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**MINUTES OF THE REGULAR
PINOLE PLANNING COMMISSION**

June 22, 2020

**DUE TO THE STATE OF CALIFORNIA'S DECLARATION OF EMERGENCY – THIS
MEETING WAS HELD PURSUANT TO AUTHORIZATION FROM GOVERNOR
NEWSOM'S EXECUTIVE ORDERS – CITY COUNCIL AND COMMISSION MEETINGS
WERE NO LONGER OPEN TO IN-PERSON ATTENDANCE. THE MEETING WAS
HELD VIA ZOOM TELECONFERENCE.**

A. CALL TO ORDER: 7:09 P.M.

B. PLEDGE OF ALLEGIANCE AND ROLL CALL

Commissioners Present: Flashman, Moriarty, Murphy, Ojeda, Vice-Chair Kurrent

Commissioner Absent: Wong

Staff Present: David Hanham, Planning Manager
Justin Shiu, Contract Planner
Alex Mog, Assistant City Attorney

C. CITIZENS TO BE HEARD

The following speakers submitted written comments via email that were read into the record and would be filed with the agenda packet for this meeting: ***Irma Ruport, David Ruport*** and ***A.J. Vossbrink; Jim, Neighbors and Friends, Citizens for a Better Pinole.***

Responding to the public comment, Planning Manager, David Hanham reported the Kaiser/Gateway Project was primarily built out with some improvements still required as part of the trail. Permits for Dr. Lee's office had been issued with construction due to commence. Concerns related to the access points to Kaiser would be something to be raised with the project engineer in that the access points were already in place.

Contract Planner Justin Shiu understood that building permits had been issued for the Green Lantern building but he was uncertain of the status of the actual work due to the pandemic.

Vice-Chair Kurrent asked staff to forward the public comment concerns to the City Council, and Mr. Hanham expressed the willingness to contact the Pinole Police

1 Department to determine whether there had been any issues with the access points
2 for Kaiser.

3
4 **D. CONSENT CALENDAR**

5
6 1. Planning Commission Meeting Minutes from May 27, 2020

7
8 **MOTION** to adopt the Planning Commission Meeting Minutes from May 27, 2020, as
9 submitted.

10
11 **MOTION: Moriarty**

12 **SECONDED: Flashman**

13 **APPROVED: 5-0-1**

14 **ABSENT: Wong**

15
16 **E. PUBLIC HEARINGS:**

17
18 **1. Accessory Dwelling Unit Ordinance (ZCA 20-02)**

19 **Request:** Consideration of amendments to the Pinole Municipal Code to
20 update regulations regarding development of accessory
21 dwelling units and junior accessory dwelling units, including
22 Chapter 17.70 Accessory Dwelling Units and associated
23 chapters referencing accessory dwelling units. Consideration
24 shall be made on whether to recommend adoption of the
25 amendments to the City Council.

26 **Applicant:** City of Pinole

27
28 **Location:** Citywide

29
30 **Planner:** Justin Shiu

31
32 Contract Planner Justin Shiu provided a PowerPoint presentation for the request to
33 consider amendments to the Pinole Municipal Code (PMC) to update regulations
34 regarding development of Accessory Dwelling Units (ADUs) and Junior ADUs. He
35 recommended the Planning Commission adopt Resolution 20-12, recommending to
36 the City Council approval of zoning code amendments regulating ADUs and JADUs,
37 including Chapters 17.20, 17.22, 17.30, 17.48, 17.70 and 17.98 as proposed in
38 Zoning Code Amendment (ZCA) 20-02.

39
40 Responding to the Commission, Mr. Shiu, Mr. Hanham, and Assistant City Attorney
41 Alex Mog clarified the following:

- 42
43
44
 - Parking was required for the ADU unless located within a half mile walking
45 distance to a transit stop (i.e. bus stop).

