

# Planning Commission Agenda Item

# **February 4, 2013**

TO: Chair Steiner and

**Members of the Planning Commission** 

**THRU:** Leslie Roseberry

**Planning Manager** 

FROM: Anna Pehoushek, Principal Planner

#### **SUBJECT**

**PUBLIC HEARING**: Zone Change No. 1268-12 to rezone properties in the Katella Corridor 2010 General Plan Land Use Focus Area to *Urban Mixed Use* (UMU) in order to establish consistency between General Plan land use designation and zoning in accordance with State law.

#### **SUMMARY**

The City of Orange General Plan update was adopted in March 2010. As part of the 2010 General Plan update, properties located between Batavia Street and the western City limit in the Katella Corridor General Plan Land Use Focus Area were designated *Urban Mixed Use* (UMIX). Presently, the properties in this area are zoned *Commercial Recreation* (CR). State law and the City's General Plan Implementation Plan require consistency to be established between the General Plan land use designation and zoning classifications. The zoning classification that corresponds to the UMIX General Plan land use designation that is appropriate for this area is *Urban Mixed Use* (UMU). Zone Change No. 1268-12 establishes General Plan and Zoning consistency for the affected properties.

#### RECOMMENDED ACTION

1) Adopt Planning Commission Resolution No. PC 07-13 entitled:

A RESOLUTION OF THE PLANNING COMMISSION RECOMMENDING THE CITY COUNCIL APPROVE ZONE CHANGE NO. 1268-12 AND ADOPT THE DRAFT ORDINANCE REZONING PROPERTIES IN THE KATELLA CORRIDOR 2010 GENERAL PLAN LAND USE FOCUS AREA BETWEEN BATAVIA STREET AND THE WESTERN CITY LIMIT TO URBAN MIXED USE (UMU) TO ESTABLISH CONSISTENCY BETWEEN THE URBAN MIXED USE GENERAL PLAN LAND

# USE DESIGNATION AND ZONING CLASSIFICATION IN ACCORDANCE WITH STATE LAW

#### **AUTHORIZATION/GUIDELINES**

Orange Municipal Code (OMC) Section 17.10.020 requires City Council approval of amendments to the Zoning Map, and also establishes procedures by which the Planning Commission reviews such amendments and makes recommendations to the City Council.

#### **PUBLIC NOTICE**

Public notice of the proposed Ordinance Amendment was published in the Orange City News newspaper on January 24, 2013. A total of 173 notices were mailed to the owners of affected properties and owners of properties within 300 feet of the affected properties. Notices were also posted at City Hall and Library posting locations.

#### **ENVIRONMENTAL REVIEW**

Final Program Environmental Impact Report (EIR) No. 1815-09 for the Comprehensive General Plan Update was certified on March 9, 2010 and prepared in accordance with the California Environmental Quality Act (CEQA). The proposed activity is within the scope of the previously approved General Plan and is adequately described in the previously certified General Plan Program EIR for purposes of CEQA.

#### PROJECT BACKGROUND

The City's 2010 General Plan was adopted on March 9, 2010. The 2010 General Plan Land Use Element included re-designation of properties in certain properties of the Katella Corridor Land Use Focus Area. A map depicting the Katella Corridor General Plan Land Use Focus Area is provided as Attachment 2 to this report. The land use designation for properties in the Katella Corridor between Batavia Street and the western City limit was changed from CR to UMIX in the 2010 General Plan update. The appropriate commercial zoning that corresponds to the UMIX General Plan designation is UMU.

In accordance with State planning law (Government Code §65860), the City must establish consistency between the General Plan and its zoning. Furthermore, Implementation Program I-1 of the General Plan Implementation Plan calls for consistency between General Plan and zoning designations to be established.

#### PROJECT DESCRIPTION

The portion of the Katella Corridor General Plan Land Use Focus Area between Batavia Street and the western City limit has a General Plan land use designation of UMIX, however is presently zoned CR. There is no development proposal associated with this Zone Change.

The proposed Zone Change would change the zoning classification of the parcels in this area to UMU. Thus, Zone Change No. 1268-12 establishes General Plan and zoning consistency for the affected properties.

#### **Previous City Council Action:**

In May 2011, the City Council adopted the City's mixed use zoning standards and adopted Zone Change 1258-10 to put the zoning in place for all but one of the mixed use zoning districts established in the 2010 General Plan. Mixed use zoning was not put in place in the westernmost portion of the Katella Corridor Land Use Focus Area that is the subject of Zone Change 1268-12 due to a 2-2 Council vote, and one recusal due to a conflict of interest. Minutes from the City Council hearings, as well as Planning Commission hearings, are provided as Attachments 3 and 4 to this report.

