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**MINUTES OF THE REGULAR
PINOLE PLANNING COMMISSION**

September 28, 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: 7:07 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

Chair Kurrent reported that an application for the Hazel Street Subdivision had been pulled from the agenda, although comments from the public related to the project would be permitted under the Citizens to be Heard portion of the agenda.

The following speaker submitted written comments via email that were read into the record and would be filed with the agenda packet for this meeting: **Don McKinney.**

D. CONSENT CALENDAR

1. Planning Commission Meeting Minutes from August 24, 2020

MOTION to adopt the Planning Commission Meeting Minutes from August 24, 2020, as submitted.

MOTION: Flashman

SECONDED: Moriarty

APPROVED: 5-0-1

ABSTAIN: Ojeda

1 Chair Kurrent confirmed with Planning Manager Hanham that the approval of
2 Planning Commission minutes could be agendized as a separate item on future
3 agendas rather than under the Consent Calendar, to allow discussion.
4

5 **E. PUBLIC HEARINGS:**
6

7 **1. Conditional Use Permit CUP 20-05: Grocery Outlet Alcohol Sales**
8

9 **Request:** Consideration of a conditional use permit modification request
10 to include the sale of distilled spirits for off-site consumption, in
11 addition to the existing sales of beer and wine for off-site
12 consumption, at Grocery Outlet – 1460 Fitzgerald Drive
13

14 **Applicant:** Grocery Outlet, Inc. c/o Compass Commercial
15 3005 Douglas Boulevard, Suite 200
16 Roseville, CA 95661
17

18 **Location:** 1460 Fitzgerald Drive (APN: 426-010-023)
19

20 **Planner:** David Hanham
21

22 Planning Manager Hanham presented the staff report dated September 28, 2020,
23 and recommended the Planning Commission adopt Resolution 20-17 approving a
24 use permit request (CUP 20-05) which permitted beer, wine, and spirits located at
25 1460 Fitzgerald Drive, subject to conditions of approval as contained in Exhibit A to
26 the resolution.
27

28 Mr. Hanham also requested that references to Resolution 20-18, as shown in the
29 staff report and in a revised resolution for the item that had been distributed to the
30 Planning Commission, be corrected to read Resolution 20-17.
31

32 Responding to the Commission, Mr. Hanham clarified the following:
33

- 34 • The first bulleted condition under the heading On-Sale Conditions, as shown
35 on Page 7 of the September 28, 2020 staff report, should be corrected to read:
36 *No sale of alcohol is allowed for on-site consumption.*
37
- 38 • Clarified the conditions of approval as shown on Pages 6 and 7 of the staff
39 report which were currently in the City of Pinole Municipal Code (PMC) and
40 those not included in the PMC at this time, which conditions would be applied
41 to the application in addition to the conditions shown in Exhibit A. Conditions
42 not currently included in the PMC could be eliminated or modified by the
43 Planning Commission.
44
- 45 • No comments had been received from the public during the September 1,

1 2020 City Council meeting at the time the City Council had considered and
2 approved a determination of Public Convenience or Necessity for the subject
3 application.
4

5 PUBLIC HEARING OPENED
6

7 KATY SCHARDT, Consultant, representing Grocery Outlet, Inc., c/o Compass
8 Commercial, the consultant working on behalf of Grocery Outlet, introduced two other
9 members representing Grocery Outlet who were also present via Zoom. When
10 asked, she stated that adding spirits to Grocery Outlet stores had not brought a host
11 of issues. Grocery Outlet stores were well managed and operated, with operators
12 taking different approaches than managers of a Safeway or CVS, as examples, since
13 the operators had a stake in the store.
14

15 JEFF SHAFFER, Director of Sales and Merchandising, Grocery Outlet, provided
16 further details on the differences in the owner/operator models for Grocery Outlet
17 stores as compared to other grocery store chains.
18

19 As to the hours of operation and in response to Condition 11, Ms. Schardt explained
20 that the store would like to be open from 8:00 A.M. to 9:00 P.M., seven days a week.
21 She requested that Condition 11 be so modified.
22

23 Mr. Shaffer confirmed that Grocery Outlet's operating hours were 8:00 A.M. to 9:00
24 P.M., seven days a week, although some operators may modify their hours of
25 operation in response to daylight savings time or the summer period. At the most,
26 the hours of operation had been extended from 7:00 A.M. to 10:00 P.M.
27

