

**PLANNING COMMISSION REGULAR MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL**
450 Civic Center Drive, Richmond, CA
November 1, 2018
6:30 p.m.

COMMISSION MEMBERS

Marilyn Langlois, Chair	Andrew Butt, Vice Chair
Nancy Baer	Jen Loy
Claudia Garcia	Michael Huang
David Tucker	

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

ROLL CALL

Present: Chair Marilyn Langlois; Commissioner Nancy Baer, Jen Loy, David Tucker and Yu-Hsiang (Michael) Huang

Absent: Vice Chair Andrew Butt and Commissioner Claudia Garcia

INTRODUCTIONS

Staff Present: Planning Staff: Lina Velasco, Roberta Feliciano, Director of Planning and Building Services Richard Mitchell, and Senior Assistant Attorney Carlos Privat

MINUTES –

None.

AGENDA

Chair Langlois provided an overview of meeting procedures for speaker registration, public comment, and public hearing functions. She said items approved by the Commission may be appealed in writing to the City Clerk by Monday, November 11, 2018 by 5:00 p.m. and she announced the appeal process after each affected item, as needed.

Chair Langlois requested that Item Number Three be moved to the top of the agenda.

CONSENT CALENDAR –

None.

BROWN ACT – Public Forum

None.

NEW BUSINESS

3. **PLN18-312: Zoning Ordinance Amendments for Wireless Facilities** PUBLIC HEARING to consider a recommendation to the City Council of an ordinance adopting amendments to Article 15.04.614 Wireless Communications Facilities of the Richmond Municipal Code. City of Richmond, applicant Planner: Lina Velasco Tentative Recommendation: Recommend Adoption to City Council

Tripp May, Attorney, and Partner with Telecom Law Firm, started the presentation by stating that a new FCC laws had been passed on September 27, 2018, called the Small Cell Order but it would not be effective until January 14, 2019. Appeals have been filed but it could take up to 2-years to have the new law overturned.

A Small Cell or SWF Classification was defined as something less than 50-feet tall or 10 percent taller than the structure it had been mounted on, nothing with an antenna that exceeds 3 cubic feet and nothing with non-antenna equipment that exceeds 28 cubic feet. There was no limits on the number of antennas that could be used on the unit.

If the unit fit within the definition then three new rules would apply to that unit. The first rule was a state or local requirement effectively prohibits deployment when it materially limits or inhibits any competitor's or potential competitor's ability to compete in a fair and balanced legal and regulatory environment. The second rule had to do with fees and that stated that all fees must be cost based. The third rule applied to aesthetics and that included a three-part test. All regulations had to be technically feasible, no more burdensome than those applied to another infrastructure deployment and published in advance.

Under the new law, shot clocks for small cells would be 60-90-days. The new law also redefined co-location to mean any wireless equipment sharing an existing structure. Most new wireless facilities that would be placed on rooftops would be subject to a 90-day shot clock and most new small cell facilities installed on existing street infrastructure was subject to a 60-day shot clock. All applications to shovel-ready projects have to be completed within the shot clock timeframe. If multiple applications were submitted at a time then whatever the longest shot clock was for that batch would be applied to all the applications.

Staff's recommendation was to hold a public hearing and adopt Resolution 18-29 recommending that the City Council introduce proposed amendments to Article 15.04.614.

Commissioner Loy asked if any of the new law was retroactive and does the City need to codify things; for example, if the public requested extra testing. Mr. May explained that there were parts that were retroactive but they did not affect the planning process. In terms of codifying things, the Commission could request that it be put in the Standard Conditions but it was not necessary.

Chair Langlois wanted more information on what a Master License Agreement was and if that needed City Council approval. Mr. May announced that the Master License agreement did need to be approved by the City Council but the standards of the Master License would be held to the new standards in terms of aesthetics. Attorney Privat added that the City did have one Master License Agreement currently and it was with Extenet which was approved several months ago. Chair Langlois's final question was if small wireless facilities were nicknamed 5G. Mr. May explained that small cells were apart of the foundation technology for 5G.

Commissioner Tucker asked if the equipment that was being replaced by the small cells was being removed. Mr. May articulated that the small cells supplement but do not replace the macro cells but the amendments did require any inoperable equipment to be removed.

Chair Langlois announced that she was overall happy with the new amendments. She suggested that notification and input from the public be a top priority. She requested that if there were any changes to the federal regulations and application submittal requirements that the Planning Commission, City Council, and the public be notified of those changes.

Discussion ensued between Chair Langlois and Staff discussing the terms of the Resolution that would be presented to City Council if the appeals were not successful. Chair Langlois requested a status update in 6-months on wireless facilities.

ACTION: It was M/S/C (Baer, Huang) to forward PLN18-312 to the City Council as prepared by Staff with the additional edits mentioned by Chair Langlois to require notification to the PC, CC and public when changes are made to the submittal requirement; which carried by the following vote 5-0 (Ayes: Langlois, Baer, Loy, Huang, Tucker; Noes: None; Absent: Butt and Garcia).

