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**MINUTES OF THE REGULAR
PINOLE PLANNING COMMISSION**

July 27, 2020

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**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.**

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A. CALL TO ORDER: 7:07 P.M.

B. PLEDGE OF ALLEGIANCE AND ROLL CALL

Commissioners Present: Flashman, Moriarty, Murphy, Ojeda, Wong, Chair
Kurrent

Commissioner Absent: None

Staff Present: David Hanham, Planning Manager
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*** and ***David O. Ruport, Jr.***

Alex Mog, Assistant City Attorney, reported that some members of the City Council had requested that Planning Commissioners vote either yes or no and refrain from abstaining from an item to the extent possible. If a Planning Commissioner felt strongly to abstain from a vote, the City Council found it would be helpful if the Planning Commissioner explained the reason for the abstention, which would be reflected in the meeting minutes.

D. CONSENT CALENDAR

1. Planning Commission Meeting Minutes from June 22, 2020

Commissioner Flashman referenced the Citizens to be Heard section of the meeting agenda for the June 22, 2020 Planning Commission meeting, noted the contents of

1 public comments received had not been shown in the meeting minutes, and asked
2 whether that could be changed in the future.

3
4 Planning Manager David Hanham explained that in most cases the public comments
5 were not shown verbatim in the Planning Commission summary meeting minutes but
6 if any action was to be taken by staff the Chair may decide to provide such direction.
7 Otherwise, given the Planning Commission meetings were televised and archived
8 via video, any written comments from the public would be attached to the meeting
9 minutes and made available to the public for the record.

10
11 **MOTION** to adopt the Planning Commission Meeting Minutes from June 22, 2020,
12 as submitted.

13
14 Commissioner Wong stated he would abstain from the vote on the Planning
15 Commission Meeting Minutes from June 22, 2020, due to absence and since he had
16 been unable to view a video posting of the meeting online via the City's website.

17
18 **MOTION: Moriarty SECONDED: Flashman APPROVED: 5-0-1**
19 **ABSTAIN: Wong**

20
21
22 **E. PUBLIC HEARINGS:**

23
24 **1. Conditional Use Permit CUP 20-03: East Bay Coffee Outdoor Dining**

25
26 **Request:** Consideration of a conditional use permit for a new outdoor
27 dining area at East Bay Coffee.

28
29 **Applicant:** Lisa Ancira
30 2529 San Pablo Avenue
31 Pinole, CA 94564

32
33 **Location:** 2529 San Pablo Avenue (APN: 401-184-015)

34
35 **Planner:** David Hanham

36
37 Chair Kurrent recalled that the Planning Commission had discussed and approved
38 outdoor dining for East Bay Coffee years ago, which had not been reflected in the
39 July 27, 2020 staff report. He asked staff to provide clarification.

40
41 Commissioner Moriarty reported she would have to recuse herself from the item due
42 to the proximity of her home to the subject site. She exited the Zoom meeting at this
43 time.

44
45 Planning Manager Hanham provided the staff report dated July 27, 2020 through a
46 PowerPoint for the request for consideration of a Conditional Use Permit (CUP) for a

1 new outdoor dining area at East Bay Coffee. He noted that references to Resolution
2 17-04 in the PowerPoint should be corrected to read *Resolution 17-03*. He also
3 clarified that in September 2017, both the Planning Commission and the City Council
4 had approved a CUP for alcohol sales within the café only. A request for outdoor
5 dining had been pulled from the application by the applicant based on issues that
6 had to be addressed at that time.
7

8 Mr. Hanham recommended the Planning Commission adopt Resolution 20-13,
9 approving CUP 20-03, amending CUP 17-03, and allowing outdoor dining located at
10 2529 San Pablo Avenue (East Bay Coffee Co).
11

