



# CITY OF NEWARK PLANNING COMMISSION

37101 Newark Boulevard, Newark, California 94560-3796 □ 510/578-4330 □ FAX 510/578-4265

City Administration Building  
7:30 p.m.  
City Council Chambers

## **AGENDA**      Tuesday, April 26, 2016

**A. ROLL CALL**

**B. MINUTES**

B.1 Approval of Minutes of the regular Planning Commission meeting of  
Tuesday, April 12, 2016. (MOTION)

**C. WRITTEN COMMUNICATIONS**

**D. ORAL COMMUNICATIONS** (Anyone wishing to address the Commission on any  
planning item not on the Agenda may take the podium and state his/her name and  
address clearly for the recorder.)

**E. PUBLIC HEARINGS**

**F. STAFF REPORTS**

F.1 Work Session on Zoning Ordinance Update – from Assistant City Manager  
Grindall. (INFORMATIONAL)

**G. COMMISSION MATTERS**

G.1 Report on City Council actions.

**H. ADJOURNMENT**

Pursuant to Government Code 54957.5: Supplemental materials distributed less than 72 hours before this meeting, to a majority of the Planning Commission, will be made available for public inspection at this meeting and at the Planning Division Counter located at 37101 Newark Boulevard, 1st Floor, during normal business hours. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection.

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# CITY OF NEWARK PLANNING COMMISSION

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City Administration Building  
7:30 p.m.  
City Council Chambers

## MINUTES

Tuesday, April 12, 2016

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### A. ROLL CALL

At 7:30 p.m., Chairperson Aguilar called the meeting to order. All Planning Commissioners were present except Commissioner Fitts (personal).

### B. MINUTES

#### B.1 Approval of Minutes of the regular Planning Commission meeting of Tuesday, March 22, 2016.

Vice-Chairperson Nillo moved, Commissioner Otterstetter seconded, to approve the Minutes of March 22, 2016. The motion passed 4 AYES.

### C. WRITTEN COMMUNICATIONS

None.

### D. ORAL COMMUNICATIONS

None.

### E. PUBLIC HEARINGS

#### E.1 Hearing to consider: (1) Adopting a resolution revoking an existing planned unit development (P-12-22) and conditional use permit (U-12-21) for a veterinary emergency facility at 5600 John Muir Drive; (2) E-16-13, an Addendum to an existing Environmental Impact Report; and (3) ASR-16-9, an Architectural and Site Plan Review, for a hotel to be located at 5600 John Muir Drive.

Assistant City Manager Grindall gave the staff report.

Answering Commissioner Bridges, ACM Grindall stated a veterinary emergency facility could be conditionally approved at a different location but no such application has been received by the City.

Answering Chairperson Aguilar, ACM Grindall stated there had been no issues with other hotels in Newark meeting the 1:1 parking ratio.

Answering Commissioner Bridges, ACM Grindall stated no new environmental impacts were identified in the Addendum to the existing Environmental Impact Report.

Chairperson Aguilar opened the Public Hearing.

Mr. Arvin Iyer, Iyer & Associates Architects, 855 Sansome Street, Suite 200, San Francisco, CA 94111, representing the owner, stated the owner has reviewed and agreed to all conditions in Resolutions 1933, 1934 and 1935.

Answering Commissioner Otterstetter, Mr. Iyer stated the existing building will be demolished.

Answering Vice-Chairperson Nillo, Mr. Iyer stated car charging stations, as well as, bicycle storage areas, would be provided.

Answering Chairperson Aguilar, Mr. Iyers estimated construction to begin two weeks after obtaining building permits and would take a year to complete.

Answering Chairperson Aguilar, Mr. Iyers stated the Hotel Operator has not yet been determined.

Chairperson Aguilar closed the Public Hearing.

Answering Commissioner Otterstetter, ACM Grindall stated staff would like to obtain the name of the Hotel Operator prior to this project going before the City Council.

Answering Chairperson Aguilar, ACM Grindall stated the City did not receive any letters or comments from the neighbors.

