

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

SUMMARY

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

PROJECT SITE AND SURROUNDING AREA

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

BACKGROUND

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

Zoning Update Committee

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

Community Input

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

PROJECT DESCRIPTION

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

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

The amendment includes the following key components:

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

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

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

Project Variants

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

No Action

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

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

Citywide TCUP

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

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

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

Trial Citywide TCUP

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

Trial TCUP-CBD

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

Trial TCUP-no surface parking

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

Development Agreement

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

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

Minor and Major Permit Procedures

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

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

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

TEMPORARY CUP OPTIONS MATRIX			
Option	Benefits	Disadvantages	Additional Notes
No Action	<ul style="list-style-type: none"> Does not contradict Planning Code; Allows uses for a limited timeframe 	<ul style="list-style-type: none"> No land use flexibility to address fluctuating economy No systematic formula for considering temporary use proposals; No systematic approach to terminating approved temporary uses; Difficult to ensure removal of uses (politically and in terms of City ability to monitor); Temporary uses can become vested, permanent; 	<ul style="list-style-type: none"> Could amend SCOA to allow temporary uses on case-by-case basis with consistent conditions Temporary use proposals would be considered under existing CUP, variance or DA procedures
Citywide TCUP	<ul style="list-style-type: none"> Allows uses for a limited timeframe Provides consistent formula for processing temporary use proposals; Responds to economic reality by allowing more land use flexibility Provides similar permitting opportunity throughout Oakland Ensures uses do not become vested 	<ul style="list-style-type: none"> Difficult to remove from Planning Code if regulations prove to be problematic In some cases, allows uses that contradict permanent controls in Planning Code; May discourage development of permanent higher and better use; 	<ul style="list-style-type: none"> To adopt permanently, would need to go to Council for approval
Trial Citywide	<ul style="list-style-type: none"> Same advantages as “Citywide TCUP” 	<ul style="list-style-type: none"> May discourage development of permanent higher and better use; 	<ul style="list-style-type: none"> To adopt would need to go to ZUC, Planning Commission

<p>TCUP</p>	<ul style="list-style-type: none"> • Sunset controls termination of permits • Sunset allows evaluation of effectiveness of regulations 	<ul style="list-style-type: none"> • In some cases, allows uses that contradict permanent controls in Planning Code; 	<p>and Council for recommendation and approval</p>
<p>Trial TCUP-CBD</p>	<ul style="list-style-type: none"> • Addresses actual demand at this time for temporary permits • Limits area to where greatest demand exists • Sunset controls termination of permits • Sunset allows evaluation of effectiveness of regulations • Allows uses for a limited timeframe • Provides consistent formula for processing temporary use proposals; • Responds to economic reality by allowing more land use flexibility • Ensures uses do not become vested 	<ul style="list-style-type: none"> • Does not cover the current demand located outside of downtown (e.g., near West Oakland BART) • May discourage development of permanent higher and better use; • In some cases, allows uses that contradict permanent controls in Planning Code; 	<ul style="list-style-type: none"> • To adopt would need to go to ZUC, Planning Commission and Council for recommendation and approval
<p>Trial TCUP-no surface parking</p>	<ul style="list-style-type: none"> • Addresses community concerns regarding surface parking • Sunset controls termination of permits • Sunset allows evaluation of effectiveness of regulations • Allows uses for a limited timeframe • Provides consistent formula for processing temporary use proposals; • Responds to economic reality by allowing more land use flexibility • Ensures uses do not become vested 	<ul style="list-style-type: none"> • Does not address actual demand at this time for temporary permits • Limits financial benefit for City • Does not consider that use could be acceptable on temporary basis • May discourage development of permanent higher and better use; • In some cases, allows uses that contradict permanent controls in Planning Code; 	<ul style="list-style-type: none"> • To adopt would need to go to ZUC, Planning Commission and Council for recommendation and approval
<p>Development Agreement</p>	<ul style="list-style-type: none"> • Incentive-based • Limited to entitled properties • City can require extensive improvements, maintenance, insurance • Allows uses for a limited timeframe 	<ul style="list-style-type: none"> • Limited to entitled properties • Does not address actual demand at this time for temporary permits • May discourage development of permanent higher and better use; • No systematic formula for considering other types of temporary use proposals; 	<ul style="list-style-type: none"> • Could negotiate specific terms and conditions for temporary use proposals • DA requires no new policy adoption
<p>Minor and Major Permit Procedures</p>	<ul style="list-style-type: none"> • Consistent with Planning Code procedures for consideration; • Allows uses for a limited timeframe • Allows public input and scrutiny of extensive uses 	<ul style="list-style-type: none"> • Potential longer timeframe for consideration of extensive uses 	

GENERAL PLAN ANALYSIS

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

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

ZONING ANALYSIS

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

ENVIRONMENTAL REVIEW

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

KEY ISSUES AND IMPACTS

Community Comments

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

ZUC Comments

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

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

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

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

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

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

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

- *This viewpoint supports an option to adopt the proposed regulations or a trial, and to include both the permitted and conditionally permitted uses (without limitation).*
- The proposal weakens the Planning Code by allowing uses that were never intended to be permitted (surface parking in CBD).
 - *The proposal would only allow land uses that are currently permitted or conditionally permitted in the underlying zoning district. However, the proposal would relax development standards to allow for the use to exist on a temporary basis. The Planning Code currently has no option for temporary permits; therefore, by definition, the proposal will contradict existing standards that require permanent improvements.*
- Surface parking is ugly, and causes hazards for pedestrians and bicyclists.
 - *This is an argument to exclude surface parking from any recommendation to move the proposed regulations forward. However, it should be noted wherever surface parking would be permitted as part of this proposal, auto fee parking is already permitted or conditionally permitted. Surface and above-grade auto-fee parking generally have the same access and egress conditions in terms of number of driveways.*

Testimony Submitted in Writing

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

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

San Francisco's Approach

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

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

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

Surface Parking

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

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

Prohibition on Temporary Conditional Use Permit Activities

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

Community Benefit Uses

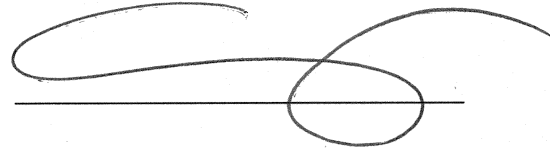
At the previous ZUC meetings where temporary permits were considered, the ZUC expressed concern about temporary community benefit uses becoming permanent due to community and possible political will. This same question might apply to any use for which there is support. The revised proposal includes measures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

RECOMMENDATION

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

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

Prepared by:



Catherine Payne, Planner III

Approved for forwarding to the
City Planning Commission by:



SCOTT MILLER
ZONING MANAGER



ERIC ANGSTADT
DEPUTY DIRECTOR, CEDA

ATTACHMENTS:

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