- 1. PLN18-310: Zoning Ordinance Overall Cleanup Amendments PUBLIC HEARING** to consider a recommendation to the City Council of an ordinance adopting clean-up amendments to Chapter 15.04 - Zoning and Subdivision Regulations, of the Richmond Municipal Code. City of Richmond, applicant Planner: Lina Velasco Tentative Recommendation: Recommend Adoption to City Council

Ms. Velasco announced that Staff had found some inconsistencies and clarification issues in the prior Zoning Ordinance update. She introduced Michael Dyett, a City Consultant, who helped Staff prepare the cleanup changes to the Zoning Ordinance.

Michael Dyett, Dyett & Bhatia Urban and Regional Planners, commented that the purpose of the cleanup amendments was to make sure that the Zoning Ordinance was consistent with the General Plan and state law. The amendments also responded to residents' concerns and he proceeded to run through the list of corrections that are proposed. The Commission was not provided an Environmental Review because the proposed amendments did not cause any physical impacts.

Staff's recommendation was to adopt the Resolution recommending the City Council adopt the proposed clean up changes to the Zoning Ordinance with the additional edits that were presented to the Commission.

Public Comment:

KATRINKA RUK announced that she was representing the Council of Industries and she lived in the City of Richmond. She pointed out that the Council of Industries was not supportive of having Marijuana businesses located in the Commercial General Zones. She posed several questions to Staff and asked for a response offline.

CORDELL HINDLER explained that he thought an upscale beachside hotel would be a great addition to Richmond and that a health gym be located in the riviera. He ended that he is in full support of the amendment changes.

The Commissioners disclosed to Staff several typos that were in the ordinance.

Commissioner Tucker asked if electric scooters and bikes would be included into the Zoning Ordinance in the future. Ms. Velasco explained that Staff did not anticipate that to happen soon because those modes of transportation were usually within the public right of way.

Chair Langlois addressed Ms. Ruk's concern and asked Staff if the marijuana facilities were going to have its own discussion at a later time. Ms. Velasco announced that the City was cleaning up the Marijuana Uses Ordinance and that would be presented to the Planning Commission in the near future.

ACTION: It was M/S/C (Tucker, Loy) to adopt Resolution 18-27 recommending that City Council adopt the cleanup amendments to Chapter 15.04 Zoning and Subdivisions Regulations of the Richmond Municipal Code and City Council adopt the additional edits that were proposed by Staff; which carried by the following vote: 5-0 (Ayes: Langlois, Baer, Loy, Huang, Tucker; Noes: None; Absent Butt and Garcia).

2. **PLN18-311: Zoning Ordinance Amendments for Schools** PUBLIC HEARING to consider a recommendation to the City Council of an ordinance adopting amendments to Chapter 15.04, Zoning and Subdivision Regulations of the Richmond Municipal Code related to schools in commercial and mixed-use Zoning districts. City of Richmond, applicant Planner: Lina Velasco Tentative Recommendation: Recommend Adoption to City Council

Ms. Velasco stated that the amendments to the Zoning Code were in response to the concerns that several Richmond residents had raised with the siting of schools within commercial and mixed-use districts. She introduced Michael Dyett, a City Consultant, to present the amendments to the Commission.

Michael Dyett, Dyett & Bhatia Urban and Regional Planners, started out by stating that the basic issue was should the existing zoning regulations be amended to address General Plan consistency issues and potential land use conflicts between schools and other uses in the mixed-use zones, Regional Commercial District, and Industrial Business District.

Mr. Dyett called out that the General Plan Policy EH1.5 had language stating that schools should be located in a neighborhood context. The other concept was that the commercial corridors be protected and enhanced.

In terms of enrollment projections for West Contra Costa Unified School District, the enrollment numbers had stayed the same over the past 8-years. Public school numbers were declining and for that reason, the school district was not looking for new land to expand on. Charter and private school enrollment were increasing dramatically. If the schools did need land to expand there were just over 200 acres that were located in residential neighborhoods. He announced that schools would not be appropriate in the CM-3, CM-4, CM-5 and CR zones because there were land use compatibility issues.

Staff was recommending to add specific design standards for schools, remove schools as an allowable use in CM-3, CM-4, CM-5, and CR, and keep as a conditional use in CM-1 and CM-2. Also, the Industrial Business District be used only for high schools and schools' grades 4 and up with a Conditional Use Permit.

Chair Langlois wanted to understand the rationale behind having K-12 schools be built in industrial zones. She asked for clarification on which building standards would apply to schools that were built outside of the district-owned land. Mr. Dyett explained that there was an existing school located in the Industrial Business Zone and Staff did not want to make that school non-conforming. In terms of which standards applied, Mr. Dyett explained that the California Building Standards Code, Title 24, would apply to the school.

Public Comment:

DON GOSNEY announced that the moratorium that was placed on the schools targeted charter schools. He did not agree with any model that took away money from kids and he believed that charter schools did that. He added that the proposed model allowed charter schools to avoid the Division of the State Architectural Standards.

