

MINUTES APPROVED AT THE PC MEETING ON FEBRUARY 16, 2023

PLANNING COMMISSION REGULAR MEETING COUNCIL CHAMBERS, RICHMOND CITY HALL

Teleconference
December 1, 2022
6:30 p.m.

COMMISSION MEMBERS

David Tucker, Chair	Jen Loy	Vacant
Jonathan Harrison, Vice Chair	Masoomah Sharifi Soofiani	
Bruce Brubaker, Secretary	Alpa Agarwal	

The regular meeting was called to order by Vice Chair Harrison at 6:30 p.m.

ROLL CALL

Present: Vice Chair Jonathan Harrison; Commissioners Bruce Brubaker, Jen Loy and Alpa Agarwal

Absent: Chair Tucker; Commissioner Masoomah Sharifi Soofiani

INTRODUCTIONS

Staff Present: Planning Staff: Lydia Elias, Community Development Director Lina Velasco, and Attorney James Atencio

MINUTES –

Vice Chair Harrison commented he was not at one of the meetings and asked if he could participate in the vote. If not, he inquired if three votes was sufficient to approve the minutes. Mr. Atencio remarked that three votes was sufficient.

September 1, 2022

Commissioner Loy commented she was absent from the meeting.

ACTION: It was M/S/C (Brubaker, Harrison) to approve the September 1, 2022 draft meeting minutes; which carried by the following vote: 3-0-2-1 (Ayes: Harrison, Brubaker, Agarwal; Noes: None; Absent: Tucker, Soofiani; Abstain: Loy).

September 15, 2022

ACTION: It was M/S/C (Loy, Brubaker) to approve the September 15, 2022 draft meeting minutes; which carried by the following vote: 3-0-2-1 (Ayes: Brubaker, Loy, Agarwal; Noes: None; Absent: Tucker, Soofiani; Abstain: Harrison).

AGENDA

Vice Chair Harrison said items approved by the Commission may be appealed in writing to the City Clerk by Monday, December 12, 2022, by 5:00 p.m.

CONSENT CALENDAR –

- 1. PLN22-266: Masa Taqueria PUBLIC HEARING** to consider a Conditional Use Permit that would allow a drive-through restaurant with the sale of beer, wine, and distilled spirits at 10409 San Pablo Avenue (APN: 510-121-028). CM-3, Commercial Mixed-Use, Commercial District. Vincent Wong & Becky TRE, owner; Jonathan Bermudez/applicant Planner: Lydia Elias Tentative Recommendation: Conditional Approval

Commissioner Agarwal requested that the item be removed from the Consent Calendar.

- 2. PLN22-373: Food Mart PUBLIC HEARING** to consider a Conditional Use Permit amendment which would allow the sale of distilled spirits in addition to beer and wine at 4251 Hilltop Drive (APN: 426-292-024). CM-2, Commercial Mixed-Use, Neighborhood District. Hari Kalra, owner/applicant Planner: Lydia Elias Tentative Recommendation: Conditional Approval

Ms. Velasco reported that the applicant had requested that the item be removed from the Consent Calendar and re-noticed for a future hearing.

BROWN ACT – Public Forum – None

NEW BUSINESS

- 1. PLN22-266: Masa Taqueria PUBLIC HEARING** to consider a Conditional Use Permit that would allow a drive-through restaurant with the sale of beer, wine, and distilled spirits at 10409 San Pablo Avenue (APN: 510-121-028). CM-3, Commercial Mixed-Use, Commercial District. Vincent Wong & Becky TRE, owner; Jonathan Bermudez/applicant Planner: Lydia Elias Tentative Recommendation: Conditional Approval

Ms. Elias explained that the applicant was looking to expand their business with a second location at 10409 San Pablo Avenue. The Conditional Use Permit (CUP) would allow the establishment of a drive-thru restaurant with outdoor dining and the sale of beer, wine, and distilled spirits. The alcohol ABC license would be a Type 47 and would allow for the sale of beer, wine, and distilled spirits for onsite and offsite consumption. Staff recommended that the Planning Commission adopt the resolution.

Ms. Elias reported the subject site was located east of Interstate 80 and within the Richmond Annex neighborhood. The proposed site was approximately 10,000 square feet with an existing 1,344 square foot commercial building with a seven-space parking lot. The previous use of the building was a fast-food restaurant which closed in 2019. The existing neighborhood included mixed retail, businesses, restaurants, residential uses, and single-family homes west of the site.