12 Responding to the Commission, Mr. Hanham and Mr. Mog clarified the following:
13

- 14 • The modified shipping container to be used by staff to be able to make drinks
15 and serve food would face out and into the property with the main door being
16 the entrance for staff. The interior layout of the container was clarified.
17
- 18 • The site would be fenced and there was no Pinole Municipal Code (PMC)
19 setback requirement for the fence which could run up to the property line.
20
- 21 • The location of the garbage container would be located up against a back
22 fence with a single-family residence located adjacent to East Bay Coffee. The
23 applicant would be required to block the garbage container from view but there
24 was no requirement that it be covered, although a requirement could be
25 imposed by the Planning Commission.
26
- 27 • There were no current plans to sell alcohol outdoors although the applicant
28 did have potential plans in the future to move alcohol sales outside, which
29 would require a Public Convenience Necessity (PCN) process before the City
30 Council and a CUP process before the Planning Commission.
31
- 32 • On-street parking was located on San Pablo Avenue. While there was the
33 ability to provide for a spot for ride sharing on San Pablo Avenue, such a
34 designation required a determination by the City Engineer.
35
- 36 • Amplified music/sound was not permitted outdoors at this time.
37
- 38 • A “rock area” that had been used for parking by the owners of the business
39 could not be used for the outdoor dining.
40
- 41 • The modified shipping container was the first type of shipping container in the
42 City of Pinole to be used for a non-storage type of use and to be located in a
43 Commercial District.
44
- 45 • A temporary use permit had been issued a few months ago as part of the
adoption of a City Council Emergency Ordinance which allowed for temporary

1 outdoor dining. If the Planning Commission approved the CUP request, the
2 temporary use permit would no longer be valid and the applicant would be
3 operating under the new CUP for outdoor dining.
4

- 5 • The applicant planned to use low outdoor small/string lights with minimal
6 impacts. A condition of approval could be added to ensure any outdoor
7 lighting was kept to an ambience level.
8
- 9 • Condition 13 of Resolution 20-13 was clarified that if/when the applicant
10 planned for alcohol sales outdoors the applicant would have to work with the
11 City to meet the requirements of the PCN process.
12

13 Mr. Mog asked the Planning Commission to consider adding two whereas clauses to
14 the recitals of Resolution 20-13 regarding alcohol consumption not permitted
15 outdoors by the CUP, and the applicant was asked to clarify the hours of operation.
16 He explained that the Conditions of Approval contained in Exhibit A had referred to
17 all of the conditions related to the prior approved CUP, which were to remain. One
18 condition prohibited the sale of alcohol outdoors. Also, the hours of operation were
19 different from those shown in the July 27 staff report. If the Planning Commission
20 desired to allow the applicant to serve alcohol outdoors subject to the applicant
21 obtaining the required PCN that could be a condition or outdoor alcohol sales could
22 be prohibited and the applicant required to return in the future at such time as the
23 applicant wanted to proceed with that component of the application.
24

25 PUBLIC HEARING OPENED 26

27 LISA ANCIRA, Business Owner/Applicant, 2529 San Pablo Avenue, Pinole, and
28 present via Zoom, explained that the business was looking at ways to continue to
29 offer the community the food, drinks, service and atmosphere the business had
30 provided in the past as a unique destination in Pinole. Outdoor seating had become
31 a necessity for establishments looking to go beyond the limitations of the current
32 take-out model. The intent was to add an open air family friendly seating option to
33 create a space that would be attractive and safe. She was confident that offering this
34 space would be consistent with the brand and would address health concerns,
35 allowing the business to pivot without sacrificing its service model. She requested
36 approval of the request.
37

38 Responding to the Commission, Ms. Ancira clarified the business itself had limited
39 hours of operation and was currently open from 7:00 A.M. to 1:00 P.M., with plans to
40 work into lunch and dinner services. The original hours of operation were 7:00 A.M.
41 to 9:00 P.M. during the week and 7:00 A.M. to 10:00 P.M. on the weekends.
42 Assuming the ability to open gradually into the lunch and dinner tiers, the hours of
43 operation would not change from the hours established by the previous use permits.
44 Ms. Ancira also clarified there had been an initial request a few years ago for a beer
45 and wine license and to have outdoor dining permitting the service of beer and wine.

1 At that time there had been some pushback from some residents and parking issues
2 that had since been addressed. Based on a recommendation from the former
3 Planning Manager, the business had decided to isolate the ability to serve beer and
4 wine inside the café only. For the time being, outdoor dining and the service of
5 outdoor beer and wine sales had been let go. The former Planning Manager
6 suggested the business prove itself as a good neighbor and establish a track record
7 first prior to coming back and making those requests.

