

The following are responses to comments and questions presented to City of Oakland Planning staff at the March 1, 2007 community meeting regarding the proposed regulations and design guidelines for the Temescal corridor. Comments and questions made by the community are in **bold** font; staff responses are in normal font. Questions and comments are grouped into eight subjects: Height and Density, Community Input and Majority Opinion, Mapping Issues, Environmental Review, Commercial Activities, Community Benefits, Impact of New Residents on Public Services, and Other Questions and Issues. Questions and comments that are answered by a common response are also grouped together within a subject heading.

**Height and Density**

- 1. Most groups in the community meetings stated that building height should be limited to 40 feet, yet regulations still incorporate a 55 foot height limit. Why?**
- 2. Building heights should be proportionate to width. Traditionally, at least a 2:1 right of way width to building height is a good standard. Therefore, staff's height limit proposals are appropriate.**
- 3. STAND supports density if it is responsible density.**
- 4. Union Street in San Francisco is a successful commercial area with a 2-3 story height limit.**
- 5. The height limit works on Union Street because it is narrow. The community should not dictate a specific height.**
- 6. Development should not be limited because we need to house the growing population along transit corridors.**
- 7. Height limits should be 40-45 feet. A greater height limit only benefits developers.**
- 8. The rezoning proposal maintains the status quo of allowing buildings that are too large.**
- 9. Higher density supports retail, neighborhood services, and the tax base.**
- 10. There should be density along the urban corridor but existing development scale should be preserved.**
- 11. There is nothing in the General Plan that says there should be a 55' height limit on Temescal.**

The proposed regulations state that most of the area would have a 45 foot height limit with an additional ten feet only allowed upon the granting of a conditional use permit. The conditional use permit could only be granted if there is a stepback at the top story of the building, the developer provides community benefits, and there are effective transitions to neighboring properties.

Staff recommends a 45 instead of 40 foot height limit because the extra five feet allows developments to have a higher ground level. In general, each upper story of a building is about 10 feet high; a 45 foot height limit allows a ground level height of up to 15 feet with three stories above. This higher ground level provides a human scale and a more comfortable pedestrian experience.

Staff includes the conditionally permitted ten feet additional height for two main reasons:

- The additional height will provide definition to Telegraph Avenue. Successful streets define and unify a space by focusing the eyes on the street area. Generally, the walls of buildings create the boundaries of this street space. When these boundaries are not sufficiently high, views outward are not contained enough to provide a sense of unifying space or place. In general, urban designers state that streets require at least a 1:2 height-to-street width ratio to achieve enough spatial confinement to define a space. The Telegraph Avenue right of way is 100 feet wide and, therefore, requires building heights of at least 50 feet to properly enclose and define the street.
- The additional height allows developments to have more units on a lot. This fulfills the intent of the General Plan to provide more density on the corridor to accommodate transit use, increase street activity, promote retail opportunities, and create lively neighborhoods. In particular, the General Plan encourages concentrated development to benefit nodes of neighborhood activity centers such as Temescal.

Note that the permitted height is being reduced from 40 to 35 feet in the core commercial area of Temescal (the area approximately bounded by 48<sup>th</sup> Street, 51<sup>st</sup> Street, Shattuck Avenue, and Telegraph Avenue), with an additional ten feet permitted upon the granting of a conditional use permit. Staff recommends this height limit to be lower than the rest of the planning area because of its high concentration of smaller scale historic buildings.

Finally, the Temescal Corridor Design Guidelines encourage creating smaller scaled buildings by breaking large building masses into smaller scale forms (see Guidelines 2.3 and 2.6). This will reduce the perceived height and size of new construction.

**12. Will the regulations create a monotonous line of buildings?**

**13. Are projections allowed into the top story stepback?**

Two provisions in the proposal encourage architectural diversity:

- Guideline 2.3 of the Temescal Corridor Design Guidelines encourages architectural variety and creative designs; and
- The regulations contain flexibility to have some construction within the required top story stepback. Specifically, the ten foot stepback is required over at least 80 percent of a building's frontage. Different treatments in the remaining 20 percent of the area will create visual diversity along the corridor.

