



Memorandum

TO: Steering Committee Members

FROM: Winston Rhodes, AICP, Planning Manager

SUBJECT: Draft Zoning Code Update

DATE: April 26, 2010

Background

The Draft Zoning Code or Zoning Ordinance is a legislative document that when enacted would replace Title 17 of the City's Municipal Code and help implement the General Plan. This is a comprehensive revision to the current Zoning Code that has been developed and incrementally modified for several decades in response to changing circumstances. The Zoning Code as well as any adopted Specific Plan is required to be consistent with the General Plan. The Zoning Code also includes the most details about how land use is regulated within the City. Consequently, detailed legal review of the Zoning Code contents is essential to ensure that it reflects recent legislation and case law as well as the desired regulatory practices within the City.

The Zoning Code is frequently referred to for day to day land use questions and administrative procedures. In Pinole, this Draft Zoning Code will operate in conjunction with the Draft Three Corridors Specific Plan to provide information about allowable uses and detailed development standards. The Three Corridors Specific Plan when adopted will be the authoritative document for the portions of the City located along San Pablo Avenue, Pinole Valley Road, and Appian Way within its defined boundaries. The Zoning Code is the authoritative document for the remaining portions of the City outside the Specific Plan boundaries. If the Specific Plan is silent on an issue (e.g. regulation of a specific land use type), then the Zoning Code will apply.

The Zoning Code Subcommittee reviewed the Draft Zoning Code document and the Draft Zoning Map on April 8th and 15th earlier this month. The focus of the discussion was to evaluate major topics addressed in the draft Zoning Code and identify issues for further modification and refinement based on the experience and expertise of the Subcommittee members. A summary of the comments received from the Subcommittee is attached (see Attachment C). In addition to the Steering Committee review, the City Attorney staff also has been conducting a detailed review of the document and has provided extensive detailed feedback that will require many minor modifications and edits and redrafting of some sections of the document to ensure legal adequacy. A brief summary of the major issues identified by the City Attorney is included below so the Steering Committee will get a sense of the legal issues identified and the areas where further changes are needed and/or recommended.

Discussion

The Draft Zoning Code includes six separate Articles. Each article includes chapters and sections for ease of reference. The Draft Zoning Code also includes text boxes that summarize the changes between the existing Code and the draft Code that are included to help readers identify areas of change between the existing and the Draft Zoning Code. Article I of the Draft Code establishes administrative procedures and describes the land use entitlement as well as the code enforcement process. Article II describes the different Zoning Districts, allowed uses, and development standards. Article III contains the site planning standards for specific development issues and includes affordable housing requirements and density bonuses applicable to residential development that are mandated by state law. Article IV includes standards for certain specific land uses. Article V includes existing chapters relating to resource conservation. Lastly, Article VI includes a glossary to define terms and clarify the contents of the Draft Zoning Code.

The Draft Zoning Code document includes several areas where focused attention is warranted based on input provided at the Subcommittee meetings and additional input received from the City Attorney staff.

- 1) Article I - Chapter 17.08. Zoning Ordinance Administration. This chapter will need to be changed to better describe the Zoning Administrator role as provided for in State law and show clear delegation of Zoning Administrator powers to City of Pinole officials. This Chapter may also need to include further information about administrative review procedures to guide administrative reviews that involve some discretionary judgment where applicants, unhappy with how rules are applied, may seek an appeal process.
- 2) Article I – Chapter 17.10. Reapplication Procedure. A section is needed to clarify how reapplication requests will be processed for projects that have been previously denied.
- 3) Article I – Chapter 17.14 Nonconforming Uses and Structures. Evaluation of the length of time to allow continuation of nonconforming uses is needed (see 17.14.030A) as well as the provisions for allowing expansion of nonconforming uses (see 17.14.050). The Steering Committee may want to quantitative regulatory thresholds to address these situations for administrative review and also establish parameters (e.g. expansion size) that would trigger review by the Planning Commission to provide for some case by case consideration especially for major expansion requests.
- 4) Article I- Section 17.16.080 Enforcement Action. Substantial revisions to the abatement / enforcement section, including a public hearing section and a "summary of costs" issued by the City before the City may recover costs of abatement are needed.
- 5) Article II - Chapter 17.20. Residential Districts. Legal staff has recommended changes to residential districts in the Consolidated Allowed Uses Table. Affected uses include mobile home parks, small family day care, large family day care, residential care facilities, transitional housing, and emergency shelters.
 - Mobile Home Parks – Staff recommends identifying residential zones where this use is permitted
 - Small Family Day Care- Staff recommends allowing as a permitted use in the Rural zone
 - Large Family Day Care - Staff recommends allowing as a permitted use in the Rural zone