28 Ms. Schardt also spoke to the second bulleted condition as shown on the bottom of
29 Page 6, which read: *There shall be no sales of beer or ales with an alcohol content*
30 *greater than six percent by volume*, which was not a condition currently in the PMC.
31 She noted some of the conditions preceded the sale of craft beer, which was a big
32 seller for Grocery Outlet and which could range from four to eight percent alcohol
33 content. She suggested the condition, as written, may preclude many retailers
34 who would like to sell their products in Grocery Outlet stores, and she asked that
35 the condition be revised to read: *There shall be no sales of beer or ales with an*
36 *alcohol content greater than ten percent by volume*.
37

38 In addition, the second bulleted condition shown on Page 7 and which read: *The*
39 *sale of beer or malt beverages in quantities of quarts, twenty-two (22) ounces,*
40 *thirty-two (32) ounces, forty (40) ounces and/or similar size quantities is prohibited,*
41 was also not in the PMC. That condition, as written, would prohibit the sale of craft
42 beer in individual bottles. Small breweries sold craft beer in the range of 22 to 24
43 ounces. She recommended the condition be revised to read: *The sale of beer or*
44 *malt beverages in quantities of quarts, thirty-two (32) ounces, forty (40) ounces*
45 *and/or similar size quantities is prohibited*.
46

1 Mr. Hanham advised no comments had been received via e-mail from the public
2 neither for nor against this item.

3
4 PUBLIC HEARING CLOSED

5
6 The Planning Commission discussed CUP 20-05 and offered the following
7 comments and/or direction to staff:

- 8
9
 - 10 • Requested more research prior to removing the restrictions around alcohol
11 content as the applicant had requested in that beer had historically been
12 around four percent alcohol and wine up to eight percent alcohol content,
13 which may have impacts on consumers. Found the conditions, as outlined in
14 the staff report and in Exhibit A, had been imposed for good reason taking
15 public safety into account. (Ojeda).

16 Mr. Hanham commented that in most cases beer and wine had been regulated by
17 the State of California. He acknowledged that craft beer was a new commodity.

18
19 Assistant City Attorney Alex Mog understood the limits had been put into place to
20 prevent creep into levels of alcohol normally seen in locations selling beer and wine,
21 which was why the conditions had been imposed although that did not mean an
22 applicant could not apply for a default liquor license.

- 23
24
 - 25 • Suggested the Planning Commission could default to the State standards
26 rather than specify the percentage of alcohol content by volume. (Kurrent)

27 Mr. Hanham and Mr. Mog both confirmed the Planning Commission may consider
28 the approach of deferring to the State standards pursuant to the regulations of a Type
29 21 liquor license.

- 30
31
 - 32 • Recognized the concerns raised by Commissioner Ojeda and acknowledged
33 the movement towards craft beer and consumer desire for its availability.
34 Asked whether craft beer identified the alcohol content on its containers,
35 questioned the number of CUPs that had been approved in Pinole which also
36 included restrictions on the types of beer that could be sold to ensure the City
37 was fair to all businesses, and expressed concern with the precedent that
38 could be set for future applications. If the application was approved for
39 Grocery Outlet with the modifications to conditions, as proposed by the
40 applicant, would like all the businesses that had been previously declined or
41 that had more restrictions on their use permits to be so notified; expressed
42 concern modifying the hours of operation and allowing the sale of alcohol after
43 9:00 P.M.; questioned whether that would be a change to the community
44 standard and if so would warrant greater discussion; and suggested that craft
45 beer could be separated from standard beer products and labeled as craft
beer with a higher alcohol content. (Flashman)

1 Mr. Hanham was uncertain of the number of CUPs that had been approved in Pinole
2 with similar restrictions.

3
4 Mr. Mog explained that there were a number of conditions that changed over time,
5 and a business always had the ability to come back to the Planning Commission and
6 request modifications to conditions.

7
8 On the question of whether to revise the second bulleted condition as shown on the
9 bottom of Page 6, as proposed by the applicant, Commissioners discussed how to
10 keep the community safe while also allowing the sale of craft beers. There was a
11 recommendation to refer back to the State standard which referred to six percent
12 for regular beer and up to ten percent for craft beer. The applicant was in
13 agreement with references to the State standard.

14
15 Mr. Hanham again clarified the conditions of approval contained in Exhibit A to the
16 resolution that were standard conditions of approval adopted by the City over time,
17 such as the hours of operation, and explained that the last two bulleted conditions
18 on Page 6 were not in the PMC but were standard conditions that had been
19 adopted for applications over the past 10 to 12 years. The second bulleted
20 condition on Page 7 was not in the PMC.