**14. There should a maximum number of buildings per block that are allowed a conditional use permit for height to reduce monotony and scale along the corridor.**

Staff does not believe the proposal will result in a monotonous urban form or buildings too great in scale because of the reasons described in the answers to questions #1 through #13.

**15. There should be greater height at intersections. 65 feet is an appropriate height limit at intersections.**

The allowed projections into the top story stepback described in the answer to question #13 coupled with Guideline 3.1 of the Temescal Corridor Design Guidelines will encourage architectural prominence at major intersections. Guideline 3.1 encourages corner building to have architectural emphasis adjacent to intersections.

**16. Approval of a conditional use permit should require that adjacent buildings are not smaller than the proposal so new construction will fit into the context of the neighborhood.**

**17. There is a Catch-22 regarding how to have larger scale development fit into the existing smaller scale neighborhood.**

**18. The height differences between new construction and existing buildings will create a hodge – podge look.**

Guideline 2.5 of the Temescal Corridor Design Guidelines provides several techniques to create visual transitions from adjacent buildings. Furthermore, a proposal must meet a finding that its scale and massing creates a visual transition to the height, bulk, and scale of buildings on adjacent lots in order to receive a conditional use permit for a ten foot increase over the permitted base height.

**19. The height limit of 55' hampers Telegraph Avenue's potential to be a great urban boulevard.**

The proposed height limit balances 1) the intent of the General Plan for development intensity along the corridors and 2) the community's varied input regarding height that has been voiced in several workshops, community meetings, emails, and phone calls. Staff believes that the proposed height and density will support and encourage

a vibrant neighborhood, retail stores, public transportation, and spatial definition for Telegraph Avenue. This development intensity, coupled with the proposed height, density, community benefits, and design guidelines, will facilitate the creation of a well designed urban corridor.

**20. There should be a three story height minimum for all new construction on Telegraph.**

The current proposal requires a conditional use permit for new construction less than two stories. The regulation is proposed because one story construction does not fulfill the policies of the General Plan regarding the type of development along the corridors. This proposal for a height minimum is the first of its kind in Oakland. Therefore, staff is proposing a modest two story minimum to determine if greater height minimums are feasible in the future.

**21. What constitutes two stories?**

Section 17.10.090 of the zoning ordinance defines a story as:

“a portion of a building between the surface of any floor and the surface of the floor next above it, or, if there is no floor above it, the space between such floor and the ceiling next above it, provided that the following shall not be deemed a story:

1. A basement or cellar if the height from finished grade at the exterior perimeter of the building to the finish floor elevation above is six (6) feet or less for at least 50% of the perimeter and does not exceed twelve (12) feet above grade at any point;
2. An attic or similar space under a gable, hip, or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such space.”

**22. Height impacts the views and quality of life of underrepresented people.**

Impacts on quality of life of neighbors are considered during the design review process.

**23. The required building envelope will determine density. Therefore, density regulations are not important.**

The maximum allowed building envelope will limit the floor area, and, therefore, the number of units in a development. A development that maximizes density in a small building envelope may tend to contain smaller units and may create traffic or parking impacts. However, the marketability of larger units may offset this tendency.

**Community Input and Majority Opinion**

- 24. Community meetings should be democratic. Majority opinion should matter. Majority opinion at past meetings was in favor of lower heights.**
- 25. The group at the community meeting does not necessarily represent the whole community regarding height.**
- 26. There should not be community meetings if the Planning Department is not listening to the community regarding height.**
- 27. It was never decided that a small group would speak for whole district.**
- 28. Those who went door to door found that people are concerned about parking, traffic, views, and other impacts resulting from larger development.**
- 29. People come to community meetings when they are against a proposal. The majority opinion at a meeting is not a scientific survey. The election voting down height limits in Berkeley is evidence of this.**

It is staff's role to carefully listen to community comments and opinions and use it as important input regarding our policy recommendations. Those living in the community provide the most direct experience of present conditions and are most directly impacted by new development. It is also staff's role to reflect the goals and objectives of the General Plan and regional housing policy regarding focusing development at urban infill areas and transportation corridors.

Community opinions regarding height in the Temescal corridor have ranged from a height limit of three stories to an unrestricted height limit. There have been a sizable number of residents expressing a preference for a 40-45 foot height limit and a sizable number expressing a preference for a 65-75 foot height limit.

