



## **Planning Code Amendments Adopted on June 2 and 9, 2020**

The following is a list of Planning Code amendments adopted by the City Council on June 2, 2020, and June 9, 2020. Each of the changes were made on June 2, 2020, and are effective July 2, 2020, with two exceptions. The changes to Auto Repair and Cleaning activities in the D-BV-4 Zone were adopted on June 9, 2020 and are effective July 9, 2020, and the activity Variance regulations were effective immediately upon approval on June 2, 2020.

The ordinance, agenda reports, and other associated documents related to all the code amendments except the changes related to the D-BV-4 Zone are located at:

<https://oakland.legistar.com/LegislationDetail.aspx?ID=4537636&GUID=33BFDB9F-A0B5-4BC1-8BF9-2BBED04C85DB>

The ordinance, agenda reports, and other associated documents related to the changes related to the D-BV-4 Zone are located at:

<https://oakland.legistar.com/LegislationDetail.aspx?ID=4541257&GUID=A8699748-094B-4A9A-BAC8-223EC9C845E5>

### **Major Substantive Changes**

#### Activity Variance Expiration (New Section 17.148.120)

*Background.* An “activity Variance” is a Variance that permits an activity type that is otherwise prohibited in the underlying zone. An activity Variance is only permitted upon making required findings. These are considered Major Variances per Section 17.134.020 of the Planning Code and, therefore, require approval by the Planning Commission. Approval of an activity Variance has been rare due to the difficulty in making the required findings. However, some have been approved in the past, including ones that allowed Industrial Activities in residential neighborhoods.

*Prior Regulation.* Some have argued that approved activity Variances “ran with the land”, meaning that owners of the land continued to enjoy the Variance in perpetuity regardless of whether the activity ceases for any period of time. For example, an Industrial Activity that received an activity Variance to operate in a residentially zoned neighborhood in 1965 and ceased operation in 1970 could arguably have reinstated the industrial activity in the present day even if intervening activities were less impactful.

*New Regulation.* The new regulation extinguishes an activity Variance if the activity has ceased operation for two or more years with a possible one year extension to three years total.

#### Changes to home occupation regulations (Chapter 17.112)

*Prior Regulations.* Prior to the change, there were two sets of Home Occupation regulations: one for the West Oakland Specific Plan (WOSP) Area and the D-CE-3 Zone, and one for the rest of Oakland. The main difference between these two versions was that the WOSP and D-CE-3 version allowed home occupations in detached accessory structures, an employee at the home, and customers by appointment. The WOSP and D-CE-3 version also contained text stating that activities involving hazardous materials may require additional City permits.

*New Regulations.* The changes replaced the existing Citywide home occupations in Chapter 17.112 with the home occupation regulations that apply to the WOSP and the D-CE-3 Zone. This includes allowing home occupations in detached accessory structures, an employee at the home, and customers by appointment throughout the City. It also includes placing the text regarding hazardous materials in the Citywide version and requiring that the character defining features of a building be maintained in all home occupations. Finally, the amendments also changed the definition of “Home Occupation” in Chapter 17.09.040 to include “Limited Agricultural Activities and/or bee keeping, in an outdoor area” to match the definition of Home Occupations in Chapter 17.112.

#### Auto Repair and Cleaning in the D-BV-4 Zone (Section 17.101C.030)

*Prior Regulations.* The prior regulations prohibited Auto Repair and Cleaning Commercial Activities as a stand-alone activity on a lot in the D-BV-4 Zone. This zone is at locations behind Broadway Auto Row, between 26<sup>th</sup> and 30<sup>th</sup> Streets.

*New Regulations.* The new regulations conditionally permit auto repair activities in the D-BV-4 Zone where it is currently prohibited as a stand-alone activity on a lot. To approve the conditional use permit, the auto repair has to be associated with an existing auto showroom on Broadway, must be located within an existing building with minor additions allowed, and inoperable cars must be stored inside.

### **Minor Substantive Changes**

#### Setbacks for smaller lots (Table 17.17.04)

*Prior Regulation.* Lots smaller than 4,000 square feet are allowed reduced minimum setbacks in the Mixed Housing Type Residential Zones. There was no listing in Table 17.17.04 for front setbacks that reflected this.

