

**PLANNING COMMISSION REGULAR MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL**
450 Civic Center Drive, Richmond, CA
July 18, 2019
6:30 p.m.

COMMISSION MEMBERS

Vacant, Chair	Andrew Butt, Vice Chair
Nancy Baer	Jen Loy
Claudia Garcia	Michael Huang
David Tucker	Brandon Evans

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

ROLL CALL

Present: Vice Chair Andrew Butt; Commissioners Nancy Baer, Jen Loy, Claudia Garcia, Yu-Hsiang (Michael) Huang, David Tucker, Brandon Evans

Absent: None

INTRODUCTIONS

Staff Present: Planning Staff: Jonelyn Whales, Director of Planning Lina Velasco, and Assistant City Attorney James Atencio

MINUTES –

None

AGENDA

Vice Chair Butt provided an overview of meeting procedures for speaker registration, public comment, and public hearing functions. Items approved by the Commission may be appealed in writing to the City Clerk by Monday, July 22, 2019, by 5:00 p.m. He announced the appeal process after each affected item, as needed.

CONSENT CALENDAR –

Vice Chair Butt gave a brief overview of the consent calendar’s policies and procedures.

- 1. PLN19-140: New Hope Church Expansion PUBLIC HEARING** to consider a request for a Conditional Use Permit for a community assembly use for a 750 square feet dining facility addition at 321 Alamo Avenue (APN: 561-182-023). RL-2, Single Family Very Low-Density District. Luther Charles Wilson, owner/applicant. Planner: Jonelyn Whales

ACTION: It was M/S/C (Baer, Loy) to approve the Consent Calendar; which carried by the following vote: 7-0-0 (Ayes: Butt, Baer, Loy, Garcia, Huang, Tucker, Evans; Noes: None; Absent: None).

BROWN ACT – Public Forum

No speakers

NEW BUSINESS

2. **PLN16-414: Indigo Therapeutics, Inc. CUP PUBLIC HEARING** to consider revocation of the Conditional Use Permit (PLN16-414) granted to Indigo Therapeutics, Inc. on October 6, 2016 by the Planning Commission to operate a cannabis manufacturing facility at 2600 Hilltop Drive (APNs: 405-050-036, -035, -034, -033, -032, -029, -020). IL, Industrial Light District. Biorichland, LLC, owner; Indigo Therapeutics, applicant. Planner: Lina Velasco. Tentative Recommendation: Revoke Conditional Use Permit

Director Velasco reported the Planning Commission approved a CUP to operate a cannabis product manufacturing facility on October 6, 2016. Staff met with the operator on May 2, 2019, to review all outstanding violations of the CUP. Notice of the Revocation Hearing was provided to the operator on May 20, 2019. Notice of the hearing was mailed to property owners located within 300 feet of the subject property on July 3, 2019. Director Velasco reviewed the findings required to revoke a CUP and the applicant's violations of the CUP.

John Russo, a representative for applicant Indigo Therapeutics, advised that the applicant has attempted to operate legally and honestly. Legal cannabis businesses have difficulty generating a profit because of high fees and taxes and low market prices for cannabis products. Mr. Russo related the difficulties the applicant has had in obtaining information from the fire department. The applicant received a violation for cannabis products left on the loading dock, but the product belonged to another cannabis business operating in the same facility without a CUP. The State has not issued any violations to the applicant.

Director Velasco indicated the Fire Department could not tell the applicant how to perform the work needed to comply with fire and building codes. The applicant was one of the first businesses licensed, and State requirements have changed several times.

Commissioner Garcia requested Mr. Russo's reasoning for not submitting email correspondence documenting attempts to work with the Fire Department to the Planning Commission. Mr. Russo related that the applicant feels as though the City is attempting to force his business out of the City. Commissioner Garcia inquired whether the applicant attempted to prove that the cannabis products did not belong to the applicant. Mr. Russo advised that he was not aware of the violation until he received Director Velasco's May 20 letter. However, at the time of the incident, he informed the police officer that the product did not belong to the applicant. Mr. Russo confirmed Commissioner Garcia's statement that the applicant did not pay taxes because the applicant claimed no sales during the applicable time periods.

Commissioner Loy asked Director Velasco if the status of unpaid fees has changed in any way since May 2. Director Velasco clarified that at the May 2 meeting; the applicant expressed intent to pay the fees within a specified time period but failed to do so. Based on the failure to pay the fees, staff began the revocation process. In the past, the applicant has paid a portion of the quarterly fees as they became due. Mr. Russo explained that the applicant offered to deposit funds for fees into escrow; however, the offer was declined.