Staff believes that the current proposal (a 45 foot height limit with an additional ten feet allowed upon the granting of a conditional use permit) represents a good balance between a height that fulfills regional and local development policy and the varied sentiments expressed by the public.

- 30. Everyone in neighborhood should be notified of the changes.**

Staff has an extensive list of neighborhood groups and interested individuals that have been and will be notified of any community, Zoning Update Committee, Planning Commission, and City Council meeting that will be held regarding this Temescal Corridor planning project. All those who provided input to the City will be notified of the changes. Staff will also advertise in the Oakland Tribune the date and time of any public hearing regarding Temescal rezoning. Although the notification costs precludes staff from mailing notifications to the thousands of residents of Temescal, staff is confident that the notification process outlined above will make interested

parties aware of important opportunities to provide input to the City regarding the proposal.

### **Mapping Issues**

**31. Maps of existing and proposed zoning and General Plan should be provided.**

**32. There should be maps that have current zoning and General Plan designations and the proposed designations.**

Staff will provide maps clearly showing existing and proposed Zoning and General Plan designations.

**33. Are you moving zones or General Plan designations around to accommodate proposed developments?**

**34. The proposed lines on the maps were drawn to accommodate development proposals.**

**35. What was the reason for moving the Community Commercial General Plan designation around to Telegraph Avenue/Claremont Street/51<sup>st</sup> Street?**

No, we are not moving General Plan or zoning designations to accommodate proposed developments. Instead, the proposed new designations are based on existing context and well reasoned planning rationale.

The proposal to extend the Community Commercial General Plan designation along Claremont Avenue serves as an example. Claremont Avenue currently has a Mixed Housing Type Residential General Plan designation. This designation does not reflect the current uses there: higher density apartment buildings, commercial activities, and office buildings. Further, buildings of greater scale than permitted by the Mixed Housing Type Residential designation are appropriate for Claremont Avenue because of its wide right of way and its function as a busy automotive service corridor that leads to freeway ramps, Telegraph Avenue, Rockridge, and the Oakland/Berkeley Hills.

The Mixed Housing Type Residential General Plan designation was also removed from part of the block bounded by Clarke, Claremont Avenue, 51<sup>st</sup> Street, and Telegraph Avenue, so that this island of parcels can be evaluated comprehensively and with consistent standards.

**36. How does the S-18 overlay zone apply to the regulations?**

The S-18 regulations were eliminated by the City Council on December 19, 2006 and replaced by new design review regulations that became effective on April 1, 2007.

**37. The combining zone confuses the regulations. Why not just change the base zone?**

Staff chose to apply a combining zone because there are three base zones in the planning area: C-30, R-70, and C-28. Each of these zones applies to multiple areas of the City, not just the Temescal corridor. For instance, the C-28 zone applies to neighborhoods on International Boulevard, Macarthur Boulevard, Park Avenue, and East 12<sup>th</sup> Street. The R-70 and C-30 zones apply to numerous areas across the City. Changes to development standards appropriate to Temescal may not be appropriate to other areas of the City. The overlay zone facilitates making adjustments specifically to Temescal without amending the base zones and changing the development standards all over the City.

**Environmental Review**

**38. The infill exemption under the California Environmental Quality Act (CEQA) should be limited because it does not protect historic properties. The proposal still leaves historic buildings at risk.**

**39. CEQA should look at cumulative impact of the demolition of historic buildings. The Historic Preservation Element should be read by the Planning Division.**

Section 17.101.018 of the proposed ordinance contains special regulations for “neighborhood character defining buildings” written specifically for the Temescal District. The regulations require a conditional use permit for the demolition of a “neighborhood character defining building”. The criteria for demolition include demonstrating:

- That a project is financially infeasible without the complete demolition of the building. This demonstration could require the presentation of a financial pro forma;
- That the public benefits of the proposed replacement project are significant and outweigh the public benefits of retaining the original structure; and
- That the design quality, craftsmanship, detailing, and building materials of the proposed replacement project are equal to or greater than that of the building to be demolished.

This proposed regulation represents some of the strictest criteria for the demolition of a building in Oakland and the City’s only requirement for a conditional use permit to demolish a building. Further, it would be illegal for the City to adopt a law that completely prohibits the demolition of a class of buildings.

