from the Department of Building Inspection showing completion of the work; (D) itemized receipts of payment for work performed; and (E) any such other documentation as the Department may require to determine compliance with the requirements of this subsection 128(l). The deadline for completion of the work and submittal of this report

may be extended at the discretion of the Department upon application of the owner of the Transfer Lot and only upon a showing that the owner has diligently pursued all required permits and completion of the work.

(4) Failure to comply with the requirements of this subsection (l), including all reporting requirements, shall be grounds for enforcement under this Code, including but not limited to under Sections 176 and 176.1. Penalties for failure to comply may include, but shall not be limited to, a lien on the Transfer Lot equal to the sale price of the TDR sold.

(Added by Ord. 414-85, App. 9/17/85; amended by Ord. 115-90, App. 4/6/90; Ord. 21-03, File No. 020328, App. 2/21/2003; Ord. 77-04, File No. 031930, App. 5/6/2004; Ord. 87-07, File No. 061688, App. 4/27/2007; Ord. 246-10, File No. 100851, App. 10/14/2010; Ord. 256-10, File No. 101200, App. 11/5/2010; Ord. [68-13](#), File No. 120474, App. 4/23/2013, Eff. 5/23/2013; Ord. [22-15](#), File No. 141253, App. 2/20/2015, Eff. 3/22/2015)

AMENDMENT HISTORY

References to officials and bodies updated and/or corrected throughout; internal subdivisions redesignated consistently throughout; in division (c)(1), former subdivisions (i) and (iii) amended and redesignated as (A) and (B), former subdivisions (v) and (vi) redesignated as (C) and (D), and former subdivisions (ii) and (iv) deleted; divisions (f)(1), (f)(3), and (l)(1) through (4) amended; Ord. [68-13](#), Eff. 5/23/2013. Divisions (a)(1) and (b) amended; Ord. [22-15](#), Eff. 3/22/2015.


**ATTACHMENT 2: MAP SHOWING OHA-RECOMMENDED AREAS FOR UPZONING
AND/OR ADDITION TO THE ZIP AREA.**

OAKLAND HERITAGE ALLIANCE

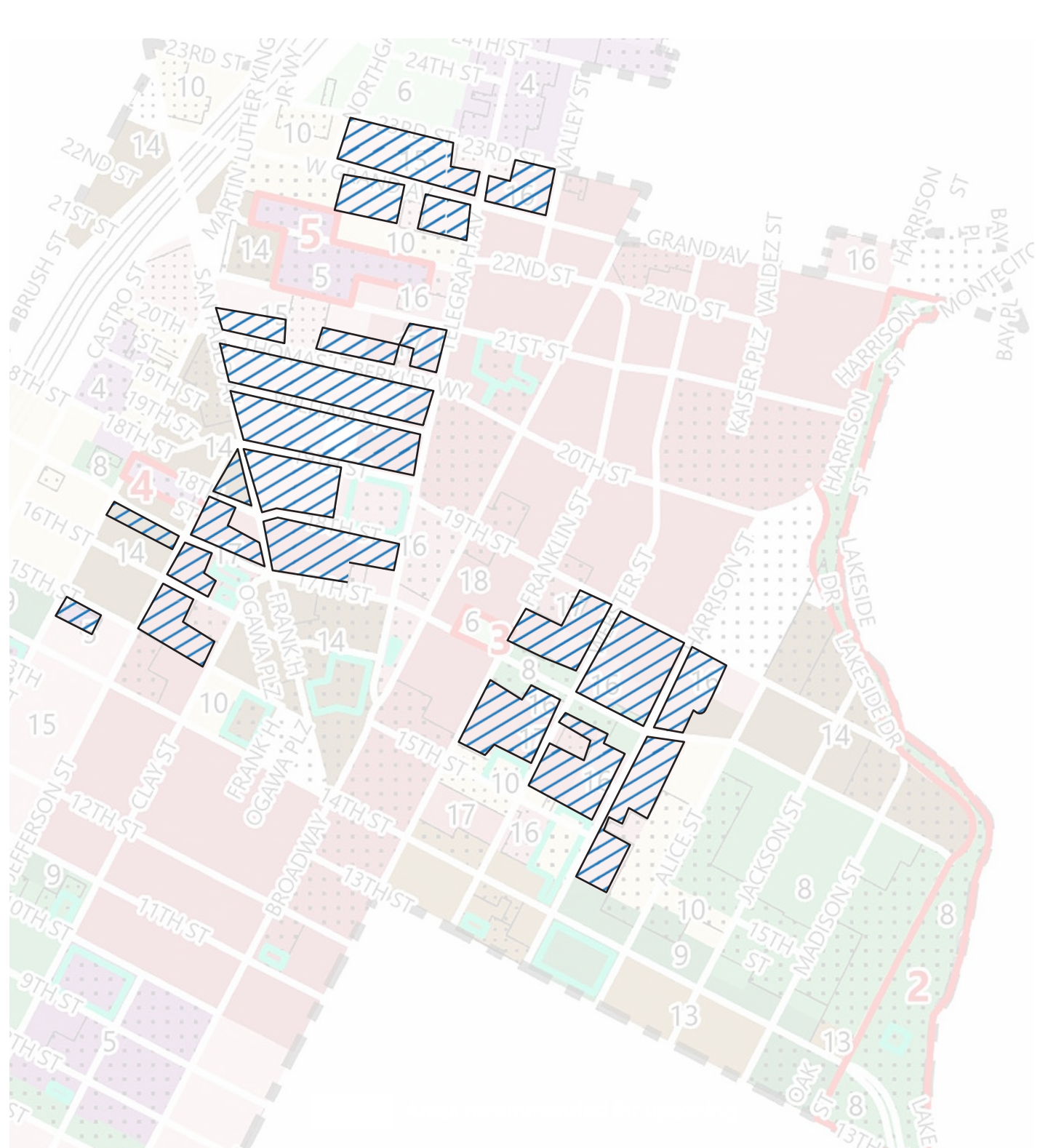
DOSP Areas Recommended for Upzoning and/or Addition to the ZIP Area

The upzoned areas are intended to provide additional development intensity (height, floor area ratio, and residential density) to offset the reduced development intensity resulting from OHA-recommended downzonings elsewhere in the DOSP area. The intensity offsets are intended to allow the downzonings to conform with the “no net loss” of development intensity required by SB 330/SB8.

The upzoned areas could also be used for expansion of the Zoning Incentive Program (ZIP) area to offset OHA’s recommended removal of the ZIP from Areas of Primary and Secondary Importance (APIs and ASIs).

 areas recommended for upzoning

May 14, 2024



**ATTACHMENT 3: OHA PROPOSAL FOR INCREASED FRONT SETBACKS FOR
THE FOUR LATE 19TH-EARLY 20TH CENTURY RESIDENTIAL APIS.**

ATTACHMENT 3: OHA-proposed front yard setback increases in the four late 19th-early 20th century residential APIs: Grove Street/Lafayette Square; 19th Street/Grove Street; Cathedral Neighborhood; and 7th Street/Harrison Square.

The proposed 0' minimum and 10' maximum front setbacks in these four APIs are significantly less than the contributing historic building setbacks in most cases. This is the case even for the 6' front setback required by Regulation 3 for Table 17.101K.04 when the ground floor contains residential units adjacent to the principal street. The proposed setbacks will promote new construction that will literally stick out from the street wall established by the contributing historic buildings, and erode the API's integrity.

RECOMMENDATION:

1. Increase the front yard setback proposed for the D-DT-R and D-DT-RX zones, so it is more consistent with the setbacks of the API contributing buildings. But allow a reduced setback for new buildings if the adjacent building has a shallower setback using the method prescribed in the RD, RM and RU Zones, e.g. see Regulation 4 for Table 17.17.03 for the RM zones. In the specific recommendations below, the minimum setback is recommended to be increased to 15 feet and the maximum setback to 20', except for the southern portion of the Grove Street/Lafayette Square API. One way to do this would be to change the minimum setback in the D-DT-R zone to 15 feet and to place all of the APIs except for the Grove Street/Lafayette Square API's southern portion into the D-DT-R Zone. Alternatively, there could be a carveout for the increased API setbacks within the D-DT-R and D-DT-RX zones provided as an additional Regulation for Table 17.17.03.
2. Apply the increased setbacks to **all buildings** within these APIs, not just those containing ground floor residential units adjacent to the principal street.

SPECIFIC RECOMMENDATIONS FOR THE FOUR APIS:

Cathedral Neighborhood API:

Total contributing properties: 33

Front setback breakdown for contributing properties:

6 ½-10':	6 Properties	18%
10-15':	14 Properties	42%
<u>15-20':</u>	<u>13 Properties</u>	<u>39%</u>
TOTAL:	33 Properties	100%

Recommendation: Since 81% of the contributing properties have front setbacks between 10' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 20'.

19th and Grove Street API:

Total contributing properties: 22

Front setback breakdown for contributing properties:

0':	2 Properties	9%
7 1/2':	6 Properties	27%
10':	7 Properties	32%
17 1/2':	1 Properties	5%
<u>20':</u>	<u>6 Properties</u>	<u>27%</u>
TOTAL:	22 Properties	100%

Recommendation: Since 64% of the contributing properties have front setbacks between 10' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 20'.

Grove Street/Lafayette Square API – North block bounded by 10th, 11th, and Castro Streets and Martin Luther King Way.

Total contributing properties: 13

Front setback breakdown for contributing properties:

0':	2 Properties	15%
9':	2 Properties	15%
12':	1 Properties	8%
15':	3 Properties	23%
18':	2 Properties	15%
20':	2 Properties	15%
TOTAL: 22 Properties 100%		

Recommendation: Since 61% of the contributing properties have front setbacks between 12' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 20'.

Grove Street/Lafayette Square, API – South two blocks bounded by 8th, 10th, and Castro streets and Martin Luther King Way and portions of adjacent blocks.

Total contributing properties: 41

Front setback breakdown for contributing properties:

0':	19 Properties	46%
7':	2 Properties	5%
5':	3 Properties	7%
10':	7 Properties	17%
15':	7 Properties	17%
20':	3 Properties	7%
TOTAL: 41 Properties 100%		

Recommendation: Since 68% of the contributing properties have front setbacks between 0' and 10', provide a 6' minimum setback as required by Regulation 3 for Table 17.101K.04, but for all buildings, not just those where the ground floor contains residential units adjacent to the principal street. Retain the maximum 10' setback.

7th Street/Harrison Square API.

Total contributing properties within the DOSP area: 72

Front setback breakdown for contributing properties:

0':	15 Properties	21%
5':	4 Properties	6%
10':	10 Properties	14%
12':	2 Properties	3%
15':	13 Properties	18%
16':	23 Properties	32%
20':	5 Properties	7%
TOTAL: 72 Properties 100%		

Recommendation: Since 74% of the contributing properties have front setbacks between 10' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 10'.

From: [Christopher Buckley](#)
To: [DowntownSpecificPlan](#); [Winter, Joanna](#); [Kaminski, Laura](#); [Gray, Neil D.](#); [Manasse, Edward](#); [Matranga, Michelle](#); [Marvin, Betty](#)
Subject: DOSP – Increased front yard setbacks within the four late 19th and early 20th century residential APIs within the DOSP area.
Date: Thursday, May 30, 2024 10:24:15 AM
Attachments: [2024-5-30DOSP-RecommendedFrontSetbackChangesIn19thEarly20thCenturyResidentialAPIs.docx](#)
[2019-11-3 585 22ndStCompleted Project1.JPG](#)

Dear DOSP Team:

Oakland Heritage Alliance has finally been able to complete its review of the latest DOSP materials, including the draft zoning amendments. Another issue that we have identified is the proposed 0' minimum and 10' maximum front setbacks (but with a minimum 6' setback required when the ground floor contains residential units adjacent to the principal street) within the four late 19th and early 20th century residential APIs, as well as throughout the entire DOSP area.

The proposed 0' minimum and 10' maximum front setbacks in these four APIs is significantly less than the contributing historic building setbacks in most cases. This is the case even for the 6' front setback required when the ground floor contains residential units adjacent to the principal street. The proposed setbacks will promote new construction that will literally stick out from the street wall established by the contributing historic buildings, and erode the API's integrity. See attached photo of 570-602 22nd Street.

We are therefore recommending that:

<!--[if !supportLists]-->1. <!--[endif]-->Within the APIs, except the southern portion of the Grove Street/Lafayette Square API, the minimum setback be increased to 15' to conform to the prevailing API setbacks, subject to reduction if the adjacent building has a shallower setback, using the method prescribed in the RD, RM and RU Zones. (For example, see Regulation 4 for RM zones Table 17.17.03.)

<!--[if !supportLists]-->2. <!--[endif]-->The increased minimum front setback be applied to **all** buildings in the APIs, not just those containing ground floor residential units adjacent to the principal street.

<!--[if !supportLists]-->3. <!--[endif]-->The maximum front setback be increased to 20' within the four APIs, except for the southern portion of the Grove Street/Lafayette Square API, where it could remain at 10'.

See the attached proposal text for further discussion.

We are planning to include these recommendations in a letter to the City Planning Commission and Landmarks Preservation Advisory Board that we hope to send out late Friday. However, we thought we should show it to you first to determine if you have any comments. If you have comments, please provide them to me by 5 PM Friday. I apologize for the short turnaround. We have had a lot on our plate, and it is challenging to keep up with everything in a timely manner.

Chris

510-697-0411 cell

From: [Christopher Buckley](#)
To: [DowntownSpecificPlan](#); [Winter, Joanna](#); [Kaminski, Laura](#); [Gray, Neil D.](#); [Matranga, Michelle](#)
Cc: [Manasse, Edward](#); [Marvin, Betty](#); [naomi@17th.com](#); [Amelia Marshall](#); [Mary Harper](#); [Daniel Levy](#); [Linda Taylor](#)
Subject: DOSP--Areas to consider for upzoning and/or adding to the ZIP
Date: Tuesday, May 14, 2024 1:41:19 PM
Attachments: [2024-5-14.OHA.ProposedUpzone-ZIP.Map.pdf](#)

Dear DOSP Team,

Thank you again for last Thursday's CAG meeting and for your responsiveness to our questions and comments.

As per our discussions, attached is a specific OHA proposal for portions of the DOSP areas that we recommend be considered for further upzoning to offset the downzoning that we are recommending for APIs and ASIs in order to conform with the "no net loss" development capacity provisions SB330 and SB8. The upzoned areas could also be used for expansion of the Zoning Incentive Program (ZIP) area to offset OHA's recommended removal of the ZIP from APIs and ASIs.

The amount of upzoning could vary within the indicated areas and would depend on how much upzoning is needed to offset any agreed upon downzonings and to maintain adequate development capacity within the ZIP.

Please let us know if this is useful and if staff is willing to consider it as part of the final fine tunings of the DOSP and related zoning amendments.. If so, please tell us what we can do to facilitate the next steps.

Chris
Christopher Buckley, AICP
Member, OHA Preservation Committee
510-697-0411 cell

Comment Letters
Received Prior to
the June 5th
Planning
Commission
Meeting



Creating & Preserving Affordable Housing

June 4, 2024

City of Oakland Planning Commission
c/o Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Public Hearing Items 1 and 2, Downtown Oakland Specific Plan (DOSP) and Associated Amendments to the Zoning Map and Planning Code

Dear Chair Shirazi and Planning Commissioners:

I am writing on behalf of Resources for Community Development (RCD), a nonprofit organization dedicated to creating and preserving affordable homes for people with the fewest options. Within Oakland, we currently provide around 700 homes affordable to low-income families, with another 77-unit development scheduled to open in 2026.

RCD is also a proud member of the East Bay Housing Organizations (EBHO). We agree with the comments that EBHO previously submitted to you in their letter dated May 14, 2024, regarding the Final Draft DOSP. We would like to emphasize the need for the DOSP to reflect Oakland's previously adopted affordable housing priorities from the 2023-2031 Housing Element and the Department of Housing and Community Development (HCD) 2023-2027 Strategic Action Plan. These plans emphasize the need to close the gap between affordable and market-rate housing production (Housing Element Goal #3) and prioritize local dollars for the development of units for extremely low-income households (HCD Action Plan, page 13).

We appreciate that the Final Draft DOSP incorporates EBHO's previous suggestion to modify the Zoning Incentive Program (ZIP) so that affordable housing benefits are provided as a fee, rather than a relatively small inclusionary on-site requirement. These fees can be leveraged for outside funding and paired with operating subsidies to provide deeply affordable housing for extremely low-income households. This aligns with the aforementioned Housing Element and HCD Action Plan goals.

However, we believe that additional changes to the ZIP are required to fully realize these goals. We offer three suggestions to further enhance the community benefits brought about by the proposed program:

1. **The amount of community benefit should be increased to ensure that at least 50% of the incremental value created through rezoning is captured for public benefit.** The community benefit is based on the concept that unearned incremental land value from rezoning should be captured for public benefit and not windfall private profit. The City's economic analysis assumed that the City could not capture more than one-third of the

incremental land value, based on “professional judgement and current economic conditions.” We have not seen any evidence in support of this amount, and we strongly oppose the concept of developing long-term policy based on short-term market conditions. Ultimately, either a \$15,000 or a \$22,500 community benefits fee represents a small fraction of the hundreds of thousands of development costs per unit. The feasibility of using the ZIP will be driven by more significant costs like interest rates, construction materials, and insurance rather than the fee. To that end, the program should at most balance public benefit and developer windfall, such that at least 50% of increased value is captured for public benefit.

2. **Affordable housing benefits should always be provided in association with increases in market-rate density.** As structured, a residential developer can take advantage of the ZIP and satisfy the community benefit requirement by including discounted commercial space or public restrooms. Even if a residential developer chooses to pay the fee, only half of that benefit would go to affordable housing. This does not align with the goal of closing the gap between affordable and market-rate production. The ZIP should be modified to require payment of a community benefit fee dedicated solely to affordable housing for any residential project receiving density or height increases. The remaining community benefit options, including payment of a community benefit fee for employment programs and streetscape improvements, should be reserved for commercial development projects utilizing the ZIP.
3. **The ZIP should allow exchange of community benefits for other development incentives, such as waivers of design rules and zoning standards.** We are concerned that ZIP will be underutilized because it is less appealing to developers than State Density Bonus Law (SDBL). While it is true that the ZIP provides substantially larger increases in density, SDBL also offers access to incentives, waivers, and parking reductions that the ZIP does not. In our experience utilizing SDBL, these other benefits are typically more useful than the actual density bonus itself. For market-rate developers, using SDBL has an additional benefit: the affordable units required to obtain a density bonus also can be used to satisfy the Affordable Housing Impact Fee (AHIF) requirements to provide in-lieu affordable units on site.

An underutilized ZIP will not help any stakeholders or achieve the City’s vision for Downtown. The City should strengthen the appeal of the ZIP by offering the ability for developers to provide community benefits in exchange for other development incentives, such as waivers of design rules and zoning standards. We also encourage the City to report on the ZIP’s utilization on an annual basis and commit to making changes to the program if there is insufficient developer interest, particularly after housing market conditions improve.

We would also like to note the importance of raising the in-lieu on-site affordable percentage requirements for the AHIF. Although we recognize that this is a separate policy matter that will be considered by Council later this summer, it is particularly relevant to the success of the ZIP.

Finally, one consistency note - according to the staff report, the ZIP program will require payment of the AHIF on all market-rate units in a project. However, this requirement is not

included in the final draft ordinance. On page 28, note 8 states “See Section 15.72.100(B)5 for Affordable Housing Impact Fees requirements when using the Zoning Incentive Program.” However, there currently is no Section 15.72.100(B)5.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Courtney Pal". The signature is written in a cursive, flowing style.

Courtney Pal
Policy Manager
Resources for Community Development



East Bay Housing Organizations

May 14, 2024

By electronic transmission

City of Oakland Planning Commission
c/o Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

RE: Downtown Oakland Specific Plan (DOSP), Item #1 on 5-15-24 Planning Commission agenda.

Dear Chair Shirazi and Planning Commissioners:

I am writing on behalf of East Bay Housing Organizations. EBHO is a nonprofit, membership-based organization working to produce, preserve and protect affordable housing opportunities for low-income communities throughout the East Bay. First founded in 1984, EBHO has grown to 400+ individual and organizational members fighting for an economically and racially just world where everyone has a safe, stable, and affordable home.

Thank you for the opportunity to comment on the Final Draft of the Downtown Oakland Specific Plan. These comments focus only on the Plan itself; we will submit separate comments on the zoning amendments, and particularly the Zoning Incentive Program, in advance of your June 5 meeting when those items will be considered.

For more than eight years, EBHO has been deeply involved in the preparation of this latest specific plan, having attended numerous meetings, commented on multiple drafts and preliminary documents, and been an active member of the Community Advisory Group (CAG).

We want to thank City staff for the work they have put into the development of this plan, including the numerous community forums, stakeholder meetings, and other efforts to solicit public input as the plan is being developed. We particularly support the focus on racial and economic equity, the disparity analyses that have been done, and the substantial amounts of data that have been collected and presented in the various plan-related documents that have been published to date. The City should be commended for these efforts.

EBHO supports more intensive development in downtown Oakland, particularly close to transit, in a way that promotes sustainability, inclusion and equity, and that moves us into the future while protecting existing residents from displacement. The Plan aspires to these goals, and we want to see the City succeed in making this vision a reality.

At the same time, we have a number of concerns about the Final Draft Plan, and hope that these comments will be useful to the City as it moves forward toward adoption and implementation. Regrettably, many of these comments are unchanged from those we submitted in November 2019 in response to the Public Review Draft Plan, and we find that most of our comments were not incorporated into this latest version. A copy of our 2019 comments is attached for your reference, particularly as there have been many changes to the Commission's makeup and only one Commissioner remains from when those comments were first submitted.

General Comments

Equity and Affirmatively Furthering Fair Housing

Since the inception of the planning process, the approach to the Plan was restructured to explicitly include a racial equity framework, which we fully support. However, in important ways we think the Plan still falls short of the mark, at least with respect to policies and programs regarding housing. The City has prepared an excellent disparity study describing existing inequities such as racial disparities in tenure, housing cost burden, displacement, and homelessness. And it has solicited a large amount of community input including outreach to communities and populations whose voices have often been marginalized in past planning processes. The City is to be commended for this extensive effort. **But it is not clear to what extent analytical work has translated into a concrete plan of action, with goals, policies and programs that will demonstratively reduce disparities and remove institutional and structural barriers to equitable outcomes.**

The Plan states:

“An Equity Framework describes the Plan’s overarching equity goal, the key disparities the Plan addresses, and how the Plan will be used to advance equitable outcomes.”
(p. 11).

In many respects the Plan appears to confuse metrics/indicators for assessing equity impacts (or more specifically, measuring continuing disparities), versus concrete actions that explicitly and intentionally eliminate disparities and structural inequities. **The Plan needs to demonstrate how each policy will reduce or eliminate identified racial disparities and patterns of segregation. This is all the more true when most of the housing policies are either a restatement of existing policies and programs, which to date have not eliminated these disparities, or are aspirations to further study and possibly implement some kind of policy in the future.**

AB 686, passed by the California Legislature and signed into law in 2018, explicitly requires all cities to Affirmatively Further Fair Housing, not just in their Housing Elements, but in all of a city's housing and community development activities and programs:

“Affirmatively furthering fair housing” means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development.” [emphasis added]

To the extent that the housing actions in the DOSP fall short of specific actions that demonstratively will reduce and eliminate racial disparities by addressing the historic, systemic, and institutional factors that give rise to these disparities, the DOSP fails to fully comply with the requirement to Affirmatively Further Fair Housing.

The Plan's housing strategy demonstrates a great deal of intentionality, but not necessarily a firm commitment to specific actions. As we have commented before and note below, **a substantial number of the housing policies are in fact little more than recommendations that the City “study,” “evaluate,” or “consider” new policies and programs.** We raised concerns about this in our comments on the Public Review Draft, and similar comments regarding the public review draft of the recently adopted Housing Element were made by public commenters and the State Department of Housing and Community Development. We are greatly discouraged to see that language here, particularly after 8 years of planning efforts during which the recommended studies, evaluations, and considerations could actually have taken place so that new programs could be included and launched concurrently with Plan adoption.

Measures of Success

Housing Production Goals

The principal housing affordability goal stated in the Plan is that 15% to 25% of all new housing should be affordable housing. It does not clearly state what is meant by affordable housing. Sometimes this term can refer specifically to extremely low, very low-, and low-income households. Other times it includes moderate income households, for whom rental

housing affordability is much less of a problem, but who do face significant barriers to attaining homeownership and who require a distinct set of housing strategies from low-income renters.

Our principal objection has been, and continues to be, that this goal is far too low and would result in continuing and worsening disparities. The City's Regional Housing Need Allocation (RHNA) for the current housing element cycle (2023-31) is as follows:

Very Low	25%
Low	14%
Moderate	17%
Above Moderate	44%

By comparison, the Plan would target 75% - 85% of new housing to above moderate-income households. **It does not aspire to match the RHNA, and in fact would continue the longstanding imbalance between market-rate production and affordable housing production.**

Moreover, the Plan does not set specific performance goals for production for extremely low, very low-, and low-income housing. There is an extended discussion of past performance in the award of City housing funds, including the City's past success in funding deeply affordable housing for extremely low-income households and permanent supportive housing, but there are no forward-looking goals. The Public Review Draft did provide goals for how affordable housing should be allocated among different economic levels. We found the methodology for doing so to be deeply flawed and commented as such, rather than correcting this methodology, the Final Draft simply omits any discussion of goals for each income level. **Since people of color, and Black people in particular, are disproportionately represented among the lowest income tiers and consequently have disproportionately high rates of housing cost burden and insecurity, there is a need for the City to be intentional and deliberate in setting firm policies to prioritize those with the greatest needs.** As drafted the Plan provides no assurance of such prioritization.

Performance Metrics

While we appreciate a performance metric that looks to a reduction in the percentage of households with cost burden, without further refinement this metric is insufficient. Reductions in cost burden could be achieved simply by disproportionately adding more units that are affordable to and occupied by high income households, who generally experience cost burden at much lower rate. **The performance metric needs to look specifically at changes in cost burden within each income group (extremely low, very low, low, moderate and above moderate) and further disaggregated by race and tenure.**

It would be advantageous to track not only “cost burden,” defined as paying more than 30% of a household’s gross (pre-tax) income on housing (including utilities), but also “severe cost burden” – paying more than 50% of gross income, a problem particularly concentrated among those with the lowest incomes. It should be noted that some higher income households may choose to pay more than 30% of their income on housing, which has an entirely differently meaning for households earning in excess of \$150,000 per year than it does for households earning less than \$50,000 per year for whom cost burden entails having insufficient income to pay for other basic necessities including food, child care, health care and transportation.

Another measure of success should be closing racial disparities in homeownership rates.

The City should track and report regularly on trends in these measures, looking specifically at the DOSP area and not just the City as a whole.

We would particularly like to see detailed tracking of housing units approved, permitted, and completed within the Plan area, by income level, housing type and unit size (by number of bedrooms), and in particular distinguishing 100 percent affordable developments from market rate developments including those with a relatively small number of affordable units on site.

Much of this data is already collected and reported for the Annual Progress Reports for the Housing Element, but only at a citywide level. Previous requests for information on housing production in each of the City’s specific plan areas, including data on what percentage of housing units are affordable, have been met with a response that **the City does not actually track or compile this data for any of its specific plan areas:**

For this request you can refer to our Housing Element Annual Progress Report (APR) data. The APR data is posted on the website here, but it is only available as an excel spreadsheet, not a GIS shapefile. The address for each project creating new housing is included in Table A and A2 of the APR documents posted on our website. For example, see the excel spreadsheet for the 2022 APR here. You'll find the street address in Column C of both Tables A and A2. (email from Planning staff to EBHO staff dated Nov 7, 2023).

For this Plan, such data tracking and analyses must explicitly be part of the Implementation Plan, with annual reporting on progress.

Lack of New Concrete Policies, Programs and Actions

To the extent that there are concrete policies, for the most part these are simply recitations of existing citywide policies and programs, not new initiatives, and not specific to the Downtown Plan area. EBHO made this comment four years ago in response to the Public Review Draft, but little seems to have changed. This is despite that fact that during the Housing Element process, EBHO and other groups again noted the preponderance of actions that involved further study and consideration rather than a firm commitment to policies and actions, and this was also one of the changes required by the State Department of Housing and Community Development before it could certify that the City's Housing Element was in compliance with State law.