She shared that the proposed hours for the new restaurant were Sunday through Saturday from 6:00 am to 1:00 am with the sales of alcohol and outdoor dining restricted to 10:00 am to 10:00 pm. The applicant proposed to repaint the interior and exterior of the existing building, install new interior tiles, install new landscaping, install a new outdoor dining patio, install new signs and resurface the lot.

Currently, the census tract had six active ABC licenses and ABC allowed up to five. Staff was able to make the public convenience and necessity findings to exceed the maximum. She noted the police department reviewed the applicant's proposal and shared no objections. The project's proposed hours were in alignment with other existing uses in the area.

Ms. Elias shared that in June 2021, the Commission approved PLN20-241 which was the applicant's first CUP that allowed the first restaurant to be constructed. The restaurant was still in business and the establishment had no Code Enforcement violations. The restaurant's current hours of operation were Sunday through Saturday from 10:00 am to 8:00 pm.

With respect to zoning, Ms. Elias reported that the project was compliant a use to the zoning. Staff had included two new conditions to ensure that 25 percent of the outdoor dining was accessible to wheelchairs and that the outdoor dining had limited hours of operation. She commented that the project was also consistent with the General Plan.

The applicant presented the project to the Richmond Annex Neighborhood Council and was in communication with them. Staff had received comments from the public who were concerned about the hours of operations and drive-thru service.

Commissioner Loy appreciated the review made by the police department and that the first location in Point Richmond had not had any violations. She requested that the applicant, during their presentation, address the concerns raised by the community.

Commissioner Brubaker understood that the drive-thru was not under consideration per the CUP and was grandfathered in from the previous use. Ms. Elias confirmed that was correct, the previous CUP ran with the land and there were no proposed changes to the building.

Commissioner Agarwal echoed Commissioner Loy's comments about the concerns raised by the neighborhood.

Jonathan Bermudez, the applicant, mentioned he recently had received concerns from the community. He noted those concerns were raised at the neighborhood council meeting and were addressed there. He mentioned several of the concerns pertained to the sale of alcohol. No alcohol would be served through the drive-thru. The restaurant would not be a full bar and would not have a full menu of cocktails. The intent was to have a restaurant that could be enjoyed by families.

Ms. Elias mentioned that Condition #9 strictly prohibited the sale of alcohol through the drive-thru. She summarized the comments made by the public which included concerns about the abutting residential property, light pollution from cars, noise from the intercom from the drive-thru, disturbances, the limited space, congregation, noise, litter, and others. The neighborhood council's response letter shared that many folks supported the restaurant with the exception of the hours and alcohol sales. With respect to the concern about the low brick wall between the abutting residential and the proposed restaurant, Ms. Elias stated that Condition #6 required the applicant to raise the height of the existing wall to 6 feet.

Vice Chair Harrison concurred the additional height of the wall would block the headlights and help with noise as well. He inquired if there were any noise complaints from the previous fast food use. Ms. Elias mentioned staff could only look back to when the business license was enacted and there had been no noise complaints from the neighbors.

Mr. Bermudez shared he wanted to see the restaurant be integrated into the neighborhood seamlessly and he wanted the restaurant to be a family-friendly environment.

Public Comment:

GARLAND ELLIS, President of the Richmond Annex Neighborhood Council, stated that some of the components of the restaurant had changed as the project moved through the process. The neighborhood supported the restaurant but was concerned about the sale of alcohol. He noted it was never mentioned that the establishment would not have outdoor seating. Upon discussions with ABC, they did not support having alcoholic beverages served in a parking lot or beverages being served to go. Folks were concerned about the liter from the beverage containers. The neighborhood supported the alcohol to be limited to beer and wine. He emphasized there was very limited space inside to serve alcohol and that type of sale would spilled over to the outside dining. He stated there had been limited conversations between the neighborhood council, residents, and the applicant.

Vice Chair Harrison asked if the outdoor dining had always been a part of the application and Ms. Elias confirmed that was correct. The City had requested that the outdoor dining be reduced in size to reduce the impact on the neighbors which the applicant obliged.

Commissioner Loy mentioned through her own experience when applying for an ABC License, if ABC had concerns, the applicant would have to address those concerns to obtain the license. She encouraged the applicant to reach out to the neighbors and hold an open dialog.