Commissioner Bridges moved, Vice-Chairperson Nillo seconded, to approve Resolution 1933, revoking the existing planned unit development (P-12-22) and conditional use permit (U-12-21) for a veterinary emergency facility. Motion passed 4 AYES.

Vice-Chairperson Nillo moved, Commissioner Otterstetter seconded, to approve Resolution 1934, approving E-16-13 an Addendum to an existing Environmental Impact Report; and approve Resolution 1935, approving ASR-16-9, an Architectural and Site Plan Review, with Exhibit A, pages 1 through 12, for a hotel to be located at 5600 John Muir Drive. The motion passed 4 AYES.

**F. STAFF REPORTS**

None.

**G. COMMISSION MATTERS**

**G.1 Report on City Council actions.**

None.

ACM Grindall informed the Planning Commission and the public that a Work Session is scheduled for April 26, 2016 to discuss the Zoning Code Update project.

Commissioners' Comments

Vice-Chairperson Nillo and Chairperson Aguilar wished good luck to the Golden State Warriors.

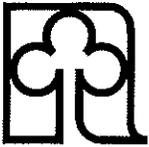
**H. ADJOURNMENT**

At 7:48 p.m., Chairperson Aguilar adjourned the regular Planning Commission meeting of Tuesday, April 12, 2016.

Respectfully submitted,



TERRENCE GRINDALL  
Secretary



**F.1 Work Session on Zoning Ordinance Update – from Assistant City Manager Grindall. TG (INFORMATIONAL)**

**Background/Discussion** – The City has retained RRM Design Group to update the Zoning Ordinance. As a part of the Ordinance update, certain Policy Issues have been identified by staff and the consultant that should be addressed early on in the update process.

The Zoning Ordinance includes regulations that govern the use and construction on all property in the City. It regulates: use, setbacks, height, landscaping, signage, parking, and design. The Ordinance also defines the procedures under which new buildings or changes in use are reviewed.

The City of Newark is embarking on a comprehensive “overhaul” of the Zoning Ordinance which would result in a modern, intuitive, effective document. Newark’s existing Zoning Ordinance was originally adopted in 1965 and has been amended numerous times over the years, but until now has not received a comprehensive review and update.

The scope of the overhaul will include complete replacement of Title 17 (Zoning) of the Newark Municipal Code with a modern user-friendly code. An electronic, printable, internet friendly and amendable Zoning Map would be created.

The attached “Policy Issue Paper” discusses important issues and ideas that have arisen in the review of planning issues in Newark. Early Planning Commission review and comment on these issues is critical. It is proposed to adjust the ordinance: to change the way non-conforming uses are addressed, to streamline development review, to guide the tenant mix in commercial centers, and to bring each property’s zoning designation into conformance with the General Plan.

The consultant will provide a review of the Policy Issue Paper and facilitate a discussion about these important issues.

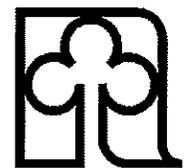
**Attachment**

**Action** - Informational. No formal action is required.

City of Newark

# ZONING ORDINANCE UPDATE

## POLICY ISSUE PAPER



**NEWARK**

APRIL 2016

City of Newark

# ZONING ORDINANCE UPDATE

## **POLICY ISSUE PAPER**



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a California corporation

**APRIL 2016**

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## Introduction

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The 2013 General Plan articulates the community's vision for the future of Newark—a safe, vibrant, livable, and sustainable community with a robust economy. The General Plan contains goals, policies, and programs to achieve this vision.

Zoning regulations are one of the primary tools a city has for implementation of its General Plan. A zoning ordinance translates the policies of a general plan into parcel-specific regulations, including land use regulations and development standards. The type and intensity of land uses that are permitted and how they perform will be critical to achieving the General Plan's vision for neighborhood preservation and enhancement, economic development, environmental sustainability, and community health.

The Zoning Ordinance Update project is intended to comprehensively revise the Newark Zoning Ordinance in order to create a concise and user-friendly set of regulations that will implement the General Plan and be consistent with State and federal law.

