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**DRAFT**

**MINUTES OF THE REGULAR  
PINOLE PLANNING COMMISSION**

**November 21, 2016**

**A. CALL TO ORDER:** 7:02 P.M.

**B. PLEDGE OF ALLEGIANCE AND ROLL CALL:**

Commissioners Present: Brooks, Hartley, Martinez-Rubin, Thompson, Chair  
Kurrent

Commissioners Absent: Tave, Wong

Staff Present: Winston Rhodes, Planning Manager  
Eric Casher, City Attorney's Office

**C. CITIZENS TO BE HEARD:**

There were no citizens to be heard.

**D. CONSENT CALENDAR:**

1. Planning Commission Meeting Minutes from October 24, 2016

**MOTION** to approve the Planning Commission Meeting Minutes from October 24, 2016, as submitted.

**MOTION: Brooks                      SECONDED: Thompson                      APPROVED: 4-0-1-2**  
**ABSTAIN: Hartley**  
**ABSENT: Tave, Wong**

**E. PUBLIC HEARINGS:**

1. **ZCA 16-03: Zoning Code Amendments Concerning City Councilmember Appeals of Planning Commission Actions**

**Request:** Consideration of a Zoning Code Text Amendment to Chapter 17.10 of the Municipal Code modifying the Zoning Code appeal process for City Council members

**Applicant:** City of Pinole

1                   **Location:**                   Citywide  
2

3                   **Project Staff:**               Eric Casher and Winston Rhodes  
4

5                   Planning Manager Winston Rhodes presented the staff report dated November 21,  
6                   2016, and identified documents presented to the Planning Commission on the dais  
7                   including a sheet to identify slight modifications to Section 17.10.070(C) of Chapter  
8                   17.10 of the Pinole Municipal Code (PMC), which differed from information staff  
9                   had included in the staff report; hard copy of staff's PowerPoint presentation; an  
10                  excerpt from the October 4, 2016 City Council meeting minutes; and the October  
11                  24, 2016 staff report the City Council had received on that date.  
12

13                  Eric Casher, representing the City Attorney's Office, provided the PowerPoint  
14                  presentation on the proposed Zoning Text Amendment, detailed the background of  
15                  the City Council's direction, and presented the outcome of the City Council  
16                  Subcommittee's discussions and recommendation. The Subcommittee had  
17                  recommended that a member of the City Council may submit an appeal of any  
18                  action taken by the Planning Commission and that the appeal be consistent with,  
19                  and equivalent to, a citizen appeal, which was a change from the existing PMC  
20                  requirement for City Council appeals. The City Council considered the  
21                  recommendations and directed staff to prepare a text amendment to modify the  
22                  existing procedure to indicate that Councilmember appeals *shall be processed in*  
23                  *the same manner as an individual appeal from a member of the public.*  
24

25                  Mr. Casher recommended that the Planning Commission adopt Resolution 16-13,  
26                  recommending that the City Council amend Chapter 17.10 of the PMC to update  
27                  and revise the appeal process for Councilmembers in the City of Pinole.  
28

29                  Both Mr. Casher and Mr. Rhodes responded to questions from the Commission on  
30                  the proposed text amendment including the background and rationale for the City  
31                  Council's direction; knowledge of two prior appeals of Planning Commission  
32                  actions over the past several years; clarification of the legal basis for an appeal;  
33                  clarification of the provisions of the Brown Act related to City Council members  
34                  appeals of actions of the Planning Commission; and further details from the City  
35                  Council Subcommittee discussions.  
36

37                  **PUBLIC HEARING OPENED**  
38

39                  There were no comments from the public.  
40

41                  **PUBLIC HEARING CLOSED**  
42

43                  The Planning Commission discussed the item and offered the following feedback  
44                  and/or input to staff:

- 45                  • Discussed that the City Council consider some mechanism to address the

1 number of appeals by a Councilmember annually, and address the cost  
2 issue as to whether it was an actual or perceived barrier to well-meaning  
3 appeals. (Hartley, Thompson)  
4