- Residential Care Facilities – Staff recommends allowing as a permitted use in the Rural zone
 - Transitional Housing – Staff recommends allowing as a permitted use in the Office Industrial Mixed Use (OIMU) zone and residential zones that are in close proximity to commercial services and transit (e.g. R-2, R-3, R-4, RMU)
 - Emergency Shelters – For consistency with State law and the draft Housing Element, staff recommends allowing as a permitted use in the OIMU zone.
- 6) Article III – Chapter 17.32 Affordable Housing Requirements. Recent case law would make it difficult to enforce this Section of the Draft Code with respect to **rental** units (ownership enforcement is legal) outside the Redevelopment Project Areas. A recent California Supreme Court decision upheld an appellate court decision in *Palmer/Sixth Street Properties v. City of Los Angeles* (2009) 175 Cal.App.4th 1396. In its opinion, the appellate court held that the application of Los Angeles’ inclusionary housing ordinance, which required the developer of a mixed-use rental housing project to restrict the rent of 15% of the units as low income units or pay an in lieu fee, conflicted with state law under the Costa-Hawkins Rental Housing Act (Civ. Code §§ 1954.50 *et seq.*) According to the decision, mandatory inclusionary housing programs under which developers are required to provide rental units at controlled rental rates (and are not provided any financial contribution or other assistance from the government) are unacceptable. Therefore, the City may not enforce affordable housing rent restrictions on rental units outside redevelopment areas (ownership units are not affected by the case) unless the city: a) provides funding for the units, or b) enters into a separate agreement with the developer. It is possible that the State Legislature may amend the Costa-Hawkins Act to address the impacts of the court’s decision in *Palmer*. Further discussion with the City Attorney is needed to determine how best to reflect this case law in Chapter 17.32.
- 7) Article III- Chapter 17.38 Density Bonus. The City Attorney noted several changes to be consistent with State Law including increasing the development threshold from 21 to 40 units in 17.38.040 D.3.iii.
- 8) Article III - Chapters 17.52 Signs and 17.54 Signs on Public Property. The City Attorney has identified Constitutional issues with these sign chapters (especially sign exemptions) and these chapters will need to be redrafted.
- 9) Article IV- Chapter 17.76. Wireless Telecommunications Facilities. The law treats wireless facilities proposed for collocation differently than stand alone new facilities. The City Attorney recommends that collocated wireless communication facilities be permitted in all zones and regulated with an administrative use permit with State allowed findings. Facilities that are not collocated may be regulated through a Conditional Use Permit for review by the Planning Commission. The consolidated allowed use table needs to be modified to reflect this legal advice.

Next Steps

The draft Zoning Code will be considered in conjunction with the draft General Plan and draft Specific Plan that are being redrafted. There will be updated Zoning Code information provided to reflect the Sub Committee comments, legal input, comments from the public, and Steering Committee comments. Once the necessary changes are made, the changes will be summarized for consideration during public hearings on adoption of the draft Zoning Code. There will be the opportunity to make additional adjustments as part of the City's action on all three draft planning documents.

Attachments:

- A. Draft Zoning Code Update March 31, 2010 (Previously Provided)
- B. April 14, 2010 Draft Zoning Map
- C. Zoning Code Update Subcommittee Comments From April 8 and 15, 2010
- D. Zoning Code Update – Consolidated Allowed Use Table March 31, 2010
- E. Allowed Use Definitions March 31, 2010
- F. Draft Minor Deviation Zoning Code Language
- G. Draft Integrated Development Language
- H. Draft Planned Development Process Language