

CITY OF OAKLAND

Agenda Report

TO: City Manager
ATTN: Robert C. Bobb
FROM: Community and Economic Development Agency
DATE: June 30, 1998

RE: CONSIDERATION OF AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO CREATE THE OPEN SPACE ZONE, AND TO REZONE APPROXIMATELY 2,800 ACRES OF PUBLICLY-OWNED PARK AND OPEN SPACE LANDS FROM VARIOUS EXISTING ZONES TO THE NEW OS ZONE

TITLE

This report is a request for the City Council to adopt an ordinance amending the Oakland Planning Code to create an Open Space (OS) Zoning District and to rezone approximately 2,800 acres of existing park and open space lands from various existing zones to the new zone.

EXECUTIVE SUMMARY

This report describes the provisions of a new zoning district to be applied to park and open space lands in the City of Oakland. Most of these properties are currently unzoned or are zoned for a variety of development types. Approximately 125 park and open space areas, encompassing 2,800 acres of land, would be rezoned "OS." The ordinance lists permitted and conditionally permitted uses in the OS Zone, includes development standards, and establishes procedures for the review and approval of future park projects. It also establishes a park classification system. More than half of the City's official zoning maps would be amended by this ordinance; these maps are attached to this report. This action implements one of the foremost recommendations of the Open Space, Conservation, and Recreation (OSCAR) Element of the General Plan, adopted by the City Council in June 1996.

FISCAL IMPACT ANALYSIS

The ancillary request to amend the Master Fee Schedule was specifically requested by the Parks and Recreation Advisory Commission as a means of reducing the cost burden on projects providing a clear public benefit. The foregone annual revenues are estimated to be less than \$5,000.00 (assuming two major CUPs and two to three minor CUPs a year). It should be noted that, under the OS Zone, use permits are only available for park improvement projects by public agencies, which is clearly a "public benefit."

BACKGROUND

When the City Council adopted the OSCAR Element in June 1996, it identified creation of the Open Space (OS) Zone as one of the Element's highest priorities. Historically, the Oakland Zoning

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Regulations have not addressed park and public open space land. Since Oakland adopted its first zoning regulations in 1935, parks have either been unzoned or zoned the same as adjacent properties -- in most cases, with a residential designation. Technically, this has left these areas vulnerable to uses which may be incompatible with their intended recreational or open space functions. Public ownership of the land has provided some assurance that parks would be retained for public benefit. However, there has been less assurance that parks would be used in a manner which best met the recreation and open space needs of the City and its residents. In the case of the unzoned parks, there has been an added risk that major projects would be constructed without the level of public notification and participation that is guaranteed by zoning.

Most cities in California have adopted "open space" zones specifically intended to protect parkland and other public open spaces. In fact, State planning law requires all cities in California (including charter cities) to include an open space district in their Zoning Regulations. These zones include land use and development standards that are specifically geared to the types of uses that occur in parks or undeveloped areas. The absence of such a zone in Oakland has led to some difficulty in deciding how and where to locate new park facilities. This has been further complicated by the lack of a park classification system which identifies the service area and function of each of the City's parks.

In the aftermath of a controversial 1,600 square foot building addition in unzoned San Antonio Park, the City Council adopted interim controls for the regulation of land use within parks and open spaces in 1991. These controls require extensive public input prior to a change of use or improvement within an Oakland park (including mandatory pre-development neighborhood meetings and public hearings before the PRAC). However, the interim controls address the approval process only. They do not include development standards or address permitted uses, parking requirements, setbacks, and other provisions traditionally addressed by zoning. The interim controls were to remain in effect until new open space Zoning Regulations were adopted.

When the City embarked on its OSCAR Element update in 1992, additional direction on the "open space zone" was provided. The 25-member OSCAR Advisory Committee defined the basic intent of the zone, outlined a desired project review process, discussed development standards, and developed a preliminary park classification system. Creation of the "Open Space Zone" was identified as the highest priority of the Element.