Commissioner Brubaker wanted to understand what the hours were for the previous fast food use and how late the proposed drive-thru would be open. Ms. Elias answered the drive-thru would be open from 6:00 am to 1:00 am. Commissioner Brubaker asked if the proposal was to allow to-go alcohol containers to be purchased. Mr. Bermudez answered the restaurant would serve biodegradable containers and glass bottles. He said he was more than willing to work with the neighbors, but noted that a Type 47 license was a process and was costly to obtain. He restated that the plan was to serve only four mixed drinks.

Commissioner Agarwal understood from 10:00 am to 10:00 pm folks would sit outside and Mr. Bermudez answered yes. Commissioner Agarwal inquired if there would be any seating indoors and Mr. Bermudez answered there would be an indoor counter for standing. Commissioner Agarwal understood the drive-thru would be open from 6:00 am to 1:00 am and only food would be served from the drive-thru. Mr. Bermudez confirmed that was correct. Commissioner Agarwal mentioned that folks could purchase alcohol inside the restaurant and those drinks may be in-to-go containers from 10:00 am to 10:00 pm. Mr. Bermudez confirmed that was correct. Commissioner Agarwal appreciated that the applicant was amendable to increasing the height of the existing wall. She inquired about the ingress and egress of the site.

Commissioner Loy interjected that the Commission only had purview over the proposed alcohol sales and the outdoor seating. She noted the building was not being altered and so the drive-thru was being grandfathered in.

Commissioner Agarwal appreciated the clarification. She asked if there was more opportunity to beautify the street facades with more tree plantings. Mr. Bermudez agreed to considered it. Ms. Velasco noted that the portion of San Pablo Street was under the jurisdiction of the City of El Cerrito but there was a landscape strip along Panama Street that the City could condition to

have more trees. Commissioner Agarwal requested a tree condition be placed in the motion of approval.

Commissioner Loy encouraged the applicant to monitor any liter that may be produced from the biodegradable cups and pursue with the City of El Cerrito the possibility of having an additional trash can.

Vice Chair Harrison was concerned about having glass bottles in the outdoor seating area and suggested the beverages be served in plastic cups or something similar. Mr. Bermudez said it was something that could be considered. He wanted to provide a good customer experience and provide a small variety of beverages.

Commissioner Brubaker and Commissioner Loy agreed that a condition to plant more trees should be added to the motion. Commissioner Loy wanted there to be language that any additional trees would be in alignment with the City's established plans.

Commissioner Brubaker asked what the recourse was for neighbors if there was a problem with the hours of operations. Ms. Elias commented that the prior fast food use was open 24 hours for drive-thru service. Ms. Velasco explained if complaints are received and no resolution could be accomplished between the City and the applicant. The CUP would return to the Commission for consideration.

Vice Chair Harrison suggested the applicant use a QR code for the drive-thru to reduce noise impacts. Mr. Bermudez remarked the restaurant would encourage online order and pick up.

Commissioner Brubaker put forward a motion that was amended by Commissioner Loy.

Mr. Bermudez agreed to the three added conditions as outlined in the motion.

Commissioner Loy requested that Commissioner Brubaker explain his intention to not allow glass containers in the outdoor dining space. She expressed concern that the non-breakable cups were easier to walk away from the establishment with. Commissioner Brubaker explained he was concerned about the noise caused by glass breaking. Commissioner Loy suggested that at an identified time, all glass containers be prohibited and only non-breakable cups be used outside. She predicted the establishment was not going to be the place to go to consume many drinks.

Vice Chair Harrison agreed that the first establishment was very family-friendly and understood that was the intent of the new location.

Commissioner Brubaker amended the motion to remove the non-breakable cups condition.

ACTION: It was M/S/C (Brubaker, Agarwal) to approve the Conditional Use Permit with two additional conditions; 1) to add a condition to provide trees if possible to achieve 2) a condition to add additional bicycle parking; which carried the following vote: 4-0-2 (Ayes: Harrison, Brubaker, Loy, Agarwal; Noes: None; Absent: Tucker, Soofiani).

Director Velasco noted that the decision made by the Commission could be appealed to the Council.

