

City of Piedmont
PLANNING COMMISSION AGENDA REPORT

DATE: July 8, 2024

TO: Planning Commission

FROM: Gopika Nair, Associate Planner

SUBJECT: Study Session Introducing Preliminary Results of a Citywide Commercial Uses Survey, and Proposed Revisions to the Provisions in City Code Chapter 17 related to Permitted Commercial Uses and Conditional Use Permits

AGENDA ITEM NUMBER 7

PURPOSE OF THE STUDY SESSION:

This agenda item introduces and discusses proposed changes to the conditional use permit (CUP) process, standards for approval, and conditional/permitted uses in Zone D. The agenda item also includes a preliminary review of a citywide commercial uses survey that is still being conducted.

EXECUTIVE SUMMARY:

This report discusses streamlined permitting processes for commercial development in Zone D, aligning with State housing mandates (SB 35 and SB 330) and the City's 6th Cycle Housing Element.

Key changes:

- **Permitted Uses:** Some commercial uses that are of benefit to the larger community are proposed to be allowed "by right" without a CUP, encouraging commercial development.
- **Conditional Use Permits:** The proposed changes include separate standards for approval for conditional commercial uses and conditional residential uses.

The intent of the proposed Code revisions related to permitted and conditional uses is multifold: to implement Housing Element programs, to provide consistency with State laws, and to facilitate commercial uses in the City's commercial areas that benefit the surrounding community. In addition to introducing the proposed Code changes, this report presents preliminary results of a citywide commercial uses survey that is intended to inform the proposed permitted "by-right" commercial uses.

BACKGROUND

All the zoning districts in the City have a list of uses that are permitted and uses that are conditionally permitted in the respective zones. *Permitted use* means a use that is permitted by

right within a zoning district without a planning permit (sign and building permits are still required, as is a business license). A **conditional use** is a use of land or buildings that may be essential or desirable to a particular community, but which are not allowed as matter of right within a zoning district and that must seek approval through a CUP process. Staff recommends revisions to the permitted and conditionally permitted uses in Zone D: Commercial and Mixed-Use and changes to the permitting process and standards surrounding regulations for conditional uses in all zones for the reasons described below:

1. Housing Element Program 4.M and State Law: In April 2024, Zoning Ordinance updates implementing certain state laws and Housing Element programs were adopted by the City Council. These updates included amending permitted and conditional residential uses in all the zoning districts. In a continuing effort, further revisions are proposed to implement Housing Element Program 4.M., consistent with SB 330 and SB 35, to allow for mixed-use developments (that meets certain criteria- primarily providing affordable housing) to be a permitted use in Zone D.

4.M Facilitate Multi-Family and Residential Mixed-Use Projects by Right Subject to Objective Standards

“Consistent with State law, including SB 35 and SB 330, the City will adopt objective design standards for multi-family and residential mixed-use projects. The purpose of these standards is to expedite the approval and development process for such projects and support the City in meeting its housing goals. The City is currently undergoing a study to develop recommendations for objective design standards for multi-family and residential mixed-use projects in Zone C and Zone D, with the intent of increasing density and development potential, reducing level of review and allowing multi-family and residential mixed use by right, subject to the objective standards. Updates are planned in two phases, first, to amend the Piedmont Design Guidelines, and second, to amend the City Code. Recommendations include upper story step-backs, articulation requirements, regulation of building placement, standards for frontage design, and standards for architectural elements. Code amendments SB35 development will include consideration of relaxation of street yard setback, coverage, and height standards, as well as new provisions for required private and shared open space and transportation demand management standards. The City has a target of 50 multi-family housing units facilitated by program 4.M, during the planning period.”

SB 330, California's Housing Crisis Act (HCA) aims to boost housing construction in urban areas. Enacted in 2019, it includes regulations to remove zoning barriers and expedite permits to achieve this goal.