Commissioner Evans requested an explanation of the violation of the Building Code in light of Mr. Russo's statement that all work has been permitted. Director Velasco explained that City staff found duct work had been installed without a permit. In addition, the room housing extraction equipment did not meet requirements. Mr. Russo advised that he contacted the building owner about repairing the ventilation system, but the building owner refused to cooperate. The applicant then hired an HVAC contractor to investigate the problem and to prepare a plan for additional ventilation for the extraction room. Commissioner Evans asked if the last time the applicant paid regulatory fees was in early 2018. Mr. Russo advised that the applicant attempted to make a partial payment in the fall of 2018. The applicant was and is aware of the outstanding regulatory fees.

Director Velasco reported that the Department of Public Health placed an embargo on the property. The embargo restricted the use of any equipment and material on the site. Mr. Russo clarified that the Department of Public Health placed an embargo on certain items and requested documentation. The applicant has provided the documentation, but the Department of Public Health has not responded. The Department of Public Health's embargo did not halt all operations.

With respect to Vice Chair Butt's inquiries regarding the CUP, Director Velasco indicated the applicant was the first entity to obtain a CUP for a marijuana manufacturing facility only. Vice Chair Butt inquired whether the applicant applied for and received a building permit to improve the building subsequent to receiving the CUP. Director Velasco clarified that the applicant had not obtained a building permit. Vice Chair Butt requested the date the applicant began operations. Mr. Russo reported the applicant had not begun operations. Mr. Russo affirmed Vice Chair Butt's statement that the applicant has never done any extraction work and has never sold any product. To Vice Chair Butt's question of whether the applicant or any other entity in the building has cultivated any cannabis onsite, Mr. Russo replied that the applicant had not cultivated any cannabis, and he did not believe any other entity has cultivated any cannabis. Vice Chair Butt requested the time when discussions with the City became unproductive. Mr. Russo reported the compliance issue was nonexistent until nonpayment became an issue. Vice Chair Butt requested Director Velasco comment and confirm that the applicant offered to place funds in an escrow account. Director Velasco recalled the offer. However, the City felt it had provided a service to the applicant, and the funds should be paid to the City rather than deposited into an escrow account. Regarding the terms of the ordinance, taxes are due upon sales. On May 2, the applicant acknowledged that sales have occurred but have not been reported. At that time, the applicant was willing to correct the tax statements but has not done so. In response, Mr. Russo reported the applicant's first product was vape cartridges, and the applicant spent months preparing the correct packaging. The applicant received its first order for product when the CUP violations came to a head. In reply to Vice Chair Butt's request for the amount of taxes due, Director Velasco stated \$106,554. Vice Chair Butt inquired whether the applicant is willing to negotiate in good faith with the City to resolve the issues. Mr. Russo expressed interest in negotiating with the City if staff will advise the applicant as to whether the proposed plans for the facility will result in licenses being issued to the applicant.

In reply to Commissioner Garcia's inquiry about submission of a plan of action to the Department of Public Health, Mr. Russo advised that the applicant submitted a plan of action to correct the violations. At the current time, the Public Health Department will not respond to his inquiries regarding the plan of action or violations. Mr. Russo indicated he could submit plans to remedy the violation regarding the extraction room and obtain a building permit. He is not aware of any other violations.

Commissioner Baer asked if the applicant is financially prepared to enter into a commitment with the City. Mr. Russo indicated he would present information to the applicant's investor group, who will determine whether continuing operations in Richmond is financially feasible.

In reply to Vice Chair Butt's inquiry about the amount of the applicant's investment, Mr. Russo stated approximately \$300,000 in rent and approximately \$250,000 to obtain the CUP. The total investment is likely between \$500,000-\$750,000.

The public hearing was closed.

Commissioner Evans inquired regarding the possibility of the City negotiating a payment plan for fees and taxes and a time period to remediate code violations. Director Velasco reported the City has negotiated such terms with the applicant in the past; however, the applicant has not complied with the terms. At this point, the applicant needs to pay a large portion of the past-due regulatory fees, to correct all past statements regarding taxes, and to pay the past-due taxes.

Commissioner Baer did not feel the applicant is motivated to continue operations in Richmond. The applicant has a history of not complying with agreements it has made with the City. The applicant appears to have significant shortcomings in addition to the difficult regulatory climate.

Commissioner Garcia suggested the City negotiate a specific time period, such as six months, for the applicant to correct the Code violations. The applicant should pay at least 50 percent of past-due regulatory fees and report correct amounts owed for past-due taxes. She requested the applicant submit evidence of its communications with the fire department and Department of Public Health.