The City of Newark retained RRM Design Group to assist in the update. The current version of the Zoning Ordinance was adopted in 1965. While it has since been amended several times in response to community concerns and to reflect changes in State and federal law, the adoption of the General Plan update in 2013 has created both an obligation and an opportunity for another comprehensive update. As one of the first steps in the revision process, City staff and the consultant team have been evaluating the current Zoning Ordinance to identify issues that need to be addressed and changes that should be considered as part of the update.

This paper summarizes the principal findings and conclusions of the consultant team's work and recommends a number of ways that the current ordinance could be improved to meet the overall objectives of the update. It is intended to distill key choices and present "big ideas" for the update, which will be further developed and refined as draft regulations are created.

### **ISSUES DISCUSSED IN THIS PAPER**

Based on information provided by City staff and technical review of the current ordinance, the topics and recommended approaches covered in the Zoning Ordinance Update Issue Paper are as follows:

- Treatment of Nonconforming Uses;
- Development Review and Approval;
- Commercial Center Tenancy;
- Zoning Districts; and
- Residential District Side and Rear Setback Requirements.

Each issue is addressed in subsequent sections of this paper.

This paper is intended as a guide for discussion and decision-making by City staff and the Planning Commission and to inform other ordinance users and community members of issues and choices related to land use regulation. The comments received will provide direction for addressing these topics as the process of drafting preliminary regulations commences.

## Treatment of Nonconforming Uses

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A community considering the adoption of a zoning ordinance update is inevitably faced with the problem of nonconforming uses; uses that were legally established before the zoning ordinance update but that would be prohibited or regulated differently under the new ordinance. They are pre-existing uses that do not meet the requirements of the updated ordinance.

***Nonconforming Use:*** *A use of property that was in compliance with zoning regulations at the time the use was established, but which, because of subsequent changes in those regulations, is no longer a permitted use.*

Most ordinances contain provisions requiring the removal of these nonconforming uses if they have been abandoned, destroyed, or substantially damaged. The idea was that provisions of this kind, along with requirements restricting the expansion or alteration of nonconforming uses, will eventually eliminate all nonconformities. However, despite these requirements aimed at eliminating nonconformities, many nonconforming uses remain.

*Traditional method of dealing with nonconforming uses include allowing the use to continue but limiting expansion and requiring removal of the use if it has ceased.*

However, nonconforming uses often exhibit a remarkable staying power, in part because they have a high earning capacity as a result of their locational monopoly which has been created and protected by law. Because traditional methods of waiting for eventual elimination of nonconformities have not been satisfactory, some communities have been using amortization provisions as a means of addressing problematic nonconforming uses.

***The Amortization Concept:*** *The constitutional protection afforded the owner of a nonconforming use exists to permit the continuance of the use to the extent necessary to protect the investment of the owner. When a landowner voluntarily abandons a nonconforming use, it is because the use is not considered by its owner to have value and there is no longer a need to protect his investment. Similarly, when a nonconforming use has been destroyed or substantially damaged, the owner's investment has been destroyed and therefore needs no further protection.*

*This line of reasoning is also at the base of the amortization concept. Instead of waiting until there is no longer an investment to protect, the owner of the use is given a period of time in which he is expected to amortize or recoup his investment.*

One of the challenges Newark will face when it updates its zoning ordinance will be to minimize the creation of nonconforming uses that will increase the time and cost of zoning administration and could create obstacles to maintaining and upgrading some nonconforming properties even when such changes would help to achieve the City's land use and development objectives.

The overall goal of Newark's current provisions for nonconforming uses is to "accommodate the reasonable continuance of nonconforming uses, structures, and signs while encouraging their eventual elimination." Currently, Newark's zoning ordinance prohibits the enlargement, alteration, or replacement

of any nonconforming use. Nonconforming uses abandoned for six months may only be used in accordance with the regulations for the district in which it is located. Destroyed or damaged single family homes may be reconstructed, but other uses or structures suffering damage to a greater extent than 50 percent of their value, may not be restored without being brought into full compliance unless the Planning Commission finds there are no feasible alternatives for restoration of the nonconforming structure under current zoning regulations.