- 5 • Discussed language to address whether an appeal is based on significant  
6 material effects on safety or significant quality of life issues within the City,  
7 without fees or cost, but be required to make the findings for the appeal with  
8 an objective, rather than a subjective, reason for an appeal. (Kurrent)  
9
- 10 • Discussed that a City Council member be allowed to file an appeal absent  
11 fees or cost for the first year (in recognition that the current system had not  
12 been abused by the Council), but did not want the potential text amendment  
13 to pose a conflict for a member of the City Council in the future if fees were  
14 imposed. (Thompson)  
15
- 16 • Recognized the adoption of the fee schedule was under the purview of the  
17 City Council, and staff affirmed the City Council had discussed a fee high  
18 enough to discourage frivolous challenges but potentially lower for  
19 members of the Council. (Hartley)  
20
- 21 • Stated a member of the City Council should not have to pay an appeal fee.  
22 (Thompson)  
23
- 24 • Stated that the City Council consider language whereby the remaining four  
25 members of the City Council could consider a waiver of the appeal fee  
26 based on the justification of the appeal. (Kurrent)  
27
- 28 • Requested that staff research city council appeal policies in other cities;  
29 suggested the PMC text amendment could cause more problems than it  
30 would solve; there was a lack of clarity on the issue to make a decision at  
31 this time not only on the appeal fees, but with the use of the term “legal” in  
32 Exhibit A; understood the appeal fee could be refundable if the appeal was  
33 successful, but suggested the term “successful” be better defined; and  
34 disagreed a member of the City Council should be required to do more than  
35 the general public. (Thompson)  
36
- 37 • Suggested the proposed PMC text amendment language would provide  
38 clarification to the current text. (Hartley)  
39
- 40 • Verified the refundable fee clause was to protect against frivolous appeals  
41 and ensure objective appeals. (Kurrent)  
42
- 43 • Requested that the first sentence of Page 4, Filing an Appeal, Section  
44 17.10.070(C), to be revised to remove the term “legal,” although staff noted  
45

1 the term had been added at the direction of the City Council. (Thompson)

- 2
- 3 • Suggested that the first sentence of Page 4 be amended to read: *Filing an*
- 4 *Appeal. All appeals shall be submitted in writing, identifying the*
- 5 *determination or action being appealed and specifically stating the grounds*
- 6 *or legal basis for the appeal.* (Kurrent)
- 7
- 8 • Suggested that the public-at-large section of the PMC related to appeals be
- 9 revised with the same language. (Thompson)

10  
11 **MOTION** to adopt Resolution 16-13, with Exhibit A, Zoning Code Amendments, A  
12 Resolution of the City of Pinole, Planning Commission Recommending that the  
13 City Council Approve A Zoning Code Amendment Modifying the Zoning Code  
14 Appeals Process (ZCA 16-03), subject to a revision to the first sentence of Page 4,  
15 Section C. Filing an Appeal to read:

16  
17 C. *Filing an Appeal. All appeals shall be submitted in writing, identifying*  
18 *the determination or action being appealed and specifically stating*  
19 *the grounds or legal basis for the appeal.*

20  
21 **MOTION: Martinez-Rubin      SECONDED: Brooks      APPROVED: 4-1-2**  
22 **NOES: Thompson**  
23 **ABSENT: Tave, Wong**

24  
25 **F. OLD BUSINESS: None**

26  
27 **G. NEW BUSINESS: None**

28  
29 **H. CITY PLANNER’S / COMMISSIONERS’ REPORT:**

30  
31 Mr. Rhodes updated the Planning Commission on the registration for the  
32 Planning Commission training at Sonoma State University scheduled for  
33 December 3, 2016. The next meeting of the Planning Commission would  
34 include the calendar for Planning Commission meetings for 2017 and possibly  
35 two to three other agenda items.

36  
37 Commissioner Thompson asked staff to inquire whether the City’s Information  
38 Technology (IT) personnel could use a live link or a printed URL to allow easier  
39 access to Planning Commission information online.

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41 Chair Kurrent wished everyone a Happy Thanksgiving.

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43 **I. COMMUNICATIONS: None**

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45 **J. NEXT MEETING:**

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The next meeting of the Planning Commission will be a Regular Meeting to be held on Monday, December 12, 2016 at 7:00 P.M.

**K. ADJOURNMENT: 8:30 P.M**

Transcribed by:

Anita L. Tucci-Smith  
Transcriber