Vice Chair Butt expressed concern that the City of Richmond could obtain a reputation as being difficult for businesses to operate in should the City revoke the applicant's CUP. The applicant has shown a willingness to work with the City. Perhaps the terms of an agreement could be a month for the applicant to submit a written plan of action that includes an escrow account. The number of cannabis-related businesses operating in the city without licenses and permits is a problem for the City and for businesses that obtain permits and licenses.

Commissioner Tucker suggested the applicant meet with its investors and subsequently provide a statement of the applicant's intent to continue operations in Richmond. Mr. Atencio advised that the applicant may make that statement at the September public hearing.

In reply to Commissioner Loy's question, Mr. Atencio reported the Planning Commission might recommend terms of an agreement that staff can negotiate with the applicant.

ACTION: It was M/S/C (Garcia, Baer) to continue the public hearing to September 2019; which carried by the following vote: 6-0-1 (Ayes: Butt, Baer, Loy, Garcia, Tucker, Evans; Noes: Huang; Absent: None).

- 3. PLN19-191: Coal and Petroleum Coke Regulations PUBLIC HEARING** to consider recommending to the City Council adoption of an ordinance (1) adding Article 15.04.615 to the Richmond Municipal Code ("RMC") to prohibit new land uses and phase out existing land uses related to the storage and handling of coal and petroleum coke, and (2) making conforming amendments to the RMC to ensure that it is internally consistent.

Planner: Lina Velasco. Tentative Recommendation: Recommend Adoption to City Council

Director Velasco reported on December 18, 2018, and the Council directed staff to study a potential ordinance that would prohibit the storage and handling of coal and petroleum coke within the City. Additionally, propose an amortization period for nonconforming uses resulting from the adoption of such an ordinance. On April 23, 2019, the Council requested the Planning Commission review certain proposed amendments to the Zoning Ordinance that would remove the storage and handling of coal and petroleum coke from the list of uses conditionally allowed in certain industrial zones. The number of complaints from residents regarding coal and petroleum coke dust is increasing. Director Velasco summarized the negative health effects related to particulate pollution from coal and petroleum coke.

Mr. Atencio advised that the City has broad police powers to protect the public's health, welfare, and safety. The City may regulate unwanted land uses if the regulations are rationally related to a legitimate government purpose. The City may eliminate an undesirable, nonconforming use if the owner of the property with the use is given an opportunity to comply during a reasonable amortization period.

Director Velasco summarized the provisions of the proposed ordinance. The proposed ordinance would not apply to the transportation of coal and petroleum coke. The proposed ordinance supports Health and Wellness Element Goal H-9 of the General Plan 2030 by reducing particulate matter emissions and toxic exposures, promoting cleaner air and reducing pollution burdens borne disproportionately by individuals living and working near certain industrial sites.

In reply to Commissioner Baer's question regarding safe storage and handling, Director Velasco indicated storage and handling could apply to stockpiles on the ground or inside buildings, shipping containers stored on paved sites, or an underground holding area. Staff drafted the language broadly to cover a multitude of operations.

Commissioner Tucker asked if the Council has reviewed the proposed ordinance. Director Velasco related that the Council had received a copy of the proposed ordinance. Staff utilized legal and planning language to adapt Councilmember Martinez's original proposal into the proposed ordinance.

Public Comment

JOHN GIOIA, Richmond resident and member of the Board of Supervisors and the local and state Air Boards, remarked that workers deserve good jobs, and the community deserves healthy air. The proposed ordinance attempts to phase out coal while protecting jobs and the environment. Coal dust is found in Richmond neighborhoods. The proposed ordinance provides Levin-Richmond Terminal with three years to transition to handling other commodities.

Commissioner Baer inquired whether petroleum coke could also be found in Richmond neighborhoods. Mr. Gioia indicated the Mayor's study did not include petroleum coke.

ANTWON CLARKE, Richmond resident, commented that the proposed ordinance would result in the loss of jobs for Richmond residents. Residents need jobs.

EDUARDO MARTINEZ, Richmond resident and Councilmember, referred to a website stating the proposed ordinance will cause the Levin-Richmond Terminal to close and directed the public to obtain information. The agenda report contains the facts and does not mention closing the facility. The concern about coal dust comes from the community.

ANDREA WEBER, Richmond resident, related that the proposed ordinance will protect the health of residents and attract clean industry. The economic future of Richmond will continue to grow.