An effective strategy for dealing with nonconforming situations recognizes that nonconforming uses are not all the same. Some are the type of activities, such as auto repair shops that generate noise, odors, dust, and traffic or require the use of potentially hazardous materials or procedures. Other nonconforming situations, such as billboards and adult businesses, may have little or no value to the community, but may be shielded by statutes and case law. Another category is made up of buildings and uses that help to define the distinctive character of a neighborhood or district—a long-time commercial use in a residential neighborhood or older homes that have substandard yards or inadequate parking.

The City may want to consider a tiered system that distinguishes between those nonconforming uses that are small and relatively benign and those that are detrimental to surrounding owners and residents. The ordinance could be changed to make it easier to up-grade those nonconforming properties that do not substantially conflict with General Plan policies and to eliminate those activities and structures that are clearly incompatible with and detrimental to surrounding uses, thereby promoting adaptive reuse of certain types of uses. A tiered system could include a procedure for allowing nonconforming uses to be continued, and even expanded, subject to certain requirements.

#### **RECOMMENDATION: ESTABLISH A CLASSIFICATION SYSTEM FOR NONCONFORMING USES**

The City could adopt a new approach to regulating nonconforming uses that would allow it to distinguish among categories of nonconforming uses that should be regulated differently. Benign uses (e.g., those that have no impacts on neighbors) would be treated differently from potentially harmful or detrimental nonconforming uses. Such a system could apply different rules to:

- Benign nonconforming uses that could be treated as conforming, expand, and remain indefinitely, as determined by the City and subject to conditions or limitations, with provisions for revoking its “benign” status if new nuisances arise;
- Uses that should be replaced at some time in the future in order to implement the General Plan’s long term objectives where redevelopment and/or reuse is unlikely in the near term because of economic or market considerations; and
- Uses that are inconsistent with the General Plan and zoning regulations, will impede implementation of the Plan, and are detrimental because of health, safety, nuisance or substantial aesthetic impacts.

#### **Benign Nonconforming Uses**

In this classification system, benign uses are those that do not have the potential to adversely impact surrounding properties. A small grocery store or office could be classified, for example, as benign, while an engine rebuilding business, auto body shop, or adult bookstore could not. The Zoning Ordinance would include the formulation of test parameters to classify a nonconforming use as benign, which may include the following criteria:

- Does not generate noise or odors incompatible with surrounding uses;
- Does not create significant traffic; and
- Does not involve activities or processes that are potentially harmful or dangerous.

The process of determining a benign nonconforming use could provide authority to impose conditions to ensure that uses deemed benign do not change their operations in a way that may adversely affect neighbors (e.g., a condition limiting hours of operation or prohibiting alcohol sales).

#### **Nonconforming Uses that are Not Detrimental to Public Health and Safety**

Uses that should be replaced at some time in the future, but are not detrimental because of health, safety, or substantial aesthetic impacts could remain indefinitely with restrictions on expansion or alteration. The Zoning Ordinance would also include provisions requiring the removal of these nonconforming uses if they have been abandoned, destroyed, or substantially damaged.

#### **Detrimental Nonconforming Uses**

Nonconforming uses that create adverse impacts and are detrimental to health and safety pose a problem when market conditions do not support redevelopment in the near term. The Zoning Ordinance could include amortization provisions which allow the City to require termination of the use within a certain time period. Amortization provisions allow the City to control how and when a nonconforming use terminates by allowing it to continue for a specific time frame calculated to accommodate the estimated useful economic life. Because amortization allows the nonconforming use to exist through the end of its useful economic life, no compensation is required because it allows the owner, at a minimum, to recoup his investment.