- Multifamily residences were allowed to have two detached ADUs with some qualifications for ADUs located within the existing multifamily residence as outlined in the June 22, 2020 staff report.
- Garages may be converted into an ADU. Replacement parking was no longer required and if a space used by the single-family residence was removed it was not required to be placed elsewhere on-site.
- Cities may impose their own regulations and design standards provided they were objective standards in and of themselves and did not prevent the provision of an ADU on a property.
- Exterior stairs to a second story ADU shall not be visible from the public right-of-way (ROW), which had been proposed as a recommendation but which did not have to be implemented if the Planning Commission found it to be unnecessary.
- Rentals may only be for terms longer than 30 days. State law allowed cities to apply this regulation as a way to prevent ADUs from being used as a Short-Term Rental (STR) or an Airbnb. Although the standard had been included in deed restrictions for ADUs, it had not been codified in the PMC. If there was any Planning Commission opposition to this regulation it would be identified in a memorandum to the City Council.
- Staff was unaware of any existing parking issues with ADUs, with a wait-and-see attitude being taken at this time.
- The City's Housing Element would be reviewed in the next six months in preparation for an update and there could be future policy discussions in terms of parking for ADUs.
- JADUs were not required to install solar panels on the main home, but were required to comply with existing building codes which does not require solar for new accessory structures. A brand new ADU would be required to comply with Title 24. Staff would not recommend imposing a requirement for solar given that the City could not require things that would make it more difficult than what would be required under State law.
- Detached ADUs must be a minimum of eight feet from the existing dwelling, which regulation had been based on current City standards to maintain separation from the ADU and the main residence for clearance purposes.
- Regulations for accessory structures were outlined.

- 1 • Most ADU applications received by staff had shown the ADUs as being units
2 and not special rooms. The City had no way of knowing whether an ADU was
3 being used as a game room or office, and its use would be difficult to enforce.
4 Complaints related to an ADU could be investigated by the City although the
5 City could not require entrance into the ADU or JADU to verify its use as
6 housing. The Planning Commission could offer a recommendation to the City
7 Council requiring the ADU or JADU to be used for housing but staff
8 emphasized the challenges enforcing such a recommendation.
9
- 10 • ADUs and JADUs were prohibited from being used for commercial uses.
11
- 12 • Side and rear setbacks had been reduced to four feet for both attached and
13 detached ADUs, with no separate or different setback requirement for the
14 street side.
15
- 16 • If, as an example, a property owner desired to convert a master bedroom suite
17 to a JADU that could be done since it would not infringe upon neighbors given
18 that existing space was being converted.
19
- 20 • If the existing residence maintained the existing parking spaces on the lot and
21 if the ADU were required to provide parking (outside of the half mile distance
22 from transit) it would be required to provide its own parking space separate
23 from the main residence.
24
- 25 • Off-street parking would be exempt if the ADU was located within one block
26 of a car share vehicle (zip car or ride share service).
27
- 28 • Owner-occupancy of the ADU or main residence currently cannot be required
29 in an ADU project, to be re-evaluated by the State in five years.
30
- 31 • The City of Pinole would have limited control over the design of the ADU or
32 JADU. A recommendation could be made that an ADU be compatible with
33 the existing residence but it could not be a requirement. Objective standards
34 could be enforced. The State had issued grants to cities as part of Senate Bill
35 (SB) 2, with Pinole using its funds to hire a consultant to take subjective
36 standards and make them objective for residential housing given the
37 challenges for cities to regulate residential housing.
38
- 39 • Current ADU applications were being processed and were in different stages
40 of completeness consisting primarily of conversions of spaces or additions as
41 ADUs.
42
- 43 • Any STRs in Pinole could be researched through Airbnb and any STR unit
44 located in the City of Pinole should be paying a Transit Occupancy Tax (TOT)
45 to the City. On the discussion, the Planning Commission was made aware of

1 one STR in Pinole.

- 2
- 3 • New development would require two covered parking stalls for the single-
- 4 family residential home. An ADU in the same proposal would have the ADU
- 5 parking be reviewed separately.
- 6
- 7 • As to whether covered parking would be required for the ADU that would have
- 8 to be reviewed further since in most cases there would be a 20-foot setback
- 9 from the driveway to the garage, and any structure in the setback would
- 10 require a modification to the PMC or a variance. The City may require a
- 11 garage at the initial build of the single-family residential home but if converted
- 12 to an ADU after it was built there was nothing the City could do.
- 13

14 PUBLIC HEARING OPENED

15
16 No comments from the public had been received via e-mail.

17 PUBLIC HEARING CLOSED

18
19
20 The Planning Commission discussed the ADU Ordinance Update and offered the
21 following comments and/or direction to staff:

- 22
- 23 • Looked forward to ensuring the City continued to remain beautiful, regulations
- 24 were not too restrictive, and objective design standards for detached ADUs
- 25 would be considered. Did not want to encroach on the environment and
- 26 recognized that ADUs and JADUs may make the City of Pinole appear more
- 27 urban than it was. Encouraged staff to research other jurisdictions and the
- 28 League of California Cities to determine how they may have addressed the
- 29 concern with loopholes in State law and respond to potential abuses to the
- 30 ADU and JADU regulations. (Moriarty)
- 31
- 32 • Supported the ADU Ordinance but opposed the regulation whereby rentals
- 33 may only be for terms longer than 30 days given the limitations and lack of
- 34 flexibility allowing Airbnbs in Pinole. (Ojeda)
- 35
- 36 • Recognized the challenges with ADUs and JADUs and the fact they may
- 37 make the community appear more urban than it was. Recognized this was a
- 38 new ordinance, feedback was very important both during and after the
- 39 ordinance had been enacted, and pointed out the ordinance could be modified
- 40 in the future if it did not ultimately work out for the community. (Murphy)
- 41
- 42 • Echoed the comments, wanted the City to remain beautiful, but otherwise
- 43 looked forward to more housing in Pinole. (Flashman)
- 44 • Recommended some refinement in the ordinance to ensure that the ADU and
- 45 JADU regulations were not abused and suggested language to ensure the

1 intent of the ADU and JADU regulations were that the units be used as rental
2 units, with a requirement to follow the City's rental process subject to
3 applicable fees, albeit with an exception if the units were occupied by family
4 members. Also suggested a City inspection process be considered with a
5 penalty for any violations if the ADU or JADU was converted to a non-intended
6 use, such as a man cave, as an example. (Kurrent)
7

8 Mr. Mog explained that anyone renting out an Airbnb, as an example, was required
9 to obtain a business license and go through the rental inspection program. Someone
10 not renting out an ADU was not required to go through a rental inspection program.
11 Language could be added to reflect *the ADU could not be modified to remove the*
12 *kitchen or sanitary facilities*, but it would not prevent someone from using the ADU
13 as a man cave as an example.
14

15 Vice-Chair Kurrent suggested language to reflect that *Owner of the property is*
16 *required to register the ADU as a rental unless they could validate the ADU was being*
17 *used as a residence for a family member or friend*, and allow an annual inspection.
18

19 The Planning Commission discussed the issue at length with concern about
20 loopholes in State law which could allow abuses to the ADU and JADU process, how
21 to conduct enforcement, whether enforcement was even possible, and whether any
22 impact fees could be imposed, with Mr. Mog commenting that if an inspection
23 program was adopted, there would be no way for the inspector to determine what the
24 ADU was being used for, making enforcement difficult. He understood the concerns
25 that had been expressed but was uncertain of a solution that could close the
26 loophole.
27

28 Vice-Chair Kurrent asked Mr. Mog to provide some direction to the City Council to
29 address the concerns when the item was submitted to the City Council for
30 consideration.
31

32 Mr. Mog commented that the only restriction he could think of at this time was a deed
33 restriction to prohibit the removal of the kitchen or the bathroom from the ADU. He
34 would work with staff to craft language that could be presented to the City Council for
35 consideration.
36

37 **MOTION** to adopt Resolution 20-12, A Resolution of the Planning Commission,
38 the City of Pinole Recommending that the City Council Approve Zoning Code
39 Amendments Regulating Accessory Dwelling Units and Junior Accessory Dwelling
40 Units, Including Chapters 17.20, 17.22, 17.30, 17.48, 17.70 and 17.98, as
41 Proposed in Zoning Code Amendment 20-02 (ZCA 20-02), subject to Exhibit A:
42 Zoning Code Amendments for Chapters 17.20, 17.22, 17.30, 17.48, 17.70 and
43 17.98, subject to the comments discussed by the Planning Commission.

44 **MOTION: Murphy**

SECONDED: Ojeda

APPROVED: 5-0-1

ABSENT: Wong

F. OLD BUSINESS:

1. Planning Commission Reorganization

MOTION to nominate ***David Kurrent*** as the Chair of the Planning Commission.

MOTION: Ojeda **SECONDED:** Moriarty **APPROVED:** 5-0-1
ABSENT: Wong

MOTION to nominate ***Sarah Flashman*** as the Vice-Chair of the Planning Commission.

MOTION: Murphy SECONDED: Ojeda APPROVED: 5-0-1
ABSENT: Wong

G. NEW BUSINESS:

1. General Plan/Specific Plan Information Session: Housing Element

Mr. Hanham explained that the Pinole Housing Element was required to be updated by December 2022, and was required to be reviewed and approved by the Department of Housing and Community Development (HCD) pursuant to State law. He presented an overview of the Housing Element which described existing and future housing in the community, and the Regional Housing Needs Allocation (RHNA) numbers from the State for Above Moderate, Moderate, Low, and Very Low Incomes.