21
22 Mr. Mog also clarified that if the Planning Commission decided to refer to State
23 standards, there would be no need to specify a percentage, which would not be in
24 the resolution but in the license for the sale of alcohol.

- 25
26 • Expressed concern following the State regulations as related to the discussion
27 of whether to modify the second bullet at the bottom of Page 6 since the
28 State could change the alcoholic content in the future, and if approved, other
29 businesses in Pinole may want to sell craft beer with a higher alcohol
30 content. Preferred that it be spelled out that the alcoholic content of regular
31 beer not be greater than six percent and craft beer not more than ten
32 percent. Concerns with public health and the potential impacts of changing
33 the community standards were also noted. (Murphy and Wong)
34
35 • Opposed requiring the applicant to separate craft beer from other beer and
36 wine products and hold the business to a higher standard not imposed on
37 other businesses. (Moriarty)
38

39 Mr. Shaffer clarified there was no segregation between craft and standard beer
40 products in Grocery Outlet stores. The products had been merchandised together.

41
42 Chairperson Kurrent requested a straw poll vote to also be reflected with a Roll
43 Call Vote from each Commissioner on the following:
44
45

1 Revise the second bullet as shown on the bottom of Page 6, to read:
2 *Alcohol content of sales of beer and ales shall be governed by State ABC*
3 *regulations but shall be no greater than ten percent. (Roll Call Vote: 5-1.*
4 *Noes: Ojeda)*

5
6 Revise the second bullet condition as shown on Page 7, to read: *The sale*
7 *of beer or malt beverages in quantities greater than twenty-five (25) ounces*
8 *shall be prohibited. (Roll Call Vote: 5-1. Noes: Ojeda)*

9
10 Revise Condition 11 of Exhibit A, to read: *Operating hours will be 7:00 A.M.*
11 *to 10:00 P.M., Monday through Sunday. (Roll Call Vote: 6-0)*

12
13 Responding to the Commission's concerns and the lack of unanimity on the
14 conditions under discussion, Mr. Mog suggested the City Council could be asked
15 to discuss this matter further, such as to provide specificity on how craft beer would
16 be handled given that the health implications were unknown, the marketing of craft
17 beers was uncertain, and the Planning Commission did not have the wherewithal
18 to make a recommendation and questioned whether the City Council wanted to
19 grandfather-in previously approved businesses or identify the number of
20 businesses approved that may or may not have similar restrictions, and consider
21 updating existing CUPs automatically or individually.

22
23 **MOTION** to adopt Resolution 20-17, a Resolution of the Planning Commission of
24 the City of Pinole, County of Contra Costa, State of California, Approving a
25 Conditional Use Permit Modification to Allow the Sale of Distilled Spirits for Off-
26 Site Consumption, in Addition to the Existing Sales of Beer and Wine for Off-Site
27 Consumption at 1460 Fitzgerald Drive, Pinole, CA 94564, APN: 426-010-023,
28 subject to the Conditions of Approval contained in Exhibit A, and subject to the
29 following revisions:

- 30
31
 - Revise the second bullet as shown on the bottom of Page 6, to read:

32
33 *Alcohol content of sales of beer and ales shall be governed by State ABC*
34 *regulations but shall be no greater than ten percent.*

- 35
36
 - Revise the second bullet condition as shown on Page 7, to read:

37
38 *The sale of beer or malt beverages in quantities greater than twenty-five*
39 *(25) ounces shall be prohibited; and*

- 40
41
 - Revise Condition 11 of Exhibit A, to read:

42
43 *Operating hours will be 7:00 A.M. to 10:00 P.M., Monday through Sunday.*
44
45

1 **MOTION: Moriarty**

2 **SECONDED: Wong**

3 **APPROVED: 5-1**

4 **NOES: Ojeda**

5 Chair Kurrent identified the 10-day appeal process of a decision of the Planning
6 Commission in writing to the City Clerk.

7 **F. OLD BUSINESS:** None

8
9 **G. NEW BUSINESS:**

10
11 **1. General Plan/Specific Plan Information Session: Community**
12 **Character**

13
14 Mr. Hanham provided an extensive overview of the Community Character Element
15 of the General Plan, read into the record the Community Character policies and
16 strategies, and provided clarification in response to Planning Commission
17 comments.

18
19 Commissioner Moriarty looked forward to revisiting the General Plan, specifically
20 the Old Town Design Review Guidelines.