According to the Historic Preservation Element of the General Plan, properties in Oakland’s Local Register of Historical Resources are considered an “historic

resource” under CEQA. Any project that causes a “substantial adverse change” to a historic resource cannot claim an exemption from CEQA, including an infill exemption. According to section 17.10.020 of the zoning ordinance, local register properties include:

“any building, object, property or district listed in the City of Oakland’s Local Register of Historical Resources, which includes all Landmarks, Designated Historic Properties, Heritage Properties, Study List Properties, Preservation Districts, and S-7 and S-20 Preservation Combining Zone Properties; and those Potential Designated Historic Properties that are determined by the City’s Cultural Heritage Survey to have an existing rating of “A” or “B”, or to contribute or potentially contribute to an Area of Primary Importance.”

Currently, there are buildings that are considered to have an “A” or “B” rating in the study area such as the Temescal Branch Library at 5205 Telegraph and the Cattaneo Block Building at 5006 Telegraph (these buildings are also considered Designated Historic Properties and Landmarks by the City of Oakland). Staff is also in discussion with the City’s Office of Cultural Heritage to possibly designate the core area of Temescal’s shopping district as an “Area of Primary Importance”.

### **Commercial Activities**

#### **40. How will regulations maximize underground parking so ground floor retail can be maximized?**

**Underground parking should be considered a community benefit.**

The regulations contain incentives to provide underground parking. Section 17.101.014B of the proposal lists certain community benefits that can be provided for a project to be eligible for ten feet of additional maximum height and 30 percent additional density. One of these benefits includes underground parking as a community benefit. Staff believes this will create more active streetfronts and opportunities for commercial activities by removing parking from the ground level. Furthermore, section 17.101.010 requires that new construction in the SD-TEM-3 zone contain ground level commercial facilities.

#### **41. Where are commercial activities proposed to be allowed on Shattuck Avenue?**

Commercial activities are proposed to be allowed on all parts of Shattuck Avenue included in the SD-TEM combining zone.

#### **42. What is a viable size for commercial space?**

According to the City's Business Development Division, a neighborhood retail space should ideally be at least 800 square feet large with at least a 15 foot wide storefront.

**43. Why don't subareas one, two, or three require new construction to have ground floor commercial?**

Staff recommends requiring new construction to contain ground floor commercial space where there is both a solid context of existing ground floor commercial space and a General Plan designation that encourages ground floor commercial. SD-TEM-4 meets both these criteria. In Subareas SD-TEM-1 and -3, where the General Plan designations (Neighborhood Center Mixed Use and Community Commercial, respectively) encourage ground floor commercial but there is not a solid context of existing ground floor commercial, the combining zone provides incentives, but no requirement, to provide ground floor commercial activities. Staff does not recommend requiring ground floor commercial space in these subareas because of the concern that nonviable commercial space may be constructed that creates blight issues and unattractive streetfronts. SD-TEM-2 has an Urban Residential General Plan Designation that neither encourages nor discourages ground floor commercial. Therefore staff recommends allowing but not requiring, discouraging, or encouraging ground floor commercial space.

**Community Benefits**

**44. Correspond height/density with affordability and community benefits.**

**45. There needs to be more certainty for developers and the public regarding the amount of community benefits that will be required.**

Staff has updated the regulations to contain more specific community benefits required for the approval of a conditional use permit to earn development bonuses.

**46. What assurance is there that developers will not still request variances to Development Standards.**

In the past, staff has recommended variances for height, in particular, because the zoning regulations had not been updated to reflect the intent of the General Plan. Therefore, staff and the Planning Commission had to evaluate how well a project implemented the intent of the General Plan on a case-by-case basis. Several variances were recommended and granted because a determination was made that a height greater than the underlying zone would implement the General Plan better than strict reliance on current zoning standards.

The proposed rezoning has been designed to implement the General Plan for the Temescal corridor. Therefore, staff will be much less likely to recommend the granting of variances because the new zoning regulations would conform to General

Plan policy. Instead, the burden of proof will be on the applicant to show that variance is required due to an unusual hardship.