Mr. Hanham highlighted the data for housing affordability, home sales, vacancy rates, rental rates in Pinole, housing assistance needs, household tenure by person per room, special needs groups, resources, single parent households, persons with disabilities, and the like, along with the number of care facilities, lack of transportation and early intervention resources for targeted groups, current housing stock, aging of housing and categories of housing conditions, housing tenure, and at-risk rental housing for affordable housing with all of the tables identified to be updated as part of the new and updated Housing Element.

Mr. Hanham reported that as part of the Housing Element Update public workshops had been planned in order to solicit input from the Planning Commission and the public. Additional sections of the Housing Element would be reviewed and discussed at the next Planning Commission meeting scheduled for July 27, starting with the section “units at risk for conversion.”

In response to the Commission, Mr. Hanham clarified the following:

- Information on household composition was provided by the U.S. Census based on the 2010 Census. The tables in the Housing Element had not been broken down but had been based on information from Contra Costa County, which updated its numbers annually.
- The 2019 figures for maximum household income levels was provided by the State Employment Development Department (EED), which information was available from the County.
- HCD published information annually on all of its housing programs for every county in the State, with the information able to be e-mailed to Planning Commissioners, and also available on the HCD website.
- The 2019 Area Median Income level for a family of four in Contra Costa County was currently \$111,700.
- Deed restricted units in the City involved constraints on the rental of the units for affordable Low and Moderate Incomes, with staff identifying some of the examples in Pinole and noting that some units were no longer bound by that restriction, such as 148 units at Bayside Apartments.

H. CITY PLANNER'S / COMMISSIONERS' REPORT

1. Verbal Updates of Projects

Mr. Hanham reported the Water Efficiency Land Use Ordinance would be presented to the Planning Commission in the next few months; staff was working with a number of developers and businesses to issue outdoor dining permits; and one of the applications involved a Conditional Use Permit (CUP) request for permanent outdoor dining to be presented to the Planning Commission at its July or August meeting. Staff continued to work with the applicants for Artisanal Garden in the hopes the application could be brought back to the Planning Commission for consideration soon and staff continued to work on minor design applications. Staff had also approved tree removal permits based on arborists' reports and continued to work with applicants for designs for the Kmart and Pinole Vista sites. Also, the City had received grant funds from SB 2 and an agreement from the State for a Request for Proposal (RFP) for a Consultant. In addition, staff would be submitting a request for a Local Early Action Planning (LEAP) grant from the State, and the Old Town Pinole Parking and Pedestrian Safety Study would be presented to the City Council in the near future.

Commissioner Moriarty stated both she and the City Council had requested a full presentation on the trees for Pinole Square, and Mr. Hanham reported he planned to schedule a close out meeting with the applicants to discuss the items of concern raised by both the Planning Commission and the City Council.

1 Once an agreement had been reached, Mr. Hanham would provide a status report
2 to both the City Council and Planning Commission.

3
4 Chair Kurrent reported for the record that he had not identified the City's appeal
5 period process as part of Agenda Item E1 since the Planning Commission's action
6 involved a recommendation only to the City Council.

7
8 Commissioner Moriarty reported the Ad Hoc Committee on Beautification had one
9 more meeting scheduled this week and would be making recommendations to the
10 City Council on four projects that had been identified for consideration including
11 Pinole Education and Awareness Campaign to keep Pinole clean, Litter Free is the
12 Way to Be, incorporating art with middle and high schoolers and the like, planting
13 trees along Pinole Creek, and clean up events facilitated by civic organizations.

14
15 Mr. Hanham reported he would be on vacation from July 1 through July 10, 2020.

16
17 [It was reported that Commissioner Ojeda was no longer participating in the
18 teleconferenced meeting, although his time of departure was not noted.]

19
20 **2. Planning Commissioner's Discussion Following the League of**
21 **California Cities Planning Commissioner's Academy**

22
23 The Planning Commission had been provided copies of a matrix of takeaways from
24 Commissioners Moriarty, Murphy and Ojeda, who had attended the League of
25 California Cities Planning Commissioner's Academy in March 2020.

26
27 Commissioners Moriarty and Murphy walked through the comments and provided
28 their perspective on their attendance at the academy.

29
30 Mr. Hanham confirmed he would work to provide the information requested and as
31 outlined in the matrix and would work with Commissioners Moriarty and Murphy
32 on the recommendations.

33
34 **I. COMMUNICATIONS:** None

35
36 **J. NEXT MEETING**

37
38 The next meeting of the Planning Commission to be a Regular Meeting to be held
39 on Monday, July 27, 2020 at 7:00 P.M.

40
41 **K. ADJOURNMENT:** 10:16 P.M

42
43 Transcribed by:

44 Sherri D. Lewis
45 Transcriber
46