21
22 Commissioner Flashman sought more information on how the Community
23 Character Element played into the Beautification Committee, which were tied
24 together in some ways. She agreed that Old Town was special to Pinole. She
25 was curious how a Park Master Plan would play into the City's parks, outdoor
26 spaces, creeks, and shorelines and how it would interplay between the Community
27 Character Element and outdoor spaces, and was also curious about the paint color
28 requirements, particularly for Old Town Pinole while recognizing it was a subjective
29 element of the General Plan.

30
31 Commissioner Wong was excited about future discussions of the Community
32 Character Element of the General Plan and the possibility of revising and modifying
33 the plans.

34
35 Commissioner Ojeda commended staff on the presentation. He looked forward to
36 participating in future discussions.

37
38 Commissioner Murphy appreciated the staff presentations on each section of the
39 General Plan and looked forward to receiving a copy of the Old Town Design
40 Guidelines in the future.

41
42 Chairperson Kurrent expressed concern with the appropriateness of some
43 language in the first paragraph of the Community Character Element, and
44 recommended deference to applicants on desired paint colors.

1 Mr. Mog reported the City Council's PMC Update Subcommittee was discussing a
2 possible new Historic Preservation Ordinance, updating guidelines, and identifying
3 potential historic properties as part of that process. As a result, something may be
4 brought to the Planning Commission in the coming months.

5 6 **H. CITY PLANNER'S / COMMISSIONERS' REPORT**

7 8 **1. Verbal Updates of Projects**

9
10 Mr. Hanham reported that building permits had increased 20 percent over 2019.
11 Staff had been working with three multi-family developers/builders including Pinole
12 Vista for between 174 and 200 units on the former Kmart site, with staff having
13 conducted a pre-application review of the project; DeNova Homes was considering
14 the Making Waves site for another approximate 160 units, and staff had provided
15 comments on a very preliminary site plan; and Pinole Woods proposed an
16 approximate 130 units.

17
18 Mr. Hanham offered other updates and stated that Pinole Square was starting
19 underground work with the landscaping plan to be revised; and Dr. Lee's Office
20 was under construction and the removal of oak trees on the property had required
21 the payment of a mitigation fee to be used for the planting of trees in other portions
22 of the community, with larger shrubs to be planted to offset the building.

23
24 Responding to Planning Commission concerns with the removal of the oak trees
25 on the Dr. Lee property and the lack of compliance with the approved landscape
26 plan for the project, Mr. Hanham emphasized staff was working with Dr. Lee to
27 address all concerns.

28
29 Chair Kurrent reported he and Commissioner Flashman had a video conference
30 as the Planning Commission Development Review Subcommittee with the
31 applicants for the Hazel Street subdivision, but since the item had not been
32 agendaized a discussion was deferred until that time.

33
34 Commissioner Moriarty reported the contractor for the Burlington Northern/Santa
35 Fe (BNSF) Railroad Bridge on San Pablo Avenue had made a presentation to the
36 West Contra Costa Transportation Advisory Committee (WCCTAC). She provided
37 an update of the Friends of Pinole Creek efforts in tandem with the Ad Hoc
38 Beautification Committee, who would be meeting with an individual working with a
39 scientist to address the trash problem in Pinole Creek. That situation involved a
40 year-long project based on community science with input from different leadership
41 of different community groups in Pinole. Additional information was available
42 @thrivingearthexchange.org. She also reported the California Coastal-Clean-Up
43 for the month of September had been a great success. In addition, she
44 congratulated Commissioner Murphy on his appointment to the City Council.

45
46 Commissioner Murphy urged everyone to complete their 2020 Census surveys.

1 Mr. Hanham advised that applications were available on-line for the vacancies on
2 the Planning Commission.

3
4 Commissioner Flashman requested a future presentation from the Ad Hoc
5 Beautification Committee and clarified with staff the Planning Commission
6 vacancies and term renewals were intended to be filled at one time, although there
7 had been some challenges due to COVID-19. She also offered her thoughts to
8 those suffering as a result of the Glass Fire in the North Bay, acknowledged that
9 wildfires had become the new normal, and emphasized the importance of
10 supporting Sonoma and Napa Counties during this time. She requested that the
11 meeting be adjourned in memory of Supreme Court Justice Ruth Bader Ginsburg.
12

13 **I. COMMUNICATIONS:** None

14
15 **J. NEXT MEETING**

16
17 The next meeting of the Planning Commission to be a Regular Meeting to be held
18 on Monday, October 26, 2020 at 7:00 P.M.
19

20 **K. ADJOURNMENT:** *In Memory of Supreme Court Justice Ruth Bader Ginsburg*
21 at 9:55 P.M.
22

23 Transcribed by:

24
25
26 Sherri D. Lewis
27 Transcriber