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**MINUTES OF THE REGULAR
PINOLE PLANNING COMMISSION**

September 25, 2017

A. CALL TO ORDER: 7:04 P.M.

B. PLEDGE OF ALLEGIANCE AND ROLL CALL:

Commissioners Present: Hartley, Kurrent, Martinez-Rubin, Tave, Wong, Chair
Thompson

Commissioners Absent: Brooks

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

C. CITIZENS TO BE HEARD:

There were no citizens to be heard.

D. CONSENT CALENDAR:

1. Planning Commission Meeting Minutes from July 24, 2017

MOTION to approve the Planning Commission Meeting Minutes from July 24, 2017, as shown.

MOTION: Kurrent

SECONDED: Tave

APPROVED: 6-0-1

ABSENT: Brooks

E. PUBLIC HEARINGS:

1. **Conditional Use Permit (CUP) 17-03: East Bay Coffee Company
Alcohol Sales – Continued to October 23, 2017**

Request: Consideration of a use permit for on-site alcohol sales
in conjunction with an existing approximately 2,500
square foot café within an existing approximately 4,225
square foot mixed use building.

Applicant: William Ancira
2143 Whippoorwill Court
Pinole, CA 94564

1
2 **Location:** 2529 San Pablo Avenue, APN 401-184-007

3
4 **Project Staff:** Winston Rhodes, Planning Manager

5
6 Planning Manager Rhodes reported that the item would be continued to the
7 Planning Commission meeting of October 23, 2017 to allow staff the opportunity to
8 resolve a number of outstanding issues.

9
10 LISA ANCIRA, 2143 Whippoorwill Court, Pinole, East Bay Coffee Company,
11 introduced herself and her husband to the Planning Commission and while she
12 understood the item was to be continued to the October 23 meeting, she requested
13 clarification as to why the item was being continued since the use permit for
14 outdoor dining had been eliminated in order to allow issues between the City and
15 the property owner to be resolved. She preferred that the item not be continued.

16
17 Mr. Rhodes explained that the current request had been modified to eliminate the
18 outdoor dining component; the original use permit had been approved in 2013; the
19 property owner owns the lot and building where the café is located and the
20 underdeveloped adjacent lot and for property tax purposes since 2013 had
21 requested and received one assessor's parcel number assigned to both lots; the
22 City was trying to ensure both parcels were being considered as separate
23 properties due to code enforcement issues; and there was evidence the
24 undeveloped area had been used as a parking lot with no evaluation of safety of
25 ingress/egress, no lighting provided, and no Americans with Disabilities Act (ADA)
26 access. There had also been accusations during public hearings that employees of
27 East Bay Coffee Company had been parking in the undeveloped area, and recently
28 staff had communications with the applicant and the property owner to secure the
29 property to ensure no members of the public patronizing East Bay Coffee Company
30 could park in the area.

31
32 Mr. Rhodes added that the use permit ran with the property; the City received no
33 formal request to legally merge the properties; and staff had been working with the
34 County Assessor's Office to determine whether or not the property could be
35 considered as one legal parcel, which issue had been raised during City Council
36 deliberations of the item, and which must be resolved prior to Planning Commission
37 action.

38
39 Mrs. Ancira expressed concern the matter was causing delays for the business;
40 disagreed with some of staff's assertions; noted the issue had also been discussed
41 with the Planning Commission Development Review Subcommittee and it had
42 been decided that no employees from the business would park in the
43 undeveloped area. She suggested the issues surrounding the continuance
44 should not prevent the business from obtaining a use permit, particularly since the
45 interest in accessing the property in any way had been withdrawn, which had been
46 made clear to the City Council.

1
2 City Attorney Eric Casher confirmed that he had discussed the matter with Mr.
3 Rhodes and given the concerns with parking at the underdeveloped lot at the City
4 Council level, and any other issues, the continuance would allow the applicant to
5 appear before the Planning Commission with a clean slate and focus on the alcohol
6 sales CUP only.
7

8 On the discussion and the suggestion that a special meeting could be held for this
9 one application only if there was a quorum of Commissioners available to do so,
10 ultimately the item was continued to the October 23 meeting and the applicant was
11 directed to work with staff off-line to answer any further questions.
12

13 **2. Zoning Code Amendment 17-02: Marijuana Cultivation and Sales**
14

15 **Request:** Consideration of Zoning Code Text Amendment
16 modifying Chapter 17.20 and Chapter 17.98 in order to
17 prohibit commercial marijuana cultivation and sales
18 within the City of Pinole
19