It is extremely discouraging that more than four years after first making these recommendations, few of these studies, evaluations and considerations have taken place. This issue is discussed in further detail below in the analysis of individual implementing policies.

Data Needed

A lot of the data is out date, much of it going back nearly 10 years (2011-2015 ACS, for example). More recent data is available – the most recent Census data release includes 5-year data for 2018-2022. This is particularly a problem for housing production data since we have very specific data for the 2015-2022 5th Cycle Housing Element period.

Given the amount of time that has passed since the DOSP planning process was initiated, it would be useful to have information on how much development activity has taken place in the Plan area during that period. This should include specific information on the number of projects and units that were entitled, started construction, or completed, as well as information on projects currently in the pipeline. Information on the extent to which State Density Bonus was used, and in what circumstances, could clarify whether existing zoning lends itself to incentive programs. These kinds of data might shed light on how much of the desired growth has occurred or is in the pipeline, and the extent to which those policies are sufficient to move the needle on closing racial disparities in outcomes.

Detailed Comments on Specific Housing Policies and Implementation Actions

H-1.1 Unit Size Monitoring:

Monitor the number of bedrooms included in new housing units approved and built in downtown.

- While this would be a useful performance metric, **absent specific policies or programs to ensure a mix of unit sizes including larger, family-serving units, this is not an effective action.**

Over the 8+ years since the planning process began, thousands of units have been constructed. A look at the mix of unit sizes (and distinguishing between unassisted and assisted, 100% affordable projects) could be based on production since 2015. Had the City collected and analyzed such data, it would be in a position to enact policies now rather than waiting for more units to be built and assessed.

The Plan does not state what changes are needed to the City's permit tracking system to gather data on unit sizes in addition to data already collected on building type and affordability level.

H-1.2 High-Intensity, Mixed-Use Neighborhoods:

As part of updates to zoning and a development incentive program, adjust the zoning in identified areas of opportunity to create new high-intensity, mixed-use neighborhoods

- The City should pay particular care when zoning to create high intensities that encourage multifamily development. Over-zoning for too much intensity can make affordable housing more difficult and expensive, increase land costs, and encourage holding land off the market until higher housing costs justify the higher land costs. We also note the need to distinguish between encouraging mixed-use neighborhoods with zoning for a mix of commercial and residential buildings, and zoning for mixed-use buildings. For example, requirements for ground-floor commercial can make housing development more challenging unless there is a sufficient market for those commercial spaces.

As we will elaborate when we provide comments on the proposed zoning amendments, the City has failed to seriously consider the extent to which existing zoning in the Downtown area provides more height and density than the market supports, which does not encourage developers to seek zoning incentives by including affordable housing. From the outset of the DOSP planning process, EBHO and other groups have consistently called for the City to strategically downzone some parts of the

Downtown to provide base zoning that would make incentives more attractive, but staff has consistently refused to consider such actions.

H-1.3 Condominium Conversion Ordinance Improvements:

As part of citywide efforts, implement requirements of Oakland's condominium conversion ordinance (updated February 2020) to promote affordability, prevent displacement, and reduce racial disparities in homeownership.

- **The citywide condominium conversion ordinance was updated in 2020 to strengthen tenant notice and protection requirements, extend coverage to 2-4 unit buildings, and increase relocation benefits, and is already in force. There is no new policy or action here.**

We note that the City's previous 2005 Guide to Condominium Conversion has apparently been removed from the City website but has not been updated and published. Instead, the City website now includes only a link to the ordinance and a copy of the flowchart from the old conversion guide, which is now out of date and inaccurate in many respects.

A more effective action would be a requirement that the City update and publish a new guide to Condominium Conversion explaining the current requirements. This should be completed within one year of Plan adoption.

Finally, we note that **the Plan mischaracterizes the objective of the City's condominium conversion ordinance**. The condominium ordinance is not, and never has been, a strategy to promote homeownership. As clearly reflected in the extensive findings that were included in the 2020 ordinance, the stated policy objectives are to protect against the loss of rental housing from the City's housing stock and protect vulnerable tenants from displacement. The ordinance does make exceptions and provide incentives for conversions where existing tenants are purchasing the units, but this is a special exception and not the purpose of the ordinance.

H-1.4 Inclusionary Housing Policy and Impact Fees:

Study an inclusionary housing policy for downtown and potential changes to existing affordable housing impact fees as part of re-assessing the City's current impact fee and the existing option for developers to provide affordable housing units on-site in lieu of paying the impact fee. As appropriate, incorporate inclusionary housing requirements or fees specific to Downtown Oakland, and consider dedicating a portion of fee revenue toward use in Downtown Oakland.

- **This action calls only for a study and consideration of possible actions but doesn't require any specific action.** The City's current study of potential changes to the existing

affordable housing impact fee, including consideration of an inclusionary requirement, was originally scheduled to be completed by December 2021, but was postponed multiple times. It now appears that City staff may be considering recommending that the existing fee be suspended or reduced. It is unclear what inclusionary options will be recommended. This is a far cry from early representation that the City would look at an inclusionary requirement in addition to the existing impact fees.

Another action needed is to adopt policies that would make impact fees available sooner. The City must either allow the advance award and commitment of fees due on projects already under construction (because half the fee is deferred until completion), or it should require that the entire impact fee be paid on building permit issuance – the marginal cost to do so is less than \$5,000 per unit. The sooner such fees are collected, the sooner they can be made available for funding commitments to the many projects that are in the pipeline for funding.

H-1.5 Jobs/Housing Impact Fee Increases:

Study increasing the City's Jobs/Housing Linkage Impact Fee for nonresidential development.

- **Once again, this calls for further study** (which as stated above is already 2-1/2 years behind schedule). Increase the Jobs/Housing Impact Fee is not the only option being considered – the study is also looking at expanding the uses covered by the fee to include more than office and warehouse/distribution. Timing of payments should also be revised as this has only a minimal impact on overall project development costs. This should be more explicitly stated in the Plan itself.

H-1.6 Enhanced Infrastructure Financing District:

Explore the creation of a new downtown value-capture mechanism, such as an Enhanced Infrastructure Financing District (EIFD), with a significant portion of this new long term revenue stream dedicated to affordable housing retention and production. Value-capture mechanisms such as an EIFD reinvest growth in property tax revenue above a baseline amount.

- **This calls for further study and is not a specific action.** Any such study should consider how long it would take for an EIFD to generate significant revenue and what opportunities for affordable housing might be lost (including the loss of potential development sites to market-rate development)

As we noted in our comments on the Public Review Draft in 2019, rather than focusing on a particular revenue source, the Plan should better identify existing revenue sources as well as a larger range of potential new revenue sources. And after so many years of planning, it is not acceptable that identification, creation, and commitment of new

funding sources is put off to the future and not incorporated into the Plan itself.

We find it surprising that while the sidebar discussion on pages 103-104 mentions the \$100 million in funding obtained from the Measure KK bond approved by voters in 2016, there is no mention of the \$350 million obtained from the Measure U bond passed in 2022 – most of which is still uncommitted, the tens of millions of dollars in affordable housing impact fees that have been assessed but not yet collected – including the near-certain payment of amounts due upon completion of projects already under construction, or the \$765 million that would flow directly to Oakland should the \$20 Billion regional bond be approved by voters in November 2024.

H-1.7 Citywide Affordable Housing Strategy:

Review the City's affordable housing strategy and update periodically.

- **This is not in itself a strategy or action. The City's affordable housing strategy is already updated periodically**, including the recently adopted Housing Element (2023), the 5-year Consolidated Plan for Housing and Community Development (2020) and Annual Action Plans, and the Department of Housing and Community Development's five-year Strategic Action Plan (2023), none of which appear to be referenced in the DOSP.

While the DOSP does mention the Permanent Access to Housing (PATH) plan, last updated in 2019, this is not an affordable housing strategy though it does recommend considering increasing the share of City affordable housing funds dedicated to extremely low income housing. The PATH plan is the City's plan for serving the needs of homeless individuals and families and was drafted in alignment with Alameda County's EveryOne Home Plan for addressing homelessness.

H-1.8 Public/Private Partnerships for Affordable Housing:

Support private housing efforts and explore public/ private partnerships with philanthropic organizations and major employers to supplement government funds for affordable housing.

- **This is a largely aspirational goal with no specific target or anticipated outcome.**

H-1.9 Directing Affordable Housing Funds Downtown:

Explore tools and policies to prioritize some portion of new affordable housing funds for use in downtown to maintain downtown as a mixed-income community, especially as downtown generates additional housing funds through accelerated development activity or increased impact fees.

- This is an action we recommended in our comments on the Public Review Draft, though we would favor reserving a portion of funds generated in the Downtown area not just

for housing in the Downtown, but also for affordable housing in “high resource” area that are more competitive for housing funding.

H-1.10 Leveraging Publicly Owned Land for Housing:

Leverage the City’s inventory of publicly owned land in a manner that supports housing affordability for Oakland residents and is consistent with the City’s strategy for public land and the California Surplus Land Act.

- **This is insufficiently vague and ignores comments we made previously that the City needs to follow through in adopting an ordinance to implement the public land policy framework approved by the City Council in 2018.** The ordinance was supposed to have been drafted and brought back to City Council for approval within 6 months. Five years later we still do not have a draft ordinance. The Plan should call for drafting and adopting such an ordinance by the end of 2024 at the latest.

Such a policy would be even more effective if it included a commitment to **providing surplus public land to affordable housing developers at deeply discounted lease rates.**

H-1.11 Co-Locate Affordable Housing and Public Facilities:

Establish public/private partnerships between libraries, recreation centers, county properties and affordable housing providers aimed at co-locating public facilities with affordable housing above.

- We generally support such synergies in co-location and note that the City could use Measure U funds earmarked for public facilities, as well as Community Development Block Grant (CDBG) funds for this purpose. We note also that the City has past experience locating Head Start centers in affordable housing.

H-1.12 Goals for Affordable Housing Production:

Ensure that a mix of market-rate and income-restricted housing is produced in downtown. Target production of between 4,365 and 7,275 affordable housing units, including units designed to accommodate larger families, out of a total housing production target of 29,100 new units.

- **We have already noted above that this goal is inadequate and inconsistent with the City’s RHNA numbers.**

H-1.13 Expedited Approvals for Affordable Housing:

Develop a process to expedite the review and approval of planning and building permits for 100% affordable housing projects.

- **This was already implemented as part of the zoning changes adopted in connection with the Housing Element and is therefore unnecessary and redundant.** 100% affordable housing projects are now approvable by right through a ministerial process subject only to design review based on objective standards.

The City should take concrete steps to ensure that building permit plan check is genuinely prioritized and expedited for 100% affordable housing projects. Also, for several years, developers have urged the City to defer payment of building permits until project completion, which would reduce costs. While these are citywide actions, they could be very beneficial for DOSP projects.

H-1.14 Habitability Standards:

Ensure habitability standards for residents of affordable and market rate housing developments.

- **Affordable housing is already subject to periodic inspections for housing quality standards as part of the City's ongoing monitoring.** As noted in our comments on the Public Review Draft, **a more aggressive and pro-active inspection program for market-rate housing must include strong safeguards against direct and economic displacement from existing units.**

H-1.15 Increased Accessibility Requirements:

Investigate passage of policies requiring a high standard of accessibility retrofits during remodels of existing buildings/units, and/or adjust requirements for new residential development in order to strengthen accessibility. This change could potentially include creation of a citywide universal design ordinance or amendment of existing citywide zoning/building codes to strengthen accessibility requirements (consider using the City of Alameda's visitability and universal design ordinance as a model).

- **Again, this is not a program, it is a call for further study.** We support efforts to increase the accessibility of new and existing housing. This should have been considered as part of the Plan rather than something to be adopted separately.

H-1.16 Family-Friendly Design:

Explore opportunities to implement revised design standards that support design and amenities targeted to families with children, such as including family-friendly common areas or public playgrounds in developments of a certain size.

- See comments above on H-1.15

Additional Policies and Programs for Consideration

There are a few additional policies and programs, which the City has previously implemented or is currently considering, that should be explicitly included in the Final Plan:

- Using a portion of Measure U bond funds to do **land banking** by purchasing available sites in the Downtown and then making them available through a competitive process consistent with the Surplus Land Act.
- Alternatively, the City could re-establish its **Site Acquisition Loan Program** that provides financing to nonprofit developers, community land trusts, etc. to purchase both vacant land and existing housing, effectively taking them off the market and reserving them for future affordable housing development once full funding is leveraged.
- The Plan lacks any strategies for **preserving existing deed restricted or rent-controlled properties**, though the Department of Housing and Community Development has operated such programs in the past. One such strategy would be **adoption of a Tenant Opportunity to Purchase Act (TOPA) and Community Opportunity to Purchase Act (COPA)**. These measure require owners who are selling their rental properties to provide tenants, land trusts and eligible affordable housing developer with a first opportunity to purchase, and if agreement is not reached and another buyer is identified, the original affordable housing developer would then have a first right of refusal to match price and terms.
- Strong measures are needed to prevent displacement of vulnerable extremely low-income renters. Tenant advocates have long noted that a critical resource would be **expanded funding to provide tenants facing eviction with a right to counsel**.

Oakland Planning Commission

May 14, 2024

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Thank you for the opportunity to comment on the Final Draft Plan. We hope you will find these comments useful to ensure that the DOSP truly provides new strategies, policies and tools that prioritize preservation and new production of housing affordable to the most vulnerable residents and eliminate racial disparities in cost burden, tenure, eviction and other identified in the City's own studies.

Please feel free to contact me if you have any questions. I can be reached via email at jeff@ebho.org, or by phone at 510-663-3830 x316.

Sincerely,

Jeffrey P. Levin
Senior Director of Policy

Attachment: EBHO Comments on Preliminary Draft Plan, Nov 6, 2019

cc: Planning Commissioners Shirazi, Sugrue, Renk, Ahrens, Randolph, Sandoval,
William Gilchrist, Ed Manasse, Laura Kaminski, Joanna Winter, Catherine Payne, Heather Klein,
Neil Gray, Pete Vollmann, Betty Marvin, Audrey Lieberworth
Councilmembers Fife, Kaplan, Kalb, Fortunato-Bas, Gallo, Jenkins, Ramachandran, Reid



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2024 May 28, 2024

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8TH DISTRICT

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9TH DISTRICT

RE: Letter of Comment on Downtown Oakland Specific Plan

Dear Ms. Winter,

The San Francisco Bay Area Rapid Transit District (BART) appreciates the opportunity to comment on the City of Oakland’s Downtown Oakland Specific Plan (DOSP) and associated Planning and Zoning Code Amendments.

BART supports the vision of the DOSP to make downtown a dynamic regional hub of culture, employment, housing, and transit, as well as the zoning changes to implement the vision and goals of the plan. At the same time, we have several comments as listed below, following upon our previous comments sent to the DOSP team in 2019 and in 2022.

1. AB2923

Based on correspondence between BART and City staff in 2022, BART understands that the City had intended to rezone BART-owned parcels to ensure conformance with Assembly Bill 2923 (AB2923). However, several parcels and their development standards appear to have been overlooked in the latest draft of the Zoning Amendments. Please ensure that zoning for the following parcels meet the AB2923 Baseline Zoning Standards as shown in Table 1.

- 001-0167-003-00
- 001-0131-008-01
- 008-0649-011-00
- 008-0660-052-03

Table 1. AB2923 Baseline Zoning Standards for Regional Center TOD Place Type

Floor Area Ratio (FAR)	7.2 or higher
Building Story	12 or higher
Residential Density	75 dwelling units per acre or higher
Minimum Vehicle Parking	0
Minimum Residential Vehicle Parking	0.375 spaces per unit or lower
Minimum Office Vehicle Parking	0 per 1,000 square feet
Minimum Secure Bicycle Parking	1 space per residential unit or higher
Shared or Unbundled Vehicle Parking	Allowed

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2. New Transbay Crossing

Please add “Capitol Corridor” to Policy M-2-7 as shown below:

“Policy M-2.7 - New Transbay Crossing/Capitol Corridor/BART Station: Consider locations for a second transbay crossing and new Capitol Corridor/BART Station in downtown. Evaluate locations such as, but not limited to, I-980, Broadway, Franklin, Webster, Clay Street or Washington Street”

3. Accessibility at BART Stations

BART’s previous comment letter, dated October 7, 2012, requested adding BART’s access needs referenced in Policy M-2.5 to the DOSP’s “Transit Projects” list. However, this request was not addressed. Moreover, Policy M-2.5 was revised to remove references to BART’s access needs, as shown below as Policy M-2.9.

“Policy M-2.9 - ADA Accessibility at Transit Stations: Maintain reliable, ADA-accessible access to transit stations (i.e. BART elevators and escalators) and find opportunities to increase the number of elevators.”

In addition, confusingly, Page 62 of Response to Comments Document (RTC) states that Policy M-2.5 was revised as follows:

“Policy M-2.5: The City of Oakland is supportive of BART’s ongoing efforts to maintain reliable, ADA accessible access to transit stations (i.e., BART elevators and escalators), and find opportunities to increase the number of elevators. BART shall address all access needs identified in previous BART planning efforts for the 19th Street Station and 12th Street/City Center Station.”

Please clarify which policy language is the latest. Nonetheless, we suggest revisions to Policy M-2.9 as shown below:

“Policy M-2.9 - ADA Accessibility at Transit Stations: Maintain reliable, ADA-accessible access to transit stations (i.e. BART elevators and escalators) and find opportunities to increase accessibility to transit, working with relevant agencies. Support BART’s efforts to improve access for 19th Street Station and 12th Street/City Center Station.”

4. Station Naming

Policy M-2.10 governs renaming transit stations, as shown below. Please note that BART has adopted [“guiding policy for consideration in station renaming”](#) and there is a formal process in place to rename BART stations.

“Policy M-2.10 - Renaming Transit Station Names: Name transportation facilities and stations to reflect the location or character of the place that they serve.”

5. TDM Plans

BART supports Policy M-2.11 to expand TDM planning to the commercial sector and require transit passes in TDM plans and encourages the City to find ways to implement this policy and monitor the City’s TDM program overall.

“Policy M-2.11 - Transportation Demand Management Plan: Implement TDM Strategies:

- Consider requiring existing downtown employers with more than 50 employees to develop and implement TDM plans and monitor and report on trip reduction.*
- Consider a requirement in TDM plans that large employers and new residential developments provide a flexible, free, or reduced transit pass for employees.”*

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6. Curbside Management

As the City moves forward with Policy M-3.8, BART asks that passenger and ADA pickup/drop-off around the 12th Street and 19th Street BART stations be carefully considered and planned to ensure safe and efficient passenger loading.

“Policy M-3.8 - Curbside Management: Actively manage curbside space to serve Oakland’s residents, merchants, and visitors, and their diverse mobility needs.”

In sum, BART supports the City of Oakland’s DOSP and accompanying Planning and Zoning Code Amendments, with requests to revise some policy language and ensure compliance with AB2923. BART looks forward to continuing to work with the City as it begins the implementation of the DOSP.

Sincerely,

DocuSigned by:

CFDF1A3DA6F8456...

Tim Chan

Group Manager, BART Stations Planning

cc: Seung-Yen Hong, BART
Commissioner Shirazi (Chair)
Commissioner Sugrue (Vice-Chair)
Commissioner Ahrens
Commissioner Randolph
Commissioner Renk
Commissioner Sandoval
Commissioner Robb



PORT OF OAKLAND

May 30, 2024

Edward Manasse
Deputy Director Planning and Building
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza
Oakland, CA 94612

**Subject: Port of Oakland Comments on the Downtown Oakland Specific Plan
Final Draft Plan (March 2024)**

Dear Mr. Manasse:

The Port of Oakland (Port) appreciates the opportunity to provide comments on the City of Oakland's (City) Downtown Oakland Specific Plan - Final Draft Plan (Final Draft Plan or DOSP, March 2024). The Port understands that comments on the Final Draft Plan will be considered as City Council prepares to adopt the DOSP in July 2024.

The Port supports the DOSP's overarching goals, strategies and implementing policies. In 2019, the Port submitted comments to the City's Draft DOSP on the importance of an industrial sanctuary with the purpose of preserving existing transportation truck and rail corridors (Attachment A). The Port commends the City for incorporating the Ports comments on the industrial land use designation - a significant improvement to the DOSP as reflected within the Economic Opportunity, Mobility, Community Health and Sustainability, and Land Use and Urban Design sections of the Final Draft Plan.

The Port also submitted comments to the Embarcadero West Rail Safety and Access Improvements project (Embarcadero Project) on May 21, 2024, providing feedback and strategic approach on maintaining the safety, efficiency, and reliability of the rail systems (Attachment B). As City staff work towards final approval of the DOSP, the Port offers the following comments for the City's consideration.

Industrial Uses

The Port agrees with the inclusion of Policy E-2.11- Maintaining Industrial/Port-Related Uses and Policy LU-1.2 – Preservation of Industrial Land Uses. This important land use designation and policies will allow the Port area to continue to thrive by preserving truck access and industrial land uses. Revisions to the zoning and amending the General Plan will enhance industrial areas to protect existing uses including production, distribution, and repairs. Any proposed improvements to the industrial area must not conflict with the Port or industrial operations.

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In addition, the Port supports Policy M-3.10 – Truck Management Plan. This policy will maintain truck routes to industrial/warehousing facilities. The development of a Downtown Oakland Truck Management Plan would complement the existing West Oakland Truck Management Plan. The Port supports this plan and the inclusion of design standards for existing truck routes and a policy allowing use of designated under-freeway areas at the periphery of downtown near the Port as electric charging stations for electric trucks. The Port has received grant funding and continues to apply for grant funding to accelerate the Port’s transition to zero emission (ZE) operations including the conversion of diesel trucks to ZE.

Again, Port commends the City in the industrial land use designation of Industry Flex 1 and Industry Flex 2 as well as zoning designation of D-DT-JLI (Downtown District Jack London Industrial) west of Jefferson St. The Port agrees with the City’s strategy for preserving industrial uses north of Howard Terminal. The Port suggests the following revisions to align with the preservation of industrial uses.

- 1) Page 152: Maintain Truck Routes to Industrial/Warehousing Facilities – Replace sentence “The Land Use Chapter describes...preserving industrial uses in Jack London west of Martin Luther King Jr. Way” to “...preserving industrial uses in Jack London west of Jefferson St” to be consistent with the zoning designation of D-DT-JLI.
- 2) Figure CH-1: Existing Public Space & Services and Future Public Realm Improvements – Remove “Priority Areas for New Public Spaces and Existing or Planned Public Space” from D-DT-JLI (Downtown District Jack London Industrial).

Howard Terminal Impacts

On June 30, 2022, the Bay Conservation and Development Commission (BCDC) approved the removal of the Port Priority Use (PPU) Area from the Howard Terminal site. However, pursuant to Assembly Bill (AB) 1191, Howard Terminal will revert to a PPU designation on January 1, 2025, should there be no ballpark development on the site. The Oakland A’s are moving forward with development in Las Vegas, Nevada. Therefore, the Port recommends that all shared-use projects and improvements proposed within and connecting to the Howard Terminal be removed or realigned, respectively, throughout the DOSP maps, figures, and chapters. Specifically, the following revisions should be incorporated into the final DOSP. Note that the following revisions may not be exhaustive of all instances of proposed connections extending through Howard Terminal mentioned in the DOSP.



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- 1) Page 45: Extensive Network of Multimodal Streets – Remove “Shared-Use Path” extending to, around, and through Howard Terminal.
- 2) Page 49: Remove “Potential New Parks/Open Space” designation on Howard Terminal.
- 3) Figure M-4: Proposed Connectivity and Access Improvements – Remove “Potential Expansion of Bay Trail” extending to, around, and through Howard Terminal. Remove “Connectivity Improvement Corridor” extending to Water St through Howard Terminal.
- 4) Figure M-7: Proposed Low-stress Short-Term Network and Vision Bicycle Networks – Remove “Potential shared-use path through Howard Terminal”. Remove “Recommended Bikeways” extending to Water St through Howard Terminal.
- 5) Figure M-8: Proposed Bus Transit Network - Remove “With redevelopment at Howard Terminal” as noted in the Legend of Figure M-8. The ballpark and residential development will not be moving forward.
- 6) Figure CH-1: Existing Public Space & Services and Future Public Realm Improvements – Remove “Priority Areas for New Public Spaces”, “Existing of Planned Public Space”, and “Potential Plaza/Public Space” from Howard Terminal.
- 7) Figure CH-5: Green Loop Connections Map – Remove “Potential Future Plaza” from Howard Terminal. Remove “Waterfront Improvement” extending to, around, and through Howard Terminal.
- 8) Page 222: Measure of Success, Waterfront Connections – Replace “Lake Merrit to Howard Terminal” with “Lake Merrit to Jack London District”.
- 9) Figure LU-2: Downtown Activity Centers & Connection Nodes – Remove “Primary Connection Corridors”, “Green Loop: Downtown Oval”, “Green Loop: West Oakland to Water”, and the green solid line (not defined in the Legend) extending to, around, and through Howard Terminal. Remove the turquoise arrow (not defined in the Legend) pointing to the waterfront of Howard Terminal. Remove “Activity Center” from Howard Terminal.



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- 10) Page 234: Sites Where Change is Anticipated – Replace sentence “Howard Terminal is also just outside of the Plan boundary, but under consideration for reuse with mixed-use development.” with “Howard Terminal is also...but under consideration for future potential development”. Replace all references to “mixed-used development” to “future use development”, in alignment with language in Figure LU-3.
- 11) Figure LU-3: Opportunity Sites as “Future Potential Development Sites (Not included in DOSP Development Program)” Port supports the description of Howard Terminal. This description should be used/consistent throughout the DOSP.
- 12) Figure LU-5: Historic Resources Map – Include a sentence “*Any analysis or determination of historic significance will be coordinated with the Port of Oakland for Howard Terminal” under the “Areas of Importance (API)” in the Legend.
- 13) Figure LU-11: Primary and Secondary Pedestrian Streets – Remove “Potential Future Public Space/Plaza” from Howard Terminal.
- 14) Figure LU-12: Proposed Streetscape and Public Space Improvements – Remove extensions of “Green Loop Connection”, “Waterfront Improvement”, and “Potential Future Public Space/Plaza” extending to, around, in, and through Howard Terminal.
- 15) Page 257: Remove mention of “Howard Terminal” from sentence “Large redevelopment projects, including those in Victory Court and Howard Terminal, should include generous public spaces”. Howard Terminal is outside of DOSP boundary.
- 16) Appendix C: G Howard Terminal Bay Trail & Waterfront Park – Remove “Project G”. Howard Terminal’s future potential development cannot guarantee dedicated facilities for the Bay Trail nor a connection to improvements on MLK Jr. Way.

Green Loop Connections and Bikeways

The proposed Green Loop Connection is designed to provide a consistent, safe, and enhanced experience for pedestrian and bicyclists. Therefore, the Green Loop Connections should not intersect with the Downtown District Jack London Industrial (D-DT-JLI) nor extend through Howard Terminal. The Green Loop Connection extending through Howard Terminal is in direct conflict with AB 1191 as the site will revert to a PPUA. MLK Jr.

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Way, Market St, and 3rd St are designated Local Truck Routes. Both Market Street and MLK Jr. Way lead into Howard Terminal and 3rd St is the designated Overweight Corridor. Truck access should be a prioritized transportation mode and preserved on Truck Routes to minimize truck spillage into local roads in West Oakland neighborhood. Road safety and a pathway to vision zero is a priority for Port operations and therefore potential modal conflict between pedestrians, bicyclists, and trucks should be minimized, especially on the designated Truck Routes and Overweight Corridor.

Consistent with the Port's comments on the Embarcadero West Rail Safety and Access Improvements Project, Port recommends maintaining pedestrian and bicyclist access on the existing bikeway on 2nd St for the east-west connection, and Clay St for north-south connection. The existing bikeway on Clay St already connects to the existing 2nd St bikeway, proposed shared use path on Embarcadero West, Ferry Terminal, and existing Bay Trail. The Port suggests the following revisions to align with road safety, truck modal priority, and preservation of industrial uses. Note that the following revisions may not be exhaustive of all instances of proposed Green Loop Connections extending through Howard Terminal and Downtown District Jack London Industrial (D-DT-JLI).