3. PLN22-384: Chevron Modernization Project Annual Compliance Report
PRESENTATION on the annual compliance report for the Chevron Refinery Modernization Project Annual Compliance Report pursuant to condition of approval H5 of Conditional Use Permit PLN11-089 at 841 Chevron Way/100 Chevron Way (APNs: 561 030-001; 561-030-002; 561-030-003; 561-030-005; 561-040-013; 561-040-014; 561- 040-015; 561-040-016; 561-040-017; 561-080-001; 561-080-002; 561-080-003; 561-080- 005; 561-080-006; 561-080-007; 561-090-003; 561-090-004; 561-100-003; 561-100-009; 561-100-010; 561-100-017; 561-110-020; 561-100-025; 561-100-037; 561-100-038; 561- 100-042; 561-100-043; 561-100-044; 561-100-047; 561-100-048; 561-100-049; 561-110-022; 561-100-029; 561-110-034; 561-110-035; 561-110-036; 561-110-041; 561-110-044; 561-390-001; 561-390-003; 561-390-004; 561-390-016; 561-400-008; 561-410-002; 561-410-003). IG, Industrial, General District. Chevron USA Inc, owner; Chevron Products Company, A Division Of Chevron USA Inc., applicant Planner: Lina Velasco Tentative Recommendation: Receive And Provide Comments

Ms. Velasco reported that the compliance report covered the 2021 calendar year.

Shari Libicki, Ramboll Corporation, stated that Ramboll had contracted with the City to complete the annual compliance report. She announced the recommended action was to receive the staff and consultant presentation and provide comments.

The Chevron Modernization Project consisted of the construction of a new hydrogen plant, collection equipment improvements, modifications to the refinery's existing sulfur recovery units (SRUs), and infrastructure improvements. The project included Project Design Features (PDFs) and mitigation measures to achieve no net increase in Criteria Air Pollutants (CAP), Toxic Air Contaminates (TAC), and no physical increase in Greenhouse Gas (GHG) emission.

The City certified the Environmental Impact Report (EIR) and approved the CUP for the project in 2014. The CUP required Chevron to submit a compliance report to the City annually after beginning the first full year of construction. The annual report was the fifth annual report submitted to the City and covered predominately operations and minimal construction activities. Varies agencies and individuals were involved in ensuring compliance with the project.

Of the four phases of the project, the majority of pre-construction and construction was complete. The pre-operation stage was complete and the operation stage was ongoing. Since the last update, the construction of the tank dome was completed as well as the GHG Construction Mitigation Project. Ongoing construction was the demolition of the old hydrogen plant. Potential future construction included modifications to the fluid catalytic cracker (FCC) feed hydrotreater (FHT). In 2018, construction-related GHG emissions was over the thresholds identified in the EIR. In December 2019, the City approved the permanent replacement of 3 Tier 2 diesel pumps in the marsh area with electric pumps. Preliminary work began in 2020 on the GHG Construction Mitigation Project. Temporary electric pumps were placed in service on August 31, 2021, and permanent electric pumps were placed into service in the first quarter of 2022. All obligations for construction were met and verified by the compliance team. Chevron continued to track emissions using the Construction Emissions Module (Module) that was developed in conjunction with the City's environmental consultant.

With respect to operations, 2021 was the second full year of operations for the new hydrogen plant and sulfur recovery improvements. All obligations for the 2021 operational year were met and verified by the City's compliance team. The team verified that there was no net increase in CAP, no physical increase in GHG emissions from the baseline, and the facility utilization was

75 percent which was below the 93 percent utilization scenario identified in the EIR. When compared to the baseline emissions, all criteria air pollutant categories were below the baseline figures.

With respect to flaring notification, the refinery was required to notify the City of hydrogen plant flaring events that were greater than 500,000 standard cubic feet as well as provide notification to the Bay Area Air Quality Management District (BAAQMD). BAAQMD tracked all reported flaring activities on the BAAQMD refinery flare monitoring page. The City concluded that the hydrogen plant flaring events were being monitored and regulated by BAAQMD.

Ms. Libicki concluded that Chevron would continue to prepare the annual compliance report and submit it to the City by September 1 of year each. Any obligations that had been fulfilled or was no longer applicable would be removed from future reports for clarity and succinctness.

Mauricio Molina, Planning Manager at the Richmond Refinery, remarked that the report showed that the refinery continued to achieve its objectives to have a newer, safer, and cleaner refinery. The refinery continued to meet current energy demands, including jet fuel for many of the airports in the Bay Area as well as gasoline for 20 percent of northern California.