## Development Review and Approval

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Zoning provisions governing development review (i.e. City land use decisions) and other administrative matters create the procedural environment through which the City can achieve the goals and policies set forth in its General Plan and other adopted plans. At their best, development review provisions can promote the type of development a community desires by providing a clear, predictable path to project approval. Conversely, vague review processes with unclear requirements can cause property owners and potential investors a high level of anxiety, frustrate community residents, and severely dampen a City's ability to attract desirable growth.

Generally, prospective investors value three central qualities in any administrative ordinance: certainty in the requirements and structure of the review process, built-in flexibility to adjust development standards to the needs of individual projects, and opportunities to request relief from requirements that constitute a substantial burden. Certainty about the types of development they can expect to see in their community is also important to residents. The degree to which Newark can incorporate these qualities into the Zoning Ordinance update will help improve its ability to compete for development in the near future.

The flexibility of a zoning ordinance is largely defined by its hierarchy of uses and their required permits. This hierarchy establishes the different levels of review the ordinance requires to make various types of zoning decisions. These decisions typically range from a relatively informal counter staff review of proposed uses and structures for compliance prior to the issuance of a building permit to more formal and complex procedures requiring public notice and a hearing before the Planning Commission or other review committee.

The primary factor influencing a project's place in the hierarchy of uses is whether the proposed use is permitted "by right" or whether a Conditional Use Permit with review by the Planning Commission is required. This determination is a reflection of community issues and concerns and is influenced by how a jurisdiction selects and designs administrative techniques. It is often possible, for example, to reduce the review threshold for a particular type of application (i.e., place it lower in the hierarchy) that is routinely approved or by increasing the specificity of development standards and performance-based criteria to address concerns that warranted a higher level of review.

The Zoning Ordinance Update provides an opportunity to adjust review thresholds based on analysis of the types of issues and projects in the City that have typically generated the most interest and concern. Generally speaking, responsibilities should be assigned with a view toward minimizing the number of players involved in making any given decision, while increasing opportunities for meaningful public input.

### **DECISION-MAKING BODIES**

Newark's current Zoning Ordinance divides decision-making authority among a number of bodies and officers, as outlined below.

#### **Community Development Director**

Newark's Community Development Director (Director) fulfills a variety of functions, including receiving and determining completeness of applications for land use permit approvals, deciding on requests for modifications of specifically identified standards associated with certain uses, issuing home occupation

permits, approving limited exceptions to fence and wall requirements, allowing tandem parking in certain situations, granting use of the transition overlay zone district, and conducting single family residential design review. The Director is also a member of the Joint Staff Committee described below.

#### **Zoning Administrator**

The Zoning Administrator is designated by the City Manager. The role is typically and currently filled by the Community Development Director. The Zoning Administrator reviews and makes decisions on cottage food operations, large family day care homes, large residential care facilities, and administrative variances.

#### **Joint Staff Committee**

The Joint Staff Committee is composed of the Community Development Director, the Public Works Director, and the Fire Chief, or their designated alternates. The Joint Staff Committee reviews all new buildings, additions, and major exterior renovations to multifamily buildings as described in Section 17.16.200, Joint Staff Committee Review; projects in the CM District that do not otherwise require Architectural and Site Plan Review; and all new buildings, additions, major exterior renovations, and requests for setback reductions in the MP, ML, MG, and MT-1 districts. Additionally, the Joint Staff Committee conducts Site Plan and Architectural Review.

#### **Planning Commission**

The Planning Commission is responsible for review of Use Permits, Planned Unit Developments, and Variances. The Planning Commission also hears appeals from some decisions made by the Director or Joint Staff Committee. It also adds to the list of permitted uses within zoning districts and recommends actions to the City Council regarding land use and development, including amendments to the Zoning Map, Zoning Ordinance, and General Plan. The Planning Commission also receives report on decisions made by the Director, Zoning Administrator, and Joint Staff Committee.

#### **City Council**

The City Council delegates authority for implementation of the Zoning Ordinance; however, it ultimately is the final decision-making body for all zoning-related issues. It hears all appeals from the actions of the Planning Commission. It sets fees and processing costs for applications. The City Council hears and decides recommendations from the Planning Commission on Zoning Ordinance and General Plan amendments. The City Council also receives report on decisions made by the Director, Zoning Administrator, and Joint Staff Committee. In addition, according to current practice, most Planning Commission actions are made contingent on approval of the City Council through a condition of approval.