- 1) Page 45: Extensive Network of Multimodal Streets - Remove "Shared-Use Path" on Embarcadero West, west of Clay St. Remove "Core+Vision Bicycle Network" on MLK Jr. Way between Embarcadero West and 4th St, Market St between Embarcadero West and 4th St, and 3rd St east of Brush St.
- 2) Page 49 – Remove "Continuous Improvements Along Waterfront" extending to, around, and through Howard Terminal.
- 3) Figure M-4: Proposed Connectivity and Access Improvements – Remove "Connectivity Improvement Corridor" and "Connectivity Improvement Intersection" on Embarcadero West, west of Clay St.
- 4) Figure M-7: Proposed Low-stress Short-Term Network and Vision Bicycle Networks – Add "Existing Bikeways" on 3rd St west of Bush St. Replace "Recommended Bikeways" to "Existing Bikeways" on 2nd St between Broadway and Brush St and Brush St between 2nd St and 3rd St. Existing bikeways already exist on 2nd St and Bush St. Remove "Recommended Bikeways" on Bush St between Embarcadero West and 2nd St, Embarcadero West, west of Clay St, MLK Jr. Way between Embarcadero West and 4th St, and Market St between Embarcadero West and 4th St.



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- 5) Figure CH-5: Green Loop Connections Map – Remove “Green Loop Connections” extending to, around, and through Howard Terminal. Howard Terminal does not connect directly to Water St. Terminate “Green Loop Connections” on Market St at 3rd St, connecting to the existing bikeway. Realign “Green Loop Connections” on MLK Jr. Way to 4th St between MLK Jr. Way and Clay St and Clay St between 4th St and Water St.
- 6) Figure LU-2: Downtown Activity Centers & Connection Nodes – Remove extensions of “Primary Connection Corridors”, “Green Loop: Downtown Oval”, “Green Loop: West Oakland to Water” on MLK Jr. Way between Embarcadero West and 4th St and Market St between Embarcadero West and 4th St.
- 7) Figure LU-11: Primary and Secondary Pedestrian Streets – Remove “Secondary Pedestrian Street” from MLK Jr. Way Between Embarcadero St and 4th St. Consistent with Port’s comments on Embarcadero Project – the Port needs to maintain vehicular access on Embarcadero West between MLK Jr. Way and Clay St – remove “Primary Pedestrian Street” on Embarcadero between MLK Jr. Way and Clary St.
- 8) Figure LU-12: Proposed Streetscape and Public Space Improvements – Remove “Green Loop Connection” from MLK Jr. Way between Embarcadero West and 4th St and Market St between Embarcadero West and 4th St.
- 9) Appendix C: F Market St Extension to Estuary – Remove “Project F”. Port recommends all Green Loop and proposed bicycle facility within and connecting to the Howard Terminal be removed or realigned. As previously indicated in Port comments for the Embarcadero Project, Market St between Embarcadero West and 3rd St is part of the Truck Route, connecting trucks accessing Howard Terminals to the 3rd St Overweight Corridor. The Port strongly recommends removal of proposed bicycle facility at intersection between Market St and Embarcadero.
- 10) Figure AP/C-2: Green Loop Recommended Future Improvements – Remove “Green Loop Alignment”, “Improvement F”, and “Improvement G” that are extending to, around, and through Howard Terminal.

2011 Oakland Railroad Quiet Zone Study

Policy M-1.3-Train Quiet Zone Study (note that the title of the report is “Oakland Railroad Quiet Zone Study Embarcadero West” prepared for the City of Oakland, June 2011) describes the continuation of implementing the requirements of the 2011 Oakland Railroad Quiet Zone Study – Embarcadero West (Quiet Zone Study). The Port supports

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implementation of the 2011 Quiet Zone Study recommendations that detail intersection safety measures and provide a blueprint for the Jack London Train Quiet Zone to reduce the nuisance of train horns.

Alameda Estuary Crossing

Chapter 3: Mobility recommends potential estuary crossings for a “bikeway” leading from Oakland into Alameda as shown in Figure M-7: Proposed Low-stress Short-Term Network and Vision Bicycle Networks. Currently, the Port, the U.S. Coast Guard, and City of Alameda are in discussions regarding the Oakland/Alameda estuary crossing. We recommend that the Washington Street alternative not be shown on the figure at this time.

Sea Level Rise

Policy CH-2.12- ECAP & Sea Level Rise Roadmap (p. 217): The Port will be conducting an extensive study of SLR and GWI at all Port areas and developing an adaptation plan. Communities and cities near the Port will also be impacted by SLR and GWI. The Port is partnering with the City, and in particular the City’s West and East Oakland neighborhoods, in an effort to include the waterfront communities in its SLR/GWI assessment. The Port also engages with neighboring cities, such as the city of Alameda, to share available information and data and partner together in addressing and adapting to SLR and GWI. The Port is a member of Oakland Alameda Adaptation Committee (OAAC), a group including cities (Alameda, Oakland), local agencies (East Bay Regional Park District, East Bay Municipal Utilities District), and a state agency (Caltrans). OAAC is starting a grant-funded study aimed at SLR adaptation projects. These efforts should be reflected as part of the roadmap strategies in the DOSP to be explored in coordination with Equitable Climate Action Plan & City’s climate vulnerability assessment efforts.

As noted previously, the Port appreciates the City reinstating the industrial zone into the DOSP. We appreciate your consideration of the Port’s additional comments to the Final Draft Plan. Please do not hesitate to contact me at 510-627-1198 or cliang@portoakland.com if you have any questions.

Sincerely,

Colleen

Director of Environmental Programs and Planning



PORT OF OAKLAND

Attachment A: Letter from the Port of Oakland re: Initial Comments on the Public Review Draft Downtown Oakland Specific Plan (August 2019) dated November 8, 2019

Attachment B: Email from the Port of Oakland re: Port Comments – EW Rail Safety Improvements dated May 22, 2024

Attachment C: Port Preferred Bike Path

CC: Joanna Winters, City of Oakland, Planner IV
Danny Wan, Executive Director
Kristi McKenney, Chief Operating Officer
Mary C. Richardson, Port Attorney
Jonathan Veach, Chief Real Estate Officer
Bryan Brandes, Director of Maritime
Jason Garben, Maritime Manager, Project Management Services
Carolyn Almquist, Maritime Manager, Business Development & Marketing
Radiah T. Victor, Sr. Port Strategic Planner
Ayaka Habu, Associate Port Strategic Planner



November 8, 2019

Edward Manasse
Deputy Director Planning and Building
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza
Oakland, CA 94612

**Subject: Port of Oakland Initial Comments on the Public Review Draft Downtown
Oakland Specific Plan (August 2019)**

Dear Mr. Manasse:

The Port of Oakland ("Port") appreciates the opportunity to provide comments on the City of Oakland's ("City") Public Review Draft Downtown Oakland Specific Plan ("Public Review Draft Plan" or "DOSP") (August 28, 2019). The Port understands that comments and feedback on the Public Review Draft Plan will inform the Final Specific Plan.

We thank you for taking the time to present the Public Review Draft Plan to the Board of Port Commissioners ("Board") at the Board's meeting on October 24, 2019. This letter provides our initial comments on the area south of I-880, including the Transformational Opportunity Areas 1, 2 and 3 described in the DOSP. The Board identified three key issues related to this area:

- 1) Mixed-use land uses west of Franklin- Protecting Port-related and industrial uses in the DOSP area.
- 2) Shared streets - Preserving transportation corridors for truck and rail traffic.
- 3) Industrial Sanctuary- This is a policy concept that is currently being discussed.

1) Mixed Use Development

The Port is concerned with potential changes in the area west of Franklin Street in the Jack London District, and the introduction of Mixed Use land designations that would allow non-industrial uses. This is delineated in Map LU-4 that includes Transformational Opportunity Areas 2 and 3. We note that the West Oakland Specific Plan ("WOSP") policies regarding land use differ from the proposals in the DOSP, specifically regarding industrial land use in the area west of Martin Luther King Way.

2} Shared Streets

The ability for trucks to move freely is a crucial element of Port operations. There is currently a truck route along 3rd Street. The Port is currently conducting an overweight corridor

study along 3rd Street. The proposed introduction of infrastructure improvements for bicycles and pedestrians along this corridor may create safety and other traffic issues.

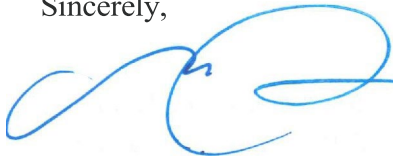
This concern also applies to Embarcadero, as noted on Figure M-3. The introduction of bicycles and pedestrians along this corridor may create safety and other traffic issues.

3) Industrial Sanctuary

The "Industrial Sanctuary" is a policy concept that is subject to active discussion. The idea is to provide protections for industrial uses. We encourage the City to consider including a discussion of this policy concept in the DOSP.

Port staff appreciate the opportunity to provide initial comments on the DOSP. The Port is continuing to review the DOSP and will provide additional comments soon. The Port looks forward to continuing to partner with the City on the DOSP and related policy efforts. Please contact Ms. Andrea Gardner, Associate Port Environmental Planner/Scientist (agardner@portoakland.com, 510-627-1181) and Joe Marsh, Port Permit Coordinator (jrnarsh@portoakland.com, 510-627-1480), if you would like to discuss any of these comments.

Sincerely,



Richard Sinkoff
Director of Environmental Programs and Planning

CC: Danny Wan, Acting Executive Director
Michele Heffes, Acting Port Attorney
Robert Andrews, Acting Director of Engineering
Andrea Gardner, Port Associate Environmental Planner/Scientist

FW: Port Comments | EW Rail Safety Improvements

Jonathan Veach <jveach@portoakland.com>

Thu 5/23/2024 12:50 PM

To: Colleen Liang <cliang@portoakland.com>

From: Jonathan Veach <jveach@portoakland.com>

Sent: Tuesday, May 21, 2024 8:23 PM

To: Ferrara, Nicole <NFerrara@oaklandca.gov>; Dupierre, Acacia <ADupierre@oaklandca.gov>

Cc: Kristi McKenney <kmckenney@portoakland.com>; Justin Taschek <jtaschek@portoakland.com>; Jason Garben <jgarben@portoakland.com>; Dorin Tiutin <dtiutin@portoakland.com>; Thomas Guo <tguo@portoakland.com>; Ayaka Habu <ahabu@portoakland.com>; Siu, Edmond <ESiu@oaklandca.gov>; Garrett Gritz <Garrett@diabloengineeringgroup.com>; Radiah Victor <rvictor@portoakland.com>; Edwin Draper <edraper@portoakland.com>

Subject: Port Comments | EW Rail Safety Improvements

Hi Nicole and Team,

The Port supports the enhanced safety, efficiency, and reliability of our rail systems with the goal of reducing the number of incidents that cause freight and passenger rail delays in Jack London Square, while also minimizing significant and adverse impacts to our commercial operations. As we move forward in collaboration, I want to share the Port's primary concerns and strategic feedback for a highly successful project:

1. The Port requests through vehicular traffic is maintained on Embarcadero West from MLK Jr. Way to Clay Street. Given this change, we'd also want to keep pedestrian/bike traffic on 2nd further east, and then connecting to Embarcadero West via Clay Street. This proposed change would be in alignment with the O-Mast letter sent to City Planning, which stresses keeping pedestrian traffic out of the industrial buffer zone. The connection from 2nd through Clay also provides a direct connection to the Ferry terminal and aligns with MTC's Bay Trail route: [Bay Trail Gap Closure Implementation Plan Prioritization \(arcgis.com\)](https://arcgis.com)
2. The Port will also formally submit comments related to the DOSP that reflect moving the bike lanes out of the industrial buffer zone.
3. Like the JLID and CIM, the Port has concerns about forcing right turns at every intersection along the proposed westbound Embarcadero West. Turning Embarcadero West into a one-way street and forcing right turns at every intersection can create a barrier effect for the Square and significantly reduces visibility. The new four-quadrant gates at every intersection will prevent left turns over the track when gates are down, which is arguably the biggest issue. However, the medians at every intersection cannot fully eliminate left hand turns or U-turns when gates are up. Thus, their overall impact is questionable while introducing unintended consequences. The Port suggests exploring signage and other design elements to prevent left-hand turns, if it is determined that is still necessary.
4. The Port requests that Embarcadero West remains 2 ways between Oak and Webster Street. As proposed, the road turns one way right around the Posey Tube, at the future Dave and Buster's site. Given that we are recommending through access on Embarcadero West, it doesn't make sense to restrict through access at this very small segment before Webster. There is significant residential density at Brooklyn Basin and those customers typically engage the Square via Embarcadero West and so we want to maintain direct access without rerouting.
5. As you know, the Port needs to accommodate parking and truck access for businesses eastbound on Embarcadero West. Please include Port Staff in your proposed stakeholder meetings. From the Port's perspective, CIM, Scott's, Waterfront Hotel, Dragongate, and BevMo will need to be engaged so we can fully understand their operational needs. Also, the engagement plan should include businesses along Broadway and others in the larger area that will be impacted e.g. along 2nd street.
6. As echoed by JLID, there is an opportunity to bring in great art/lighting design early to help with barriers, wayfinding, and other design elements.

Please feel free to reach out if you'd like to discuss any of these points further, thanks Nicole.

Jonathan Veach

Chief Real Estate Officer

Port of Oakland – *Everyone's Port*

Mobile: 310-422-1893

Email: jveach@portoakland.com



Legend



Downtown Jack
London Industrial
District



Existing Bike Facility



Port Preferred Bike Path



DOSP Proposed
Green Loop
Connections





East Bay Housing Organizations

June 4, 2024

By electronic transmission

City of Oakland Planning Commission
c/o Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

RE: Downtown Oakland Specific Plan (DOSP), Planning Code Amendments, Item #2 on June 5, 2024, Planning Commission agenda.

Dear Chairperson Shirazi and Planning Commissioners:

I am writing on behalf of East Bay Housing Organizations. EBHO is a nonprofit, membership-based organization working to produce, preserve and protect affordable housing opportunities for low-income communities throughout the East Bay. First founded in 1984, EBHO has grown to 400+ individual and organizational members fighting for an economically and racially just world where everyone has a safe, stable, and affordable home.

Thank you for the opportunity to comment on the Final Draft of the Downtown Oakland Specific Plan (DOSP). On May 14, we sent you comments on the Draft Plan itself. These comments focus on the Planning Code amendments, and specifically on the proposed Zoning Incentive Program (ZIP) as a strategy to meet the City's affordable housing goals in the DOSP area.

As a member of the DOSP Community Advisory Group, we have followed the development of the ZIP closely for many years. We appreciate all the work and economic analysis that has gone into it. Nonetheless, as the only significant new affordable housing policy being enacted as part of the DOSP, we find the ZIP to be flawed and limited in its efficacy.

- **The program is entirely voluntary, with no certainty that it will be utilized.** The assumption that permitting substantial increases in allowable intensity and height will induce developers to build more and bigger projects is not well grounded. It's not clear that developers want the additional height and density that the ZIP will provide, nor is it clear that projects of this scale can be supported - architecturally and with respect to building code requirements - on many of the eligible parcels. The City has elsewhere noted that many projects are using the State Density Bonus to obtain various incentives and concessions without necessarily increasing density, which suggests that given the current base zoning, additional density is not highly valued.

- **The ZIP should be modified to require that residential projects provide affordable housing as the community benefit in return for any added density or height.** We appreciate that our suggestion to modify the ZIP's affordable housing benefit from a relative handful of onsite affordable units to payment of a fee that the City can use to leverage outside funding and provide much more deeply affordable housing that is more consistent with the City's housing priorities identified in the City's Strategic Action Plan for Affordable Housing. As proposed, however, there is no requirement that any affordable housing benefits will be provided. Even if a developer of a residential project decides to take advantage of the ZIP, it does not need to provide affordable housing benefits. It could choose to include non-residential uses on the ground floor including discounted commercial space or public restrooms, and thereby qualify for the ZIP. Increases in residential density beyond the base zoning should specifically require affordable housing benefits in exchange. Other community benefits on the "menu" can be derived from non-residential projects utilizing the ZIP.
- **A larger percentage of the community benefits fee for residential projects should be devoted to affordable housing.** Even when residential developers choose to pay the fee, only half of that fee goes to affordable housing. This is insufficient given the City's pressing housing needs, its inability to maintain an adequate balance between market-rate and affordable housing production, and the community's identification in numerous meetings of affordability, displacement, and homelessness as critical equity issues for the Downtown.
- **Simplify the program to require the same benefits regardless of location.** The ZIP should not include zones with different requirements. Those zones cover small areas based on current market dynamics, but those dynamics could shift rapidly, particularly across such limited geographic areas.
- **The City should modify the program to ensure that at least 50% of the increased value is captured for public benefit.** The entire ZIP program is based on the concept of land value capture, which EBHO strongly supports. When the public sector takes actions that increase land value (such as upzoning), a significant part of that unearned incremental value should be captured for public benefit and not windfall private profit. The City's economic analysis assumed that the City could not capture more than one-third of the incremental land value because it was deemed necessary to allow two-thirds of the increment to be divided between the landowner and the developer, effectively increasing profits from land speculation and increasing rates of return for developers. There was no evidence to back up this arbitrary formula, and the consultant concluded

that this was “based largely on professional judgement and current economic conditions.” The DOSP is a long-range plan that needs to look beyond current economic conditions.

To the extent that the program is designed to allow landowners to capture a significant share of the incremental value, this translates directly into a general increase in land values. This will create upward pressure on land prices throughout the Downtown and runs completely counter to the City’s identification of high land costs as a barrier to affordable housing in the downtown area.

- **The proposed legislation does not clearly specify that participation in the ZIP program requires full payment of the Affordable Housing Impact Fee.** According to the staff report and numerous statements by City staff, the ZIP program will require payment of the Affordable Housing Impact Fee on all the market-rate units in a project. However, the language that would clearly establish this requirement does not seem to be included here. On page 28 of the Planning Code amendments, note 8 states “See Section 15.72.100(B)5 for Affordable Housing Impact Fees requirements when using the Zoning Incentive Program.” There currently is no Section 15.72.100(B)5, and we have not seen any proposed amendments to establish these requirements. Modifications to the impact fee ordinance that codify this requirement should be included now for reference and then adopted by the City Council concurrently with adoption of the DOSP.
- **The ZIP should provide other incentives in addition to increased height and intensity, in order to be a more favorable option compared to the State Density Bonus.** As structured, there is a substantial risk that developers will choose to use the State Density Bonus (SDB) rather than the ZIP, yielding minimal affordable housing benefits. While in many cases the ZIP provides much greater increases in density than can be obtained with the density bonus, the SDB offers other benefits that are of great value to developers.

First, the SDB entitles developers to one or more incentives along with waivers and parking reductions. These additional benefits are not provided by the ZIP. Planning staff has stated that they are seeing a significant number of density bonus applications that are seeking incentives and waivers without a significant increase in density, indicating that it is the other benefits, and not greater density, which is of most use to developers.

Second, the affordable units required to obtain a density bonus also can be counted as meeting the Affordable Housing Impact Fee’s option to provide affordable units on site in lieu of paying the fee. A project that qualifies for a density bonus of 20% by providing

5% of its units for very low income households also qualifies for a waiver of nearly \$3 million in Affordable Housing Impact Fees. In a 100-unit project, provision of just five very low-income units entitles the developer to an additional 20 market rate units, one incentive such as a reduction in open space requirements, and waiver of impact fees (nearly \$3 million). This provides substantial benefits to the developers with very little public benefit.

- **While beyond the scope of the DOSP, we want to note that the success of the ZIP program also depends on modifications to the Affordable Housing Impact Fee (AHIF).** Staff has stated that the most significant affordable housing benefit from the ZIP program is not the community benefits fee itself, but the requirement that AHIF be paid on both the base units and the bonus units. Payment of the AHIF into the City's Affordable Housing Trust Fund yields more units and deeper affordability than the in lieu option; the City should take steps to make payment of the fee more attractive option by ensuring ensure that the in-lieu option yields public benefits comparable to those provided by the fee.

EBHO is strongly supportive of efforts to create a dense, vibrant, and sustainable downtown with public amenities and more transit-oriented housing. Making this happen in a way that promotes equity, significantly reduces the disparities that the City has identified, and truly makes Downtown a place for residents at all economic levels requires a sustained and intentional emphasis on affordable housing.

We urge the Planning Commission to recommend the changes we have outlined above as part of its approval of the DOSP.

Sincerely,



Jeffrey Levin
Senior Director of Policy

cc: William Gilchrist
Emily Weinstein
Joanna Winter

From: [James E Vann](#)
To: [Sahar Shirazi](#); [Natalie Sandoval](#); [Vince Sugrue](#); [Maurice Robb](#); [Alex Randolph](#); [Jen Renk](#); [Josie Ahrens](#)
Cc: [Kalb, Dan](#); [Fife, Carroll](#); [Jenkins, Kevin](#); [Jenkins, Kevin](#); [Gallo, Noel](#); [Kaplan, Rebecca](#); [Fortunato Bas, Nikki](#); [Ramachandran, Janani](#); [Reid, Treva](#); [Lieberworth, Audrey](#); [Lieberworth, Audrey](#); [Manasse, Edward](#); [Winter, Joanna](#); [Winter, Joanna](#); [Kaminski, Laura](#); [Kaminski, Laura](#); [Gray, Neil D.](#); [Marvin, Betty](#); [Gilchrist, William](#); [Payne, Catherine](#); [Klein, Heather](#); [Vollmann, Peterson](#); [Office of the Mayor](#)
Subject: Comments & Recommendations on the DOSP by the Homeless Advocacy Working Group (HAWG)
Date: Wednesday, June 5, 2024 2:29:54 PM

TO: Members, Oakland Planning Commission and
Officials, Oakland Planning Department

As a representative of the Homeless Advocacy Working Group, HAWG has actively participated in the Community Advisory Group as the DOSP has developed over the years.

HAWG submits the following comments and recommendations for the Planning Commission's consideration at the Commission's June 5 meeting.

James E Vann AIA Architect (ret)
Advisory to the Homeless Advocacy Working Group
510-763-0142

1. HAWG is skeptical of the hoped-for effectiveness of the "ZIP," the Zoning Incentive Program." As developers also have ready access to the State's "Density Bonus," -- which assures the production of at least some affordable units, and which also carries an "impact fee exception" for such units, there is little or no need to seek further density through the ZIP... The ZIP introduces massive complications and a high staff burden with no equivalent benefits for the program.
2. HAWG is disappointed that the DOSP does not mention "inclusionary housing" or "inclusionary zoning." Oakland is the only developed city in the entire Bay Area that does not have an "inclusionary ordinance." Beyond the State Density Bonus, "inclusionary zoning" is the surest means of certifying that some of the City's residential development will meet affordability standards,
3. The DOSP fails to acknowledge that the "uncontrolled cost of rent" is the greatest driver of residential, small business, nonprofit groups, and culture-keeping evictions, which are continuing happenings that cause incessant instability in development plans, outcomes, and quality of life for the City's inhabitants.
4. One suggestion to offset the destructiveness of "uncontrolled cost of rent" is to decommodify substantial amounts of development. The City should invest in several "city-owned hubs," particularly in areas concentrations of artists, cultural institutions, small businesses, live-work, nonprofit associations, and similar ... where the "cost of rent" can be established free of market dynamics -- but in accordance with affordability.
5. The Chapters on Homelessness adequately explores the sociology of the dysfunction of homelessness and presumes needed funding will emerge from a variety of public funding and resources. However, targeting such resources does not make them appear., The DOSP lacks recommendations for obtaining such needed funding that have some degree of assurance.



June 4, 2024

By electronic transmission

Oakland City Planning Commission
c/o Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

**Subject: Downtown Oakland Specific Plan (DOSP) and related zoning amendments—
Items #1 and #2 on 6-5-24 City Planning Commission agenda.**

Dear City Planning Commission Members:

The following comments refine and supplement those in our attached 5/9/24 letter to the City Planning Commission. We are still reviewing the latest draft zoning amendments released last Friday, May 31, so the following comments may be incomplete and subject to further refinement and expansion.

1. Transferable development rights (TDR). We would like to thank staff for incorporating most of the TDR comments in our 5/9/24 letter into the latest draft zoning amendments. This satisfies our major concerns regarding the TDR proposal. The major loose end is that some detailed procedural provisions from the San Francisco program still need to be included. Staff is proposing that these provisions be incorporated into an Administrative Instruction (AI) that would be separate from the zoning text and would be issued within a year after the zoning amendment adoptions. **OHA recommends that issuance of the AI within a year after adoption be memorialized in the ordinance adopting the zoning amendments** to help ensure that the AI is actually issued within a year.

In addition, we remain concerned that the base intensities are too high for developers to use the TDR program or the Zoning Incentive Program (ZIP). See item 1 in our 5/9/24 letter for further discussion.

2. DOSP areas recommended for upzoning and/or addition to the ZIP area. See item 5 in our 5/9/24 letter and the Attachment 2 map.

The upzoned areas are intended to provide additional development intensity (height, floor area ratio, and residential density) to offset the reduced development intensity resulting from the OHA-recommended downzonings elsewhere in the DOSP area. The intensity offsets are intended to allow the downzonings to conform with the “no net loss” of residential development intensity required by SB 330 and SB8.

The upzoned areas could also be used for expansion of the Zoning Incentive Program (ZIP) area to offset OHA’s recommended removal of the ZIP from Areas of Primary and Secondary Importance (APIs and ASIs).

3. Increase the front yard setbacks in the four late 19th-early 20th century residential APIs: Grove Street/Lafayette Square; 19th Street/Grove Street; Cathedral Neighborhood; and 7th Street/Harrison Square.

The proposed 0' minimum and 10' maximum front setbacks in these four APIs are significantly less than the contributing historic building setbacks in most cases. This is the case even for the 6' front setback required by Regulation 3 for Table 17.101K.04 when the ground floor contains residential units adjacent to the principal street. The proposed setbacks will promote new construction that will literally **stick out** from the street wall established by the contributing historic buildings, and erode the API's integrity. See example below, which also illustrates the negative impacts on APIs and ASIs of new buildings that are taller than the tallest contributing buildings to the API/ASI.



RECOMMENDATION:

1. Increase the front yard setback proposed for the D-DT-R and D-DT-RX zones, so it is more consistent with the setbacks of the API contributing buildings. But allow a reduced setback for new buildings if the adjacent building has a shallower setback using the method prescribed in the RD, RM and RU Zones, e.g. see Regulation 4 for Table

17.17.03 for the RM zones. In the specific recommendations for the four APIs, the minimum setback is recommended to be increased to 15 feet and the maximum setback to 20', except for the southern portion of the Grove Street/Lafayette Square API, which could remain as currently proposed, since 58% of the existing front setbacks are 7' or less.

2. Apply the increased setbacks to **all buildings** within these APIs, not just those containing ground floor residential units adjacent to the principal street.

See Attachment 3 for detailed proposals and methodology.

4. Tower Standards--General.

It is good that the tower standards remain in the Planning Code rather than being shifted to the upcoming Objective Design Review Standards.

However, the proposed tower standards are too permissive and will tend to promote wide, slab-like towers that could result in a skyline of bulky and overly wide structures. Much of Downtown Oakland's existing skyline now has these characteristics (see Figure 1) , since the existing tower standards are also too permissive, currently with no limit on tower length for both residential and nonresidential and continuing the no limit for nonresidential under the proposed standards (see Figure 2).



Figure 1: Downtown Oakland skyline from southbound I-880 Market Street offramp, dominated by wide, closely spaced, bulky buildings.



Figure 2. Ca.260' wide highrise developed under current tower standards with no limit on building elevation length.

Among other things, the non-residential tower standards have been eliminated in the proposal (including maximum building length and maximum diagonal length) except for requiring an average per story lot coverage of 40,000 ft.² in Intensity Area 18 and 30,000 ft.² elsewhere.

For residential towers, the proposed standards are summarized as follows:

Average floor area: 15,000 ft.² with 20,000 ft.² and 25,000 ft.², respectively,
in Intensity Areas 17 and 18.

Maximum building length: 200 feet

Maximum diagonal length: 235 feet

Minimum separation between towers on the same lot: 40 feet

In contrast, Downtown San Francisco (C-3-O Zone) has the following requirements:

- a. Lower tower (also applies to buildings up to 160 feet tall):

Maximum floor area size: 20,000 ft.²

Maximum building length: 160 feet

Maximum diagonal length: 190 feet

- b. Upper tower:
 - Maximum floor area size: 17,000 ft.² (12,000 ft.² maximum average).
 - Maximum building length: 130 feet
 - Maximum average diagonal length: 160 feet

The proposed Oakland standards should be modified to be more like San Francisco's to promote more slender, less bulky structures, especially for residential buildings.