*New Regulation.* Lots smaller than or equal to 4,000 square have reduced minimum setbacks. The change also added front yard setback regulations that match a prior table.

#### Additional activities that create credit for dwelling units in the D-BV-1 Zone (Table 17.101C.01)

*Prior Regulation.* In the Broadway Valdez District– 1 (D-BV-1) Zone, commercial floor area must be constructed to establish a certain number of residential units. With the exception of a movie theater, these activities were required to be on the ground floor to get this credit.

*New Regulation.* The amendments allow second floor fitness clubs, yoga studios, martial arts studios, bowling alleys, theaters, and night clubs to count toward the minimum retail area to earn additional residential units.

#### Restriction on locating Nonresidential Activities over Residential Activities in commercial zones (Section 17.102.180)

*Prior Regulation.* This section only allowed Commercial Activities to be conducted above Residential Activities in a commercial zone upon the granting of a Conditional Use Permit (CUP). HBX, CIX, and D-CE Work/Live Facilities are exempted from this limitation.

*New Regulation.* The amendment allows Commercial Activities to be conducted above Residential Activities by right in commercial zones.

#### Razor and barbed wire around construction sites (Chapter 17.108.140(B))

*Prior Regulations.* Barbed or razor wire were never allowed to be used in fences in residential or commercial zones.

*New Regulation.* This change allows the use of barbed and razor wire in fences in residential and commercial zones to enclose sites for the duration of construction, provided that the proposal meets the requirements of an administrative instruction. It also adds electrical wire to the list of prohibited materials in all fences.

#### Fences and walls in nonresidential zones near residential and open space zones and the right-of-way (Section 17.108.140(C))

*Prior Regulations.* If within ten feet of a residential zone, fences and walls in a commercial or industrial zone could be a maximum eight feet tall “by right” and ten feet tall upon the granting of Small Project Design Review approval.

*New Regulation.* The new regulations extend this limit to a wall within ten feet of the public right-of-way or open space zone. The requirement also requires fences between eight and ten feet tall to contain landscape screening.

#### Change of ABC license in restaurants mapped in a restricted area (Section 17.114.070)

*Prior Regulation.* Previously, regulations incorrectly indicated that a CUP was required for any change in a nonconforming activity involving the sale of alcoholic beverages at a full-service restaurant in a “restricted area” that requires a new type of alcoholic beverage license from the State of California Department of Alcoholic Beverage Control (ABC). Restaurants were also incorrectly indicated as requiring a CUP to sell alcohol in “restricted areas”.

*New Regulation.* The change removes this erroneous CUP requirement.

#### Change in parking requirement for Group Assembly Commercial Activities (Section 17.116.080)

*Prior Regulation.* Group Assembly Commercial Activities had the following parking requirement outside of Downtown:

One (1) space for each fifteen (15) seats in indoor places of assembly with fixed seats, plus one space for each one hundred (100) square feet of floor area in indoor places of assembly without fixed seats, plus a number of spaces to be prescribed by the Director of City Planning, pursuant to [Section 17.116.040](#), for outdoor assembly.

Section 17.10.380 of the Planning Code describes Group Assembly Commercial Activities as:

The provision of instructional, amusement, and other services of a similar nature to group assemblages of people. This classification does not include any activity classified in [Section 17.10.160](#) Community Assembly Civic Activities, [Section 17.10.170](#) Recreational Assembly Civic Activities, or [Section 17.10.180](#) Community Education Civic Activities. Examples of activities in this classification include, but are not limited to, the following:

- Yoga, martial arts, driving school, job training, and other instructional classes in facilities with three thousand (3,000) square feet or more of classroom or instructional space;
- Drive-in theaters;
- Theaters or venues with three thousand (3,000) square feet or more of performance, lobby space, and audience floor area;
- Temporary carnivals, fairs, and circuses;
- Cabarets, night clubs, dance halls, adult entertainment, and pool halls;
- Banquet halls;
- Fitness clubs with three thousand (3,000) square feet or more of floor area.