### **LAND USE PERMITS AND APPROVALS**

The following table summarizes the types of land use permits and approvals that the current ordinance authorizes, and lists the authorities that can issue these approvals.

<b>DISCRETIONARY APPROVALS AND ISSUING AUTHORITIES</b>		
<i>Permit Type</i>	<i>General Purpose</i>	<i>Issuing Authority</i>
Use Permit	Required for some uses to establish conformance with the Ordinance, General Plan, or other plans and policies, as well as compatibility with adjacent properties	Planning Commission
Planned Unit Developments	Allow planned developments which conform with the purposes of the Zoning Ordinance, although they deviate in certain respects from the zoning map and the district regulations	Planning Commission
Variance	Allows the modification of one or more site development standards that cause unnecessary hardship	Planning Commission
Administrative Variance	Allow setback reductions on lots with single family dwelling units	Zoning Administrator
Site Plan and Architectural Review	Review of all new buildings, additions, and major exterior renovations in all Commercial Districts	Joint Staff Committee
Joint Staff Committee Review	Review of all new buildings, additions, and major exterior renovations to multi-family buildings and in the MP, ML, MG, and MT-1 Districts	Joint Staff Committee
Cottage Food Operations, Large Family Daycare, and Residential Care Facility Review	Ensure compliance with the Zoning Ordinance	Zoning Administrator
Single Family Design Review	Review of new single-family residences, second-story additions and exterior modifications to existing single-family residences, and additions and exterior modifications at the front of existing single-family residences	Director
Home Occupation Permits	Ensure compliance with the Zoning Ordinance	Director

All decisions by the Director, Zoning Administrator, and Joint Staff Committee are reported to the Planning Commission and City Council. Although these are reported as “optional review items”, the potential for review creates a situation where any decision of the Director, Zoning Administrator, or Joint Staff Committee is final until the Planning Commission and City Council have made a determination, which can take 45 days or more.

**RECOMMENDATION: REVISE ADMINISTRATIVE PROCEDURES TO STREAMLINE DEVELOPMENT REVIEW**

There are a variety of options that Newark could consider for revising its current regulations to streamline the decision-making process. The Zoning Ordinance Update provides an opportunity to adjust review thresholds based on analysis of the types of issues and projects in the City that typically generate the most interest and concern. Generally speaking, responsibilities should be assigned with a view toward minimizing the number of players involved in making any given decision, while increasing opportunities for meaningful public input.

### **Establish a Minor Use Permit Process**

The Zoning Ordinance update could include a new type of use permit, Minor Use Permit, approved by the Community Development Director. The Minor Use Permit would be required for uses that are “limited in scope and impacts” but which currently require a hearing by the Planning Commission. Applications for Minor Use Permits would be subject to public notice and a hearing before the Director would only be held if someone requested one. All decisions would be subject to appeal. Notice of decision or notice of pending decision would be given to Planning Commissioners with an option for the Planning Commission to call for review of a project. Such a procedure creates more certainty in the process for both the community and developers while still providing opportunities for meaningful public input. Conditional Use Permits would be reserved for uses that pose potential or significant land use compatibility issues.

### **Simplify the Design Review Process**

Current procedures and requirements for Joint Staff Committee Review, Single Family Design Review, and Architectural and Site Plan Review could be consolidated and augmented to streamline the design review process. Specific design review criteria would be identified to guide decision-makers review of projects and ensure high quality site planning and design. Design review would be conducted by the Community Development Director except the Planning Commission would conduct design review for all projects otherwise requiring Planning Commission approval. As with the Minor Use Permit process, notice of decision or notice of pending decision of the Community Development Director would be given to Planning Commissioners with an option for the Planning Commission to call for review of a project.