8
9 Ms. Ancira added that the current outdoor dining request had been made to the City
10 at the time COVID-19 had occurred and the City Council had graciously offered
11 urgency permits to allow outdoor dining. The business currently had permission for
12 outdoor service and had received permission for the beer and wine sales, however
13 in order to make the investment and make the area the way the business wanted it
14 to be, and to be consistent with the business brand, the applicants preferred a
15 permanent permit prior to making that investment.

16
17 Ms. Ancira also explained that the “rock area” had involved an issue with the surface
18 and there had been concerns with ingress and egress. At the time of the beer and
19 wine license request there had been an agreement that the business and the owner
20 not use that area for parking. Since the beer and wine license had been received
21 the area had not been used for parking, with the exception of two events (car show
22 and parade) permitted by the City.

23
24 Ms. Ancira further described the business model for outdoor dining which would be
25 compliant with the County Health Department directives for social distancing. The
26 modified shipping container allowed access without people having to come into the
27 venue and customers would be able to be served in that area proportionate to the
28 table seating. In the event of inclement weather, the outdoor dining area would have
29 some protection via umbrellas. In addition, atmospheric subtle string lighting would
30 be used in the outdoor area with no bright lights or poles. Most of the lighting would
31 be low and not visible beyond the coffee house. Similar lighting had been common
32 in many upscale/casual outdoor dining establishments in the Bay Area.

33
34 Ms. Ancira reiterated, when asked, that there were future plans for the sale of alcohol
35 (beer and wine) service outdoors with a desire to add taps in the modified shipping
36 container. She again reiterated the business model would be compliant with social
37 distancing requirements, which requirements would be well marked for the public.

38
39 Mr. Hanham advised that staff would inspect the outdoor dining area to ensure it met
40 all requirements including social distancing requirements.

41
42 Ms. Ancira added that most of the activity would occur in the kitchen inside the
43 building, with the modified shipping container to be used for drinks service with one
44 to two people at the most in that area at one time. The main building would be used
45 for major food preparation, all compliant with social distancing requirements. There
46 were no plans for outdoor music although ideally in the future it would be nice to hold

1 one-time community events. Any trash would be covered, with a trash bin at the rear
2 of the property that was also covered. As to a recommendation to designate a
3 parking space at the front of the business as a loading zone for ride sharing, she
4 noted since the business had opened there had been no incidents with the sale of
5 alcohol and all staff had been appropriately trained. She identified the close proximity
6 of two bus stops to the business which would be perfect for temporary pull-ins for ride
7 sharing, and suggested arrangements could be made to educate people on effective
8 transportation. There were also plans for outdoor games, such as corn holes and
9 giant Jenga games.

10
11 Mr. Hanham reported no e-mail comments had been received from the public for the
12 item.

13
14 PUBLIC HEARING CLOSED

15
16 The Planning Commission discussed CUP 20-03: East Bay Coffee Outdoor Dining
17 and offered the following comments and/or direction to staff:

- 18
19 • Recommended a one- to two-foot setback with shrubs at the front for the fence
20 to ensure the fence design was more welcoming. If outdoor alcohol sales
21 were to be considered in the future, suggested that be pushed forward now
22 with the understanding the applicant would have to go through the PCN
23 process with the City Council. (Flashman)
24
25 • Excited about the project and had no additional questions or concerns.
26 (Murphy)
27
28 • Stated the application offered a great opportunity for the City. (Ojeda)
29
30 • The proposed granite path of travel to the shipping container would have to
31 be Americans with Disabilities Act (ADA) compliant, to be verified during the
32 plan check phase of the project. Agreed the fence be set back to provide a
33 privacy fence, or it could be kept as is with the fence design to be modified to
34 be more open and friendly. (Wong)
35
36 • Recommended a new Condition 28, to read: *All lighting in the outdoor area*
37 *shall not be invasive on neighbors and will be approved by the Planning*
38 *Director. And Condition 17 of Resolution 20-13 to be revised to read: If the*
39 *operation of the use results in documented valid conflicts pertaining to*
40 *parking, lighting, noise, nuisance, traffic or other impacts, at the direction of*
41 *staff, the use permit may be referred to the Planning Commission for*
42 *subsequent review at a public hearing and possible revocation in accordance*
43 *with Title 17 of the Pinole Municipal Code. Agreed the fence should be set*
44 *back as proposed, also suggested the picket fence offered little security and*
45 *sought a more open fence design. (Kurrent)*