The OSCAR Element was adopted in June 1996. Subsequently, the City Council funded a number of implementation tasks, including drafting of the zoning amendments and updating of the zoning maps. An administrative review Draft ordinance was completed in March 1997. This Draft was revised several times through participation by staff in City Planning, Parks, and the City Attorney's Office and was ultimately presented to the Parks and Recreation Advisory Commission and Planning Commission for review and public input.

To date, four public hearings have been held to consider the OS Zone. Two hearings were conducted by the Parks and Recreation and Advisory Commission (PRAC) on December 10, 1997 and January 10, 1998. Two hearings were conducted by the City Planning Commission on December 17, 1997

and January 21, 1998. Minor revisions to the ordinance text were made by each Commission in response to public testimony and Commissioner input. At their January 21 meeting, the City Planning Commission unanimously approved a motion to forward the revised ordinance to the City Council for approval.

Following the Planning Commission's action, Staff identified the specific parcels to be rezoned and the requisite amendments to the zoning maps. The changes affect 161 of the City's official zoning maps, or about half of the maps covering the City of Oakland. The proposed map changes are included in the draft ordinance attached to this Staff report.

CONTENTS OF THE PROPOSED ORDINANCE

The Open Space (OS) zone has been structured to be compatible and consistent with the rest of the Oakland Zoning Regulations. New sections dealing exclusively with open space would be added to the Regulations; other sections of the Regulations would be amended as needed to make reference to the new OS Zone. Approximately 2,800 acres of parkland (125 parks and open space areas) would be rezoned. Land within the jurisdiction of the Port of Oakland (including Estuary Park, Martin Luther King Jr Regional Shoreline, Galbraith Golf Course, and various waterfront parks) would not be rezoned.

Classification of Parks

In addition to assigning an "OS" designation to each park in the City, the zoning map would further classify Oakland's parks into the nine park categories adopted through the OSCAR Element. The nine park and open space categories are:

- Resource Conservation Area (RCA)
- Region-Serving Park (RSP)
- Community Park (CP)
- Neighborhood Park (NP)
- Active Mini-Park (AMP)
- Passive Mini-Park (PMP)
- Linear Park (LP)
- Special Use Park (SU)
- Athletic Field (AF)

Each park in the City has been mapped as a "region-serving park", "community park", "neighborhood park," etc., depending on how it was classified by the OSCAR Element. Such designations have been indicated with a two-or three-letter abbreviation in parentheses following the letters "OS" on the zoning map. For instance, Lakeside Park would be zoned OS(RSP) and Montclair Park would be zoned OS(CP). A list of the proposed designations for each park is attached to this staff report (See Attachment B)

A number of parks have more than one designation, reflecting their multiple functions. For instance, the natural area of Joaquin Miller Park is zoned OS(RCA) while the new Observatory, Community Center, and other improved areas are zoned OS(RSP).

Classification of parks is one of the most important parts of the new ordinance. Uses that are conditionally permitted in one type of park may not be permitted in another. Development standards also vary from one type of park to the next. The intent of the classification system is to maximize the efficient use of parkland; protect the City's parks from overdevelopment; and maintain a hierarchy of neighborhood, community, and regional parks.

Permitted and Conditionally Permitted Uses

The core of the proposed ordinance is a set of tables which indicate permitted and conditionally permitted uses in each type of park. The nine types of parks appear in the columns on each table. Approximately 80 facilities and activities are listed in the tables' rows. Symbols are used to indicate where the uses are permitted, allowed with a Major Conditional Use Permit, or allowed with a Minor Conditional Use Permit. A use is prohibited if no symbol appears in the cell on the table, or if the use is not listed on the table. For consistency with the rest of the Oakland Zoning Regulations, uses are classified as "activities" or "facilities." Most of the uses listed are classified as "activities."

On the date the new ordinance is adopted, all uses that currently exist in Oakland's parks will either be "deemed approved" or become "legal non-conforming," depending on how they are classified in the tables (special provisions for non-conforming uses are included in the existing Oakland Zoning Regulations; there are limits to expansion of such uses and rebuilding in the event they are destroyed).