### **Integrate Use-Specific Standards**

Many jurisdictions have been able to streamline zoning review by amending their ordinances to include carefully crafted standards and restrictions that are specific to particular uses. Standards can also be specific to zoning districts or clearly defined physical locations (e.g., arterial streets, locations within 100 feet of a residential zoning district). The Zoning Ordinance could also include a process that allows staff to approve an exception to a standard when it is minor, meets the intent of the ordinance, and produces a better solution for the project and for adjacent properties. As a result, the community and decision-makers may be confident their vision is being implemented and may reduce its watch over individual projects, allowing more projects to be approved administratively.

## Commercial Center Tenancy

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There are a number of uses permitted by-right within the City's Commercial Retail Districts besides retail. These uses include, but are not limited to, office, restaurant, and personal service uses. As such, the tenancy of individual establishments within a commercial center may change among a variety of uses without any land use review or approval by the City.

Currently, the market demand for purely retail uses is lower than the market demand for other uses permitted by-right in the Commercial Retail Districts, particularly restaurants. As a result, many retail establishments in commercial centers are being replaced by restaurant, office, or personal service uses and the City is experiencing a loss in the amount and variety of available retail services.

Loss of retail services not only impacts resident's accessibility to retail goods, the uncontrolled change of tenancy from retail to higher-intensive uses can impact the availability of parking. Restaurants have an overall higher parking demand than retail uses. In Newark, restaurants are required to provide one parking space for every 100 square feet of floor area. Retail stores, business offices, and service establishments are required to provide one parking space for every 200 square feet of floor area.

When a commercial center is proposed, the City calculates required parking based on the proposed use and associated square footages. Because the tenant mix is typically not known at this stage in the project, the parking ratio used is that for general retail stores, business offices, and service establishments and commercial centers are generally required to provide one parking space for every 200 square feet of floor area. This is half the number of parking spaces required for restaurants. Once the commercial center is established, a change in tenancy from one permitted use to another permitted use does not trigger a recalculation of the parking requirements.

### **RECOMMENDATION: INCORPORATE PROVISIONS TO REQUIRE REVIEW OF CHANGES IN TENANCY FROM RETAIL TO OTHER USES IN COMMERCIAL CENTERS**

#### **Require Each Commercial Center to Contain a Certain Amount of Retail Services**

The City could require each commercial center to contain a certain percentage of space or certain square footage dedicated to retail uses, ensuring an even distribution of retail uses throughout the City's commercial centers. This approach can be effective in commercial centers controlled by a single entity. However, in commercial centers with where there are different owners for individual sites, determining an equitable way to identify which owner is responsible for providing the required commercial area is difficult and can result in burdening the "last one in".

#### **Require a Minor Use Permit for Uses Other Than Retail in Commercial Centers**

The City could require discretionary review, such as through a Minor Use Permit process suggested previously in this paper, for uses other than retail in commercial centers. This approach would facilitate the establishment of retail uses. Other uses would not be prohibited, but through the Minor Use Permit process, the City is afforded the opportunity to review the appropriateness of other uses on a case-by-case basis. Through this process, the City can evaluate whether the area is adequately served by retail and address other areas of potential concern such as the availability of parking.

**Calculate Parking Requirements for Each Individual Use and Change in Tenancy in Commercial Centers**

Alternatively, the City could require the number of parking spaces provided for a commercial center to be equal to the sum of the requirements calculated separately for each use. Where there is a change in tenancy, the City would review how much parking is provided by the commercial center and calculate the number of parking spaces required separately for each existing use and the proposed new use to ensure there is enough parking provided to meet the total amount of parking required for the new use. This would have the effect of encouraging retail uses as they require less parking than restaurant and other higher-intensity service uses. There would be no additional discretionary review, however, with each change in tenancy, the City would need to review how much parking is available and how much parking is required. If there is not enough parking for the new use, a business license would not be issued.

**Require a Master Use Permit for Commercial Centers**

Another approach is to require a Master Use Permit for multi-tenant commercial centers. This type of permit would contain a generic list of “allowable uses” that can be developed on the site, even if they are not present when the project is originally built but are reasonably anticipated by the developer. In this way, new uses can fill vacated spaces without having to initiate another permit process, however, the City would review the use replacement for consistency with the Master Use Permit.