Staff has advised that the standards for non-residential towers are being relaxed because large floor plates are required to make non-residential, high-rise buildings viable. The specific floor area size needed to achieve such viability appears to be a moving target. Several years ago we were told it was 20,000 ft.²; now it appears to be 30,000 ft.². **Staff should provide documentation to the City Planning Commission and City Council justifying the need for such large floor plates.** And if 30,000 ft.² is the necessary floor plate size, why is 40,000 ft.² being permitted by right in Intensity Area 18?

For residential high-rise, it is unclear why 25,000 ft.² is being allowed in Intensity Area 18 and 15,000 ft.² elsewhere. Is our understanding that overly large floor plates are not viable for residential towers due to the need for most rooms to have windows. Vancouver, which has a reputation for successful urbanism, allows floor plates only up to 6000 ft.² with maximum building length of 90 feet. For San Francisco's Rincon Hill and South Beach neighborhood (next to the Bay Bridge approach) the maximum floor plate is 8500 ft.², maximum building length 100 feet and maximum diagonal length 125 feet.

Staff should provide a presentation to the City Planning Commission and City Council of the skylines in highly-regarded downtowns, along with the tower design standards for these cities. The Commission and Council should be asked to identify which skyline images they like best, and which could serve as a model for Oakland. Tower standards that would promote this vision would then be adopted. In addition to Vancouver and San Francisco, possibilities include Seattle, downtown Los Angeles, and possibly even Singapore, Dubai and Shanghai Pudong.



Figure 3: Downtown Seattle skyline

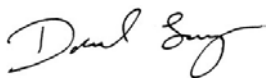
5. Delete tower design standard 17.101K.138.3.b. The standard reads:

For tower facades over one hundred fifty (150) feet in width, provide a change in massing by providing one or more articulations, step backs, or notches greater than twenty (20) feet wide and ten (10) feet deep to reduce apparent building bulk.

Rather than reducing perceived bulk, the required articulations will tend to intensify perceived bulk by promoting a more complex building mass that will tend to look busy. A more effective way to break up overly long building masses is to design facades so they look like two or more buildings. And even building facades wider than 150 feet can minimize bulk by being well detailed, such as using intricate surface materials, such as brick or other masonry, horizontal moldings, articulating the base and top and arranging windows in columns that provide a clear, and well-ordered composition. Numerous pre-1940 skyscrapers with wide facades have these characteristics.

Thank you for the opportunity to comment. Please contact Christopher Buckley at (510) 523-0411 or cbuckleyaicp@att.net or Naomi Schiff at (510) 835-1819 or Naomi@17th.com if you would like to discuss these comments.

Sincerely,



Daniel Levy
President

Attachments:

1. OHA 5/9/24 letter to CPC.
2. Map showing OHA-recommended areas for upzoning and/or addition to the ZIP area.
3. OHA proposal for increased front setbacks for the four late 19th-early 20th century residential APIs.

By electronic transmission:

cc: William Gilchrist, Ed Manasse, Laura Kaminski, Joanna Winter, Catherine Payne, Heather Klein, Neil Gray, Pete Vollmann, Betty Marvin, Audrey Lieberworth, Bureau of Planning/Zoning

Mayor and City Council

ATTACHMENT 1: OHA 5/9/24 LETTER TO CITY PLANNING COMMISSION.



May 9, 2024

By electronic transmission

City of Oakland Planning Commission
c/o Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

**Subject: Downtown Oakland Specific Plan (DOSP) and related zoning amendments—
Item #1 on 5-15-24 Planning Commission agenda.**

Dear Chair Shirazi and Planning Commissioners:

Oakland Heritage Alliance (OHA) has not yet completed its review of the latest versions of the DOSP and related zoning amendments so the following comments are preliminary and subject to modification. We continue to refine our review and responses to the informative and well-thought-out May 6, 2024 Landmarks Preservation Advisory Board (LPAB) staff report responding in detail to our previous comments, but which we were only able to access on May 4.

Most of the following comments are based on or follow up those submitted to the LPAB on August 28, 2022 and to the City Planning Commission (CPC) on November 6, 2019 but are more focused, reflecting recent changes to the Draft DOSP and zoning amendments. Here we made an effort to address only the most significant points. These comments plus some others were also sent to the LPAB.

We thank staff for modifying the drafts to incorporate many of our previous comments, especially regarding the transferable development rights (TDR) provisions. But there are still some significant loose ends. The following primarily addresses these issues.

- 1. The base intensities are probably too high for either the Zoning Incentive Program (ZIP) or Transferable Development Rights (TDR) program to incentivize developers to use them. There must be strategic downzoning, not just more uponings.** The Specific Plan provides an opportunity to correct the mistakes of the 2009 rezoning. It provided excessive by-right height limits and FARs, which appear to have eliminated the need to induce developers to use TDRs, the ZIP, or other incentives to proceed with their projects. For example, much of downtown Oakland was provided with by-right 14.0, 17.0 and 20.0 FARs in the 2009 rezoning. Unfortunately, these heights are mostly retained in the Draft Specific Plan. This is especially disappointing given such statements in the 2016 Plan Alternatives Report as the following on page 4.7:

“Rezone areas with unnecessarily excessive height limits to allow for more flexibility with density bonuses and other developer incentives”.

By comparison, the maximum by-right FAR in San Francisco, resulting from its 1985 Downtown Specific Plan, is 9.0, which can be increased up to 18.0 (higher at some locations, such as the Salesforce Tower) in exchange for TDRs and other community benefits. “Overzoning,” such as in downtown Oakland, tends to artificially inflate land values and creates more barriers to providing affordable housing and encourages owners to “land bank” their property while waiting for a major development project that will pay them top dollar. Ironically this can **discourage** development, rather than encourage it, as intended by overzoning. Land banking also tends to encourage a slumlord mentality, with building owners reluctant to spend money to properly maintain their buildings and refusing long-term leases that could include major tenant improvements. This discourages high-quality tenants.

See also a 2014 white paper on Public Benefit Zoning, prepared for the Association of Bay Area Governments, Metropolitan Transportation Commission and Eastbay Housing Organizations available at: http://ebho.org/wp-content/uploads/2011/09/LVR-White-Paper-ExecSum_141113.compressed.pdf

Page 266 of the Draft DOSP acknowledges this challenge by stating:

Because of the generous zoning allowances that already exist for most areas downtown, there are limited areas where a Transfer of Development Rights (TDR) program might be effective. Most of the areas that would be candidates for a TDR program are also being considered for the development incentive program. Further analysis will determine how the two programs can work in coordination and avoid undermining the other’s intent.

The solution is: DO NOT OVERZONE!

We appreciate the 5/6/24 LPAB staff report’s responses to the above recommendations, which are presented in more detail in Items 4 and 5 below. See Attachment 1 for replies to these and other staff responses to OHA concerns.

2. Transferable Development Rights. (TDR).

We would again like to thank staff for incorporating much of the San Francisco’s TDR program into the similar proposed Oakland program. However, there are still some details that must be addressed:

- a. There appear to be typos and/or misplaced words at the bottom of page 30 of the zoning amendments that significantly impact the meaning of the section. Here is a redline showing what we believe to be the correct version, which is the version we have been recommending:

G. Characteristics of the sending and receiving sites.

- 1. Both the receiving and sending sites must be within a D-DT Zone.*
 - 2. The sending site must be: 1) either a Designated Historic Property (DHP); ~~rated "A" or "B" by the Office of Cultural Heritage Survey~~; or 2) any Potentially Designated Historic Property (PDHP) either rated "A" or "B" by the Office of the Cultural Heritage Survey or that contributes to an Area of Secondary Importance (ASI) or Area of Primary Importance (API).*
- b. We are concerned that limiting the TDR receiving sites to those within the ZIP area will provide insufficient TDR demand for the program to succeed. One alternative would cap the amount of TDR per eligible site outside of the ZIP, similar to San Francisco's approach. That alternative allows FAR up to 9.0 without TDR and up to 18.0 with TDR. Staff has been very accommodating in addressing these kinds of details with us. We hope that staff will continue to work with us on these remaining issues.
- c. As noted in the 5/6/24 LPAB staff report, the DOSP zoning amendments do not include some detailed procedural provisions from the San Francisco program, and proposes that these provisions be included in an administrative document that would be separate from the zoning text. These provisions address such topics as: (1) documentation that the planning department has issued a certificate verifying how many TDRs a property has a right to (Section 128(e)(1), etc.); and (2) a notice of restriction stating that the transfer of TDRs from the sending site permanently reduces the development potential of the site by the amount of TDRs transferred. (Section 128 (g)(4)(A)(iii)). Staff should ask the City Attorney how to handle this if staff has not already done so.

If the revisions will be memorialized in an administrative document, there should be a reference to the document in the zoning text. The administrative document should also be included at least in the final package provided to the City Council. In that way the administrative document can be effective immediately after the TDR program becomes effective. If the administrative document is not available at that time, it may get put on the back burner and forgotten. That could lead to problems and delay when the first TDR requests are submitted. Staff will then have to scramble to prepare all of the documents to be executed by the TDR applicant. If this happens, important provisions could fall through the cracks. Applicants may become discouraged by the program, since all of the documents they must execute are not immediately available. The San Francisco Planning Code TDR provisions are attached for your reference.

- d. If staff has not already done so, we recommend that they talk to Fortress Real Estate Advisors in San Francisco to get their review of the proposed Oakland TDR program, especially regarding limiting the use of TDR on receiving sites to

50% of the additional intensity allowed by the ZIP and the design review requirement. Fortress has acted as a TDR broker in San Francisco and has played a key role in the success of the San Francisco program.

4. Maximum intensity map for projects not participating in the ZIP.

- a. **Do not increase height/FAR limits for APIs and ASIs.** These limits should either stay as-is or be reduced, such as: (i) on 15th Street between Broadway and Harrison, and 17th Street between Franklin and Harrison; (ii) the Victorian residential neighborhoods on 22nd Street (Telegraph-MLK), 18th Street (Jefferson-MLK) and MLK (7th-11th Streets); (iii) the produce market; and (iv) much of the Lake Merritt residential area (“Gold Coast”) bounded by 14th, Harrison and the Lake. These height/FAR increases could threaten API/ASI contributors with demolition or adverse alteration and promote intrusive new development. See Attachment 1 photo of an example of intrusive new development within an API.
- b. **Reduce existing height/FAR limits in some APIs/ASIs,** such as Old Oakland and portions of the Downtown Oakland National Register District that were inappropriately upzoned in 2009. OHA’s specific recommendations for these reductions are shown on the 9-22-19 height map included in Attachment 1.

See Attachment 1 for further discussion.

5. Maximum intensity map for ZIP areas.

- a. **Delete APIs/ASIs and freestanding PDHPs such as the following from the ZIP area map:** Telegraph Avenue north of 23rd Street, the First Christian Science Church and Wakefield Building at the northwest corner of 17th and Franklin and the Downtown National Register District.
- b. **Expand the ZIP area to include and/or upzone portions of the areas bounded by Franklin, 14th, 19th and Harrison and west of Telegraph. The ZIP expansion and/or zoning would offset downzoning elsewhere to satisfy SB 330/SB8 as discussed in Comment 4b above.**

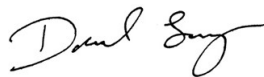
See Attachment 1 for further discussion.

6. We greatly appreciate staff’s thorough and conscientious responses to the comments in our 8/28/22 letter. Our replies to some of those responses are in Attachment 1. Some of them only involve correction or clarification of what we believe are errors and ambiguities. We hope to resolve these points through follow up discussions with staff.
7. We are very pleased with the EIR mitigation measures listed on pages 27–30 of the 5/6/24 LPAB staff report, especially those promoting use of the California Historical Building

Code and facilitating relocation of buildings that would otherwise be demolished. Implementation of some of these is subject to “when funding becomes available” and using vague words such as “encourage,” “consider,” and so on. Can the language be more firm? Can the EIR and/or DOSP establish a DOSP Implementation Committee consisting of staff and interested outside stakeholders to help ensure that these initiatives are seriously pursued so they aren’t eventually forgotten?

Thank you for the opportunity to comment. Please contact Christopher Buckley at (510) 523–0411 or cbuckleyaicp@att.net or Naomi Schiff at (510) 835–1819 or Naomi@17th.com if you would like to discuss these comments.

Sincerely,



Daniel Levy
President

Attachments:

1. Selected OHA replies to 5/6/24 LPAB staff report responses to OHA 8/28/22 comments
2. San Francisco Planning Code TDR provisions

By electronic transmission:

cc: Planning Commissioners Shirazi, Sugrue, Renk, Ahrens, Randolph, Sandoval,
William Gilchrist, Ed Manasse, Laura Kaminski, Joanna Winter, DOSP staff and
consultants, Catherine Payne, Heather Klein, Neil Gray, Pete Vollmann, Betty Marvin,
Audrey Lieberworth, Bureau of Planning/Zoning
Councilmember Carroll Fife, District 3
Councilmembers Kaplan, Kalb, Fortunato-Bas, Gallo, Jenkins, Ramachandran, Reid
Landmarks Preservation Advisory Board members Rice, Bomba, Katticaran, Lenci, Matheny

Attachment 1: Selected OHA Replies to 5-6-24 Staff Report Responses to OHA 8-28-22 DOSP Letter

May 9, 2024

Oakland Heritage Alliance (OHA) is still reviewing the Draft DOSP and the related zoning amendments presented at the 5/6/24 LPAB meeting and in the 5/6/24 staff report. **The following replies are therefore preliminary and subject to expansion and modification.** Item 9 is the most significant. The original OHA height recommendations are shown on the attached map dated 9/22/19.

The staff responses are shown as standard text, while the OHA replies are shown in *red italics*.

*Note: OHA and staff reached agreement on some of the 8/28/22 comments, especially those concerning Transferable Development Rights (TDRs). These agreements are therefore not reflected in this document. **OHA would like to thank staff for diligently working with us on these agreements.***

- 1. Fire Alarm Building (FAB).** The original proposal to increase the FAB height limit from 55' to 90' has been revised down to 65'. The 65' height would allow redevelopment of the site, potentially as a Jazz Museum or as an expansion of the Main Library. This height is consistent with the permitted height for the neighboring Oakland Museum of California, Oakland Public Library, County Courthouse, and the adjacent BAMBD along 14th Street. Additionally, the City owns the land and will have control over design review of this site. This site is not currently under consideration for market-rate housing, as some commenters have feared; it is in the early stages of review to be used for public purposes, as desired by the City and community members.

We are confused by staff's response. We believe that the original proposal was a base height of 45', rather than 55', with 90' using the Zoning Incentive Program (ZIP). Reduction of the proposed increase to 65' and taking the site out of the ZIP area is appreciated, but the OHA recommendation was to retain the existing 45' height limit. The Fire Alarm Building site height limit should be lower than the Lakeside/Gold Coast neighborhood, since the site partially functions as open space and as a transition from the library and courthouse to Lakeside Park.

(Note: Although not directly related to the zoning amendments, the Fire Alarm Building is a PDHP, which should be retained intact as part of the proposed Jazz Museum or any other project, even if additions are made on site. The Jazz Museum renderings that we have seen appear to show a retention of only a small part of the building.)

2. **Lakeside/Gold Coast Area.** The original proposal to increase the height limit from the existing 55' limit to 90' has been revised down to 65' due to concerns about an appearance of a solid wall of buildings along Lake Merritt blocking views of downtown. Although many of the existing lakefront buildings are already taller than 65', this reduced height limit will allow for desired infill that is consistent with many of the area's existing beautiful 4- to 6- story multifamily residential buildings.

Thank you for reducing the proposed height limit increases from 90' to 65'. But we continue to recommend the existing 55' height limit, which allows new residential development height that could be 85' or more with a state density bonus.

Staff does not recommend lowering the interior of the residential area, which is at HIA 6 (65') and includes many existing beautiful 4- to 6-story multifamily residential buildings.

Yes, there are two or three attractive older buildings with height between 55' and 65' within the subject area, but these are outliers and the interplay with the state density bonus law needs to be considered.

TARGETED HEIGHT REDUCTIONS TO PROTECT HISTORIC CHARACTER

3. **17th Street between Franklin and Harrison.** Reducing the northeast half of the block between Broadway and Franklin (office building at 426 17th St. and church at 1701 Franklin) from HIA 18 (No Limit) to HIA 6 (65').

Thank you for this height reduction, but 426 17th St. and 1701 Franklin St. are on 17th St. between Broadway and Franklin, not between Franklin and Harrison and are still in ZIP area.

*Regarding the portion of 17th St. that is actually between Franklin and Harrison, the existing 55 foot height limit is proposed to be increased to 65 feet "to allow space for a 1 to 2 story vertical addition". **The existing 55' height limit should instead be retained,** especially between Franklin and Webster Street, which is one of Downtown Oakland's most admired groupings of two and three story early 20th century commercial buildings. See photo below.*



The existing buildings are about 50 feet in height maximum. These especially well-integrated architectural ensembles are among Downtown Oakland's most important urban design assets. Given the small portion of the DOSP area occupied by these ensembles, we do not understand why the DOSP is so focused on promoting vertical additions and significantly taller new construction that could disrupt Downtown Oakland's limited number of these ensembles. There are vast portions of the DOSP area outside APIs/ASIs that lack these ensembles and where substantially larger and taller buildings would not have adverse urban design impacts.

4. 15th Street between Broadway and Harrison.

Heights are already proposed to be reduced from the existing "No Limit" to HIA 10 (90') to be consistent with the other buildings along 15th Street.

This area and other portions of the Downtown National Register District along with APIs/ASIs and freestanding PDHPs should not be included in the ZIP area. As we have noted in Item 9 below and in other correspondence, the ZIP area can be expanded elsewhere to compensate.

*The existing height limit between Franklin and Harrison Streets is 85' rather than unlimited. Existing buildings are 35' or lower, except for the former YWCA which is about 65'. OHA's concern regarding 15th St. is limited to the portion between Broadway and Webster Street plus the south side of 15th Street between Webster and Harrison, where the White Building and Coit Hotel are located. **We therefore continue to recommend that the height limit for these frontages be 55', except for the Coit Hotel and adjacent vacant parcel, where the existing 85' height limit appropriately reflects the height of the hotel.***

5. Victorian residential neighborhood on 22nd St. (Telegraph-MLK)—Cathedral Neighborhood API. Changing HIA 6 (65') to HIA 5 (55') where there is a consistent height context in the Area of Primary Importance (API) on the south side of 22nd and the north side near MLK.

We appreciate the proposed reduction of the height limit from 65' to 55', but 55' is the existing height limit, is already excessive and allows new residential development height that could be 85' or more with a state density bonus. See the out of scale new building at 570-602 21st Street/585 22nd Street which is a major disruption to the Cathedral Neighborhood API.



Buildings that are even more massive and disruptive can be developed using the state density bonus law.

*As stated in Items 7 and 8 below, **the maximum height in APIs/ASIs should be no greater than the predominant maximum height of contributing buildings**, which for 22nd St. are wall heights of about 30' and roof heights of about 40'. We therefore continue to recommend 30'/40' here as well as in the similar areas discussed below.*

Staff does not recommend reducing the remainder of the block. The HIA 10 (90') area is auto garage and postal facility that should be redeveloped; it is not part of an API.

Although technically not part of the API, these locations are at the center of the API. Overscaled new buildings on these sites will be an integral part of the 22nd Street streetscape and will significantly disrupt the API.

6. **Produce Market.** Removing two already-developed parcels from the boundary and then revising the height proposal for this area from HIA 5 (55', FAR 3.5) to HIA 3 (45', FAR 2.5), which includes modest change from the existing FAR 1.0 to allow building owners to add second story additions that might help improve the economic viability of maintaining the market buildings; adding design standards for the Produce Market to include a step-back for upper floor additions.

Thank you for reducing the proposed height limits and FAR, but a doubling of the existing 1.0 FAR is not “modest”, especially with a 45' height limit that is about triple the existing predominant building heights. If the intent is to allow second-story additions, why is 45' even proposed, when 2" should be sufficient? Providing the increase with a 15–20-foot stepback is a good strategy, but we can't find this provision in the actual zoning amendments.

THE FOLLOWING OHA RECOMMENDATIONS WERE CONSIDERED AND NOT ADOPTED:

Maintain or reduce heights/FARs in APIs and ASIs.

7. **Old Oakland API.** Staff does not recommend lowering the existing HIA 5 (55') in the interior of the district or the HIA 6 (65') along 7th St., which allows minor height increases to existing buildings and also allows for the redevelopment of a vacant parking lot.

The existing contributing buildings in Old Oakland are all about 45' or less, so the existing 55' height limit (which resulted from the misguided 2009 upzoning) is already too high. Being a full story higher than the tallest contributing buildings it is not a “minor” increase. The height limit should reflect the predominant maximum height of existing contributing buildings. Again, the interplay with density bonus projects needs to be considered.

In addition, if heights were lowered, buildings in the area would be less likely to be able to take advantage of the TDR program.

*Yes, the TDR program is intended for historic buildings that are less than the by-right height, but height limits in APIs/ASIs should not be purposely set above the maximum prevailing height of contributing buildings just to generate TDR opportunities for historic buildings. Instead, the prevailing maximum height of contributing buildings should be the major factor in determining the height limit in APIs/ASIs. **The height limit itself should be considered the major preservation tool, with TDR as a backstop for buildings that are below the prevailing height of contributing buildings, and therefore below the height limit, even if lower by only one or two stories.** But for freestanding DHPs and PDHPs, TDR should be considered the primary preservation tool.*

8. **Downtown Oakland National Register District.** Staff does not recommend changes to the urban core of Downtown Oakland. Serviced by BART and extensive bus connections; there is no character-defining height context, and it is one of the most appropriate locations in the city for high rise, dense development. Heights in the draft amendments are reduced from the highest heights in the areas to the west, north and east of Frank H. Ogawa Plaza. Staff does propose to reduce the height of the property adjacent to City Hall to 95' to maintain the architectural significance and primacy of City Hall.

Thank you for the height reduction to 95'

*The downtown urban core consists of subareas, including the historic core defined by the Downtown National Register District as well as other subareas such as around Kaiser Center. **The maximum building height should be customized for consistency with the desired future development character of each subarea. In the case of the Downtown National Register District and other APIs/ASIs, the future development character should retain the architectural predominance of the contributing buildings, especially in APIs as important as the National Register District.** Increasing the allowed height beyond the predominant maximum height of contributing buildings invites taller intrusive new buildings that can visually overwhelm the contributing buildings and disrupt or destroy the sense of time and place and the architectural consistency that currently exists. The OHA-recommended height limit range of 35' to 15' within the National Register District seeks to reflect the predominant height of contributing buildings within the various portions of the District.*

9. **Increase by-right intensity in some areas & reduce base intensities in other areas.** OHA's recommendation is intended to achieve "no net loss" under SB 330. However, the locations proposed are not appropriate for lower intensity. These reductions would remove a large section of the most potentially incentivizing areas from the ability to participate in the ZIP, hampering the viability of the ZIP to provide meaningful benefits to the community. The changes would also limit development intensity exactly where it is needed most to meet the City's sustainability, housing and employment goals; within the most transit and service-rich area of the City.

Increase intensity in the following areas to allow decreasing it elsewhere:

- **The area roughly bounded by Lake Merritt, Grand Avenue, 20th St. and Broadway**
- **Much of the area bounded by 14th, 11th, Jefferson and Broadway**

This proposal from OHA was intended to increase by-right intensity in some locations to reduce base intensities in other areas to achieve "no net loss" under SB 330, but still be able to require developers to "buy back" their capacity to develop to the same level allowed under current zoning. However, the locations are not appropriate for lower intensity than originally proposed for two reasons: 1) The proposed increases to the base

zoning would remove a large section of the most potentially incentivizing areas (i.e. able to add intensity while maintaining the same building type) from the ability to participate in the ZIP, seriously hampering the viability of the ZIP to be able to provide meaningful benefits to the community; and 2) The proposed decreases would also limit intensity of development in exactly where it is needed most to meet the City's environmental sustainability, housing and employment goals, by limiting development in the most transit-rich and service-rich area of the City. This would be inconsistent with Oakland's Equitable Climate Action Plan ("ECAP"), Oakland's Housing Element and State Housing Laws and policy.

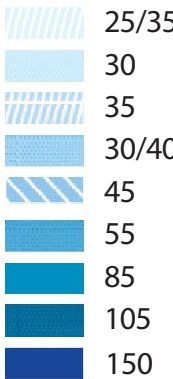
There has been a major miscommunication on this. The two listed areas are already appropriately in the ZIP. The additional areas that OHA had recommended on 8-28-22 for upzoning and/or inclusion in the ZIP were: (a) portions of area the bounded by Franklin, 14th, 19th and Harrison; and (b) much of the area west of Telegraph and north of 17th.

We would like to review these areas with staff to determine if they are appropriate for: (a) Further upzoning to offset (as per SB 330) our recommended downzonings elsewhere; and (b) Inclusion in the ZIP to compensate for our recommended removal from the ZIP of various API and ASI parcels and other parcels containing DHPs and/or PDHPs.

Oakland Heritage Alliance
Preliminary Height Limit Recommendations: 9-22-2019

OHA Recommends

Intensity Area	Proposed Maximum Height	Proposed Maximum FAR	Proposed Maximum Density
1 - Lowest	45'/55'	2.0/3.5	300 SF/1,089 SF
2	65'	5	250 SF
3	85'	7.5	200 SF
4	175'	12	110 SF
5	275'	12.0/17.0	90 SF
6	450'	20	87 SF
7	No Limit	22	80 SF
8 - Highest	No Limit	30	65 SF



OHA NOTES:

The recommended height limits apply to historic areas identified as Areas of Primary or Secondary Importance as defined in the Oakland General Plan and parcels in close proximity to these areas. The height limits are intended to reflect the prevailing height of individual historic buildings within these areas.

30/40 = First number refers to wall height limit. Second number refers to roof height limit available if using a

gable or hip roof. All height limits subject to adjustment depending on:

- Continued refinement of the height
- limits based on further analysis of
- as-built conditions;

Strategy for addressing height

increases mandated by State

Density Bonus Law;



Floor area ratios;	Provision of	a	n	y	transf	era	ble	³ 3	30%/40;
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Scatter plot showing the number of children per woman (Y-axis) versus the year of birth (X-axis). The data points are labeled with their corresponding year values.

Year	Children per woman (approx.)
1950	3.5
1951	3.2
1952	3.0
1953	2.8
1954	2.5
1955	2.2
1956	2.0
1957	1.8
1958	1.5
1959	1.2
1960	1.0
1961	0.8
1962	0.6
1963	0.4
1964	0.2
1965	0.1
1966	0.0
1967	0.0
1968	0.0
1969	0.0
1970	0.0
1971	0.0
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2000	0.0

Attachment 2: San Francisco Planning Code TDR provisions

SEC. 128. TRANSFER OF DEVELOPMENT RIGHTS IN C-3 DISTRICTS.

(a) Definitions.

(1) "Development Lot." A lot to which TDR may be transferred to increase the allowable gross floor area of development thereon beyond that otherwise permitted by the Zoning Control Table for the district in which the lot is located.

(2) "Owner of Record." The owner or owners of record in fee.

(3) "Preservation Lot." A parcel of land on which is either (A) a Significant or Contributory building (as designated pursuant to Article 11); or (B) a Category V Building that has complied with the eligibility requirement for transfer of TDR as set forth in Section 1109(c); or (C) a structure designated an individual landmark pursuant to Article 10 of this Code. The boundaries of the Preservation Lot shall be the boundaries of the Assessor's lot on which the building is located at the time the ordinance or, as to Section 1109(c), resolution, making the designation is adopted, unless boundaries are otherwise specified in the ordinance.

(4) "Transfer Lot." A Preservation Lot located in a C-3 District from which TDR may be transferred. A lot zoned P (public) may in no event be a Transfer Lot unless a building on that lot is (A) owned by the City and County of San Francisco; and (B) located in a P District adjacent to a C-3 District; and (C) designated as an individual landmark pursuant to Article 10 of this Code, designated as a Category I Significant Building pursuant to Article 11 of this Code, or listed on the National Register of Historic Places; and (D) the TDR proceeds are used to finance, in whole or in part, a project to rehabilitate and restore the building in accordance with the Secretary of Interior standards. For the purposes of Section 128(b), a lot zoned P that satisfies the criteria of this Subsection (4) to qualify as a "Transfer Lot" shall be deemed to have an allowable gross floor area of 7.5:1 under Section 124.