The new ordinance will require a conditional use permit (CUP) prior to construction of most of the facilities and activities typically associated with parks in Oakland. Only a very small number of uses are permitted without a CUP, including landscaping and street furniture (benches, planter boxes, tables, etc.). Uses requiring a Minor CUP must first be considered by the PRAC at a public hearing. Uses requiring a Major CUP must be considered by both the PRAC and the City Planning Commission. For example, if the City wanted to construct a new recreation center in Bushrod Park, a Major CUP would be required and public hearings before the PRAC and Planning Commission would be conducted. If it wanted to construct tennis courts in Lowell Park, a Minor CUP would be required, with a PRAC public hearing followed by a decision by the Director of City Planning. Using the same example, the City would be prohibited from locating the tennis courts in Colby Park or Park Boulevard Plaza, since tennis courts are prohibited uses in passive mini-parks.

Granting a use permit will require that certain "findings" be made regarding aesthetics, General Plan consistency, and public benefit. The findings are the same as those required for all use permits in Oakland, with the additional requirement for a "no net loss of open space" finding (discussed below).

The ordinance recognizes that the City cannot predict every type of park activity that may come along in the future. It allows the tables to be modified from time to time (by the Director of City Planning) as new uses are proposed. It also includes provisions for parks to be reclassified (by the City Council

on advice of the Planning Commission) so that certain activities may be allowed. The Ordinance also recognizes that a Major CUP may be redundant in cases where a Master Plan for the park has recently been approved by the City Council. In such cases, the Ordinance includes provisions to allow large projects with a Minor CUP only.

A CUP would not be required for normal repair and maintenance projects, or when new recreational programs are proposed within existing park facilities. For instance, the City could introduce a school lunch program at one of its recreation centers without a CUP. However, a CUP would be needed if that program required adding a cafeteria to the recreation center, or construction of new play equipment on the lawn.

Development Standards

As with all zoning districts, the ordinance sets standards for height and yards. For most parks, height limits would be 35 or 45 feet, depending on the type of park. Special use parks have no height limit. Buildings would be required to "step down" as they approached the property lines of zones with more restrictive height limits. Yard requirements (i.e., setbacks) would be based on the setbacks of the adjacent zones. No setback requirements would apply in special use parks.

The development standards would set "impervious surface" limits for parks based on the type and size of the park. These limits are intended to ensure that a given percentage of each park remains open and uncovered by pavement or structures. Generally speaking, the larger the park, the lower the percentage limits. The limits have been tested on a number of Oakland parks to ensure that they are reasonable. In the event a park is already at or over the maximum allowable impervious surface area, a minor variance would be required before additional land could be covered by structures or pavement.

The ordinance also includes provisions for parking. The same standards that apply elsewhere in the City would apply, with the number of required spaces determined by the size and type of facility being considered. Reduced parking requirements may be allowed where certain conditions are met, such as the availability of nearby underutilized parking or a limited service area for the project.

Project Review Procedure

A project review procedure is included in the ordinance. The procedure is a hybrid between the existing "Interim Controls" and the established procedure for referring design review applications affecting historic properties to the Landmarks Preservation Advisory Board. Projects funded by 1989 Measure AA, 1990 Measure K, and 1996 Measure I would be exempt from this procedure.

The first step in the procedure would be to conduct a pre-development neighborhood meeting. This is an optional step, to be conducted at the discretion of the Director of Parks, Recreation, and Cultural Affairs. This step would be appropriate for larger projects which are likely to generate a high degree of neighborhood interest. If such a meeting is held, the ordinance requires posting of public notices on and around the park, and a mailing to interested persons and neighborhood groups.

The second step would be to submit an application and project description to the Community and Economic Development Agency (CEDA) for routing, review, and consideration. Once the application was determined complete and appropriate revisions to the project were made, CEDA and OPRCA would coordinate the scheduling of public hearings, preparation of staff reports, and summaries of staff comments.