20 **Applicant:** City of Pinole
21 2131 Pear Street
22 Pinole, CA 94564
23

24 **Location:** Citywide
25

26 **Project Staff:** Eric Casher, City Attorney
27 Winston Rhodes, Planning Manager
28

29 City Attorney Eric Casher provided a PowerPoint presentation of the staff report
30 dated September 25, 2017, and recommended the Planning Commission adopt
31 Resolution 17-09, recommending the City Council amend Chapter 17.20 and
32 Chapter 17.98 of Title 17, of the Pinole Municipal Code (PMC) to prohibit all
33 marijuana uses within the City, except for personal cultivation of up to six (6)
34 marijuana plants in accordance with California law and proposed regulations.
35

36 Responding to questions from the Commission, Mr. Casher clarified the City
37 Council direction to essentially adopt a ban on all recreational marijuana
38 commercial sales and personal outdoor cultivation, which required amendments to
39 the PMC. The Planning Commission's review authority was to consider the Zoning
40 Code amendments and make a recommendation to the City Council, consistent
41 with the procedures for Zoning Code amendments.
42

43 Mr. Casher explained that State law allowed an individual in a private residence to
44 grow up to six plants for personal consumption; Exhibit A to the staff report
45 identified allowable uses in the City with a chart for personal marijuana cultivation,
46 with language from State law. Pursuant to State law, an individual would not be

1 allowed to sell any marijuana grown absent a license. There was no State or local
2 license available at this time allowing for enforcement of any violation of the
3 ordinance.

4
5 Mr. Casher detailed the rationale at the City Council level whether or not to allow
6 outdoor marijuana cultivation; the Chief of Police had attended many of the City
7 Council meetings and had presented his perspective on the potential for break-ins
8 and criminal activities for outdoor grows, and had addressed concerns with respect
9 to odor, visibility of sight lines and the like, all issues which had been considered by
10 the City Council when considering outdoor cultivation. The City Council would
11 revisit all of the regulations regarding commercial sales and personal outdoor
12 cultivation once better data was available. He added that the Zoning Code text
13 amendments had essentially reflected the language in State law described as
14 “cannabis” and anything products derived from cannabis, and with a ban in place,
15 would also apply to any smoke shop or business that sold tobacco products where
16 the sale of marijuana would not be permitted.

17
18 In response to concerns with fire safety and potential hazards from indoor
19 cultivation, Mr. Rhodes explained that the Chief of Police was serving as the Acting
20 Fire Chief and had supported the proposed Zoning Code text amendment
21 language.

22
23 In addition to being allowed to grow six plants, Mr. Casher explained that an
24 individual could possess up to an ounce of marijuana for personal use and if visiting
25 a commercial kitchen, as an example, and making a marijuana infused dish of
26 some sort for personal use would be legally permitted within the City, but if one
27 wished to sell what was made, they would be subject to the laws of the neighboring
28 jurisdiction where the product was being offered for sale.

29
30 Mr. Rhodes read into the record the definition for “commercial marijuana cultivation”
31 as defined in the draft text amendment and noted that the sale of products
32 containing cannabis would be prohibited.

33
34 PUBLIC COMMENTS OPENED

35
36 There were no comments from the public.

37
38 PUBLIC COMMENT CLOSED

39
40 The Planning Commission discussed the proposed text amendments for Marijuana
41 Cultivation Sales and offered the following comments and/or direction to staff:

- 42
43 • Suggested the proposed text amendment needed more thought, particularly
44 related to outdoor cultivation, with concerns raised as to whether the Fire
45 Chief had opined on the issue given the potential for fire hazards from indoor

1 cultivation; concerns with vapor shops selling ancillary products that could
2 be used for marijuana; and concern the ordinance prohibited the delivery of
3 medical marijuana; and given the number of unresolved issues and
4 concerns opposed a motion to move the ordinance forward to the City
5 Council for consideration. (Kurrent)
6

- 7 • Concerned with outdoor cultivation and greenhouse gases if it was more
8 efficient to cultivate outside; expressed concern with enforcement of indoor
9 cultivation; and encouraged the City Council to follow up on the commitment
10 to revisit the issue, particularly where there could be conflict with General
11 Plan goals; and concerns prohibiting the delivery of marijuana for medical
12 reasons for those who could not travel. (Hartley)
13

14 Commissioner Martinez-Rubin offered a motion, seconded by Commissioner Tave,
15 to adopt Resolution 17-09, as shown.
16