(5) "Transferable Development Rights (TDR)." Units of gross floor area that may be transferred, pursuant to the provisions of this Section and Article 11 of this Code, from a Transfer Lot to increase the allowable gross floor area of a development on a Development Lot.

(6) "Unit of TDR." One unit of TDR is one square foot of gross floor area.

(b) **Amount of TDR Available for Transfer.** The maximum TDR available for transfer from a Transfer Lot consists of the difference between (1) the allowable Gross Floor Area permitted on the Transfer Lot by the Zoning Control Table for the district in which the lot is located; and (2) the Gross Floor Area of the development located on the Transfer Lot.

(c) **Eligibility of Development Lots and Limitation on Use of TDR on Development Lots.** TDR may be used to increase the allowable gross floor area of a development on a Development Lot if the following requirements and restrictions are satisfied:

(1) Transfer of Development Rights shall be limited to the following:

(A) The Transfer Lot and the Development Lot are located in a C-3 Zoning District; or

(B) the Transfer Lot contains a Significant building and is located in the South of Market Extended Preservation District, as set forth in Section 819, and the Development Lot is located in a C-3 District; or

(C) the Transfer Lot is in a P District adjacent to a C-3 District and meets the requirements established in subsection (a)(4) above and the Development Lot is located in a C-3 District; or

(D) the Transfer Lot is located in any C-3 District and contains an individual landmark designated pursuant to Article 10 and the Development Lot is located in any C-3 District.

(2) TDR may not be transferred for use on any lot on which is or has been located a Significant or Contributory building; provided that this restriction shall not apply if the designation of a building is changed to Unrated; nor shall it apply if the Historic Preservation Commission finds that the additional space resulting from the transfer of TDR is essential to make economically feasible the reinforcement of a Significant or Contributory building to meet the standards for seismic loads and forces of the Building Code, in which case TDR may be transferred for that purpose subject to the limitations of this Section and Article 11, including Section 1111.6. Any alteration shall be governed by the requirements of Sections 1111 to 1111.6.

(3) Notwithstanding any other provision of this Section, development on a Development Lot is limited by the provisions of this Code, other than those on floor area ratio, governing the approval of projects, including the requirements relating to height, bulk, setback, sunlight access, and separation between towers, and any limitations imposed pursuant to Section 309 review applicable to the Development Lot. The total allowable gross floor area of a development on a Development Lot may not exceed the limitation imposed by Section 123(c).

(d) **Effect of Transfer of TDR.** Transfer of TDR from a Transfer Lot permanently reduces the development potential of the Transfer Lot by the amount of the TDR transferred, except as provided in Section 124(f). In addition, transfer of TDR from a Preservation Lot containing a Contributory building or an individual landmark designated pursuant to Article 10 causes such building to become subject to the same restrictions on demolition and alteration, and the same penalties and enforcement remedies, that are applicable to Significant Buildings Category I, as provided in Article 11.

(e) Procedure for Determining TDR Eligibility.

(1) In order to obtain a determination of whether a lot is a Transfer Lot and, if it is, of the amount of TDR available for transfer, the owner of record of the lot may file an application with the Zoning Administrator for a Statement of Eligibility. The application for a Statement of Eligibility shall contain or be accompanied by plans and drawings and other information which the Zoning Administrator determines is necessary in order to determine whether a Statement of Eligibility can be issued. Any person who applies for a Statement of Eligibility prior to expiration of the time for request of reconsideration of designation authorized in Section 1106 shall submit in writing a waiver of the right to seek such reconsideration.

(2) The Zoning Administrator shall, upon the filing of an application for a Statement of Eligibility and the submission of all required information, issue either a proposed Statement of Eligibility or a written determination that no TDR are available for transfer and shall mail that document to the applicant and to any other person who has filed with the Zoning Administrator a written request for a copy, and shall post the proposed Statement of Eligibility or written determination on the Planning Department website. Any appeal of the proposed Statement of Eligibility or determination of noneligibility shall be filed with the Board of Appeals within 20 days of the date of issuance of the document. If not appealed, the proposed Statement of Eligibility or the determination of noneligibility shall become final on the 21st day after the date of issuance. The Statement of Eligibility shall contain at least the following information:

- (A) the name of the owner of record of the Transfer Lot;
- (B) the address, legal description and Assessor's Block and Lot of the Transfer Lot;
- (C) the C-3 use district within which the Transfer Lot is located;

(D) whether the Transfer Lot contains a Significant or Contributory building, a Category V building, or an Article 10 individually designated landmark;

(E) the amount of TDR available for transfer; and

(F) the date of issuance.

(3) Once the proposed Statement of Eligibility becomes final, whether through lack of appeal or after appeal, the Zoning Administrator shall record the Statement of Eligibility in the Office of the County Recorder. The County Recorder shall be instructed to mail the original of the recorded document to the owner of record of the Transfer Lot and a conformed copy to the Zoning Administrator.

(f) Cancellation of Eligibility.

(1) If reasonable grounds should at any time exist for determining that a building on a Preservation Lot may have been altered or demolished in violation of Articles 10 or 11, including Sections 1110 and 1111 thereof, the Zoning Administrator may issue and record with the County Recorder a Notice of Suspension of Eligibility for the affected lot and, in cases of demolition of a Significant or Contributory building, a notice that the restriction on the floor area ratio of a replacement building may be applicable and shall mail a copy of such notice to the owner of record of the lot. The notice shall provide that the property owner shall have 20 days from the date of the notice in which to request a hearing before the Zoning Administrator in order to dispute this initial determination. If no hearing is requested, the initial determination of the Zoning Administrator is deemed final on the twenty-first day after the date of the notice, unless the Zoning Administrator has determined that the initial determination was in error.

(2) If a hearing is requested, the Zoning Administrator shall notify the property owner of the time and place of hearing, which shall be scheduled within 21 days of the request, shall conduct the hearing, and shall render a written determination within 15 days after the close of the hearing. If the Zoning Administrator shall determine that the initial determination was in error, that officer shall issue and record a Notice of Revocation of Suspension of Eligibility. Any appeal of the determination of the Zoning Administrator shall be filed with the Board of Appeals within 20 days of the date of the written determination following a hearing or, if no hearing has been requested, within 20 days after the initial determination becomes final.

(3) If after an appeal to the Board of Appeals it is determined that an unlawful alteration or demolition has occurred, or if no appeal is taken of the determination by the Zoning Administrator of such a violation, the Zoning Administrator shall record in the Office of the County Recorder a Notice of Cancellation of Eligibility for the lot, and shall mail to the property owner a conformed copy of the recorded Notice. In the case of demolition of a Significant or Contributory Building, the Zoning Administrator shall record a Notice of Special Restriction noting the restriction on the floor area ratio of the Preservation Lot, and shall mail to the owner of record a certified copy of the Notice. If after an appeal to the Board of Appeals it is determined that no unlawful alteration or demolition has occurred, the Zoning Administrator shall issue and record a Notice of Revocation of Suspension of Eligibility and, if applicable, a Notice of Revocation of the Notice of Special Restriction, and shall mail conformed copies of the recorded notices to the owner of record.

(4) No notice recorded under this Section 128(f) shall affect the validity of TDR that have been transferred from the affected Transfer Lot in compliance with the provisions of this Section prior to the date of recordation of such notice, whether or not such TDR have been used.

(g) Procedure for Transfer of TDR.

(1) TDR from a single Transfer Lot may be transferred as a group to a single transferee or in separate increments to several transferees. TDR may be transferred either directly from the original owner of the TDR to the owner of a Development Lot or to persons, firms or entities who acquire the

TDR from the original owner of the TDR and hold them for subsequent transfer to other persons, firms, entities or to the owners of a Development Lot or Lots.

(2) When TDR are transferred, they shall be identified in each Certificate of Transfer by a number. A single unit of TDR transferred from a Transfer Lot shall be identified by the number "1." Multiple units of TDR transferred as a group for the first time from a Transfer Lot shall be numbered consecutively from "1" through the number of units transferred. If a fraction of a unit of TDR is transferred, it shall retain its numerical identification. (For example, if 5,000-1/2 TDR are transferred in the initial transfer from the Transfer Lot, they would be numbered "1 through 5,000 and one-half of 5,001.") TDR subsequently transferred from the Transfer Lot shall be identified by numbers taken in sequence following the last number previously transferred. (For example if the first units of gross floor area transferred from a Transfer Lot are numbered 1 through 10,000, the next unit transferred would be number 10,001.) If multiple units transferred from a Transfer Lot are subsequently transferred separately in portions, the seller shall identify the TDR sold by numbers which correspond to the numbers by which they were identified at the time of their transfer from the Transfer Lot. (For example, TDR numbered 1 through 10,000 when transferred separately from the Transfer Lot in two equal portions would be identified in the two Certificates of Transfer as numbers 1 through 5,000 and 5,001 through 10,000.) Once assigned numbers, TDR retain such numbers for the purpose of identification through the process of transferring and using TDR. The phrase "numerical identification," as used in this section, shall mean the identification of TDR by numbers as described in this Subsection.

(3) Transfer of TDR from the Transfer Lot shall not be valid unless (A) a Statement of Eligibility has been recorded in the Office of the County Recorder prior to the date of recordation of the Certificate of Transfer evidencing such transfer and (B) a Notice of Suspension of Eligibility or Notice of Cancellation of Eligibility has not been recorded prior to such transfer or, if recorded, has thereafter been withdrawn by an appropriate recorded Notice of Revocation or a new Statement of Eligibility has been thereafter recorded.

(4) Transfer of TDR, whether by initial transfer from a Transfer Lot or by a subsequent transfer, shall not be valid unless a Certificate of Transfer evidencing such transfer has been prepared and recorded. The Zoning Administrator shall prepare a form of Certificate of Transfer and all transfers shall be evidenced by documents that are substantially the same as the Certificate of Transfer form prepared by the Zoning Administrator, which form shall contain at least the following:

(A) For transfers from the Transfer Lot only:

(i) Execution and acknowledgement by the original owner of TDR as the transferor(s) of the TDR; and

(ii) Execution and acknowledgment by the Zoning Administrator; and

(iii) A notice, prominently placed and in all capital letters, preceded by the underlined heading "Notice of Restriction," stating that the transfer of TDR from the Transfer Lot permanently reduces the development potential of the Transfer Lot by the amount of TDR transferred, with reference to the provisions of this Section.

(B) For all transfers:

(i) The address, legal description, Assessor's Block and Lot, and C-3 use district of the Transfer Lot from which the TDR originates; and

(ii) The amount and sale price of TDR transferred; and

(iii) Numerical identification of the TDR being transferred; and

(iv) The names and mailing addresses of the transferors and transferees of the TDR; and

(v) Execution and acknowledgment by the transferors and transferees of the TDR; and

(vi) A reference to the Statement of Eligibility, including its recorded instrument number and date of recordation, and a recital of all previous transfers of the TDR, including the names of the transferors and transferees involved in each transfer and the recorded instrument number and date of recordation of each Certificate of Transfer involving the TDR, including the transfer from the Transfer Lot which generated the TDR.

(5) When a Certificate of Transfer for the transfer of TDR from a Transfer Lot is presented to the Zoning Administrator for execution, that officer shall not execute the document if a transfer of the TDR would be prohibited by any provision of this Section or any other provision of this Code. The Zoning Administrator shall, within five business days from the date that the Certificate of Transfer is submitted for execution, either execute the Certificate of Transfer or issue a written determination of the grounds requiring a refusal to execute the Certificate.

(6) Each duly executed and acknowledged Certificate of Transfer containing the information required herein shall be presented for recordation in the Office of the County Recorder and shall be recorded by the County Recorder. The County Recorder shall be instructed to mail the original Certificate of Transfer to the person and address designated thereon and shall be given a copy of the Certificate of Transfer and instructed to conform the copy and mail it to the Zoning Administrator.

(h) Certificate of Transfer of TDR for a Project on a Development Lot.

(1) When the use of TDR is necessary for the approval of a building permit for a project on a Development Lot, the Director of the Department of Building Inspection shall not approve issuance of the permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required number of TDR. When the transfer of TDR is necessary for the approval of a site permit for a project on a Development Lot, the Zoning Administrator shall impose as a condition of approval of the site permit the requirement that the Director of the Department of Building Inspection shall not issue the first addendum to the site permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required number of TDR.

(2) In order to obtain certification as required in Section 128(h)(1), the permit applicant shall present to the Zoning Administrator:

(A) Information necessary to enable the Zoning Administrator to prepare the Notice of Use of TDR, which information shall be at least the following:

- (i) The address, legal description, Assessor's Block and Lot, and zoning classification of the Development Lot;
- (ii) The name and address of the owner of record of the Development Lot;
- (iii) Amount and numerical identification of the TDR being used;
- (iv) A certified copy of each Certificate of Transfer evidencing transfer to the owner of the Development Lot of the TDR being used; and

(B) A report from a title insurance company showing the holder of record of the TDR to be used, all Certificate of Transfer of the TDR, and all other matters of record affecting such TDR. In addition to showing all such information, the report shall guarantee that the report is accurate and complete and the report shall provide that in the event that its guarantee or any information shown in the report is incorrect, the title company shall be liable to the City for the fair market value of the TDR at the time of the report. The liability amount shall be not less than \$10,000 and no more than \$1,000,000, the appropriate amount to be determined by the Zoning Administrator based on the number of TDR being used.

(C) An agreement whereby the owner of the Development Lot shall indemnify the City against any and all loss, cost, harm or damage, including attorneys' fees, arising out of or related in any way to the assertion of any adverse claim to the TDR, including any loss, cost, harm or damage occasioned by the passive negligence of the City and excepting only that caused by the City's sole and active negligence. The indemnity agreement shall be secured by a financial balance sheet certified by an auditor or a corporate officer showing that the owner has assets equal to or greater than the value of the TDR, or other security satisfactory to Planning Department and the City Attorney.

(3) If the Zoning Administrator determines that the project applicant has complied with the provisions of Subsection (h)(2) and all other applicable provisions of this Section, and that the applicant is the owner of the TDR, that officer shall transmit to the Director of the Department of Building Inspection, with a copy to the project applicant, written certification that the owner of the Development Lot owns the TDR. Prior to transmitting such certification, the Zoning Administrator shall prepare a document entitled Notice of Use of TDR stating that the TDR have been used and may not be further transferred, shall obtain the execution and acknowledgment on the Notice of the owner of record of the Development Lot, shall execute and acknowledge the Notice, shall record it in the Office of the County Recorder, and shall mail to the owner of record of the Development Lot a conformed copy of the recorded Notice. If the Zoning Administrator determines that the project applicant is not the owner of the TDR, or has not complied with all applicable provisions of this Section, that determination shall be set forth in writing along with the reasons therefore. The Zoning Administrator shall either transmit certification or provide a written determination that certification is inappropriate within 10 business days after the receipt of all information required pursuant to Subsection (h)(2).

(i) Cancellation of Notice of Use; Transfer from Development Lot.

(1) The owner of a Development Lot for which a Notice of Use of TDR has been recorded may apply for a Cancellation of Notice of Use if (A) the building permit or site permit for which the Notice of Use was issued expires or was revoked or cancelled prior to completion of the work for which such permit was issued and the work may not be carried out; or (B) any administrative or court decision is issued or any ordinance or initiative or law is adopted which does not allow the applicant to make use of the permit; or (C) a portion or all of such TDR are not used.

(2) If the Zoning Administrator determines that the TDR have not been and will not be used on the Development Lot based on the reasons set forth in subsection (i)(1), the Zoning Administrator shall prepare the Cancellation of Notice of Use of TDR. If only a portion of the TDR which had been acquired are not being used, the applicant may identify which TDR will not be used and the Cancellation of Notice of Use of TDR shall apply only to those TDR. The Zoning Administrator shall obtain on the Cancellation of Notice of Use of TDR the signature and acknowledgment of the owner of record of the Development Lot as to which the Notice of Use of TDR was recorded, shall execute and acknowledge the document, and shall record it in the office of the County Recorder.

(3) Once a Cancellation of Notice of Use of TDR has been recorded, the owner of the Development Lot may apply for a Statement of Eligibility in order to transfer the TDR identified in that document. The procedures and requirements set forth in this Section governing the transfer of TDR shall apply to the transfer of TDR from the owner of a Development Lot after a Notice of Use has been filed, except for the provisions of this Section permanently restricting the development potential of a Transfer Lot upon the transfer of TDR; provided, however, that the district or districts to which the TDR may be transferred shall be the same district or districts to which TDR could have been transferred from the Transfer Lot that generated the TDR.

(j) Erroneous Notice of Use; Revocation of Permit. If the Zoning Administrator determines that a Notice of Use of TDR was issued or recorded in error, that officer may direct the Director of the Department of Building Inspection to suspend any permit issued for a project using such TDR, in which case the Director of the Department of Building Inspection shall comply with that directive. The Zoning Administrator shall thereafter conduct a noticed hearing in order to determine whether the Notice of Use of TDR was issued or recorded in error. If it is determined that the Notice of Use of TDR was issued or recorded in error, the Director of the Department of Building Inspection shall revoke the permit; provided, however, that no permit

authorizing such project shall be revoked if the right to proceed thereunder has vested under California law. If it is determined that the Notice of Use of TDR was not issued or recorded in error, the permit shall be reinstated.

(k) **Effect of Repeal or Amendment.** TDR shall convey the rights granted herein only so long and to the extent as authorized by the provisions of this Code. Upon repeal of such legislative authorization, TDR shall there after convey no rights or privileges. Upon amendment of such legislative authorization, TDR shall thereafter convey only such rights and privileges as are permitted under the amendment. No Statement of Eligibility shall convey any right to use, transfer or otherwise utilize TDR if the maximum floor area ratio for the Transfer Lot is reduced after the Statement of Eligibility is issued.

(l) Preservation Rehabilitation, and Maintenance Requirements for Preservation Lots.

(1) In addition to the material required to be submitted with an application for a Certificate of Transfer for initial transfer from the Transfer Lot set forth in subsection 128(g), the owner of the Transfer Lot shall:

(A) Demonstrate that any and all outstanding Notices of Violation have been abated; and

(B) Submit for approval by the Department a Preservation, Rehabilitation, and Maintenance Plan that describes any proposed preservation and rehabilitation work and that guarantees the maintenance and upkeep of the Transfer Lot. This Plan shall include:

(i) a plan for the ongoing maintenance of the Transfer Lot;

(ii) information regarding the nature and cost of any rehabilitation, restoration or preservation work to be conducted on the Transfer Lot, including information about any required seismic, life safety, or disability access work;

(iii) a construction schedule; and

(iv) any other such information as the Department may require to determine compliance of this subsection 128(l).

All such work, shall comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The requirements of the approved Plan shall be recorded along with the final Certificate of Transfer in the Office of the County Recorder.

Notwithstanding the foregoing, the owner of the Transfer Lot may apply to the Department for a hardship exemption from the requirements of subsection (i). Such hardship exemption shall demonstrate to the satisfaction of the Department that sale of TDR is necessary to fund the work required to cure the outstanding Notice(s) of Violation on the Transfer Lot.

(2) Approval of the Certificate of Transfer for initial transfer from the Transfer Lot shall be conditioned on execution of the requirements described in subsection (l)(1). Once any TDR is transferred from the Transfer Lot, the Certificate of Transfer and conditions may not be withdrawn.

(3) Within one year of the issuance of the Certificate of Transfer for initial transfer from the Transfer Lot, the owner of the Transfer Lot shall submit a status report to the Department detailing how the requirements of subsection (l)(1) have been completed and describing ongoing maintenance activities. Such report shall include: (A) information detailing the work completed; (B) copies of all permits obtained for the work, including any Certificates of Appropriateness or Permits to Alter; (C) any inspection reports or other documentation from the Department of Building Inspection showing completion of the work; (D) itemized receipts of payment for work performed; and (E) any such other documentation as the Department may require to determine compliance with the requirements of this subsection 128(l). The deadline for completion of the work and submittal of this report

may be extended at the discretion of the Department upon application of the owner of the Transfer Lot and only upon a showing that the owner has diligently pursued all required permits and completion of the work.

(4) Failure to comply with the requirements of this subsection (l), including all reporting requirements, shall be grounds for enforcement under this Code, including but not limited to under Sections 176 and 176.1. Penalties for failure to comply may include, but shall not be limited to, a lien on the Transfer Lot equal to the sale price of the TDR sold.

(Added by Ord. 414-85, App. 9/17/85; amended by Ord. 115-90, App. 4/6/90; Ord. 21-03, File No. 020328, App. 2/21/2003; Ord. 77-04, File No. 031930, App. 5/6/2004; Ord. 87-07, File No. 061688, App. 4/27/2007; Ord. 246-10, File No. 100851, App. 10/14/2010; Ord. 256-10, File No. 101200, App. 11/5/2010; Ord. [68-13](#), File No. 120474, App. 4/23/2013, Eff. 5/23/2013; Ord. [22-15](#), File No. 141253, App. 2/20/2015, Eff. 3/22/2015)

AMENDMENT HISTORY

References to officials and bodies updated and/or corrected throughout; internal subdivisions redesignated consistently throughout; in division (c)(1), former subdivisions (i) and (iii) amended and redesignated as (A) and (B), former subdivisions (v) and (vi) redesignated as (C) and (D), and former subdivisions (ii) and (iv) deleted; divisions (f)(1), (f)(3), and (l)(1) through (4) amended; Ord. [68-13](#), Eff. 5/23/2013. Divisions (a)(1) and (b) amended; Ord. [22-15](#), Eff. 3/22/2015.


**ATTACHMENT 2: MAP SHOWING OHA-RECOMMENDED AREAS FOR UPZONING
AND/OR ADDITION TO THE ZIP AREA.**

OAKLAND HERITAGE ALLIANCE

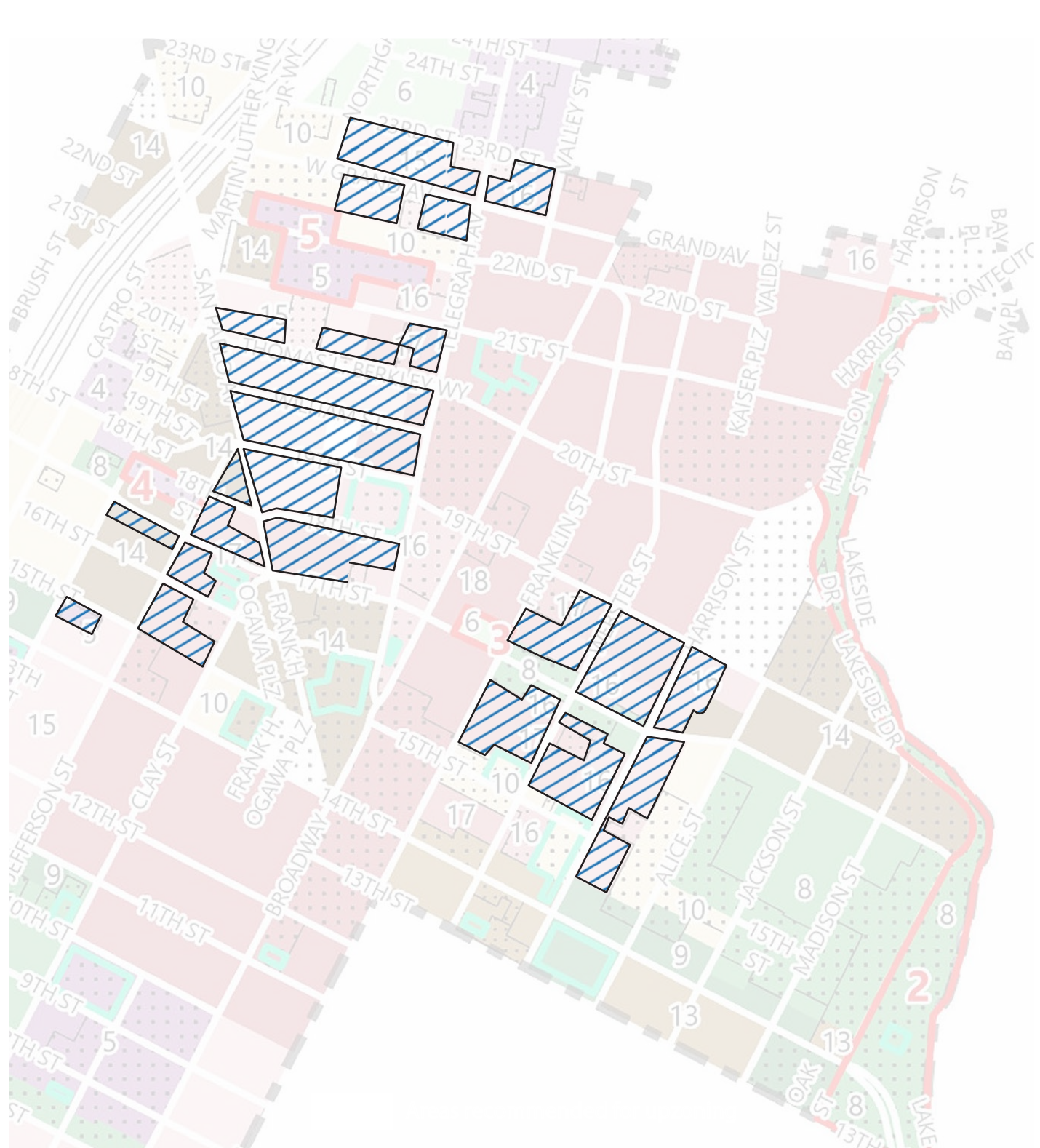
DOSP Areas Recommended for Upzoning and/or Addition to the ZIP Area

The upzoned areas are intended to provide additional development intensity (height, floor area ratio, and residential density) to offset the reduced development intensity resulting from OHA-recommended downzonings elsewhere in the DOSP area. The intensity offsets are intended to allow the downzonings to conform with the “no net loss” of development intensity required by SB 330/SB8.

The upzoned areas could also be used for expansion of the Zoning Incentive Program (ZIP) area to offset OHA’s recommended removal of the ZIP from Areas of Primary and Secondary Importance (APIs and ASIs).

 areas recommended for upzoning

May 14, 2024



**ATTACHMENT 3: OHA PROPOSAL FOR INCREASED FRONT SETBACKS FOR
THE FOUR LATE 19TH-EARLY 20TH CENTURY RESIDENTIAL APIS.**

ATTACHMENT 3: OHA-proposed front yard setback increases in the four late 19th-early 20th century residential APIs: Grove Street/Lafayette Square; 19th Street/Grove Street; Cathedral Neighborhood; and 7th Street/Harrison Square.

The proposed 0' minimum and 10' maximum front setbacks in these four APIs are significantly less than the contributing historic building setbacks in most cases. This is the case even for the 6' front setback required by Regulation 3 for Table 17.101K.04 when the ground floor contains residential units adjacent to the principal street. The proposed setbacks will promote new construction that will literally stick out from the street wall established by the contributing historic buildings, and erode the API's integrity.

RECOMMENDATION:

1. Increase the front yard setback proposed for the D-DT-R and D-DT-RX zones, so it is more consistent with the setbacks of the API contributing buildings. But allow a reduced setback for new buildings if the adjacent building has a shallower setback using the method prescribed in the RD, RM and RU Zones, e.g. see Regulation 4 for Table 17.17.03 for the RM zones. In the specific recommendations below, the minimum setback is recommended to be increased to 15 feet and the maximum setback to 20', except for the southern portion of the Grove Street/Lafayette Square API. One way to do this would be to change the minimum setback in the D-DT-R zone to 15 feet and to place all of the APIs except for the Grove Street/Lafayette Square API's southern portion into the D-DT-R Zone. Alternatively, there could be a carveout for the increased API setbacks within the D-DT-R and D-DT-RX zones provided as an additional Regulation for Table 17.17.03.
2. Apply the increased setbacks to **all buildings** within these APIs, not just those containing ground floor residential units adjacent to the principal street.