The third step would be to conduct a PRAC public hearing. Notices of this hearing would be posted in and around the park, and a limited mailing to interested neighbors and neighborhood groups would be performed. The PRAC would make a recommendation on the project at its hearing. For Minor CUPs, this recommendation would be made to the Director of City Planning who would then approve, conditionally approve, or deny the application. For Major CUPs, this recommendation would be made to the Planning Commission, who would conduct a subsequent public hearing on the project.

Projects requiring Major CUPs would be subject to the same process now required for Major CUPs in other zones. Following the PRAC hearing, a Planning Commission hearing would be scheduled. Notices would be mailed to persons living within 300 feet of the park and posted on utility poles in and around the park. Additional outreach would occur through press releases and mailings to neighborhood groups within the service area of the park.

The procedure includes provisions for appeals of Planning Director and Planning Commission decisions. It also includes provisions for referring projects affecting City Landmarks to the Landmarks Preservation Advisory Board for review and comment prior to taking action.

No Net Loss Provisions

Issuance of a CUP will require a finding that there has been no net loss of open space in Oakland's urban park system since the effective date of the ordinance. Making this finding will require that the City establish a tracking system to monitor "additions" and "subtractions" to its park system. "Additions" would include acquisitions of new urban (i.e., flat) parks, community gardens, land trust properties, and other public land that is improved to a useable condition. "Subtractions" would include any space in an urban park that is covered by a structure. Additions must exceed subtractions for the finding to be made. If this is not the case, then new open space of comparable value will need to be provided when the project is built.

Additions and subtractions of land under the jurisdiction of the Port of Oakland will be exempt from the tracking system, since the Port is not bound by the City's Zoning Regulations. However, the City will encourage the Port to participate in its tracking system and adopt its own "no net loss" policy.

ADDITIONAL PROVISIONS

The ordinance includes a recommendation for a follow-up report to be prepared 12 months after its adoption. The purpose of this report will be to determine whether or not the new OS Zone is achieving its desired objectives, and to make appropriate revisions and recommendations at that time.

The ordinance also includes an amendment to the Master Fee Schedule which would waive the fee for Major and Minor CUPs for projects within the OS Zone. This provision was specifically requested by the Parks and Recreation Advisory Commission as a means of reducing the cost burden on projects providing a clear public benefit.

ENVIRONMENTAL DETERMINATION

The California Environmental Quality Act (CEQA) Guidelines list projects which are exempt from environmental review. Section 15061(b)(3), the "general rule," states that "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." Pursuant to Section 1270 of the City CEQA Procedures, a zoning change where the new classification is at least as restrictive or more restrictive than the existing classification is exempt under the general rule. This is the case with the proposed OS Zone and it has therefore been determined to be exempt from CEQA.

RECOMMENDATIONS:

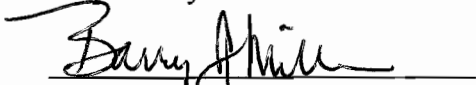
1. Conduct the first reading of the ordinance at July 14, 1998 Council meeting.
2. Conduct the second reading of the ordinance at the July 28, 1998 Council meeting and adopt the ordinance at that time.

Respectfully Submitted,



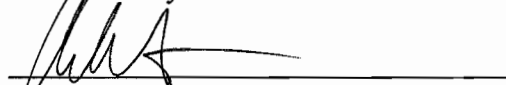
WILLIAM E. CLAGGETT
Interim Director, Community and Economic
Development Agency

Prepared by:



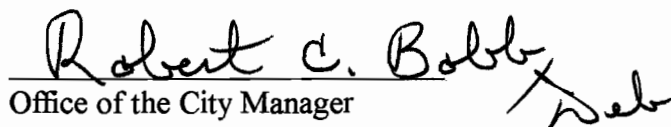
BARRY J. MILLER, AICP
Consultant

Concurred by:



Andrew Altman
Chief of Planning

APPROVED FOR FORWARDING TO THE COMMUNITY
AND ECONOMIC DEVELOPMENT COMMITTEE OF
THE CITY COUNCIL:


Office of the City Manager

ATTACHMENTS:

- A. Draft Ordinance, including Draft Amendments to the Oakland Zoning Ordinance creating the Open Space Zone and proposed zoning map changes.
- B. List of Parks Proposed for Rezoning.