17 On the motion, Commissioner Hartley requested an amendment to encourage the
18 City Council to look at the issue of indoor/outdoor cultivation, which was
19 inconsistent with other goals in the General Plan; and consideration of the
20 delivery/transport of marijuana for those with medical needs. He questioned why
21 the delivery of a legal product was a land use/Planning Commission issue.
22

23 Mr. Rhodes clarified the scenario of someone needing medical marijuana in the
24 City of Pinole where a member of a family could purchase marijuana from a
25 commercial dispensary outside the City's jurisdiction and transport it to the City of
26 Pinole, if they did not want to proceed with the cultivation process as outlined in the
27 draft ordinance, and which was not prohibited pursuant to the ordinance. He
28 defined "personal use" and explained that while the text amendment banned
29 deliveries, people could still gain access to marijuana from another jurisdiction and
30 people who needed marijuana for medical or other reasons could do so.
31

32 When advised by Mr. Casher that the Planning Commission could take action on
33 the draft ordinance with direction to staff to make the City Council aware of its
34 concerns, Commissioner Hartley amended his original amendment to the motion to
35 direct staff to bring those issues to the attention of the City Council at such time a
36 presentation was made to the City Council.
37

38 Mr. Casher clarified on the discussion that for all intents and purposes there was no
39 difference between "personal" and "medical marijuana," although if one were to
40 purchase marijuana and had a medical card, that person could not be charged an
41 associated tax with the purchase.
42

43 The Planning Commission discussed the issue of transport/delivery of marijuana in
44 the City of Pinole at great length, expressed concern with the difficulty of
45 enforcement, and whether or not it was a land use issue, and Mr. Rhodes

1 explained that all local agencies were attempting to draft legislation to address the
2 legalization process of marijuana and from a land use standpoint the discussion
3 related to a supply chain issue.

4
5 Mr. Rhodes stated it was a land use issue since if marijuana was delivered in the
6 community the Pinole Police Department had expressed concern that could invite
7 criminal activity, particularly with a predominantly cash business.

8
9 Commissioner Martinez-Rubin restated her original motion, seconded by
10 Commissioner Tave, to adopt Resolution 17-09, as shown, and suggested the City
11 Council resolve the issue of marijuana delivery.

12
13 **MOTION** to adopt Resolution 17-09, with Exhibit A, Zoning Code Amendments, a
14 Resolution of the City of Pinole Planning Commission Recommending that the City
15 Council Approve a Zoning Code Amendment Modifying Chapter 17.20 and Chapter
16 17.98 Regulating Marijuana Uses in the City of Pinole (ZCA 17-02)

17
18 **MOTION: Martinez-Rubin SECONDED: Tave**

APPROVED: 5-1-1

NOES: Kurrent

ABSENT: Brooks

19
20
21
22 **3. Zoning Code Amendment 17-03: Regional Commercial Zoning District**
23 **Alcohol**

24
25 **Request:** Consideration of Zoning Code Text Amendment
26 modifying Chapters 17.20 and Chapter 17.59 allowing
27 alcohol sales as a conditionally permitted use within the
28 Regional Commercial (RC) Zoning District and allowing
29 alcohol sales at gas stations as a conditionally
30 permitted use.

31
32 **Applicant:** City of Pinole
33 2131 Pear Street
34 Pinole, CA 94564

35
36 **Location:** Regional Commercial Zoning District

37
38 **Project Staff:** Eric Casher, City Attorney
39 Winston Rhodes, Planning Manager

40
41 Planning Manager Winston Rhodes presented the staff report dated September 25,
42 2017, and recommended the Planning Commission adopt Resolution 17-10,
43 recommending the City Council amend Chapters 17.20 and 17.59 of Title 17 of the
44 PMC to require use permits to sell alcohol in the RC Zoning District, allow alcohol
45 sales at gas stations in accordance with State law, and modify the standard
46 conditions of approval.