## APPLICATION(S) REQUESTED/ REQUIRED FINDINGS

The request involves a Zone Change/Ordinance Amendment. Zone Change No. 1268-12 will establish consistency between the General Plan land use designations and property zoning classifications on the subject properties.

Required Findings: There are no required findings for an Ordinance Amendment or Zone Change since it is considered a legislative action. However, OMC Section 17.10.020 requires that when the Planning Commission makes a recommendation to the City Council, the Planning Commission include in its decision: 1) the reasons for the recommendation; 2) the relationship of the proposed amendment to the General Plan and applicable Specific Plans; and 3) the environmental determination. These three items are addressed in the Planning Commission Resolution. By adopting the Resolution, the Planning Commission will have complied with this Code provision.

#### ANALYSIS/STATEMENT OF THE ISSUES

Staff is bringing the Zone Change for the western Katella Corridor Focus Area back to the Planning Commission and City Council for reconsideration based on three factors: 1) the need to resolve the inconsistency between the General Plan and Zoning designations in accordance with state planning law; 2) to streamline the review process for changes in use and new development; and 3) the implications the failure to re-zone in 2011 presents on the City's upcoming update to the General Plan Housing Element.

#### **Issue 1: State Law**

As noted previously, state planning law requires consistency to be established between a City's General Plan and Zoning designations. Presently, an inconsistency exists in the western portion of the Katella Corridor General Plan Focus Area that is the subject of this Zone Change.

#### **Resolution:**

The proposed Zone Change would establish UMU zoning for the area, which would be consistent with the General Plan UMIX designation. Therefore, compliance with state law would be achieved for properties in the subject area.

#### **Issue 2: Changes in Use and New Development**

The existing inconsistency between the UMIX General Plan designation and CR zoning has the potential to create a barrier for changes in property use or new development because a project that may come forward on property within this area is subject to conflicting City policies. Given the fact that the CR zoning is more restrictive than the types of uses intended to be accommodated under the UMIX General Plan designation (and corresponding UMU zoning), should a property owner be interested in pursuing a use that is consistent with the UMIX General Plan designation but conflict with the CR zoning, they would be subject to spending the time and money associated with an individual Zone Change application and public hearing to establish UMU zoning for their property.

Since the 2011 failure to approve the UMU zoning in the subject Zone Change area, staff has received regular contact from major property owners inquiring about the status of rectifying the inconsistency between the General Plan and Zoning designations. Additionally, as the economy has gradually improved, staff is consistently receiving inquiries about the potential uses allowed and development potential of properties in the area, and conveys information about the status and limitations of the existing zoning. Specifically, contacting parties are told that that certain types of commercial, medical, or residential uses may involve the need to apply for a Zone Change as part of the approval/entitlement process.

#### **Resolution:**

The proposed UMU zoning provides property owners with a wider range of uses that are either "Permitted" or "Conditionally Permitted" on their property than is presently allowed under the CR zoning. A review of the difference in uses in presented in Attachment 5 to this report. Therefore, establishing consistency between the UMIX General Plan designation and UMU zoning eliminates the potential development complexities associated with conflicting City policies applicable to properties in the area, and also provides for a variety of uses that may not presently be accommodated by the CR zoning.

# **Issue 3: Housing Element Update**

The City's Housing Element Update is in the process of being updated in accordance with the state's Housing Element Update schedule, which requires Housing Element adoption by October 2013. In an effort to work with cities, the state is offering a streamlined Housing Element Update review process, provided that a city's existing Housing Element has been certified by the state, and that the city can demonstrate achievement of key action items identified in the Element. The City of Orange is well-positioned to take advantage of the streamlined review

process with its certified Housing Element. However, Policy Action 17 of the City's Housing Element calls for the City to provide adequate sites for housing development.

The City's 2010 Housing Element looked to the UMIX districts established in the General Plan as areas that could provide opportunities for the development of housing to satisfy the City's Regional Housing Need Allocation (RHNA). The UMIX designation accommodates residential development at 30-60 units per acre. The California Department of Housing and Community Development (HCD) recognizes development densities greater than 30 units per acre as densities under which rental rates could fall within "affordable" levels even if a project was a market-rate development. Therefore, the majority of the "Housing Opportunity Sites" identified in the City's 2010 Housing Element are located in the UMIX districts on Town and Country, in Uptown Orange, and in the West Katella Corridor. The mixed use zoning that the City in place in 2011 partially achieves the intent of Policy Action 17 with respect to providing adequate housing sites in the community. However, failure to complete the UMU re-zoning effort on Katella places the City in jeopardy.