1
2 The Commission discussed the fence and offered suggestions. Chair Kurrent
3 suggested a solid wall would be off-putting and an open air fence was preferred;
4 Commissioner Ojeda suggested whatever fence design was chosen it be set back
5 around two feet from the sidewalk offering more space and suggested that placing
6 the fence to the edge of the sidewalk would be too crowded; Commissioner
7 Flashman suggested a setback would be helpful and may increase the curb appeal
8 of the property since the fence, as proposed, may make the sidewalk appear too
9 crowded. Commissioner Wong commented that if the fence was required to be set
10 back two feet there could be challenges with respect to uniformity and ADA
11 compliance and it may not be attractive. He offered an example of an open fence
12 design which was also tall enough to allow common plants to grow. He sought a
13 design which was more open and welcoming than a "wall."
14

15 Ms. Ancira emphasized the desire for a certain ambience and feel. She commented
16 that a 6- or 8-inch setback for the fence had been discussed but emphasized the
17 need to require full access for ADA compliance. For aesthetic purposes, the intent
18 was that the fence look and feel great, with the potential for some greenery up and
19 along the fence. It was also important that there be a good noise barrier for patrons
20 and the neighborhood, with the fence to provide privacy and serve as a noise barrier.
21 She was willing to submit design specifications to staff and suggested the sidewalk
22 felt crowded due to trees that had become overgrown in the middle of the walkway,
23 a concern that had been raised with the City.
24

25 By consensus, the Planning Commission agreed that staff should work with the
26 applicant to come up with ideas for the fence while taking into account the Planning
27 Commission comments, with a final design to be provided to the Planning
28 Commission by e-mail.
29

30 Mr. Mog clarified that the resolution before the Planning Commission had not been
31 prepared to allow the sale of alcohol with outdoor dining, which request would include
32 a requirement for a list of other businesses within 1,000 feet that also sold alcohol, to
33 be submitted before a CUP could be issued by the City.
34

35 **MOTION** to adopt Resolution 20-13, A Resolution of the Planning Commission,
36 the City of Pinole, County of Contra Costa, State of California, Approving
37 Conditional Use Permit 20-03, to Amend Conditional Use Permit 17-03, Resolution
38 17-11, and to Allow For Outdoor Dining at East Bay Coffee Company Restaurant
39 Located at 2529 San Pablo Avenue, Pinole, CA 94564, APN: 401-184-015),
40 subject to Exhibit A of Resolution 17-11, Conditions of Approval for East Bay
41 Coffee Company Alcohol Sales Conditional Use Permit, and subject to:
42

- 43 • A new Condition 28 to read:

44 *All lighting in the outdoor area shall not be invasive on neighbors and will be*
45

1 *approved by the Planning Director.*

- 2
- 3 • Revise Condition 17 to read:

4

5 *If the operation of the use results in documented valid conflicts pertaining to*

6 *parking, lighting, noise, nuisance, traffic or other impacts, at the direction of*

7 *staff, the use permit may be referred to the Planning Commission for*

8 *subsequent review at a public hearing and possible revocation in accordance*

9 *with Title 17 of the Pinole Municipal Code.*

10

11 **MOTION: Flashman**

12 **SECONDED: Ojeda**

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

14 **ABSENT: Moriarty**

15 Chair Kurrent identified the 10-day appeal process of a decision of the Planning

16 Commission in writing to the City Clerk.

17 Commissioner Moriarty returned to the meeting via Zoom at this time.

18

19 **F. OLD BUSINESS:** None

20

21 **G. NEW BUSINESS:**

22

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

24

25 Mr. Hanham reported that staff had applied for a Local Action Planning (LEAP)

26 Grant for the Housing Element and he hoped the City would be notified of the grant

27 status soon to allow staff to proceed with the update to the Housing Element. At

28 this time he provided an overview of the remaining sections of the Housing

29 Element, (with the discussion having been continued from the June 22, 2020

30 Planning Commission meeting) and again detailed the Regional Housing Needs

31 Allocation (RHNA) numbers. The City would be notified of its RHNA by the end of

32 2020.