1
2 Responding to the Commission, Mr. Rhodes clarified that if the Zoning Code Text
3 Amendment as proposed was approved, then all gas stations in the City of Pinole
4 would be eligible to apply for alcohol sales with a CUP. Assuming it was in an area
5 that was over-concentrated in terms of alcohol sales licenses, a Public
6 Convenience or Necessity Finding would have to be made by the City Council
7 before the CUP could be considered.
8

9 Mr. Rhodes added the language shown in Section 17.59.040 Standard Conditions,
10 A1, had been language that was likely part of State law at the time the original
11 ordinance had first been adopted. The intent of the standard conditions had been
12 to echo State law, with the Department of Alcohol and Beverage Control (ABC)
13 taking the lead in enforcement. He acknowledged some regulations could be
14 inconsistent or overly complex to accomplish the objective and described the intent
15 of that section. He also referenced the Business and Professions Code as related
16 to the discussion and emphasized the need to ensure the PMC was always
17 consistent with State law to ensure that the ordinance was enforceable.
18

19 Mr. Casher stated that staff would review the language in Section 17.59.040, A1
20 and if there was any inconsistency with ABC regulations or State law efforts would
21 be made to ensure consistency throughout.
22

23 PUBLIC COMMENTS OPENED

24
25 There were no comments from the public.
26

27 PUBLIC COMMENT CLOSED

28
29 The Planning Commission discussed the proposed text amendments for Regional
30 Commercial Zoning District Alcohol Sales and offered the following comments
31 and/or direction to staff:
32

- 33 • Recommended a revision to Section 17.59.040, Standard Conditions, B5 to
34 read: *All servers prior to serving alcohol shall receive responsible beverage*
35 *service training and documentation of this training shall be retained on the*
36 *premises and made available upon request;* with the same change made to
37 Section 17.59.040 C7. As to the language in Section 17.59.040, Standard
38 Conditions A1 through 8, if required and consistent with State law that
39 section would be acceptable, otherwise some of the language could be
40 overly prescriptive and restrictive and should be stricken from the ordinance.
41 (Hartley)
42

43 Staff also clarified that BevMo was a large alcohol supplier while in most
44 supermarkets or convenience stores alcohol was not the dominant product. The
45 concern was that the dominant product in the retail store not be alcohol, which was

1 the rationale for the language in Section 17.59.040, A6.

- 2
- 3 • Concurred with the need to eliminate the overly prescriptive text
- 4 amendments from the ordinance. (Kurrent, Martinez-Rubin)
- 5

6 Mr. Rhodes identified the overly prescriptive text amendments as Section
7 17.59.040, Standard Conditions A1, 2, 3, 4, 5, with A6, 7, 8, 9 and 10 to be
8 renumbered accordingly.

9
10 **MOTION** to adopt Resolution 17-10, with Exhibit A, Zoning Code Amendments, a
11 Resolution of the City of Pinole Planning Commission Recommending that the City
12 Council Approve a Zoning Code Amendment Modifying Chapters 17.20 and 17.59
13 (ZCA 17-03), subject to:

- 14
- 15 • Section 17.59.040, Standard Conditions A 1 through 5 to be stricken;
- 16
- 17 • Section 17.59.040, Standard Conditions, B5 to be revised to read: *All*
- 18 *servers prior to serving alcohol shall receive responsible beverage service*
- 19 *training and documentation of this training shall be retained on the premises*
- 20 *and made available upon request; and*
- 21
- 22 • Section 17.59.040, Standard Conditions C7 to be modified similarly to
- 23 Section 17.50.040 B5.
- 24

25 **MOTION: Hartley**

SECONDED: Wong

APPROVED: 6-0-1

ABSENT: Brooks

26
27
28 **F. OLD BUSINESS:** None

29
30 **G. NEW BUSINESS:** None

31
32 **H. CITY PLANNER'S / COMMISSIONERS' REPORT:**

33
34 Mr. Rhodes reported that CVS construction contractor had pulled building
35 permits; an application was anticipated in the next few weeks for the Appian 80
36 Shopping Center; the eye surgery center on Pinole Valley Road and Henry
37 Avenue and dialysis clinic at the northeast corner of Pinole Valley Road and I-80
38 was in plan check; and the Development Services Department continued to work
39 with County Flood Control and the Gateway Shopping Center developer on the
40 planned Pinole Creek trail improvements. He provided an update on the East
41 Bay Regional Park District (EBRPD) Bay Trail Extension and reported that the
42 project was under construction, and review of the color and railing design
43 remained to be reviewed in the field by the subcommittee and members of the
44 public.

1 **I. COMMUNICATIONS:** None

2

3 **J. NEXT MEETING:**

4

5 The next meeting of the Planning Commission will be a Regular Meeting to be
6 held on Monday, October 23, at 7:00 P.M.

7

8 **K. ADJOURNMENT:** 8:52 P.M

9

10 Transcribed by:

11

12

13 Anita L. Tucci-Smith

14 Transcriber

15