Based on contact with HCD staff in recent months, staff has been informed that HCD staff will be looking closely at the City's implementation of Policy Action 17 in making a determination about whether or not the City may be granted streamlined Housing Element review. Staff believes that the City would be best positioned in the Housing Element Update process if rezoning of the West Katella Corridor could be achieved prior to submittal of the Housing Element Update to HCD. Should HCD determine that Orange does not qualify for the streamlined review process, not only will additional staff and consultant time be involved, but HCD could more closely scrutinize other Policy Actions of the Housing Element and impose more onerous affordable housing expectations on the City in order to ultimately certify the City's 2014 Housing Element. Furthermore, rather than being granted an 8-year timeframe until the next Housing Element Update, the City could be subjected to a shorter 4-year update cycle and greater performance expectations.

#### **Resolution:**

Rezoning properties in the West Katella Corridor to UMU will satisfy HCD's expectation that the City re-zone property to provide adequate sites for housing development to achieve its RHNA. Re-zoning will also minimize any risk of the City being found ineligible for streamlined Housing Element review and possibly being subject to a 4-year Housing Element Update cycle as opposed to an 8-year cycle.

#### **Issue 4: On-the-Ground Uses in Relation to Zoning**

During the public outreach phase of the 2010 General Plan update, the City received feedback from property and business owners in the subject area of the Katella Corridor Focus Area regarding the CR land use designation in relation to existing uses in the area. The CR General Plan and Zoning established in the 1990s was designed to encourage certain types of retail, restaurant, and recreational uses to locate along the Katella Corridor. During the years that the CR General Plan and Zoning have been in place, the uses identified in the zoning have not materialized to the extent anticipated by the City. In the area between Batavia and the western

City limit, existing uses consist of the Stadium Promenade theaters and restaurants, the Katella Grill, the badminton club and restaurant, auction houses, office, home improvement, a broadcasting center, and a variety of service businesses, limited light industrial and warehousing uses

Many of the uses have a long-term established within the Zone Change area, however many properties are also experiencing regular tenant turnover or difficulty finding tenants under the existing CR zoning. Therefore, during the General Plan update process, the City and community concluded that a UMIX General Plan designation was more appropriate for this area than the CR designation.

# **Resolution:**

The proposed Zone Change establishes UMU zoning on all affected properties. This zoning accommodates a broader spectrum of commercial uses than would otherwise be permitted under the CR zoning (see Attachment 5).

#### **Issue 5: Legal Non-Conforming Uses**

Certain remaining light industrial uses in the area would become legal non-conforming as a result of the proposed Zone Change. In conjunction with adoption of the 2010 General Plan, the City Council adopted Ordinance No. 12-09 (OMC Section 17.38.065), making special accommodations for properties made non-conforming by the land use changes of the General Plan. These provisions are detailed in Attachment 6, and include permitting a legal non-conforming use to remain indefinitely and also to expand. In the case of properties previously zoned CR, Section 17.38.065.B.5 provides for nonconforming industrial development that was established prior to the time the CR zoning was put in place (Zone Change No. 1175-95) to be governed by the City's Industrial (M-1 and M-2) zoning standards. Hence, properties or uses made legal non-conforming by the new zoning can remain as is after the change in zoning occurs.

#### **Summary:**

Based on the conflict with state law, the hurdle the General Plan-Zoning inconsistency presents to property owners and/or developers, and the potential adverse implications of a failure to rezone on the City's Housing Element, staff believes that it is prudent to re-zone the subject Zone Change area to UMU. Not only would the Zone Change lay these issues to rest, the UMU zoning would afford property owners with a wider range of uses for their properties than are otherwise possible under the existing CR zoning.

#### ADVISORY BOARD RECOMMENDATION

The proposed Zone Change was not reviewed by either the Staff Review Committee or the Design Review Committee due to the fact that it does not involve a specific development project,

and implements a land use designation that was discussed extensively by the Planning Commission and City Council during General Plan development and adoption.

# ATTACHMENTS/EXHIBITS

## **Attachments to Report:**

- Draft Planning Commission Resolution No. PC 07-13
   1-A. Draft Ordinance
- 2. General Plan Focus Area Map for the Katella Corridor
- 3. City Council Minutes, April 26, 2011, May 10, 2011
- 4. Planning Commission Minutes, January 17, 2011, February 23, 2011, March 21, 2011
- 5. Comparative Land Use Table for Urban Mixed Use vs. Commercial Recreation Zoning
- 6. OMC Section 17.38.065

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