SPECIFIC RECOMMENDATIONS FOR THE FOUR APIS:

Cathedral Neighborhood API:

Total contributing properties: 33

Front setback breakdown for contributing properties:

6 ½-10':	6 Properties	18%
10-15':	14 Properties	42%
15-20':	13 Properties	39%
TOTAL:	33 Properties	100%

Recommendation: Since 81% of the contributing properties have front setbacks between 10' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 20'.

19th and Grove Street API:

Total contributing properties: 22

Front setback breakdown for contributing properties:

0':	2 Properties	9%
7 1/2':	6 Properties	27%
10':	7 Properties	32%
17 1/2':	1 Properties	5%
20':	6 Properties	27%
TOTAL:	22 Properties	100%

Recommendation: Since 64% of the contributing properties have front setbacks between 10' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 20'.

Grove Street/Lafayette Square API – North block bounded by 10th, 11th, and Castro Streets and Martin Luther King Way.

Total contributing properties: 13

Front setback breakdown for contributing properties:

0':	2 Properties	15%
9':	2 Properties	15%
12':	1 Properties	8%
15':	3 Properties	23%
18':	2 Properties	15%
20':	2 Properties	15%
<hr/>		
TOTAL:	22 Properties	100%

Recommendation: Since 61% of the contributing properties have front setbacks between 12' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 20'.

Grove Street/Lafayette Square, API – South two blocks bounded by 8th, 10th, and Castro streets and Martin Luther King Way and portions of adjacent blocks.

Total contributing properties: 41

Front setback breakdown for contributing properties:

0':	19 Properties	46%
7':	2 Properties	5%
5':	3 Properties	7%
10':	7 Properties	17%
15':	7 Properties	17%
20':	3 Properties	7%
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TOTAL:	41 Properties	100%

Recommendation: Since 68% of the contributing properties have front setbacks between 0' and 10', provide a 6' minimum setback as required by Regulation 3 for Table 17.101K.04, but for all buildings, not just those where the ground floor contains residential units adjacent to the principal street. Retain the maximum 10' setback.

7th Street/Harrison Square API.

Total contributing properties within the DOSP area: 72

Front setback breakdown for contributing properties:

0':	15 Properties	21%
5':	4 Properties	6%
10':	10 Properties	14%
12':	2 Properties	3%
15':	13 Properties	18%
16':	23 Properties	32%
20':	5 Properties	7%
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TOTAL:	72 Properties	100%

Recommendation: Since 74% of the contributing properties have front setbacks between 10' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 10'.



June 4, 2024

By electronic transmission

Oakland City Planning Commission
c/o Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

**Subject: Downtown Oakland Specific Plan (DOSP) and related zoning amendments—
Items #1 and #2 on 6-5-24 City Planning Commission agenda.**

Dear City Planning Commission Members:

The following comments refine and supplement those in our attached 5/9/24 letter to the City Planning Commission. We are still reviewing the latest draft zoning amendments released last Friday, May 31, so the following comments may be incomplete and subject to further refinement and expansion.

1. Transferable development rights (TDR). We would like to thank staff for incorporating most of the TDR comments in our 5/9/24 letter into the latest draft zoning amendments. This satisfies our major concerns regarding the TDR proposal. The major loose end is that some detailed procedural provisions from the San Francisco program still need to be included. Staff is proposing that these provisions be incorporated into an Administrative Instruction (AI) that would be separate from the zoning text and would be issued within a year after the zoning amendment adoptions. **OHA recommends that issuance of the AI within a year after adoption be memorialized in the ordinance adopting the zoning amendments** to help ensure that the AI is actually issued within a year.

In addition, we remain concerned that the base intensities are too high for developers to use the TDR program or the Zoning Incentive Program (ZIP). See item 1 in our 5/9/24 letter for further discussion.

2. DOSP areas recommended for upzoning and/or addition to the ZIP area. See item 5 in our 5/9/24 letter and the Attachment 2 map.

The upzoned areas are intended to provide additional development intensity (height, floor area ratio, and residential density) to offset the reduced development intensity resulting from the OHA-recommended downzonings elsewhere in the DOSP area. The intensity offsets are intended to allow the downzonings to conform with the “no net loss” of residential development intensity required by SB 330 and SB8.

The upzoned areas could also be used for expansion of the Zoning Incentive Program (ZIP) area to offset OHA’s recommended removal of the ZIP from Areas of Primary and Secondary Importance (APIs and ASIs).

3. Increase the front yard setbacks in the four late 19th-early 20th century residential APIs: Grove Street/Lafayette Square; 19th Street/Grove Street; Cathedral Neighborhood; and 7th Street/Harrison Square.

The proposed 0' minimum and 10' maximum front setbacks in these four APIs are significantly less than the contributing historic building setbacks in most cases. This is the case even for the 6' front setback required by Regulation 3 for Table 17.101K.04 when the ground floor contains residential units adjacent to the principal street. The proposed setbacks will promote new construction that will literally **stick out** from the street wall established by the contributing historic buildings, and erode the API's integrity. See example below, which also illustrates the negative impacts on APIs and ASIs of new buildings that are taller than the tallest contributing buildings to the API/ASI.



RECOMMENDATION:

1. Increase the front yard setback proposed for the D-DT-R and D-DT-RX zones, so it is more consistent with the setbacks of the API contributing buildings. But allow a reduced setback for new buildings if the adjacent building has a shallower setback using the method prescribed in the RD, RM and RU Zones, e.g. see Regulation 4 for Table

17.17.03 for the RM zones. In the specific recommendations for the four APIs, the minimum setback is recommended to be increased to 15 feet and the maximum setback to 20', except for the southern portion of the Grove Street/Lafayette Square API, which could remain as currently proposed, since 58% of the existing front setbacks are 7' or less.

2. Apply the increased setbacks to **all buildings** within these APIs, not just those containing ground floor residential units adjacent to the principal street.

See Attachment 3 for detailed proposals and methodology.

4. Tower Standards--General.

It is good that the tower standards remain in the Planning Code rather than being shifted to the upcoming Objective Design Review Standards.

However, the proposed tower standards are too permissive and will tend to promote wide, slab-like towers that could result in a skyline of bulky and overly wide structures. Much of Downtown Oakland's existing skyline now has these characteristics (see Figure 1) , since the existing tower standards are also too permissive, currently with no limit on tower length for both residential and nonresidential and continuing the no limit for nonresidential under the proposed standards (see Figure 2).



Figure 1: Downtown Oakland skyline from southbound I-880 Market Street offramp, dominated by wide, closely spaced, bulky buildings.

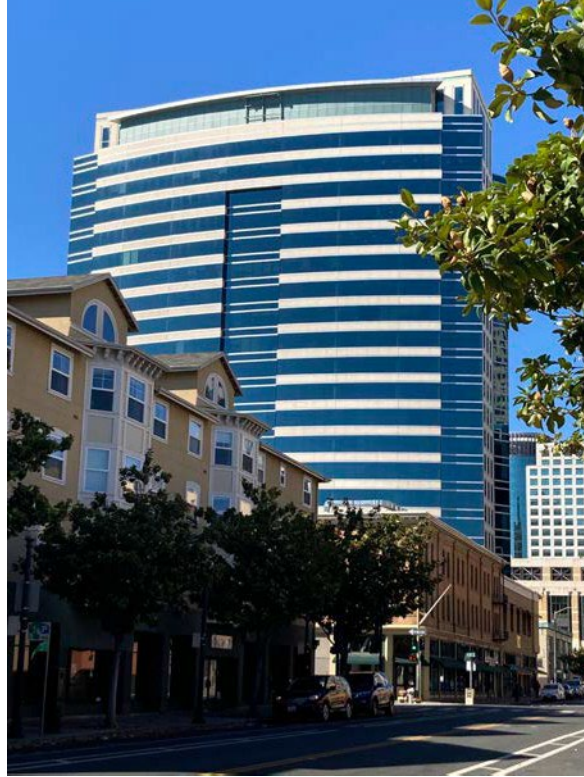


Figure 2. Ca.260' wide highrise developed under current tower standards with no limit on building elevation length.

Among other things, the non-residential tower standards have been eliminated in the proposal (including maximum building length and maximum diagonal length) except for requiring an average per story lot coverage of 40,000 ft.² in Intensity Area 18 and 30,000 ft.² elsewhere.

For residential towers, the proposed standards are summarized as follows:

Average floor area: 15,000 ft.² with 20,000 ft.² and 25,000 ft.², respectively,
in Intensity Areas 17 and 18.

Maximum building length: 200 feet

Maximum diagonal length: 235 feet

Minimum separation between towers on the same lot: 40 feet

In contrast, Downtown San Francisco (C-3-O Zone) has the following requirements:

- a. Lower tower (also applies to buildings up to 160 feet tall):

Maximum floor area size: 20,000 ft.²

Maximum building length: 160 feet

Maximum diagonal length: 190 feet

- b. Upper tower:
 - Maximum floor area size: 17,000 ft.² (12,000 ft.² maximum average).
 - Maximum building length: 130 feet
 - Maximum average diagonal length: 160 feet

The proposed Oakland standards should be modified to be more like San Francisco's to promote more slender, less bulky structures, especially for residential buildings.

Staff has advised that the standards for non-residential towers are being relaxed because large floor plates are required to make non-residential, high-rise buildings viable. The specific floor area size needed to achieve such viability appears to be a moving target. Several years ago we were told it was 20,000 ft.²; now it appears to be 30,000 ft.². **Staff should provide documentation to the City Planning Commission and City Council justifying the need for such large floor plates.** And if 30,000 ft.² is the necessary floor plate size, why is 40,000 ft.² being permitted by right in Intensity Area 18?

For residential high-rise, it is unclear why 25,000 ft.² is being allowed in Intensity Area 18 and 15,000 ft.² elsewhere. Is our understanding that overly large floor plates are not viable for residential towers due to the need for most rooms to have windows. Vancouver, which has a reputation for successful urbanism, allows floor plates only up to 6000 ft.² with maximum building length of 90 feet. For San Francisco's Rincon Hill and South Beach neighborhood (next to the Bay Bridge approach) the maximum floor plate is 8500 ft.², maximum building length 100 feet and maximum diagonal length 125 feet.

Staff should provide a presentation to the City Planning Commission and City Council of the skylines in highly-regarded downtowns, along with the tower design standards for these cities. The Commission and Council should be asked to identify which skyline images they like best, and which could serve as a model for Oakland. Tower standards that would promote this vision would then be adopted. In addition to Vancouver and San Francisco, possibilities include Seattle, downtown Los Angeles, and possibly even Singapore, Dubai and Shanghai Pudong.



Figure 3: Downtown Seattle skyline

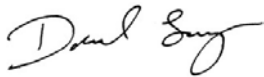
5. Delete tower design standard 17.101K.138.3.b. The standard reads:

For tower facades over one hundred fifty (150) feet in width, provide a change in massing by providing one or more articulations, step backs, or notches greater than twenty (20) feet wide and ten (10) feet deep to reduce apparent building bulk.

Rather than reducing perceived bulk, the required articulations will tend to intensify perceived bulk by promoting a more complex building mass that will tend to look busy. A more effective way to break up overly long building masses is to design facades so they look like two or more buildings. And even building facades wider than 150 feet can minimize bulk by being well detailed, such as using intricate surface materials, such as brick or other masonry, horizontal moldings, articulating the base and top and arranging windows in columns that provide a clear, and well-ordered composition. Numerous pre-1940 skyscrapers with wide facades have these characteristics.

Thank you for the opportunity to comment. Please contact Christopher Buckley at (510) 523-0411 or cbuckleyaicp@att.net or Naomi Schiff at (510) 835-1819 or Naomi@17th.com if you would like to discuss these comments.

Sincerely,



Daniel Levy
President

Attachments:

1. OHA 5/9/24 letter to CPC.
2. Map showing OHA-recommended areas for upzoning and/or addition to the ZIP area.
3. OHA proposal for increased front setbacks for the four late 19th-early 20th century residential APIs.

By electronic transmission:

cc: William Gilchrist, Ed Manasse, Laura Kaminski, Joanna Winter, Catherine Payne, Heather Klein, Neil Gray, Pete Vollmann, Betty Marvin, Audrey Lieberworth, Bureau of Planning/Zoning

Mayor and City Council

ATTACHMENT 1: OHA 5/9/24 LETTER TO CITY PLANNING COMMISSION.



May 9, 2024

By electronic transmission

City of Oakland Planning Commission
c/o Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

**Subject: Downtown Oakland Specific Plan (DOSP) and related zoning amendments—
Item #1 on 5-15-24 Planning Commission agenda.**

Dear Chair Shirazi and Planning Commissioners:

Oakland Heritage Alliance (OHA) has not yet completed its review of the latest versions of the DOSP and related zoning amendments so the following comments are preliminary and subject to modification. We continue to refine our review and responses to the informative and well-thought-out May 6, 2024 Landmarks Preservation Advisory Board (LPAB) staff report responding in detail to our previous comments, but which we were only able to access on May 4.

Most of the following comments are based on or follow up those submitted to the LPAB on August 28, 2022 and to the City Planning Commission (CPC) on November 6, 2019 but are more focused, reflecting recent changes to the Draft DOSP and zoning amendments. Here we made an effort to address only the most significant points. These comments plus some others were also sent to the LPAB.

We thank staff for modifying the drafts to incorporate many of our previous comments, especially regarding the transferable development rights (TDR) provisions. But there are still some significant loose ends. The following primarily addresses these issues.

- 1. The base intensities are probably too high for either the Zoning Incentive Program (ZIP) or Transferable Development Rights (TDR) program to incentivize developers to use them. There must be strategic downzoning, not just more uponings.** The Specific Plan provides an opportunity to correct the mistakes of the 2009 rezoning. It provided excessive by-right height limits and FARs, which appear to have eliminated the need to induce developers to use TDRs, the ZIP, or other incentives to proceed with their projects. For example, much of downtown Oakland was provided with by-right 14.0, 17.0 and 20.0 FARs in the 2009 rezoning. Unfortunately, these heights are mostly retained in the Draft Specific Plan. This is especially disappointing given such statements in the 2016 Plan Alternatives Report as the following on page 4.7:

“Rezone areas with unnecessarily excessive height limits to allow for more flexibility with density bonuses and other developer incentives”.

By comparison, the maximum by-right FAR in San Francisco, resulting from its 1985 Downtown Specific Plan, is 9.0, which can be increased up to 18.0 (higher at some locations, such as the Salesforce Tower) in exchange for TDRs and other community benefits. “Overzoning,” such as in downtown Oakland, tends to artificially inflate land values and creates more barriers to providing affordable housing and encourages owners to “land bank” their property while waiting for a major development project that will pay them top dollar. Ironically this can **discourage** development, rather than encourage it, as intended by overzoning. Land banking also tends to encourage a slumlord mentality, with building owners reluctant to spend money to properly maintain their buildings and refusing long-term leases that could include major tenant improvements. This discourages high-quality tenants.

See also a 2014 white paper on Public Benefit Zoning, prepared for the Association of Bay Area Governments, Metropolitan Transportation Commission and Eastbay Housing Organizations available at: http://ebho.org/wp-content/uploads/2011/09/LVR-White-Paper-ExecSum_141113.compressed.pdf

Page 266 of the Draft DOSP acknowledges this challenge by stating:

Because of the generous zoning allowances that already exist for most areas downtown, there are limited areas where a Transfer of Development Rights (TDR) program might be effective. Most of the areas that would be candidates for a TDR program are also being considered for the development incentive program. Further analysis will determine how the two programs can work in coordination and avoid undermining the other's intent.

The solution is: DO NOT OVERZONE!

We appreciate the 5/6/24 LPAB staff report's responses to the above recommendations, which are presented in more detail in Items 4 and 5 below. See Attachment 1 for replies to these and other staff responses to OHA concerns.

2. Transferable Development Rights. (TDR).

We would again like to thank staff for incorporating much of the San Francisco's TDR program into the similar proposed Oakland program. However, there are still some details that must be addressed:

- a. There appear to be typos and/or misplaced words at the bottom of page 30 of the zoning amendments that significantly impact the meaning of the section. Here is a redline showing what we believe to be the correct version, which is the version we have been recommending:

G. Characteristics of the sending and receiving sites.

- 1. Both the receiving and sending sites must be within a D-DT Zone.*
 - 2. The sending site must be: 1) either a Designated Historic Property (DHP); ~~rated "A" or "B" by the Office of Cultural Heritage Survey~~; or 2) any Potentially Designated Historic Property (PDHP) either rated "A" or "B" by the Office of the Cultural Heritage Survey or that contributes to an Area of Secondary Importance (ASI) or Area of Primary Importance (API).*
- b. We are concerned that limiting the TDR receiving sites to those within the ZIP area will provide insufficient TDR demand for the program to succeed. One alternative would cap the amount of TDR per eligible site outside of the ZIP, similar to San Francisco's approach. That alternative allows FAR up to 9.0 without TDR and up to 18.0 with TDR. Staff has been very accommodating in addressing these kinds of details with us. We hope that staff will continue to work with us on these remaining issues.
- c. As noted in the 5/6/24 LPAB staff report, the DOSP zoning amendments do not include some detailed procedural provisions from the San Francisco program, and proposes that these provisions be included in an administrative document that would be separate from the zoning text. These provisions address such topics as: (1) documentation that the planning department has issued a certificate verifying how many TDRs a property has a right to (Section 128(e)(1), etc.); and (2) a notice of restriction stating that the transfer of TDRs from the sending site permanently reduces the development potential of the site by the amount of TDRs transferred. (Section 128 (g)(4)(A)(iii)). Staff should ask the City Attorney how to handle this if staff has not already done so.

If the revisions will be memorialized in an administrative document, there should be a reference to the document in the zoning text. The administrative document should also be included at least in the final package provided to the City Council. In that way the administrative document can be effective immediately after the TDR program becomes effective. If the administrative document is not available at that time, it may get put on the back burner and forgotten. That could lead to problems and delay when the first TDR requests are submitted. Staff will then have to scramble to prepare all of the documents to be executed by the TDR applicant. If this happens, important provisions could fall through the cracks. Applicants may become discouraged by the program, since all of the documents they must execute are not immediately available. The San Francisco Planning Code TDR provisions are attached for your reference.

- d. If staff has not already done so, we recommend that they talk to Fortress Real Estate Advisors in San Francisco to get their review of the proposed Oakland TDR program, especially regarding limiting the use of TDR on receiving sites to

50% of the additional intensity allowed by the ZIP and the design review requirement. Fortress has acted as a TDR broker in San Francisco and has played a key role in the success of the San Francisco program.

4. Maximum intensity map for projects not participating in the ZIP.

- a. **Do not increase height/FAR limits for APIs and ASIs.** These limits should either stay as-is or be reduced, such as: (i) on 15th Street between Broadway and Harrison, and 17th Street between Franklin and Harrison; (ii) the Victorian residential neighborhoods on 22nd Street (Telegraph-MLK), 18th Street (Jefferson-MLK) and MLK (7th-11th Streets); (iii) the produce market; and (iv) much of the Lake Merritt residential area (“Gold Coast”) bounded by 14th, Harrison and the Lake. These height/FAR increases could threaten API/ASI contributors with demolition or adverse alteration and promote intrusive new development. See Attachment 1 photo of an example of intrusive new development within an API.
- b. **Reduce existing height/FAR limits in some APIs/ASIs,** such as Old Oakland and portions of the Downtown Oakland National Register District that were inappropriately upzoned in 2009. OHA’s specific recommendations for these reductions are shown on the 9-22-19 height map included in Attachment 1.

See Attachment 1 for further discussion.

5. Maximum intensity map for ZIP areas.

- a. **Delete APIs/ASIs and freestanding PDHPs such as the following from the ZIP area map:** Telegraph Avenue north of 23rd Street, the First Christian Science Church and Wakefield Building at the northwest corner of 17th and Franklin and the Downtown National Register District.
- b. **Expand the ZIP area to include and/or upzone portions of the areas bounded by Franklin, 14th, 19th and Harrison and west of Telegraph. The ZIP expansion and/or zoning would offset downzoning elsewhere to satisfy SB 330/SB8 as discussed in Comment 4b above.**

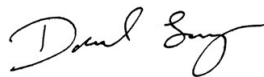
See Attachment 1 for further discussion.

6. We greatly appreciate staff’s thorough and conscientious responses to the comments in our 8/28/22 letter. Our replies to some of those responses are in Attachment 1. Some of them only involve correction or clarification of what we believe are errors and ambiguities. We hope to resolve these points through follow up discussions with staff.
7. We are very pleased with the EIR mitigation measures listed on pages 27–30 of the 5/6/24 LPAB staff report, especially those promoting use of the California Historical Building

Code and facilitating relocation of buildings that would otherwise be demolished. Implementation of some of these is subject to “when funding becomes available” and using vague words such as “encourage,” “consider,” and so on. Can the language be more firm? Can the EIR and/or DOSP establish a DOSP Implementation Committee consisting of staff and interested outside stakeholders to help ensure that these initiatives are seriously pursued so they aren’t eventually forgotten?

Thank you for the opportunity to comment. Please contact Christopher Buckley at (510) 523–0411 or cbuckleyaicp@att.net or Naomi Schiff at (510) 835–1819 or Naomi@17th.com if you would like to discuss these comments.

Sincerely,



Daniel Levy
President

Attachments:

1. Selected OHA replies to 5/6/24 LPAB staff report responses to OHA 8/28/22 comments
2. San Francisco Planning Code TDR provisions

By electronic transmission:

cc: Planning Commissioners Shirazi, Sugrue, Renk, Ahrens, Randolph, Sandoval,
William Gilchrist, Ed Manasse, Laura Kaminski, Joanna Winter, DOSP staff and
consultants, Catherine Payne, Heather Klein, Neil Gray, Pete Vollmann, Betty Marvin,
Audrey Lieberworth, Bureau of Planning/Zoning
Councilmember Carroll Fife, District 3
Councilmembers Kaplan, Kalb, Fortunato-Bas, Gallo, Jenkins, Ramachandran, Reid
Landmarks Preservation Advisory Board members Rice, Bomba, Katticaran, Lenci, Matheny

Attachment 1: Selected OHA Replies to 5-6-24 Staff Report Responses to OHA 8-28-22 DOSP Letter

May 9, 2024

Oakland Heritage Alliance (OHA) is still reviewing the Draft DOSP and the related zoning amendments presented at the 5/6/24 LPAB meeting and in the 5/6/24 staff report. **The following replies are therefore preliminary and subject to expansion and modification.** Item 9 is the most significant. The original OHA height recommendations are shown on the attached map dated 9/22/19.

The staff responses are shown as standard text, while the OHA replies are shown in *red italics*.

Note: OHA and staff reached agreement on some of the 8/28/22 comments, especially those concerning Transferable Development Rights (TDRs). These agreements are therefore not reflected in this document. OHA would like to thank staff for diligently working with us on these agreements.

- 1. Fire Alarm Building (FAB).** The original proposal to increase the FAB height limit from 55' to 90' has been revised down to 65'. The 65' height would allow redevelopment of the site, potentially as a Jazz Museum or as an expansion of the Main Library. This height is consistent with the permitted height for the neighboring Oakland Museum of California, Oakland Public Library, County Courthouse, and the adjacent BAMBD along 14th Street. Additionally, the City owns the land and will have control over design review of this site. This site is not currently under consideration for market-rate housing, as some commenters have feared; it is in the early stages of review to be used for public purposes, as desired by the City and community members.

We are confused by staff's response. We believe that the original proposal was a base height of 45', rather than 55', with 90' using the Zoning Incentive Program (ZIP). Reduction of the proposed increase to 65' and taking the site out of the ZIP area is appreciated, but the OHA recommendation was to retain the existing 45' height limit. The Fire Alarm Building site height limit should be lower than the Lakeside/Gold Coast neighborhood, since the site partially functions as open space and as a transition from the library and courthouse to Lakeside Park.

(Note: Although not directly related to the zoning amendments, the Fire Alarm Building is a PDHP, which should be retained intact as part of the proposed Jazz Museum or any other project, even if additions are made on site. The Jazz Museum renderings that we have seen appear to show a retention of only a small part of the building.)

2. **Lakeside/Gold Coast Area.** The original proposal to increase the height limit from the existing 55' limit to 90' has been revised down to 65' due to concerns about an appearance of a solid wall of buildings along Lake Merritt blocking views of downtown. Although many of the existing lakefront buildings are already taller than 65', this reduced height limit will allow for desired infill that is consistent with many of the area's existing beautiful 4- to 6- story multifamily residential buildings.

Thank you for reducing the proposed height limit increases from 90' to 65'. But we continue to recommend the existing 55' height limit, which allows new residential development height that could be 85' or more with a state density bonus.

Staff does not recommend lowering the interior of the residential area, which is at HIA 6 (65') and includes many existing beautiful 4- to 6-story multifamily residential buildings.

Yes, there are two or three attractive older buildings with height between 55' and 65' within the subject area, but these are outliers and the interplay with the state density bonus law needs to be considered.

TARGETED HEIGHT REDUCTIONS TO PROTECT HISTORIC CHARACTER

3. **17th Street between Franklin and Harrison.** Reducing the northeast half of the block between Broadway and Franklin (office building at 426 17th St. and church at 1701 Franklin) from HIA 18 (No Limit) to HIA 6 (65').

Thank you for this height reduction, but 426 17th St. and 1701 Franklin St. are on 17th St. between Broadway and Franklin, not between Franklin and Harrison and are still in ZIP area.

*Regarding the portion of 17th St. that is actually between Franklin and Harrison, the existing 55 foot height limit is proposed to be increased to 65 feet "to allow space for a 1 to 2 story vertical addition". **The existing 55' height limit should instead be retained,** especially between Franklin and Webster Street, which is one of Downtown Oakland's most admired groupings of two and three story early 20th century commercial buildings. See photo below.*



The existing buildings are about 50 feet in height maximum. These especially well-integrated architectural ensembles are among Downtown Oakland's most important urban design assets. Given the small portion of the DOSP area occupied by these ensembles, we do not understand why the DOSP is so focused on promoting vertical additions and significantly taller new construction that could disrupt Downtown Oakland's limited number of these ensembles. There are vast portions of the DOSP area outside APIs/ASIs that lack these ensembles and where substantially larger and taller buildings would not have adverse urban design impacts.

4. 15th Street between Broadway and Harrison.

Heights are already proposed to be reduced from the existing "No Limit" to HIA 10 (90') to be consistent with the other buildings along 15th Street.

This area and other portions of the Downtown National Register District along with APIs/ASIs and freestanding PDHPs should not be included in the ZIP area. As we have noted in Item 9 below and in other correspondence, the ZIP area can be expanded elsewhere to compensate.

*The existing height limit between Franklin and Harrison Streets is 85' rather than unlimited. Existing buildings are 35' or lower, except for the former YWCA which is about 65'. OHA's concern regarding 15th St. is limited to the portion between Broadway and Webster Street plus the south side of 15th Street between Webster and Harrison, where the White Building and Coit Hotel are located. **We therefore continue to recommend that the height limit for these frontages be 55', except for the Coit Hotel and adjacent vacant parcel, where the existing 85' height limit appropriately reflects the height of the hotel.***

5. Victorian residential neighborhood on 22nd St. (Telegraph-MLK)—Cathedral Neighborhood API. Changing HIA 6 (65') to HIA 5 (55') where there is a consistent height context in the Area of Primary Importance (API) on the south side of 22nd and the north side near MLK.

We appreciate the proposed reduction of the height limit from 65' to 55', but 55' is the existing height limit, is already excessive and allows new residential development height that could be 85' or more with a state density bonus. See the out of scale new building at 570-602 21st Street/585 22nd Street which is a major disruption to the Cathedral Neighborhood API.



Buildings that are even more massive and disruptive can be developed using the state density bonus law.

*As stated in Items 7 and 8 below, **the maximum height in APIs/ASIs should be no greater than the predominant maximum height of contributing buildings**, which for 22nd St. are wall heights of about 30' and roof heights of about 40'. We therefore continue to recommend 30'/40' here as well as in the similar areas discussed below.*

Staff does not recommend reducing the remainder of the block. The HIA 10 (90') area is auto garage and postal facility that should be redeveloped; it is not part of an API.

Although technically not part of the API, these locations are at the center of the API. Overscaled new buildings on these sites will be an integral part of the 22nd Street streetscape and will significantly disrupt the API.

6. **Produce Market.** Removing two already-developed parcels from the boundary and then revising the height proposal for this area from HIA 5 (55', FAR 3.5) to HIA 3 (45', FAR 2.5), which includes modest change from the existing FAR 1.0 to allow building owners to add second story additions that might help improve the economic viability of maintaining the market buildings; adding design standards for the Produce Market to include a step-back for upper floor additions.