The Zoning Ordinance update adopted by the City Council in April 2024 provides that the residential component of a mixed-use development in Zone D is a permitted use; however, the commercial component of mixed-use development remains a conditional use. Because State law requires that a mixed-use development that meets certain criteria be processed ministerially with no discretionary review, the City cannot require a discretionary conditional use permit for the commercial uses in such a development project. Thus, in this next round of updates, staff proposes to identify some commercial uses that can be

permitted as a use-by-right in Zone D. To help with this effort, the City has launched a [survey](#) to gauge the community's preferences for commercial uses in Zone D.

2. **Housing Element Program 4.U:** To approve any conditional use permit, the review body must make findings for approval. The findings provide a framework for making decisions, facilitate orderly analysis, reduces the likelihood that the City will leap randomly from evidence to conclusions, serves a public relations function by demonstrating that administrative decision-making is careful, reasoned, and equitable, and enables parties to determine whether and on what basis they should seek judicial review and remedies. The existing CUP approval findings criteria contain language prioritizing service to Piedmont residents and lack objective standards. Housing Element Program 4.U Amend Conditional Use Permit Findings requires the City to develop CUP findings criteria that distinguish between residential and commercial uses requiring a CUP and eliminate a subjective standard for residential uses.

Housing Element Program 4.U Amend Conditional Use Permit Findings

“To eliminate a potential governmental constraint, the City of Piedmont proposes new program 4.U, Amend Conditional Use Permit findings. In implementing program 4.U, the City will develop a conditional use permit process that complies with State law and distinguishes between required findings for commercial uses and required findings for residential uses. The new conditional use permit findings for residential uses will no longer require a finding that “The use is primarily intended to serve Piedmont residents (rather than the larger region)”.

To implement the Program and comply with state law, staff recommends updates to the existing findings criteria section 17.68.040 of Division 17.68.

3. **Improve Current Procedures and Practices:** In reviewing and processing CUPs during the past several years, staff has identified areas for improvement and recommends updates to the current procedures and practices. These updates add clarity to the code language, modifies the permit applicability, and adds language clarifying the validity of the permit.

The next section of the report discusses the proposed updates to Provisions in City Code Chapter 17 related to Permitted Commercial Uses and Conditional Use Permits, in this order:

1. Updates to Uses in Zone D
2. Citywide Commercial Uses Survey
3. Updates to the CUP division.

DISCUSSION:

1. Permitted and Conditional Uses in Zone D: Commercial and Mixed-Use

In this section staff compares existing uses with proposed revisions to uses in Zone D. The proposed updates will add some commercial uses as a permitted use (or use-by-right) to be consistent with Housing Element Program 4.M and state law, and importantly to streamline and

expedite approvals for commercial projects and mixed-use projects that provide affordable housing. These regulations are crucial determinants of permissible uses for commercial properties, and they can significantly influence property values and potential profitability.

Current Zone D Conditional and Permitted Uses

- There are no permitted (by-right) commercial uses. Except for those that are prohibited, all the commercial uses allowed in Zone D require a conditional use permit, including those that are part of a mixed-use project.
- Residential uses that are allowed as part of a mixed-use development in Zone D include several that are a permitted use and one that is a conditional use.

Proposed Revisions to Zone D Conditional and Permitted Uses

- Identify some commercial uses that would be a permitted use. These commercial uses can be stand-alone uses or part of a mixed-use development.
- The commercial uses not identified as permitted uses would require a CUP, or they could be prohibited.

To understand what types of businesses the community prefers in Zone D a citywide survey is underway. This survey is discussed in the next section.

2. Citywide Commercial Uses Survey

Voices of the community members are crucial in shaping the zoning laws for Zone D, a vital area encompassing Grand Avenue (Oakland border to Linda Ave) and Highland Avenue (Civic Center). Zoning decisions directly impact a community's character and well-being, so public opinion is a key consideration for regulatory bodies.

The City has launched a [survey](#) to gauge the community's preferences for 16 commercial uses proposed for Zone D. The 16 uses include: Hardware store, dry cleaner, financial institution, fitness center, liquor store, offices-general professional (real estate, architectural), offices-medical/dental, restaurants and cafes, retail-food and beverage sales, retail- nurseries and garden supplies, retail sales- neighborhood serving, tutoring/lessons, dance, music and martial arts studio, bar/tavern, personal services (beauty parlor, barber shop), and animal supplies and services (veterinary, boarding, grooming, hospital sales).