33

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

- 35
- 36 • In terms of the Units at Risk of Conversion Section of the Housing Element,
- 37 there had been recent changes in state law whereby any time a regulatory
- 38 agreement expired that required the housing to be kept as affordable, the
- 39 city must be notified ahead of time (six months to a year).
- 40
- 41 • Staff would follow up on the addresses for Units at Risk of Conversion to
- 42 determine whether or not they were keeping the same income threshold
- 43 and if they were they would fall under the new law.
- 44 • The City of Pinole had been notified about the affordable status of the
- 45 Bayside Apartments in 2019, which status would expire in November 2020.

- The City's existing Zoning Districts and Three Corridors Specific Plan would be reviewed pursuant to the parameters of SB 22 funds to determine what would be allowed/disallowed in those zoning districts in terms of the RHNA.
- Accessory Dwelling Units (ADUs) had not been counted as affordable housing units since ADUs had primarily been connected to the main structure/home, however, staff cautioned some of the details/rules may change by the time the City proceeded with its Housing Element Update.
- Assembly Bill (AB) 1600 Parks and Recreation Fee Nexus Study, assessment of Development Impact Fees, and Open Space contributions.

H. CITY PLANNER'S / COMMISSIONERS' REPORT

1. Verbal Updates of Projects

Mr. Hanham reported staff had seen a 25 percent increase in permits as compared to 2019 consisting primarily of building permits. Future applications included a 4-unit project on Hazel Street with the Development Agreement (DA) being finalized by the City Attorney's Office. It was anticipated the project would be considered by the Planning Commission at its August 24, 2020 meeting. Staff was also working on the Water Efficiency Land Use Ordinance, also to be presented to the Planning Commission at its August 24 meeting. In addition, staff had been working with the property owner on an application for the former Kmart property and had a number of different ADU projects in process of being finalized. Further, the City had received grant funds from Senate Bill (SB) 2, which would allow different policy changes and actions to the Three Corridors Specific Plan, Zoning Ordinance and General Plan.

Commissioner Flashman inquired of the status of a prior request from the public for the Pinole Police Department to review whether or not there had been any issues with the access points to Kaiser, and Mr. Hanham advised he was working with the Development Services Director/City Engineer on that issue.

Commissioner Moriarty inquired of the status of the Old Town Parking and Pedestrian Safety Study, the trees for Pinole Square, Artisanal Garden application, and the railroad bridge project on San Pablo Avenue.

Mr. Hanham reported he was working with the Development Services Director/City Engineer and the City Council to schedule the Old Town Parking and Pedestrian Safety Study. He had not yet followed up with the applicants for Pinole Square but had e-mails to the owner of the property and hoped to have information at the next meeting. Staff had difficulty reaching the applicant for the Artisanal Garden application and more information was expected this week. As to the railroad bridge

1 project on San Pablo Avenue, he understood efforts were being made to complete
2 the funding mechanisms to build the bridge, with City staff working with the West
3 Contra Costa Transportation Advisory Committee (WCCTAC) and the Contra
4 Costa Transportation Authority (CCTA) to ensure all funding was in place. He was
5 otherwise unaware of the status of the plans for the project.
6

7 Commissioner Ojeda inquired of the status of the former Toys “R” Us and Doctors
8 Hospital buildings and whether or not staff was aware the clock at CVS was not
9 working property.

10
11 Mr. Hanham reported he was unaware of any plans for the Toys “R” Us building
12 other than rumors. The former Doctors Hospital property was for sale and there
13 had been some conversations with developers on potential development. As to
14 the blighted condition of the Doctors Hospital property, the City had been
15 monitoring the property via code enforcement with the property checked once a
16 month. He would meet with the Code Enforcement Officer at the property in the
17 next month. He was also aware the new clock at CVS was not working properly
18 and reported that staff had contacted CVS and there was a code enforcement case
19 on the property. He confirmed that the conditions of approval for the project
20 required the clock to operate properly.
21

22 **I. COMMUNICATIONS:** None

23
24 **J. NEXT MEETING**

25
26 The next meeting of the Planning Commission to be a Regular Meeting to be held
27 on Monday, August 24, 2020 at 7:00 P.M.
28

29 **K. ADJOURNMENT:** 10:01 P.M *In Memory of U.S. Representative, Congressman*
30 *John Lewis* and *Civil Rights Activist Cordy Tindell (C.T.) Vivian.*
31

32 Transcribed by:

33
34
35 Sherri D. Lewis
36 Transcriber