*New Regulation.* Outside of Downtown, the change reduces the parking space requirement to one space per 600 feet of floor area on the ground floor and 1,000 square feet of floor area above the ground floor area for all Group Assembly activities exempt theaters, cabarets, and nightclubs with performance and/or dance space.

#### Downtown car share space requirement (Section 17.116.105)

*Prior Regulation.* New multifamily buildings of ten or more units in CBD and D-LM zones had to provide car-share spaces.

*New Regulation.* This update to the zoning code requires multifamily dwellings of five or more units in the CBD and D-LM zones to provide car-sharing spaces and transit passes.

#### Conditional Use Permits related to Planned Unit Developments or subdivisions (Section 17.134.110)

*Prior Regulation.* CUP approval that is part of a Planned Unit Development (PUD) could be filed separately from the associated subdivision map.

*New Regulation.* The amendments require CUPs, PUDs, and subdivisions to be applied for simultaneously.

Subdivision and Design Review approval (Section 17.136.120)

*Prior regulation.* Projects that required both design review and subdivision approval to be constructed did not have to be considered together.

*New regulation.* The amendments require that design review and subdivision permits be considered together.

Timing of a final development plan after approval of a Planned Unit Development (Section 17.140.040)

*Prior Regulation.* The Planning Code required developers to submit a Final Development Plan (FDP) within one year of approval of a Preliminary Development Plan (PDP) as part of a PUD permit. A PDP shows the location and design of rights of ways; use, location, and approximate dimensions of structures; and the location of parks and other public facilities. The FDP shows the location of infrastructure; detailed architectural plans; detailed plans for street improvements; and grading or earth-moving plans.

*New Regulation.* This amendment allows developers two years to submit their final development plan after PUD approval.

Residential bonus in Planned Unit Developments (Section 17.142.100)

*Prior Regulation.* Through a PUD process, a project can incorporate certain activities that are not otherwise allowed in a zone. One allowed activity was Permanent Residential Activities.

*New Regulation.* The changes prohibit Permanent Residential Activities as an allowed bonus through the PUD process.

Location to file an appeal (Sections 17.01.080B, 17.132.040, 17.134.070A/B, 17.136.090, 17.140.070, 17.144.070, 17.144.090, 17.148.070A/B, 17.152.070, 17.156.170, and 17.157.140)

*Prior Regulations.* These sections stated that appeals need to be filed with the City Clerk using a form prescribed by the Planning Commission.

*New Regulation.* The change requires that appeals be filed with the Bureau of Planning using a form prescribed by the Planning and Building Director.

Listing Special Project Design Review as a discretionary permit (Section 17.158.190)

*Prior Regulations.* Section 17.158.190 lists the Planning Code permits that are considered discretionary for the purposes of CEQA. This list is important because only discretionary projects can be considered under the California Environmental Quality Act (CEQA). The current list of discretionary permits includes the following:

1. CUPs;
2. Small project design review, as defined in Chapter 17.136 of the Oakland Planning Code;
3. Regular design review, as defined in Chapter 17.136 of the Oakland Planning Code;
4. Development agreements;
5. PUDs;
6. Rezoning; and
7. Variances.

*New Regulation.* The changes place Special Project Design Review, a process created in 2016 for the evaluation of some industrial developments, on this list. The Special Project Design Review process is similar to Small Project Design Review, which is also on the list. Special Project Design Review approvals are discretionary because they include subjective criteria and conditions of approval.

### **Non-Substantive Changes**

Adding missing note to development standards table for the RM Zones (Table 17.17.03)

*Prior Regulation.* There was no reference to note 7 in the row stating the required front yard setback in the RM Zones. This note allows reduced front yard setbacks for commercial buildings in the “C” combining zone.

*New Regulation.* The amendments placed reference to note 7 in the row corresponding to the front yard setback.

Rewording of a limitation on commercial activities in the Central Business District – Residential Zone (Table 17.58.01)

*Prior Regulation.* Commercial activities are generally limited to the ground floor in the residential zone of the Central Business District. There are two exceptions to this limitation. Upon the granting of a CUP, an activity of 2,000 square feet or less in a Local Register historic property may be above the ground floor, and a principal activity can extend to the second floor if there is an internal connection between the spaces.

*New Regulation.* There is no change to the regulation, only a rewording for clarity.