The permit could specify the number of square feet within a development that may be devoted to each use classification, and then furthermore state allowable variations from those numbers (ex. up to 10 percent). As long as the project adheres to that area limit, developers are free to construct, divide, or aggregate uses as they wish.

## Zoning Districts

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The City's current practice for updating zoning districts is that after a General Plan update, property zoning is not updated until the property owner requests such an update. This results in the alignment of zoning districts and General Plan land use designations occurring over an unknown period of time and creates the need for provisions addressing the transition, or interim, period where the zoning is not consistent with the General Plan.

The General Plan functions as a community's constitution for future development. Once adopted, the General Plan becomes the foundation for all policies and day-to-day land use decisions made within city limits. When the zoning and General Plan are not in alignment in relation to a specific property, there can be much confusion as to what can be built and what rules apply.

Users of a zoning ordinance, including applicants, property owners, community members, staff, and decision makers, want to know what can be built, how land can be used, and what the rules the City follows for development review. Vague review processes with unclear requirements can cause developers a high level of anxiety, frustrate community residents, and severely dampen a City's ability to attract desirable growth. Additionally, California State Law requires zoning to be consistent with a city's general plan.

### **RECOMMENDATION: REZONE PROPERTY CONSISTENT WITH THE GENERAL PLAN**

In order to provide a clear, predictable set of requirements for the use and development of property within the City, the Zoning Ordinance update includes Zoning Map updates for consistency with the General Plan Land Use Designations. In many cases, this will consist of a 'reclassification' or renaming of zoning districts to better align with General Plan Land Use Designations. Other cases will involve rezoning of property. Property owner notification will be given for those properties proposed to be rezoned as part of the Zoning Ordinance Update project.

## Residential District Side and Rear Setback Requirements

An essential part of enhancing neighborhoods is ensuring that building form fits the intended character of an area. Building height and setback requirements can go a long way toward enhancing the character of neighborhoods, creating a sense of visual separation and openness between development, and providing light, air, and a sense of privacy. However, overly detailed and prescriptive standards can result in mediocre and standardized projects and limit an applicant's ability to propose a creative design solution that meets the development standard's objective.

The current regulations require a minimum side yard setback of 10 percent of the lot width with a minimum requirement of five feet and a maximum requirement of 10 feet. The minimum rear yard setback is 25 feet. An additional stepback of one foot is required for each two feet of height of a structure above 12 feet. It is increasingly uncommon for new residential development to be single story. Therefore, these standards effectively require residential structures to be designed in a 'wedding cake' style where the second story is stepped back six feet from the first story on the side and rear facades.



Much of the remaining residential development in Newark will consist on in-fill lots. Increasingly, residential development on in-fill lots consists of multi-story structures in order to accommodate the amenities, building features, and square footage that meet current demands. The current standard, which requires a stepback for portions of a structure above 12 feet, is reflective of outdated residential development practices and does not recognize the role other elements of building and site design play in ensuring compatibility with neighboring development. For example, landscaping and the careful placement of windows, an upper-story stepback may not have a noticeable effect on compatibility.

### **RECOMMENDATION: ADJUST RESIDENTIAL DISTRICT SIDE AND REAR SETBACK REQUIREMENTS TO ALLOW FLEXIBILITY IN BUILDING DESIGN WHILE MAINTAINING A SENSE OF VISUAL SEPARATION AND OPENNESS**

Compatibility concerns and the desire to maintain a sense of separation and openness between development is best addressed by flexible setback standards coupled with review by a design review authority. The task of the design review body is to ensure project design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, and the general community. More flexible side and rear setback requirements can serve to facilitate residential infill development and allow creative design solutions while still addressing compatibility and small lot development challenges. At minimum, the current setback requirement could be adjusted to require a stepback for portions of a building over 25 feet, reflected current development trends of multi-story development.