Mr. Molina summarized the refinery's accomplishments. Since operations began in 2019, the refinery continued to remain well within the emission commitments in the no net increase. In addition, the refinery was working with the Contra Costa Health Service to fully implement and ensure compliance with the Reliability Program. He noted since 2018, the refinery had reduced refinery-wide particulate matter emissions by 30 percent. The refinery also provided over \$70 million for the Environmental College Scholarship and community programs through the Environmental and Community Investment Agreement (ECIA).

He shared that Chevron continued to explore opportunities to further advance low carbon energy and he announced the team would love to partner with the City, labor unions, and others to make the City the leader in the energy transition. Some of the projects being explored included additional solar power generation on the refinery site, hydrogen and renewable fuels, and more emission reduction projects within the refinery. The refinery was also advancing the creation of a Richmond hydrogen hub by holding events and partnering with other entities to encourage the use of hydrogen.

Commissioner Brubaker understood that Ms. Libicki was a consultant for the City and Ms. Libicki confirmed that was correct. Commissioner Brubaker wanted to understand if Chevron was acting in good faith and that the information provided was verifiable. Ms. Libicki answered that Chevron refinery staff had always been responsive to questions. Commissioner Brubaker inquired if flaring events had increased or decreased year over year. Ms. Libicki mentioned it was common to see additional flaring at start up and so during 2019 the plant had a high number of flare-ups. The events decreased in 2020, and while they increased slightly in 2021, the flaring activities were within the range of normal for flaring. The compliance team continued to monitor flaring activity. Commissioner Brubaker asked how long the Chevron refinery was required to be monitored. Ms. Libicki restated that as the projects reached completion, they would be removed from the compliance checklist. She recalled there was no end date on the monitoring of emissions. Commissioner Brubaker appreciated the annual presentations and wanted to see them continue. He wanted to understand the process if further GHG mitigations were needed. Ms. Libicki answered the need for more mitigation would arise if construction emissions were higher than the identified thresholds in the EIR and/or if the annual emissions exceed the baseline emissions. The purpose of the annual reporting was not to identify new

mitigations and to verify that Chevron's mitigations were effective. Shawn Lee, Chevron Refinery, restated the refinery's intention was not to exceed the limits but if there were an exceedance, then a mitigation measure would be implemented. Mr. Molina added that some of the energy transition projects that were being explored could result in lower GHG emissions.

Commissioner Agarwal mentioned that several community members have expressed that the refinery was hurting the environment and that the lower real estate figures were because of the refinery's presence. She asked if staff could share any comments on those concerns. Ms. Libicki remarked her expertise was in air quality and could not offer any help with respect to property values. With respect to air quality, there was a significant amount of work on community monitoring that was done adjacent to the site during the EIR process. During that monitoring time, there was never an indication of air quality issues. Since then the City had been implementing Assembly Bill (AB) 617 monitoring through several projects and she encouraged folks to engage in those projects if they had concerns about air quality. Ms. Velasco noted that the City does not monitor all of the operations at the refinery, only the ones outlined in the EIR.

Vice Chair Harrison understood that the refinery was exploring programs to reduce its baseline emission figures. Mr. Molina answered as the energy transition projects are refined, they will be presented to the appropriate agencies for approval of implementation. Vice Chair Harrison asked if future projects would be subject to a similar monitoring program and Mr. Molina believed they would be. Ms. Velasco noted that the detail of the monitoring would vary project by project.

Commissioner Loy appreciated the refinery's work with the scholarship and the other community engagement efforts.

Public Comment:

None

Hakim Johnson, Chevron Refinery, echoed Ms. Libicki's comment with respect to AB 617 projects. He mentioned that Richmond had the most air quality monitors within the city when compared to other Bay Area cities and that was because of the implementation of AB 617.

Commissioner Agarwal requested more information about AB 617.

COMMISSION BUSINESS

- 4. Development pipeline projects** – Ms. Velasco requested that the item be held over to the December 15, 2022 meeting to allow all Commissioners to be present.
- 5. Reports of Officers, Commissioners, and Staff** – No report
- 8. Adjournment** - The meeting was adjourned at 8:16 p.m. to the next regular meeting on December 15, 2022.