Thank you for reducing the proposed height limits and FAR, but a doubling of the existing 1.0 FAR is not “modest”, especially with a 45' height limit that is about triple the existing predominant building heights. If the intent is to allow second-story additions, why is 45' even proposed, when 2" should be sufficient? Providing the increase with a 15–20-foot setback is a good strategy, but we can't find this provision in the actual zoning amendments.

THE FOLLOWING OHA RECOMMENDATIONS WERE CONSIDERED AND NOT ADOPTED:

Maintain or reduce heights/FARs in APIs and ASIs.

7. **Old Oakland API.** Staff does not recommend lowering the existing HIA 5 (55') in the interior of the district or the HIA 6 (65') along 7th St., which allows minor height increases to existing buildings and also allows for the redevelopment of a vacant parking lot.

The existing contributing buildings in Old Oakland are all about 45' or less, so the existing 55' height limit (which resulted from the misguided 2009 upzoning) is already too high. Being a full story higher than the tallest contributing buildings it is not a “minor” increase. The height limit should reflect the predominant maximum height of existing contributing buildings. Again, the interplay with density bonus projects needs to be considered.

In addition, if heights were lowered, buildings in the area would be less likely to be able to take advantage of the TDR program.

*Yes, the TDR program is intended for historic buildings that are less than the by-right height, but height limits in APIs/ASIs should not be purposely set above the maximum prevailing height of contributing buildings just to generate TDR opportunities for historic buildings. Instead, the prevailing maximum height of contributing buildings should be the major factor in determining the height limit in APIs/ASIs. **The height limit itself should be considered the major preservation tool, with TDR as a backstop for buildings that are below the prevailing height of contributing buildings, and therefore below the height limit, even if lower by only one or two stories.** But for freestanding DHPs and PDHPs, TDR should be considered the primary preservation tool.*

8. **Downtown Oakland National Register District.** Staff does not recommend changes to the urban core of Downtown Oakland. Serviced by BART and extensive bus connections; there is no character-defining height context, and it is one of the most appropriate locations in the city for high rise, dense development. Heights in the draft amendments are reduced from the highest heights in the areas to the west, north and east of Frank H. Ogawa Plaza. Staff does propose to reduce the height of the property adjacent to City Hall to 95' to maintain the architectural significance and primacy of City Hall.

Thank you for the height reduction to 95'

*The downtown urban core consists of subareas, including the historic core defined by the Downtown National Register District as well as other subareas such as around Kaiser Center. **The maximum building height should be customized for consistency with the desired future development character of each subarea. In the case of the Downtown National Register District and other APIs/ASIs, the future development character should retain the architectural predominance of the contributing buildings, especially in APIs as important as the National Register District.** Increasing the allowed height beyond the predominant maximum height of contributing buildings invites taller intrusive new buildings that can visually overwhelm the contributing buildings and disrupt or destroy the sense of time and place and the architectural consistency that currently exists. The OHA-recommended height limit range of 35' to 15' within the National Register District seeks to reflect the predominant height of contributing buildings within the various portions of the District.*

9. **Increase by-right intensity in some areas & reduce base intensities in other areas.** OHA's recommendation is intended to achieve "no net loss" under SB 330. However, the locations proposed are not appropriate for lower intensity. These reductions would remove a large section of the most potentially incentivizing areas from the ability to participate in the ZIP, hampering the viability of the ZIP to provide meaningful benefits to the community. The changes would also limit development intensity exactly where it is needed most to meet the City's sustainability, housing and employment goals; within the most transit and service-rich area of the City.

Increase intensity in the following areas to allow decreasing it elsewhere:

- **The area roughly bounded by Lake Merritt, Grand Avenue, 20th St. and Broadway**
- **Much of the area bounded by 14th, 11th, Jefferson and Broadway**

This proposal from OHA was intended to increase by-right intensity in some locations to reduce base intensities in other areas to achieve "no net loss" under SB 330, but still be able to require developers to "buy back" their capacity to develop to the same level allowed under current zoning. However, the locations are not appropriate for lower intensity than originally proposed for two reasons: 1) The proposed increases to the base

zoning would remove a large section of the most potentially incentivizing areas (i.e. able to add intensity while maintaining the same building type) from the ability to participate in the ZIP, seriously hampering the viability of the ZIP to be able to provide meaningful benefits to the community; and 2) The proposed decreases would also limit intensity of development in exactly where it is needed most to meet the City's environmental sustainability, housing and employment goals, by limiting development in the most transit-rich and service-rich area of the City. This would be inconsistent with Oakland's Equitable Climate Action Plan ("ECAP"), Oakland's Housing Element and State Housing Laws and policy.

There has been a major miscommunication on this. The two listed areas are already appropriately in the ZIP. The additional areas that OHA had recommended on 8-28-22 for upzoning and/or inclusion in the ZIP were: (a) portions of area the bounded by Franklin, 14th, 19th and Harrison; and (b) much of the area west of Telegraph and north of 17th.

We would like to review these areas with staff to determine if they are appropriate for: (a) Further upzoning to offset (as per SB 330) our recommended downzonings elsewhere; and (b) Inclusion in the ZIP to compensate for our recommended removal from the ZIP of various API and ASI parcels and other parcels containing DHPs and/or PDHPs.

Preliminary Height Limit Recommendations: 9-22-2019

OHA Recommends

Intensity Area	Proposed Maximum Height	Proposed Maximum FAR	Proposed Maximum Density _y
1 - Lowest	45'/55'	2.0/3.5	300 SF/1,089 SF
2	65'	5	250 SF
3	85'	7.5	200 SF
4	175'	12	110 SF
5	275'	12.0/17.0	90 SF
6	450'	20	87 SF
7	No Limit	22	80 SF
8 - Highest	No Limit	30	65 SF

OHA NOTES:

- The recommended height limits apply to historic areas identified as Areas of Primary or Secondary Importance as defined in the Oakland General Plan and parcels in close proximity to these areas. The height limits are intended to reflect the prevailing height of individual historic buildings within these areas.

- **30/40** = First number refers to wall height limit. Second number refers to roof height limit available if using a

- gable or hip roof
All height limits subject to adjustment
depending on:

- Continued refinement of the height

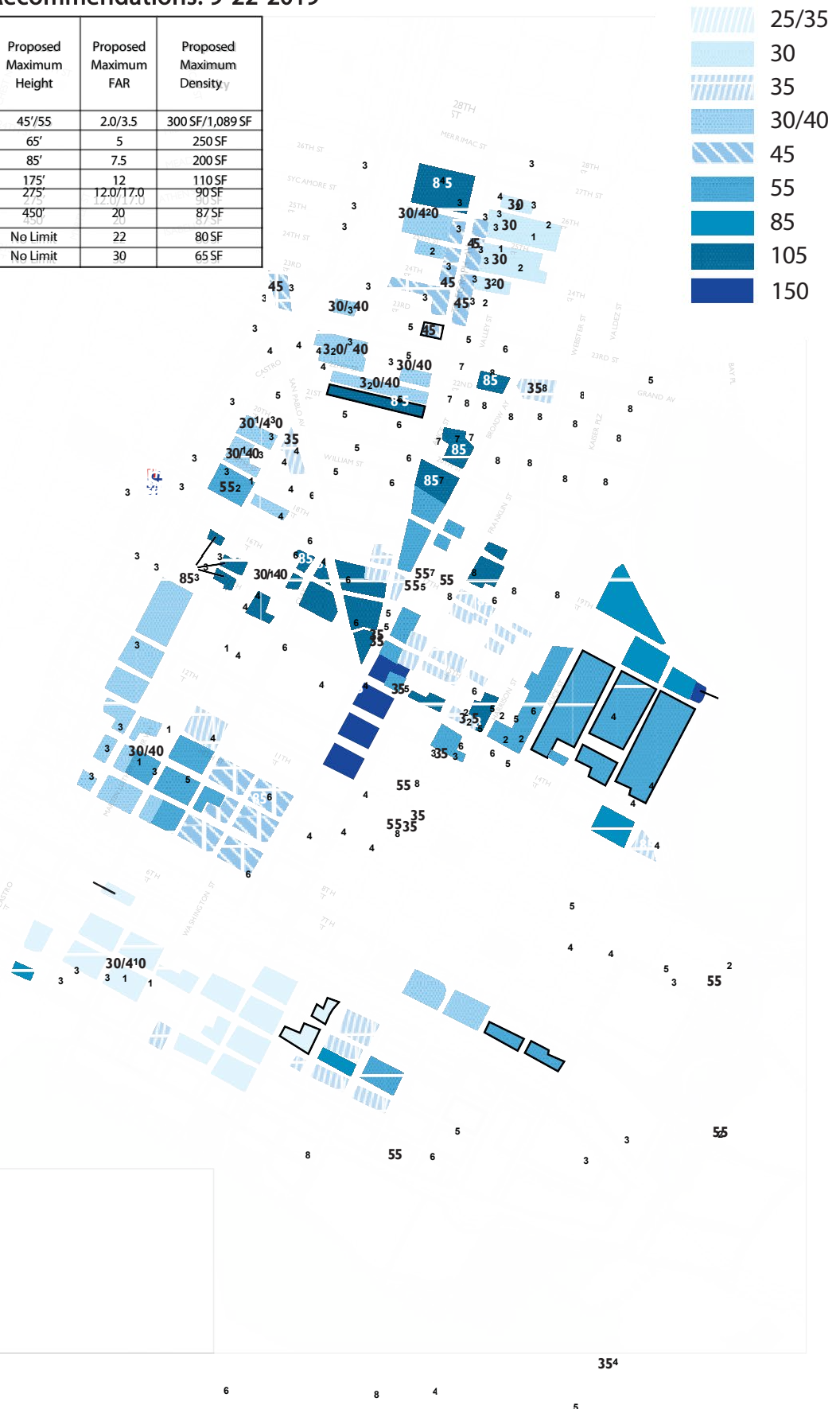
- limits based on further analysis of

- as-built conditions;

- ### Strategy for addressing height

- increases mandated by State

- Density Bonus Law;



Floor area ratios;	Provision of	a	n	y	transf	era	ble	³ 3	30 ¹ /40 ¹	³
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Scatter plot showing the number of children per woman (Y-axis) versus the year of birth (X-axis). The data points are labeled with their corresponding year of birth. The plot shows a general downward trend in fertility over time.

Year of Birth	Number of Children per Woman
1950	3.5
1951	3.2
1952	3.0
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1999	3.0
2000	3.0

Attachment 2: San Francisco Planning Code TDR provisions

SEC. 128. TRANSFER OF DEVELOPMENT RIGHTS IN C-3 DISTRICTS.

(a) Definitions.

(1) "Development Lot." A lot to which TDR may be transferred to increase the allowable gross floor area of development thereon beyond that otherwise permitted by the Zoning Control Table for the district in which the lot is located.

(2) "Owner of Record." The owner or owners of record in fee.

(3) "Preservation Lot." A parcel of land on which is either (A) a Significant or Contributory building (as designated pursuant to Article 11); or (B) a Category V Building that has complied with the eligibility requirement for transfer of TDR as set forth in Section 1109(c); or (C) a structure designated an individual landmark pursuant to Article 10 of this Code. The boundaries of the Preservation Lot shall be the boundaries of the Assessor's lot on which the building is located at the time the ordinance or, as to Section 1109(c), resolution, making the designation is adopted, unless boundaries are otherwise specified in the ordinance.

(4) "Transfer Lot." A Preservation Lot located in a C-3 District from which TDR may be transferred. A lot zoned P (public) may in no event be a Transfer Lot unless a building on that lot is (A) owned by the City and County of San Francisco; and (B) located in a P District adjacent to a C-3 District; and (C) designated as an individual landmark pursuant to Article 10 of this Code, designated as a Category I Significant Building pursuant to Article 11 of this Code, or listed on the National Register of Historic Places; and (D) the TDR proceeds are used to finance, in whole or in part, a project to rehabilitate and restore the building in accordance with the Secretary of Interior standards. For the purposes of Section 128(b), a lot zoned P that satisfies the criteria of this Subsection (4) to qualify as a "Transfer Lot" shall be deemed to have an allowable gross floor area of 7.5:1 under Section 124.

(5) "Transferable Development Rights (TDR)." Units of gross floor area that may be transferred, pursuant to the provisions of this Section and Article 11 of this Code, from a Transfer Lot to increase the allowable gross floor area of a development on a Development Lot.

(6) "Unit of TDR." One unit of TDR is one square foot of gross floor area.

(b) **Amount of TDR Available for Transfer.** The maximum TDR available for transfer from a Transfer Lot consists of the difference between (1) the allowable Gross Floor Area permitted on the Transfer Lot by the Zoning Control Table for the district in which the lot is located; and (2) the Gross Floor Area of the development located on the Transfer Lot.

(c) **Eligibility of Development Lots and Limitation on Use of TDR on Development Lots.** TDR may be used to increase the allowable gross floor area of a development on a Development Lot if the following requirements and restrictions are satisfied:

(1) Transfer of Development Rights shall be limited to the following:

(A) The Transfer Lot and the Development Lot are located in a C-3 Zoning District; or

(B) the Transfer Lot contains a Significant building and is located in the South of Market Extended Preservation District, as set forth in Section 819, and the Development Lot is located in a C-3 District; or

(C) the Transfer Lot is in a P District adjacent to a C-3 District and meets the requirements established in subsection (a)(4) above and the Development Lot is located in a C-3 District; or

(D) the Transfer Lot is located in any C-3 District and contains an individual landmark designated pursuant to Article 10 and the Development Lot is located in any C-3 District.

(2) TDR may not be transferred for use on any lot on which is or has been located a Significant or Contributory building; provided that this restriction shall not apply if the designation of a building is changed to Unrated; nor shall it apply if the Historic Preservation Commission finds that the additional space resulting from the transfer of TDR is essential to make economically feasible the reinforcement of a Significant or Contributory building to meet the standards for seismic loads and forces of the Building Code, in which case TDR may be transferred for that purpose subject to the limitations of this Section and Article 11, including Section 1111.6. Any alteration shall be governed by the requirements of Sections 1111 to 1111.6.

(3) Notwithstanding any other provision of this Section, development on a Development Lot is limited by the provisions of this Code, other than those on floor area ratio, governing the approval of projects, including the requirements relating to height, bulk, setback, sunlight access, and separation between towers, and any limitations imposed pursuant to Section 309 review applicable to the Development Lot. The total allowable gross floor area of a development on a Development Lot may not exceed the limitation imposed by Section 123(c).

(d) **Effect of Transfer of TDR.** Transfer of TDR from a Transfer Lot permanently reduces the development potential of the Transfer Lot by the amount of the TDR transferred, except as provided in Section 124(f). In addition, transfer of TDR from a Preservation Lot containing a Contributory building or an individual landmark designated pursuant to Article 10 causes such building to become subject to the same restrictions on demolition and alteration, and the same penalties and enforcement remedies, that are applicable to Significant Buildings Category I, as provided in Article 11.

(e) Procedure for Determining TDR Eligibility.

(1) In order to obtain a determination of whether a lot is a Transfer Lot and, if it is, of the amount of TDR available for transfer, the owner of record of the lot may file an application with the Zoning Administrator for a Statement of Eligibility. The application for a Statement of Eligibility shall contain or be accompanied by plans and drawings and other information which the Zoning Administrator determines is necessary in order to determine whether a Statement of Eligibility can be issued. Any person who applies for a Statement of Eligibility prior to expiration of the time for request of reconsideration of designation authorized in Section 1106 shall submit in writing a waiver of the right to seek such reconsideration.

(2) The Zoning Administrator shall, upon the filing of an application for a Statement of Eligibility and the submission of all required information, issue either a proposed Statement of Eligibility or a written determination that no TDR are available for transfer and shall mail that document to the applicant and to any other person who has filed with the Zoning Administrator a written request for a copy, and shall post the proposed Statement of Eligibility or written determination on the Planning Department website. Any appeal of the proposed Statement of Eligibility or determination of noneligibility shall be filed with the Board of Appeals within 20 days of the date of issuance of the document. If not appealed, the proposed Statement of Eligibility or the determination of noneligibility shall become final on the 21st day after the date of issuance. The Statement of Eligibility shall contain at least the following information:

- (A) the name of the owner of record of the Transfer Lot;
- (B) the address, legal description and Assessor's Block and Lot of the Transfer Lot;
- (C) the C-3 use district within which the Transfer Lot is located;

(D) whether the Transfer Lot contains a Significant or Contributory building, a Category V building, or an Article 10 individually designated landmark;

(E) the amount of TDR available for transfer; and

(F) the date of issuance.

(3) Once the proposed Statement of Eligibility becomes final, whether through lack of appeal or after appeal, the Zoning Administrator shall record the Statement of Eligibility in the Office of the County Recorder. The County Recorder shall be instructed to mail the original of the recorded document to the owner of record of the Transfer Lot and a conformed copy to the Zoning Administrator.

(f) Cancellation of Eligibility.

(1) If reasonable grounds should at any time exist for determining that a building on a Preservation Lot may have been altered or demolished in violation of Articles 10 or 11, including Sections 1110 and 1111 thereof, the Zoning Administrator may issue and record with the County Recorder a Notice of Suspension of Eligibility for the affected lot and, in cases of demolition of a Significant or Contributory building, a notice that the restriction on the floor area ratio of a replacement building may be applicable and shall mail a copy of such notice to the owner of record of the lot. The notice shall provide that the property owner shall have 20 days from the date of the notice in which to request a hearing before the Zoning Administrator in order to dispute this initial determination. If no hearing is requested, the initial determination of the Zoning Administrator is deemed final on the twenty-first day after the date of the notice, unless the Zoning Administrator has determined that the initial determination was in error.

(2) If a hearing is requested, the Zoning Administrator shall notify the property owner of the time and place of hearing, which shall be scheduled within 21 days of the request, shall conduct the hearing, and shall render a written determination within 15 days after the close of the hearing. If the Zoning Administrator shall determine that the initial determination was in error, that officer shall issue and record a Notice of Revocation of Suspension of Eligibility. Any appeal of the determination of the Zoning Administrator shall be filed with the Board of Appeals within 20 days of the date of the written determination following a hearing or, if no hearing has been requested, within 20 days after the initial determination becomes final.

(3) If after an appeal to the Board of Appeals it is determined that an unlawful alteration or demolition has occurred, or if no appeal is taken of the determination by the Zoning Administrator of such a violation, the Zoning Administrator shall record in the Office of the County Recorder a Notice of Cancellation of Eligibility for the lot, and shall mail to the property owner a conformed copy of the recorded Notice. In the case of demolition of a Significant or Contributory Building, the Zoning Administrator shall record a Notice of Special Restriction noting the restriction on the floor area ratio of the Preservation Lot, and shall mail to the owner of record a certified copy of the Notice. If after an appeal to the Board of Appeals it is determined that no unlawful alteration or demolition has occurred, the Zoning Administrator shall issue and record a Notice of Revocation of Suspension of Eligibility and, if applicable, a Notice of Revocation of the Notice of Special Restriction, and shall mail conformed copies of the recorded notices to the owner of record.

(4) No notice recorded under this Section 128(f) shall affect the validity of TDR that have been transferred from the affected Transfer Lot in compliance with the provisions of this Section prior to the date of recordation of such notice, whether or not such TDR have been used.

(g) Procedure for Transfer of TDR.

(1) TDR from a single Transfer Lot may be transferred as a group to a single transferee or in separate increments to several transferees. TDR may be transferred either directly from the original owner of the TDR to the owner of a Development Lot or to persons, firms or entities who acquire the

TDR from the original owner of the TDR and hold them for subsequent transfer to other persons, firms, entities or to the owners of a Development Lot or Lots.

(2) When TDR are transferred, they shall be identified in each Certificate of Transfer by a number. A single unit of TDR transferred from a Transfer Lot shall be identified by the number "1." Multiple units of TDR transferred as a group for the first time from a Transfer Lot shall be numbered consecutively from "1" through the number of units transferred. If a fraction of a unit of TDR is transferred, it shall retain its numerical identification. (For example, if 5,000-1/2 TDR are transferred in the initial transfer from the Transfer Lot, they would be numbered "1 through 5,000 and one-half of 5,001.") TDR subsequently transferred from the Transfer Lot shall be identified by numbers taken in sequence following the last number previously transferred. (For example if the first units of gross floor area transferred from a Transfer Lot are numbered 1 through 10,000, the next unit transferred would be number 10,001.) If multiple units transferred from a Transfer Lot are subsequently transferred separately in portions, the seller shall identify the TDR sold by numbers which correspond to the numbers by which they were identified at the time of their transfer from the Transfer Lot. (For example, TDR numbered 1 through 10,000 when transferred separately from the Transfer Lot in two equal portions would be identified in the two Certificates of Transfer as numbers 1 through 5,000 and 5,001 through 10,000.) Once assigned numbers, TDR retain such numbers for the purpose of identification through the process of transferring and using TDR. The phrase "numerical identification," as used in this section, shall mean the identification of TDR by numbers as described in this Subsection.

(3) Transfer of TDR from the Transfer Lot shall not be valid unless (A) a Statement of Eligibility has been recorded in the Office of the County Recorder prior to the date of recordation of the Certificate of Transfer evidencing such transfer and (B) a Notice of Suspension of Eligibility or Notice of Cancellation of Eligibility has not been recorded prior to such transfer or, if recorded, has thereafter been withdrawn by an appropriate recorded Notice of Revocation or a new Statement of Eligibility has been thereafter recorded.

(4) Transfer of TDR, whether by initial transfer from a Transfer Lot or by a subsequent transfer, shall not be valid unless a Certificate of Transfer evidencing such transfer has been prepared and recorded. The Zoning Administrator shall prepare a form of Certificate of Transfer and all transfers shall be evidenced by documents that are substantially the same as the Certificate of Transfer form prepared by the Zoning Administrator, which form shall contain at least the following:

(A) For transfers from the Transfer Lot only:

(i) Execution and acknowledgement by the original owner of TDR as the transferor(s) of the TDR; and

(ii) Execution and acknowledgment by the Zoning Administrator; and

(iii) A notice, prominently placed and in all capital letters, preceded by the underlined heading "Notice of Restriction," stating that the transfer of TDR from the Transfer Lot permanently reduces the development potential of the Transfer Lot by the amount of TDR transferred, with reference to the provisions of this Section.

(B) For all transfers:

(i) The address, legal description, Assessor's Block and Lot, and C-3 use district of the Transfer Lot from which the TDR originates; and

(ii) The amount and sale price of TDR transferred; and

(iii) Numerical identification of the TDR being transferred; and

(iv) The names and mailing addresses of the transferors and transferees of the TDR; and

(v) Execution and acknowledgment by the transferors and transferees of the TDR; and

(vi) A reference to the Statement of Eligibility, including its recorded instrument number and date of recordation, and a recital of all previous transfers of the TDR, including the names of the transferors and transferees involved in each transfer and the recorded instrument number and date of recordation of each Certificate of Transfer involving the TDR, including the transfer from the Transfer Lot which generated the TDR.

(5) When a Certificate of Transfer for the transfer of TDR from a Transfer Lot is presented to the Zoning Administrator for execution, that officer shall not execute the document if a transfer of the TDR would be prohibited by any provision of this Section or any other provision of this Code. The Zoning Administrator shall, within five business days from the date that the Certificate of Transfer is submitted for execution, either execute the Certificate of Transfer or issue a written determination of the grounds requiring a refusal to execute the Certificate.

(6) Each duly executed and acknowledged Certificate of Transfer containing the information required herein shall be presented for recordation in the Office of the County Recorder and shall be recorded by the County Recorder. The County Recorder shall be instructed to mail the original Certificate of Transfer to the person and address designated thereon and shall be given a copy of the Certificate of Transfer and instructed to conform the copy and mail it to the Zoning Administrator.

(h) Certificate of Transfer of TDR for a Project on a Development Lot.

(1) When the use of TDR is necessary for the approval of a building permit for a project on a Development Lot, the Director of the Department of Building Inspection shall not approve issuance of the permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required number of TDR. When the transfer of TDR is necessary for the approval of a site permit for a project on a Development Lot, the Zoning Administrator shall impose as a condition of approval of the site permit the requirement that the Director of the Department of Building Inspection shall not issue the first addendum to the site permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required number of TDR.

(2) In order to obtain certification as required in Section 128(h)(1), the permit applicant shall present to the Zoning Administrator:

(A) Information necessary to enable the Zoning Administrator to prepare the Notice of Use of TDR, which information shall be at least the following:

- (i) The address, legal description, Assessor's Block and Lot, and zoning classification of the Development Lot;
- (ii) The name and address of the owner of record of the Development Lot;
- (iii) Amount and numerical identification of the TDR being used;
- (iv) A certified copy of each Certificate of Transfer evidencing transfer to the owner of the Development Lot of the TDR being used; and

(B) A report from a title insurance company showing the holder of record of the TDR to be used, all Certificate of Transfer of the TDR, and all other matters of record affecting such TDR. In addition to showing all such information, the report shall guarantee that the report is accurate and complete and the report shall provide that in the event that its guarantee or any information shown in the report is incorrect, the title company shall be liable to the City for the fair market value of the TDR at the time of the report. The liability amount shall be not less than \$10,000 and no more than \$1,000,000, the appropriate amount to be determined by the Zoning Administrator based on the number of TDR being used.

(C) An agreement whereby the owner of the Development Lot shall indemnify the City against any and all loss, cost, harm or damage, including attorneys' fees, arising out of or related in any way to the assertion of any adverse claim to the TDR, including any loss, cost, harm or damage occasioned by the passive negligence of the City and excepting only that caused by the City's sole and active negligence. The indemnity agreement shall be secured by a financial balance sheet certified by an auditor or a corporate officer showing that the owner has assets equal to or greater than the value of the TDR, or other security satisfactory to Planning Department and the City Attorney.

(3) If the Zoning Administrator determines that the project applicant has complied with the provisions of Subsection (h)(2) and all other applicable provisions of this Section, and that the applicant is the owner of the TDR, that officer shall transmit to the Director of the Department of Building Inspection, with a copy to the project applicant, written certification that the owner of the Development Lot owns the TDR. Prior to transmitting such certification, the Zoning Administrator shall prepare a document entitled Notice of Use of TDR stating that the TDR have been used and may not be further transferred, shall obtain the execution and acknowledgment on the Notice of the owner of record of the Development Lot, shall execute and acknowledge the Notice, shall record it in the Office of the County Recorder, and shall mail to the owner of record of the Development Lot a conformed copy of the recorded Notice. If the Zoning Administrator determines that the project applicant is not the owner of the TDR, or has not complied with all applicable provisions of this Section, that determination shall be set forth in writing along with the reasons therefore. The Zoning Administrator shall either transmit certification or provide a written determination that certification is inappropriate within 10 business days after the receipt of all information required pursuant to Subsection (h)(2).

(i) Cancellation of Notice of Use; Transfer from Development Lot.

(1) The owner of a Development Lot for which a Notice of Use of TDR has been recorded may apply for a Cancellation of Notice of Use if (A) the building permit or site permit for which the Notice of Use was issued expires or was revoked or cancelled prior to completion of the work for which such permit was issued and the work may not be carried out; or (B) any administrative or court decision is issued or any ordinance or initiative or law is adopted which does not allow the applicant to make use of the permit; or (C) a portion or all of such TDR are not used.

(2) If the Zoning Administrator determines that the TDR have not been and will not be used on the Development Lot based on the reasons set forth in subsection (i)(1), the Zoning Administrator shall prepare the Cancellation of Notice of Use of TDR. If only a portion of the TDR which had been acquired are not being used, the applicant may identify which TDR will not be used and the Cancellation of Notice of Use of TDR shall apply only to those TDR. The Zoning Administrator shall obtain on the Cancellation of Notice of Use of TDR the signature and acknowledgment of the owner of record of the Development Lot as to which the Notice of Use of TDR was recorded, shall execute and acknowledge the document, and shall record it in the office of the County Recorder.

(3) Once a Cancellation of Notice of Use of TDR has been recorded, the owner of the Development Lot may apply for a Statement of Eligibility in order to transfer the TDR identified in that document. The procedures and requirements set forth in this Section governing the transfer of TDR shall apply to the transfer of TDR from the owner of a Development Lot after a Notice of Use has been filed, except for the provisions of this Section permanently restricting the development potential of a Transfer Lot upon the transfer of TDR; provided, however, that the district or districts to which the TDR may be transferred shall be the same district or districts to which TDR could have been transferred from the Transfer Lot that generated the TDR.