CHARLES DAVIDSON, Hercules resident, shared facts about petroleum coke and advocated in favor of the proposed ordinance.

RICHARD KATZ, Richmond resident, commented that coal and petroleum coke affect human health, the environment, and water quality. He supported the proposed ordinance.

QUANAH BRIGHTMAN, Executive Director of United Native Americans and Richmond resident, stated the Levin-Richmond Terminal is a public nuisance and demanded an immediate ban on the shipping and storage of coal and petroleum coke. He encouraged the Planning Commission to support the proposed ordinance.

JANET PYGEARGE, Rodeo resident, opposed all chemicals used in making fuel. Workers need to be safe while working in refineries.

KATRINKA RUK, Richmond resident and speaking on behalf of the Council of Industries, related that the economy's transition from coal and petroleum coke will occur over many years. Halting the shipping of coal and petroleum coke in Richmond will only shift the material to other locations. Transporting the material longer distances will increase carbon emissions. A small, family-owned business that supports the community and employs 50 workers should not be penalized. As an alternative, the Council can support AB 617. The proposed ordinance should be delayed until monitoring is complete.

BOB JENNINGS, Northern California representative for the State Building Trades, opposed the proposed ordinance. All jobs need to be protected.

MIKE MILLER, United Steel Workers Local 326 President and Richmond resident, urged the Planning Commission to vote against the proposed ordinance and to keep jobs in Richmond.

DION SIMONI, Richmond resident, opposed the proposed ordinance.

NICK DIAZ, Richmond resident, related that union workers pride themselves on working safely and producing safe materials. Union work supports his family.

TIMOTHY JEFFERIES, Boilermaker Local 549 Business Manager, stated residents want jobs that provide livable wages. The proposed ordinance will hamper Levin's business, which will affect jobs.

LOREN CALHOUN, Richmond resident, remarked that the employees of Levin-Richmond Terminal pride themselves on safety. He asked the Planning Commission to delay its recommendation until it has the results of the air quality tests.

BILL WHITNEY, Contra Costa County Building Trades, commented that the proposed ordinance would affect jobs. No one has contacted him about working toward a reasonable solution to improving air quality and maintaining jobs.

JASON GALLIA, Ironworkers Union President and Richmond resident, indicated any loss of jobs would be detrimental to Richmond. He urged the Planning Commission to gather facts before making a decision.

CHRIS SNYDER, Operating Engineers Local 3 Political Director, shared the benefits provided to union workers at Levin-Richmond Terminal. The City should conduct testing through an independent third party.

SHAWN JOHNSON, Richmond resident, promised union workers would put as much effort into finding a solution as they put into their work. He supported delaying the proposed ordinance until test results are available and working together to find a solution.

JAIME GONZALES, Local 3 Business Agent, commented that families depend on the safe union jobs at Levin-Richmond Terminal. The proposed ordinance will affect the workers and their families.

KYLE STOCKMAN reported the Levin-Richmond Terminal has been injury free for ten years and is one of the safest and cleanest places he has worked. Safety inspections have noted the terminal as an exceptional facility.

KEN BURNS, Richmond resident and Operating Engineers Business Agent, asked why the air and health issues have not been raised in the past. The proposed ordinance will affect a lot of lives.

PAM SAUCER, Richmond resident, supported keeping jobs in Richmond. Losing a job is stressful and can result in death.

TONY LESTER commented that Levin-Richmond Terminal's life blood is safety and environmental stewardship. Levin provides jobs and gives back to the community.

CHRIS LOCKE, attorney for Levin-Richmond Terminal, referred to his written comments submitted to the Planning Commission. The McCrone analysis does not differentiate coal dust from other carbon-based dusts in the samples and does not identify the source of dust. No data shows fugitive dust from Levin poses health risks or environmental impacts. If adopted, the proposed ordinance would face serious legal challenges on a variety of grounds.

DIANE LIVIA, Oakland resident and San Francisco Baykeeper Board Member, noted coal is a toxic pollutant. Levin-Richmond Terminal stores huge piles of coal, and dust from the piles settles on residents of Richmond and the waters of the Bay. The coal poses a direct threat to marine life. Baykeeper supports the proposed ordinance.

DOROTHY GILBERT, Richmond resident, stated the proposed ordinance will not close Levin-Richmond Terminal and will not reduce employment. Levin will shift to handling cleaner commodities.

SUSAN WEHRLE, Richmond resident, expressed concern about fugitive coal dust because it contains chemicals that can cause heart disease and cancer. The community needs sustainable employment that will improve the environment.