The survey delves deeper, asking the community to weigh in on permitting options (permitted without a hearing, permitted with limitations, or not permitted) for each use. Additionally, community members can suggest standards for permitted uses. For example, a community member might support cafes but want limitations on alcohol service, operating hours, or drive-thru options. The survey also offers an option to propose uses not on the list, ensuring that the community's voices are fully captured.

The survey closes on July 19, 2024.

Survey results so far: With 127 responses received as of June 21, 2024, a significant portion of responders hail from within a 10-minute walk of the Grand and Highland Avenue commercial areas, indicating strong local interest. Current data suggests a community preference for restaurants and cafes, tutoring services, dance studio, music studio, martial arts studio, retail nurseries and garden supplies, neighborhood-serving retail stores, food and beverage retailers, and professional offices.

3. Current and Recommended Revisions to division 17.38 Conditional Use Permits

A CUP allows a local jurisdiction to consider through a public hearing process special uses which may be essential or desirable to a particular community, but which are not allowed as a matter of right within a zoning district. Consideration of a CUP is a discretionary act, and as currently provided in Piedmont's City Code a CUP hearing is held by both the Planning Commission, which makes a recommendation, and the City Council, which is the decision-making body.

Current CUP Regulations:

- All commercial uses within Zone D (Commercial and Mixed Use) require a CUP, even for minor modifications to an existing business with a CUP and for any changes to the structure in which the business is located.
- Findings criteria for a review body to approve a project are not entirely objective and implies providing service only to Piedmont residents.
- The findings criteria cannot be applied effectively to both commercial uses and residential uses.

Proposed Revisions to CUP Procedure:

- Applicability: Staff proposes that minor structural modifications to a building housing an existing use would no longer trigger the need for a CUP. Currently, such proposed construction also requires a design review permit, and that requirement would remain unchanged. It is unnecessary and burdensome to require a CUP for a project in which the use remains largely unchanged.
- Findings: To satisfy State law, Staff proposes two separate sets of findings for approval: a) objective findings criteria applicable only to residential or similar conditional uses (such as large family day care homes, and certain residential care facilities); and b) discretionary findings criteria applicable to commercial or similar conditional uses. This includes replacing the requirement to primarily serve Piedmont residents with a focus on serving the "general neighborhood."

- Validity: To ensure clarity and align with best practices, staff recommends adding a new section that explicitly states the CUP is attached to the property, not the owner. This means the permit remains valid even in the event of a change in ownership or business operation (as long as the use approved for the property remains the same).

COMMISSION ACTION:

This is an informational item only and no action is required. Through a discussion of the information provided in this study session and the survey, staff seeks responses from the Commission and public that will help inform draft revisions to Zone D, CUP and other related divisions of the Zoning Ordinance that the Commission will be asked to consider for a recommendation to the City Council at a future undetermined Planning Commission meeting.

CONCLUSION AND NEXT STEPS:

This report proposes a streamlined approach to Zone D commercial development, aligning with state housing mandates and the City's housing goals. By establishing permitted uses that the community finds desirable, the City aims to facilitate mixed-use development and streamline commercial permitting. The proposed CUP revisions focus on efficiency, objectivity, and clarity and will be informed by public engagement, including the current survey. Early survey data suggests community preferences for retail stores, professional offices, and neighborhood-serving businesses.

Once staff has finalized draft updates to the Zoning Ordinance, the updates will be brought to both the Planning Commission (which makes a recommendation) and the City Council (which is the decision-making body) for their consideration.

LINKS TO RELEVANT DOCUMENTS:

1. Commercial Uses Survey:
https://piedmont.ca.gov/news/permitted_commercial_uses_survey_june_2024
2. The City of Piedmont's 6th Cycle [Housing Element](#)
3. Piedmont City Code [Chapter 17, Planning and Land Use](#)
4. [Council Report and Ordinance](#) adopting Zoning Ordinance Updates that went into effect on April 3, 2024.