PATRICIA CURTIN stated that she was representing Amethod Public School which was a charter school located in Richmond. She announced that the school was in support of the text amendments. She explained that her understanding from Staff is that A Method Public School would become a non-conforming school under the new text amendment but the school would be grandfathered in and allowed to remain open.

RITCHIE F. COOK is a retired teacher from West Contra Costa Unified School District and he was concerned that under the new proposed amendment changes the public schools would lose more students to charter schools. He was also concerned about the nature of the current charter school's buildings and that the buildings did not meeting safety standards.

KATRINKA RUK representing the Council of Industries and announced that the biggest concern they had was putting schools in the Industrial Business Zone. She suggested that the Commission re-zone the existing charter school located in an Industrial Business Zone and not allow other schools to be located in an Industrial Business Zone.

CARLOS TOBOADA was a retired teacher and he requested that the Commission extend the moratorium that was adopted by the City Council to protect the health, safety, and welfare of the students. He did not support the changes to the ordinance and the support of charter schools.

Chair Langlois asked Staff when the existing moratorium ended and if it was possible for the Commission to extend the moratorium. Ms. Velasco commented that she was not sure if it was possible to extend the moratorium and the existing moratorium was scheduled to end on December 17, 2018.

Chair Langlois asked Mr. Toboada what he thought the Commission should do when the moratorium ended. Mr. Toboada did not see any conditions that the Commission could put in place to equal what the moratorium was doing. He was concerned that the new amendments would increase development of charter schools.

JOHN IRMINGO announced that he was a teacher at Pinole Middle School. He announced that charter schools usually did not reside in neighborhoods and as more charter schools opened

up, more traffic would be brought into Richmond. He urged the Commission to extend the moratorium.

ARTO RINTEELA, President of Fairmede-Hilltop Neighborhood Council and member of the Defend Public Education NOW, stated he was the one who suggested the existing moratorium to the City Council. He also urged the Commission to recommend an extension of the moratorium to the City Council.

CORDELL HINDLER agreed with the previous speaker that the moratorium be extended. He urged the Commission to wait to make a decision on any new schools until the surrounding neighborhood councils could review the plans. He was concerned about the safety of the buildings that charter schools were located in.

Commissioner Baer asked Mr. Rinteela what the benefit of extending the moratorium would be. Mr. Rinteela suggested that the City should not get involved in school district affairs and put a cap on schools to not sell their land to private school.

Commissioner Tucker reiterated to Staff that charter schools under the new amendments would be considered non-conforming but would still be able to remain open. The only way they would be affected is if they decided to expand and Ms. Velasco explained that the schools would be subject to the standards of non-conforming uses.

Ms. Velasco noted that the amendments would also affect parochial schools and other private schools, not just charter schools.

Chair Langlois asked if the City could construct new schools to be built only on school district owned property. Mr. Privat announced that recommendation could be analyzed and to extend the moratorium the circumstances would have to be substantially different than when the existing moratorium was put into place.

Chair Langlois mentioned that there were three areas that she saw that could be modified and one was the elimination of the provision that allowed schools to be located in the Industrial Business District. Two, she was requested that any new school construction not be allowed within 1,500-feet of an above ground fuel storage tank or within 2,000-feet of a hazardous waste disposal site. Three, she recommended that City Council initiate a process to study the possibility of amending the Occupancy Standards in the Building Code for schools to maximize the Division of the State Architect (DSA) guidelines.

Discussion commenced between the Commission and Staff about the existing school that was located in an Industrial Business District and if any of the proposed amendments would have impacts on that school.

ACTION: It was M/S/C (Langlois, Baer) to approve PLN18-311 with all of the Staff recommendations on changes to the Zoning Ordinance for schools with two exceptions; one exception would be to not allow K-12 schools in Industrial Business Districts and two, modify the language in the Ordinance to read that K-12 schools would not be allowed to be constructed within 1,500-feet of an above ground fuel storage tank or high pressure oil or gas pipeline or within 2,000-feet of a hazardous waste disposal site. In addition recommend that the Council initiate a process to study the possibility of amending the City's Building Code to revise the Occupancy Standards for K-12 schools

constructed in Richmond with an attention to maximizing safety and looking at the DSA Standards as a guide; which carried by the following vote: 5-0 (Ayes: Langlois, Baer, Loy, Huang, Tucker; Noes: None; Absent: Butt and Garcia).

COMMISSION BUSINESS

7. **Reports of Officers, Commissioners and Staff** – Commissioner Loy announced that there is a new regional effort fighting against white supremacy called Bay Area Stands United Against Hate. There would be a week of activities and events happening throughout the Bay Area starting November 11, 2018 and going through November 18, 2018. The kickoff event was going to be held in Berkeley, CA on November 11, 2018 at 1:00 pm in the park near City Hall.

8. **Adjournment** - The meeting was adjourned at 8:50 p.m. to the next regular meeting on December 6, 2018.