### **Impact of New Residents on Public Services**

**47. Environmental review should assess impact on the public services.**

**48. Property taxes don't pay for costs of residential development because of the services required for new residents.**

The proposal is a reflection of the Land Use and Transportation Element of the General Plan which calls for intensification along the Temescal Corridor. The General Plan was accompanied by a Environmental Impact Report that assessed the impact of anticipated development would have on public services. The report indicated that, with identified mitigations, the impact of new development on public services would not be significant. Further, the CEQA review process requires an assessment of whether a project will have a significant impact on public services.

Staff also believes that the proposal will result in increased commercial development in the area (under the State's current tax structure, commercial development tends to increase revenue to the City more than residential development). The proposal includes significant incentives for commercial development, particularly in the SD-TEM-1, SD-TEM-3, and SD-TEM-4 subareas. Also, increasing population in the corridors will make commercial development more viable.

### **Other Questions and Issues**

**49. Is this a rezoning?**

Yes, this is a rezoning, a zoning text amendment, and an amendment to the General Plan map. The General Plan map amendment provides a parcel-by-parcel General Plan designation for the area, not the generalized map currently used. The General Plan map amendments also create a larger Community Commercial designation between 52<sup>nd</sup> Street and Highway 24 and on Claremont Avenue. These changes are reflective of the current context of the area. The proposed zoning map amendments include:

- Mapping a new Temescal Corridor Combining Zone along the corridor;
- Refining the zoning maps so that designations do not unintentionally cross through properties; and
- Applying zoning districts that implement the proposed General Plan designations. For instance, the area between 52<sup>nd</sup> Street and Highway 24 is proposed to have a C-30 District Thoroughfare Commercial Zone because that zone is consistent with the Community Commercial General Plan designation.

There are also proposed text changes to the zoning ordinance: the new text for the Temescal Corridor Combining Zone and changes to the section outlining bonuses for mixed use developments in the C-28 Commercial Shopping District Zone.

**50. There should be a more progressive tax system to reduce income inequality. There should be more tax justice.**

This is an important question, but outside the scope of this project.

**51. When will the area between West Macarthur and 40<sup>th</sup> Street be rezoned?**

The rezoning of that area from R-70 to R-50 is proposed as part of this process.

**52. What happens to legal nonconforming buildings if they burn down?**

The zoning ordinance states that if a legal nonconforming building is damaged or destroyed less than 75% of its replacement value, it may be restored subject to any required building permits. If the facility is damaged or destroyed more than 75% of its replacement value it may only be restored upon the granting of a conditional use permit from the Planning Department.

**53. The preservation of Temescal Creek, rental housing, and a range of housing unit sizes should be included in the intent statement and supported by regulations in the ordinance.**

The preservation of rental housing and condominium conversions are issues that are being studied Citywide. Therefore, regulations specific to Temescal are not appropriate at this time. The daylighting of Temescal Creek would require a long-term interdepartmental plan between the Planning, Building Services, and Public Works Department and a large financial commitment on behalf of the City. Concurrently adopting a daylighting plan for Temescal Creek with the rezoning proposal would significantly delay the rezoning process. Therefore, staff believes that a daylighting plan would create too much of a delay in the rezoning process given the many development projects currently being proposed in the area.

**54. More green space should be required to mitigate height increases.**

Sections 17.101.014 and 17.44.210 state that a project must provide one of four community benefits to earn a height and density bonus. One of these four bonuses includes providing funding for parks in the Temescal Neighborhood. Staff believes this will improve the quality of open space as more developments are approved for the area.

**55. We should have infrastructure plans that will create a beautiful boulevard. I don't trust developers to provide amenities.**

Staff also believes that the proposal should be accompanied by a comprehensive and fully funded infrastructure plan to create a beautiful boulevard. In 2005, City staff developed a streetscape plan entitled “Telegraph Pedestrian Streetscape Improvements Project” that identifies specific improvements to Telegraph Avenue such as intersection bulbouts, crosswalks, landscaping, pedestrian oriented streetlights, benches, and other street furnishings. One of the community benefits that developers can provide to earn development bonuses is a financial contribution to implement this streetscape plan. Although these funds will not fully implement the project, they will make the City more eligible to be awarded matching grants for the improvements. Staff believes that the City should further pursue funding mechanisms to implement the Telegraph Avenue street improvement project.