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INTRODUCED BY COUNCILMEMBER _____

CITY ATTORNEY _____

ORDINANCE No. _____ C. M. S.**AN ORDINANCE AMENDING THE OAKLAND PLANNING CODE TO CREATE THE OS OPEN SPACE ZONE, AND TO REZONE APPROXIMATELY 2,800 ACRES OF PUBLICLY-OWNED PARK AND OPEN SPACE LANDS FROM VARIOUS EXISTING ZONES TO THE NEW OS ZONE.**

WHEREAS, many of Oakland's parks and other open space lands are currently unzoned or are zoned with a variety of development-oriented categories; and

WHEREAS, the lack of zoning in some Oakland parks and the use of development-oriented zoning in other parks has led to past land use and development conflicts; and

WHEREAS, the lack of zoning in some Oakland parks has led to the approval of projects without a desirable level of community involvement and notification; and

WHEREAS, it is in the best interest of the City that clear standards be established to govern the implementation of General Plan policies regarding changes of use and improvements in such parklands;

WHEREAS, the City Council adopted Resolution 68807 C.M.S. on March 21, 1992 establishing interim land use controls for Oakland's parks with the stated intention of replacing these controls with permanent controls following the adoption of the Open Space, Conservation, and Recreation (OSCAR) Element; and

WHEREAS, the City Council adopted the updated OSCAR Element of the General Plan in June 1996; and

WHEREAS, OSCAR Actions OS-1.1.1 AND OS-2.1.1 direct the City to amend its zoning ordinance to include open space zoning provisions; and

WHEREAS, the City Council identified adoption of the Open Space Zone as one of the highest implementation priorities of the OSCAR Element; and

WHEREAS, the City retained a consultant to prepare the Open Space Zoning Ordinance, including revised maps, in 1996; and

WHEREAS, drafts of the proposed ordinance were prepared by the consultant, reviewed by Staff, and revised accordingly throughout 1997; and

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WHEREAS, the proposed ordinance was presented to the Parks and Recreation Advisory Commission on December 10, 1997 and on January 10, 1998; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on December 17, 1997; and

WHEREAS, the Planning Commission identified revisions to the ordinance and recommended approval of the revised ordinance by the City Council at its meeting on January 21, 1998; and

WHEREAS, subsequent to this recommendation, the specific zoning map revisions to be made pursuant to the new ordinance were identified; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, the Guidelines as prescribed by the Secretary of Resources and the provisions of the Statement of Objectives, Criteria, and Procedures for Implementation of CEQA: City of Oakland, have been satisfied and, in accordance with Section 15061(b)(3), the actions on the part of the City Council to create the proposed Open Space Zone and rezone those areas identified in Attachment "A" have been determined to be exempt from CEQA; and

WHEREAS, the recommendations of the City Planning Commission came regularly for deliberation before the City Council Community and Economic Development Committee on June 30, 1998; and

WHEREAS, the City Council Community and Economic Development Committee considered the impacts of creating the Open Space Zone and amending the Zoning Maps included in Attachment "A"; and

WHEREAS, zoning amendments came on for hearing before the City Council on July 14, 1998 and for second reading on July 28, 1998; and

WHEREAS, the Council finds and determines that the public safety, health, convenience, comfort, prosperity, and general welfare will be furthered by the proposed ordinance; now therefore,

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

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

SECTION 2. The City Council finds and determines that adoption of this Ordinance is exempt from the California Environmental Quality Act (CEQA) of 1970 under Section 15061(b)(3) of CEQA.