(j) Erroneous Notice of Use; Revocation of Permit. If the Zoning Administrator determines that a Notice of Use of TDR was issued or recorded in error, that officer may direct the Director of the Department of Building Inspection to suspend any permit issued for a project using such TDR, in which case the Director of the Department of Building Inspection shall comply with that directive. The Zoning Administrator shall thereafter conduct a noticed hearing in order to determine whether the Notice of Use of TDR was issued or recorded in error. If it is determined that the Notice of Use of TDR was issued or recorded in error, the Director of the Department of Building Inspection shall revoke the permit; provided, however, that no permit

authorizing such project shall be revoked if the right to proceed thereunder has vested under California law. If it is determined that the Notice of Use of TDR was not issued or recorded in error, the permit shall be reinstated.

(k) **Effect of Repeal or Amendment.** TDR shall convey the rights granted herein only so long and to the extent as authorized by the provisions of this Code. Upon repeal of such legislative authorization, TDR shall thereafter convey no rights or privileges. Upon amendment of such legislative authorization, TDR shall thereafter convey only such rights and privileges as are permitted under the amendment. No Statement of Eligibility shall convey any right to use, transfer or otherwise utilize TDR if the maximum floor area ratio for the Transfer Lot is reduced after the Statement of Eligibility is issued.

(l) Preservation Rehabilitation, and Maintenance Requirements for Preservation Lots.

(1) In addition to the material required to be submitted with an application for a Certificate of Transfer for initial transfer from the Transfer Lot set forth in subsection 128(g), the owner of the Transfer Lot shall:

(A) Demonstrate that any and all outstanding Notices of Violation have been abated; and

(B) Submit for approval by the Department a Preservation, Rehabilitation, and Maintenance Plan that describes any proposed preservation and rehabilitation work and that guarantees the maintenance and upkeep of the Transfer Lot. This Plan shall include:

(i) a plan for the ongoing maintenance of the Transfer Lot;

(ii) information regarding the nature and cost of any rehabilitation, restoration or preservation work to be conducted on the Transfer Lot, including information about any required seismic, life safety, or disability access work;

(iii) a construction schedule; and

(iv) any other such information as the Department may require to determine compliance of this subsection 128(l).

All such work, shall comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The requirements of the approved Plan shall be recorded along with the final Certificate of Transfer in the Office of the County Recorder.

Notwithstanding the foregoing, the owner of the Transfer Lot may apply to the Department for a hardship exemption from the requirements of subsection (i). Such hardship exemption shall demonstrate to the satisfaction of the Department that sale of TDR is necessary to fund the work required to cure the outstanding Notice(s) of Violation on the Transfer Lot.

(2) Approval of the Certificate of Transfer for initial transfer from the Transfer Lot shall be conditioned on execution of the requirements described in subsection (l)(1). Once any TDR is transferred from the Transfer Lot, the Certificate of Transfer and conditions may not be withdrawn.

(3) Within one year of the issuance of the Certificate of Transfer for initial transfer from the Transfer Lot, the owner of the Transfer Lot shall submit a status report to the Department detailing how the requirements of subsection (l)(1) have been completed and describing ongoing maintenance activities. Such report shall include: (A) information detailing the work completed; (B) copies of all permits obtained for the work, including any Certificates of Appropriateness or Permits to Alter; (C) any inspection reports or other documentation from the Department of Building Inspection showing completion of the work; (D) itemized receipts of payment for work performed; and (E) any such other documentation as the Department may require to determine compliance with the requirements of this subsection 128(l). The deadline for completion of the work and submittal of this report

may be extended at the discretion of the Department upon application of the owner of the Transfer Lot and only upon a showing that the owner has diligently pursued all required permits and completion of the work.

(4) Failure to comply with the requirements of this subsection (l), including all reporting requirements, shall be grounds for enforcement under this Code, including but not limited to under Sections 176 and 176.1. Penalties for failure to comply may include, but shall not be limited to, a lien on the Transfer Lot equal to the sale price of the TDR sold.

(Added by Ord. 414-85, App. 9/17/85; amended by Ord. 115-90, App. 4/6/90; Ord. 21-03, File No. 020328, App. 2/21/2003; Ord. 77-04, File No. 031930, App. 5/6/2004; Ord. 87-07, File No. 061688, App. 4/27/2007; Ord. 246-10, File No. 100851, App. 10/14/2010; Ord. 256-10, File No. 101200, App. 11/5/2010; Ord. [68-13](#), File No. 120474, App. 4/23/2013, Eff. 5/23/2013; Ord. [22-15](#), File No. 141253, App. 2/20/2015, Eff. 3/22/2015)

AMENDMENT HISTORY

References to officials and bodies updated and/or corrected throughout; internal subdivisions redesignated consistently throughout; in division (c)(1), former subdivisions (i) and (iii) amended and redesignated as (A) and (B), former subdivisions (v) and (vi) redesignated as (C) and (D), and former subdivisions (ii) and (iv) deleted; divisions (f)(1), (f)(3), and (l)(1) through (4) amended; Ord. [68-13](#), Eff. 5/23/2013. Divisions (a)(1) and (b) amended; Ord. [22-15](#), Eff. 3/22/2015.


**ATTACHMENT 2: MAP SHOWING OHA-RECOMMENDED AREAS FOR UPZONING
AND/OR ADDITION TO THE ZIP AREA.**

OAKLAND HERITAGE ALLIANCE

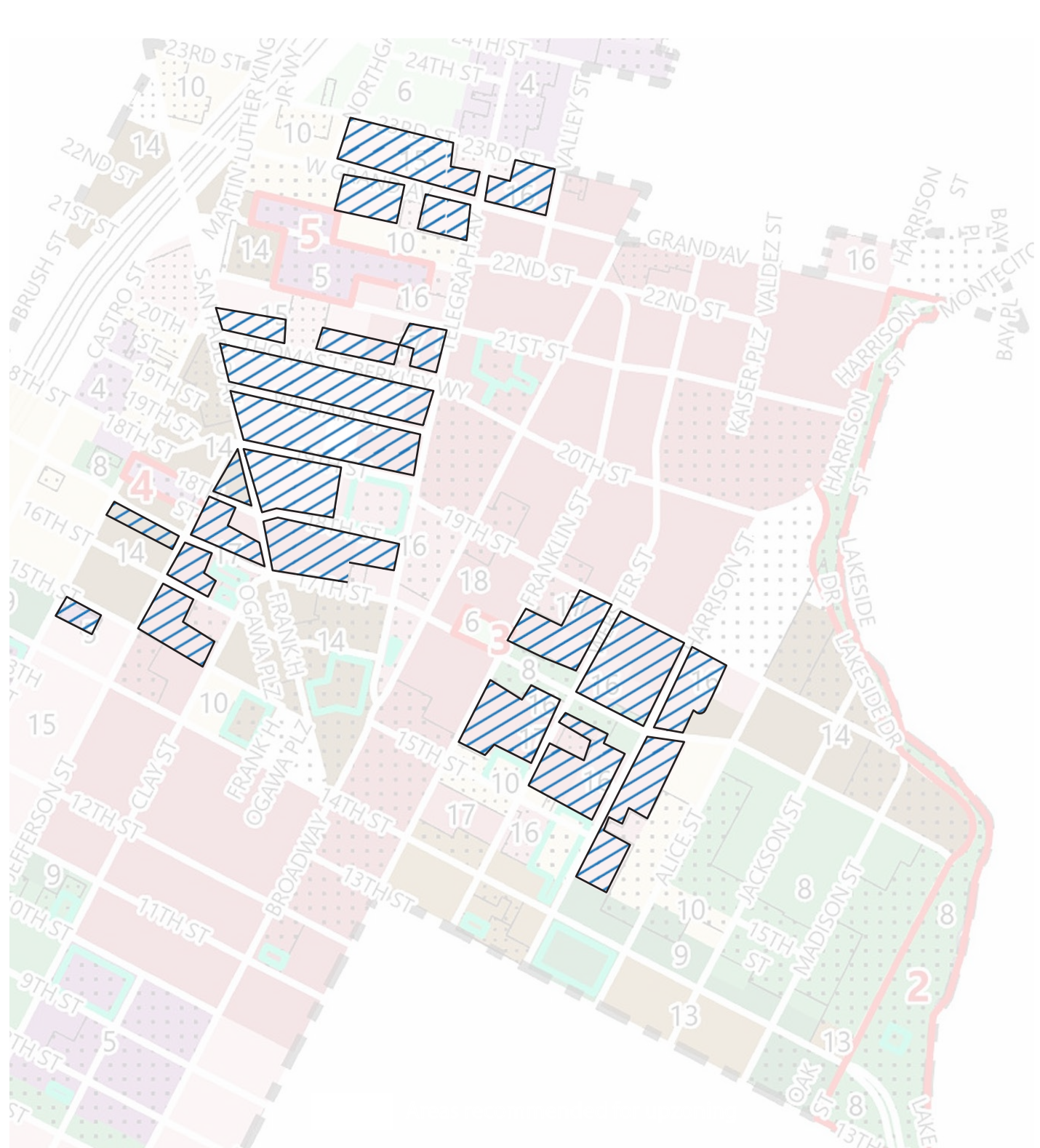
DOSP Areas Recommended for Upzoning and/or Addition to the ZIP Area

The upzoned areas are intended to provide additional development intensity (height, floor area ratio, and residential density) to offset the reduced development intensity resulting from OHA-recommended downzonings elsewhere in the DOSP area. The intensity offsets are intended to allow the downzonings to conform with the “no net loss” of development intensity required by SB 330/SB8.

The upzoned areas could also be used for expansion of the Zoning Incentive Program (ZIP) area to offset OHA’s recommended removal of the ZIP from Areas of Primary and Secondary Importance (APIs and ASIs).

 areas recommended for upzoning

May 14, 2024



**ATTACHMENT 3: OHA PROPOSAL FOR INCREASED FRONT SETBACKS FOR
THE FOUR LATE 19TH-EARLY 20TH CENTURY RESIDENTIAL APIS.**

ATTACHMENT 3: OHA-proposed front yard setback increases in the four late 19th-early 20th century residential APIs: Grove Street/Lafayette Square; 19th Street/Grove Street; Cathedral Neighborhood; and 7th Street/Harrison Square.

The proposed 0' minimum and 10' maximum front setbacks in these four APIs are significantly less than the contributing historic building setbacks in most cases. This is the case even for the 6' front setback required by Regulation 3 for Table 17.101K.04 when the ground floor contains residential units adjacent to the principal street. The proposed setbacks will promote new construction that will literally stick out from the street wall established by the contributing historic buildings, and erode the API's integrity.

RECOMMENDATION:

1. Increase the front yard setback proposed for the D-DT-R and D-DT-RX zones, so it is more consistent with the setbacks of the API contributing buildings. But allow a reduced setback for new buildings if the adjacent building has a shallower setback using the method prescribed in the RD, RM and RU Zones, e.g. see Regulation 4 for Table 17.17.03 for the RM zones. In the specific recommendations below, the minimum setback is recommended to be increased to 15 feet and the maximum setback to 20', except for the southern portion of the Grove Street/Lafayette Square API. One way to do this would be to change the minimum setback in the D-DT-R zone to 15 feet and to place all of the APIs except for the Grove Street/Lafayette Square API's southern portion into the D-DT-R Zone. Alternatively, there could be a carveout for the increased API setbacks within the D-DT-R and D-DT-RX zones provided as an additional Regulation for Table 17.17.03.
2. Apply the increased setbacks to **all buildings** within these APIs, not just those containing ground floor residential units adjacent to the principal street.

SPECIFIC RECOMMENDATIONS FOR THE FOUR APIS:

Cathedral Neighborhood API:

Total contributing properties: 33

Front setback breakdown for contributing properties:

6 ½-10':	6 Properties	18%
10-15':	14 Properties	42%
<u>15-20':</u>	<u>13 Properties</u>	<u>39%</u>
TOTAL:	33 Properties	100%

Recommendation: Since 81% of the contributing properties have front setbacks between 10' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 20'.

19th and Grove Street API:

Total contributing properties: 22

Front setback breakdown for contributing properties:

0':	2 Properties	9%
7 1/2':	6 Properties	27%
10':	7 Properties	32%
17 1/2':	1 Properties	5%
<u>20':</u>	<u>6 Properties</u>	<u>27%</u>
TOTAL:	22 Properties	100%

Recommendation: Since 64% of the contributing properties have front setbacks between 10' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 20'.

Grove Street/Lafayette Square API – North block bounded by 10th, 11th, and Castro Streets and Martin Luther King Way.

Total contributing properties: 13

Front setback breakdown for contributing properties:

0':	2 Properties	15%
9':	2 Properties	15%
12':	1 Properties	8%
15':	3 Properties	23%
18':	2 Properties	15%
20':	2 Properties	15%
<hr/>		
TOTAL:	22 Properties	100%

Recommendation: Since 61% of the contributing properties have front setbacks between 12' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 20'.

Grove Street/Lafayette Square, API – South two blocks bounded by 8th, 10th, and Castro streets and Martin Luther King Way and portions of adjacent blocks.

Total contributing properties: 41

Front setback breakdown for contributing properties:

0':	19 Properties	46%
7':	2 Properties	5%
5':	3 Properties	7%
10':	7 Properties	17%
15':	7 Properties	17%
20':	3 Properties	7%
<hr/>		
TOTAL:	41 Properties	100%

Recommendation: Since 68% of the contributing properties have front setbacks between 0' and 10', provide a 6' minimum setback as required by Regulation 3 for Table 17.101K.04, but for all buildings, not just those where the ground floor contains residential units adjacent to the principal street. Retain the maximum 10' setback.

7th Street/Harrison Square API.

Total contributing properties within the DOSP area: 72

Front setback breakdown for contributing properties:

0':	15 Properties	21%
5':	4 Properties	6%
10':	10 Properties	14%
12':	2 Properties	3%
15':	13 Properties	18%
16':	23 Properties	32%
20':	5 Properties	7%
<hr/>		
TOTAL:	72 Properties	100%

Recommendation: Since 74% of the contributing properties have front setbacks between 10' and 20', it is recommended that the proposed minimum front setback be increased to 15' with a maximum of 10'.

From: [Jeffrey Levin](#)
To: [Shahar Shirazi](#); [jahrenopc@gmail.com](#); [alexrandolph.oak@gmail.com](#); [jrenkopc@gmail.com](#); [nataliesandovalopc@gmail.com](#); [vsugrueopc@gmail.com](#); [MRobbOPC@gmail.com](#)
Cc: [Oakland Planning Commission](#); [DowntownSpecificPlan](#); [Gilchrist, William](#); [Winter, Joanna](#); [Weinstein, Emily](#)
Subject: EBHO Comments on Final Draft Planning Code Amendments for DOSP (Item 2 on June 5, 2024 Agenda)
Date: Tuesday, June 4, 2024 8:56:25 PM
Attachments: [Final Draft DOSP Planning Code amendments - EBHO comments 2024-06-04.pdf](#)

Dear Planning Commissioners -

Attached please find EBHO's comments on the Final Draft of the Planning Code amendments for the Downtown Oakland Specific Plan (DOSP), and specifically on the proposed Zoning Incentive Program (ZIP).

Also attached for your convenience are our May 14, 2024 comments on the Final Draft DOSP itself, which were previously submitted to you.

As a long-time participant in the DOSP's Community Advisory Group (CAG), we support the DOSP's vision of a Downtown Oakland that serves the needs of all Oaklanders, centered on equity and reducing disparities. Realizing this vision requires among other things a clear focus on protecting, preserving and producing affordable housing opportunities for our lowest income residents. The ZIP is the primary new affordable housing incentive program offered by the Plan. We believe that the ZIP requires a number of changes to realize this vision and achieve the goals of the DOSP.

We ask that you consider our comments and recommend that these changes be incorporated before forwarding the DOSP to the City Council for final approval.



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East Bay Housing Organizations

June 4, 2024

By electronic transmission

City of Oakland Planning Commission
c/o Bureau of Planning and Zoning
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612

RE: Downtown Oakland Specific Plan (DOSP), Planning Code Amendments, Item #2 on June 5, 2024, Planning Commission agenda.

Dear Chairperson Shirazi and Planning Commissioners:

I am writing on behalf of East Bay Housing Organizations. EBHO is a nonprofit, membership-based organization working to produce, preserve and protect affordable housing opportunities for low-income communities throughout the East Bay. First founded in 1984, EBHO has grown to 400+ individual and organizational members fighting for an economically and racially just world where everyone has a safe, stable, and affordable home.

Thank you for the opportunity to comment on the Final Draft of the Downtown Oakland Specific Plan (DOSP). On May 14, we sent you comments on the Draft Plan itself. These comments focus on the Planning Code amendments, and specifically on the proposed Zoning Incentive Program (ZIP) as a strategy to meet the City's affordable housing goals in the DOSP area.

As a member of the DOSP Community Advisory Group, we have followed the development of the ZIP closely for many years. We appreciate all the work and economic analysis that has gone into it. Nonetheless, as the only significant new affordable housing policy being enacted as part of the DOSP, we find the ZIP to be flawed and limited in its efficacy.

- **The program is entirely voluntary, with no certainty that it will be utilized.** The assumption that permitting substantial increases in allowable intensity and height will induce developers to build more and bigger projects is not well grounded. It's not clear that developers want the additional height and density that the ZIP will provide, nor is it clear that projects of this scale can be supported - architecturally and with respect to building code requirements - on many of the eligible parcels. The City has elsewhere noted that many projects are using the State Density Bonus to obtain various incentives and concessions without necessarily increasing density, which suggests that given the current base zoning, additional density is not highly valued.

- **The ZIP should be modified to require that residential projects provide affordable housing as the community benefit in return for any added density or height.** We appreciate that our suggestion to modify the ZIP's affordable housing benefit from a relative handful of onsite affordable units to payment of a fee that the City can use to leverage outside funding and provide much more deeply affordable housing that is more consistent with the City's housing priorities identified in the City's Strategic Action Plan for Affordable Housing. As proposed, however, there is no requirement that any affordable housing benefits will be provided. Even if a developer of a residential project decides to take advantage of the ZIP, it does not need to provide affordable housing benefits. It could choose to include non-residential uses on the ground floor including discounted commercial space or public restrooms, and thereby qualify for the ZIP. Increases in residential density beyond the base zoning should specifically require affordable housing benefits in exchange. Other community benefits on the "menu" can be derived from non-residential projects utilizing the ZIP.
- **A larger percentage of the community benefits fee for residential projects should be devoted to affordable housing.** Even when residential developers choose to pay the fee, only half of that fee goes to affordable housing. This is insufficient given the City's pressing housing needs, its inability to maintain an adequate balance between market-rate and affordable housing production, and the community's identification in numerous meetings of affordability, displacement, and homelessness as critical equity issues for the Downtown.
- **Simplify the program to require the same benefits regardless of location.** The ZIP should not include zones with different requirements. Those zones cover small areas based on current market dynamics, but those dynamics could shift rapidly, particularly across such limited geographic areas.
- **The City should modify the program to ensure that at least 50% of the increased value is captured for public benefit.** The entire ZIP program is based on the concept of land value capture, which EBHO strongly supports. When the public sector takes actions that increase land value (such as upzoning), a significant part of that unearned incremental value should be captured for public benefit and not windfall private profit. The City's economic analysis assumed that the City could not capture more than one-third of the incremental land value because it was deemed necessary to allow two-thirds of the increment to be divided between the landowner and the developer, effectively increasing profits from land speculation and increasing rates of return for developers. There was no evidence to back up this arbitrary formula, and the consultant concluded

that this was “based largely on professional judgement and current economic conditions.” The DOSP is a long-range plan that needs to look beyond current economic conditions.

To the extent that the program is designed to allow landowners to capture a significant share of the incremental value, this translates directly into a general increase in land values. This will create upward pressure on land prices throughout the Downtown and runs completely counter to the City’s identification of high land costs as a barrier to affordable housing in the downtown area.

- **The proposed legislation does not clearly specify that participation in the ZIP program requires full payment of the Affordable Housing Impact Fee.** According to the staff report and numerous statements by City staff, the ZIP program will require payment of the Affordable Housing Impact Fee on all the market-rate units in a project. However, the language that would clearly establish this requirement does not seem to be included here. On page 28 of the Planning Code amendments, note 8 states “See Section 15.72.100(B)5 for Affordable Housing Impact Fees requirements when using the Zoning Incentive Program.” There currently is no Section 15.72.100(B)5, and we have not seen any proposed amendments to establish these requirements. Modifications to the impact fee ordinance that codify this requirement should be included now for reference and then adopted by the City Council concurrently with adoption of the DOSP.
- **The ZIP should provide other incentives in addition to increased height and intensity, in order to be a more favorable option compared to the State Density Bonus.** As structured, there is a substantial risk that developers will choose to use the State Density Bonus (SDB) rather than the ZIP, yielding minimal affordable housing benefits. While in many cases the ZIP provides much greater increases in density than can be obtained with the density bonus, the SDB offers other benefits that are of great value to developers.

First, the SDB entitles developers to one or more incentives along with waivers and parking reductions. These additional benefits are not provided by the ZIP. Planning staff has stated that they are seeing a significant number of density bonus applications that are seeking incentives and waivers without a significant increase in density, indicating that it is the other benefits, and not greater density, which is of most use to developers.

Second, the affordable units required to obtain a density bonus also can be counted as meeting the Affordable Housing Impact Fee’s option to provide affordable units on site in lieu of paying the fee. A project that qualifies for a density bonus of 20% by providing

5% of its units for very low income households also qualifies for a waiver of nearly \$3 million in Affordable Housing Impact Fees. In a 100-unit project, provision of just five very low-income units entitles the developer to an additional 20 market rate units, one incentive such as a reduction in open space requirements, and waiver of impact fees (nearly \$3 million). This provides substantial benefits to the developers with very little public benefit.

- **While beyond the scope of the DOSP, we want to note that the success of the ZIP program also depends on modifications to the Affordable Housing Impact Fee (AHIF).** Staff has stated that the most significant affordable housing benefit from the ZIP program is not the community benefits fee itself, but the requirement that AHIF be paid on both the base units and the bonus units. Payment of the AHIF into the City's Affordable Housing Trust Fund yields more units and deeper affordability than the in lieu option; the City should take steps to make payment of the fee more attractive option by ensuring ensure that the in-lieu option yields public benefits comparable to those provided by the fee.

EBHO is strongly supportive of efforts to create a dense, vibrant, and sustainable downtown with public amenities and more transit-oriented housing. Making this happen in a way that promotes equity, significantly reduces the disparities that the City has identified, and truly makes Downtown a place for residents at all economic levels requires a sustained and intentional emphasis on affordable housing.

We urge the Planning Commission to recommend the changes we have outlined above as part of its approval of the DOSP.

Sincerely,



Jeffrey Levin
Senior Director of Policy

cc: William Gilchrist
Emily Weinstein
Joanna Winter



June 4, 2024

Planning Commission
City of Oakland
One Frank Ogawa Plaza
Oakland, CA 94607
Delivered via email

RE: Downtown Oakland Specific Plan - Final EIR, Responses to Comments

Dear Planning Commissioners,

In addition to the comments previously provided regarding the Final Draft Plan and proposed Draft Zoning Amendments, the Pacific Merchant Shipping Association (PMSA) and Union Pacific Railroad (UP) provide these comments on the Downtown Oakland Specific Plan (DOSP) Final Environmental Impact Report (FEIR)/Response to Public Comments.

Land Use Amendment to Light Industry Designation is Consistent with Draft EIR and Current Uses
We agree with the conclusion in the Response to Comments regarding Land Use (DOSP Response to Comments Document, pg. 25), that the proposed areas of “Light Industry” in the DOSP more consistently reflect current industry uses within this existing area.

The General Plan amendment changes from the August 2019 Public Review Draft Plan to the Final Draft Plan represent minor changes to what was analyzed in the Draft EIR. Instead of Light Industry being proposed along 4th and 2nd streets from Brush to Clay, it is now all the way from 3rd Street to Embarcadero West east of Castro, and from 4th to Embarcadero West west of Jefferson. That is to say that there are no longer pockets, but rather fuller sections with Light Industry that more consistently follow the pattern of current industry and use within those blocks. The above changes, also shown above in revised Figure III-6, Proposed General Plan Land Use Designations Amendments, would not have any environmental impacts, nor would they cause any policy inconsistencies that were not already identified in the Draft EIR in Chapter IV, Policy or Chapter V.A, Land Use.

EIR Properly Identifies the Market Street and Martin Luther King Junior Way Railroad Crossings as “Designated Truck Routes” without Bike Lanes or Sidewalks

We agree with the accurate descriptions of the at-grade railroad crossing characteristics of the Market Street and MLK Jr. Way in the Draft EIR (at pg. 154), and these remain unchanged in the Final EIR. The Market Street “crossing serves truck access to Howard Terminal and Schnitzer Steel,” and the crossing “is a designated truck route.” The MLK Jr. Way “crossing serves motor vehicle access to Howard Terminal, the Vistra Power Plant, and other uses” and is also “a designated truck route.” With regard to active transportation infrastructure, the DEIR accurately describes that “[b]ike lanes on Market Street terminate one block prior to the crossing on 3rd Street” and that on MLK Jr. Way “[s]outh of the tracks it is a two-lane road with no sidewalks” and that “sidewalks terminate prior to the crossing.”

Transportation Impacts for Railroad Crossing Impacts are Significant and Unmitigated

Mitigation Measure TRANS-2, Cumulative Mitigation Measure TRANS-1, and SCA-TRANS-7 as identified in the DEIR/FEIR are insufficient mitigation for the significant impacts associated with the specific designs to introduce new pedestrian and bicycle infrastructure on the crossings at Market Street and MLK Jr. Way. As noted in the DEIR, these crossings do not currently facilitate these incompatible active transportation uses as proposed.

The existing DOSP mitigation measures, as described as related to a “Quiet Zone” application, seem to be focused on mitigation of potential impacts for crossings east of Clay St., and not focused on Market and MLK Jr. Way.

The DOSP mitigation measures are woefully inadequate especially when one compares them to the findings made for the same crossings by the City in the Howard Terminal EIR which determined that even after significant mitigation measures, including the construction of a dedicated bike and pedestrian overcrossing (Howard Terminal, Mitigation Measure TRANS-3b), that the exposure to a substantial transportation hazard at these intersections would be “Significant and Unavoidable with Mitigation.” (see Howard Terminal DEIR, Impact TRANS-3.CU).

To the extent that the DOSP intends to replicate Howard Terminal-related bike and pedestrian infrastructure and travel patterns across these two intersections, the DOSP Environmental Documents should at the very least rely on the Howard Terminal EIR Railroad Study (Appendix TRA) and explain why introducing new and significant transportation hazards under this plan are not subject to at least the same Mitigation Measures as the Howard Terminal project and why there is no determination of significant and unavoidable impacts when even less mitigation measures are proposed under this plan than under the prior plan for the same crossings.

DOSP EIR Does Not Identify, Analyze, or Propose Potential Mitigation for Displacement of the Designated Truck Routes on Market Street and MLK Jr. Way

The DOSP EIR does not analyze the potential disruption, displacement, or elimination of designated truck routes on Market Street or MLK Jr. Way either by the physical imposition of the Green Loop or the zoning changes imposed by the Green Loop combining zoning.

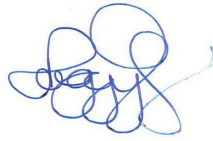
We would recommend that the Final EIR provide the same analysis for the impacts and potential significance of impacts from lane reduction for bikes and pedestrian safety for its proposed Market Street and MLK Jr. Way conversions in the Industrial zones south of 880 that the DOSP provides in its analysis of impacts and potential significance of impacts of Webster Street plans from lane reduction for bikes and pedestrian safety for overall impacts to Chinatown.

Please do not hesitate to contact either PMSA or UP with any questions or to follow up with these comments on the DOSP Final EIR and Response to DEIR Comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mike Jacob', with a stylized, cursive script.

Mike Jacob
PMSA

A handwritten signature in blue ink, appearing to read 'Peggy Ygbuhay', with a stylized, cursive script.

Peggy Ygbuhay
Union Pacific Railroad

cc: Joanna Winter, Oakland Planning Department
Ed Manase, Oakland Planning Department