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SECTION 3. Chapter 17.11, entitled OS OPEN SPACE ZONING REGULATIONS and as presented in Attachment “A”, is hereby added to the Oakland Planning Code.

SECTION 4. Chapter 17.135, entitled SPECIAL USE PERMIT REVIEW PROCEDURE FOR THE OS ZONE and as presented in Attachment “A”, is hereby added to the Oakland Planning Code.

SECTION 5. The following sections of Oakland Planning Code are hereby amended as indicated in Attachment “A”: Section 17.10.040, Section 17.10.140, Section 17.10.170, Section 17.10.190, Section 17.10.240, Section 17.102.120, Section 17.104.010, Section 17.108.020(A), Section 17.110.020, Section 17.116.270, Section 17.116.280, Section 17.134.020(A), Section 17.134.030, 17.134.040(A)(1) and (B)(1), and Section 17.144.030.

SECTION 6. Section 17.144.055, entitled REVIEW BY PARKS AND RECREATION ADVISORY COMMISSION IN CERTAIN CASES and as presented in Attachment “A”, is hereby added to the Oakland Planning Code.

SECTION 7. Section 17.04.050, entitled SPECIAL DEFINITIONS FOR PROJECTS IN THE OPEN SPACE (OS) ZONE and as presented in Attachment “A,” is hereby added to the Oakland Planning Code.

SECTION 8. The designation and location of zones and zone boundaries on section maps 25, 31, 32, 35, 36, 40, 42, 45, 46, 47, 54, 56, 57, 58, 59, 65, 67, 68, 69, 70, 71, 77, 78, 79, 81, 82, 83, 84, 89, 91, 93, 94, 95, 96, 99, 100, 102, 103, 104, 113, 117, 122, 123, 127, 128, 129, 133, 134, 135, 136, 140, 141, 150, 151, 153, 154, 157, 158, 159, 160, 166, 167, 168, 169, 170, 171, 173, 174, 175, 176, 177, 184, 185, 186, 187, 188, 189, 191, 192, 193, 200, 202, 203, 204, 205, 208, 210, 212, 218, 219, 220, 221, 222, 223, 226, 228, 229, 230, 235, 236, 238, 239, 240, 241, 243, 244, 245, 246, 247, 250, 251, 252, 253, 254, 255, 259, 260, 261, 266, 267, 268, 269, 270, 274, 275, 286, 290, 291, 292, 296, 298, 310, 312, 313, 315, 316, 318, 319, 320, 321, 322, 323, 324, 325, 326, 332, 333, 334, 335, 339, 341, 342, 343, 344, 345, 346, 347, 354, 355, 356, 358 at Chapter 17.154 of the Oakland Planning Code are hereby amended as indicated in Attachment “A” to rezone areas from a variety of zoning designations to the new OS Open Space zone.

SECTION 9. The City Council finds that park improvements may provide substantial public benefits and therefore determines that the fees ordinarily imposed for planning and zoning approvals should be waived for applications in the OS Zone. The Master Fee Schedule as set forth in Ordinance Number 9336 C.M.S., as amended, is hereby amended to include the clause “(No Fee in OS Zone)” immediately following lettered item “A. APPLICATIONS UNDER THE OAKLAND ZONING REGULATIONS (42511).”

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SECTION 10. This Ordinance shall be reviewed by the City Planning Commission 12 months following the date of its adoption to determine whether it is successfully achieving the goals, objectives, and policies of the OSCAR Element and to determine if any modifications are necessary.

SECTION 11. This ordinance shall be effective upon adoption, subject to the provisions of Section 216 of the Charter of the City of Oakland, but shall not apply to permits already issued or to applications approved for which building permits have not yet been issued.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 19_____

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, CHANG, DE LA FUENTE, MILEY, NADEL, REID, RUSSO, SPEES AND
PRESIDENT HARRIS

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD

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

Item E
Cb ED Conte.
6-30-98