CARL PERKINS, Phillips 66 Refinery Manager, supported Levin-Richmond Terminal, union jobs, and clean air. Petroleum coke shipped from the refinery to Levin-Richmond Terminal is treated and covered to prevent fugitive dust. The Planning Commission should consider the test results from AB 617 when they are available.

TED WICKERS, Fairfield resident, remarked that the proposed ordinance, as written, will eliminate jobs. More data is needed before a decision is made.

LISA PARK, Richmond resident, supported the proposed ordinance. Coal and petroleum coke dust contain fine particles that damage human cardiovascular systems. The dust also contains heavy metals that poison the body. Coal and petroleum coke can be phased out concurrently with the air monitoring program.

GALEN CARRENS, Richmond resident, commented that Levin-Richmond Terminal operated for decades before it began storing and exporting coal. The proposed ordinance will provide a period of time for the terminal to transition to handling the materials it handled previously. He expressed concern that his family will develop asthma; property values will stagnate, and those families will leave Richmond.

ERIC BERGMAN, Alameda County resident, suggested the Planning Commission invite Phillips 66 executives to talk about a transition from hazardous energy sources to cleaner and renewable energy sources.

ANDRES SOTO, Communities for a Better Environment, stated the generations of coal miners suffering from black lung disease is sufficient evidence of the harm of coal dust. Petroleum coke is so hazardous that burning it as a fuel is prohibited.

MIKE PARKER believed a national campaign for just transition is needed to improve the environment and create new jobs. He urged the adoption of the proposed ordinance.

GREG MURPHY advised that not acting on the coal and petroleum coke issue will simply shift it to another community. If the proposed ordinance is not acceptable, staff can propose a new ordinance based on science.

AARON ISHERWOOD, Sierra Club Managing Attorney, supported the staff recommendation. The proposed ordinance does not eliminate any jobs. Obtaining more data is not a reason to delay action.

SHOSHANA WECHSLER supported the proposed ordinance because it will support the health of the community and maintain jobs.

JOE FISHER, Richmond resident and Coronado Neighborhood Council President, requested the Planning Commission delay its decision until all facts are available. The AB 617 program includes a specific focus on coal. Levin-Richmond Terminal is responsible for thousands of dollars of scholarships for residents of the Coronado neighborhood.

SUSAN HYBLOOM, Richmond resident, did not attribute her health problems to coal dust, but it certainly does not improve her health problems. She suggested Levin-Richmond Terminal transport non-toxic materials.

MIKE CROLL, Operating Engineers Local 3 District Representative, supported the Levin-Richmond Terminal and its employees. The study commissioned by Mayor Butt is incomplete.

MAIA JAFFE, Richmond resident, urged the Planning Commission to consider the children of Richmond and future generations of Richmond residents in making its decision. The community can have both jobs and clean air.

JULIE WALSH reported the health of Richmond residents is worse than that of surrounding cities. Poor air quality is a major reason for residents' poor health. The asthma rate in Richmond is the worst in the state.

MARY FLANAGAN supported the proposed ordinance. Students at Nystrom Elementary School have asthma, chronic bronchitis, and frequent nose bleeds. Levin-Richmond Terminal is located near a dense residential neighborhood. If the City will not close Levin-Richmond, it should at least ban coal dust.

MINDA BERBECO, Sierra Club San Francisco Bay Chapter Director, supported the proposed ordinance. Levin-Richmond Terminal stores coal and petroleum coke in open piles near water, homes, and schools. Coal and petroleum coke are dangerous to the community and workers.

KATHLEEN MCAFEE, Richmond resident, commented that union workers need to work with others to transition union jobs to industries not related to coal and petroleum.

JANET JOHNSON, Richmond resident, indicated the AB 617 study has not begun. The idea that actionable data will be available within a year is wildly optimistic.

CHARLES MAFUAHINGANO, Richmond resident, supported the employees of Levin-Richmond Terminal and the jobs that provide a living wage.

GARY LEVIN, Levin-Richmond Terminal President and CEO, referred to his and his attorney's written comments submitted to the Planning Commission prior to the hearing. The proposed ordinance, as currently written, will put the Marine Terminal out of business and negatively impact employees of the Richmond Pacific Railroad. There is no business available to replace the business prohibited by the proposed ordinance. The nature and intensity of operations have not changed. The Marine Terminal is configured specifically for bulk commodities and is not suitable for other commodities, if there was an export market for other commodities. No data shows that fugitive coal or petroleum coke dust from the Marine Terminal poses health risks or environmental impacts. The McCrone study is not good evidence or good science. The Marine Terminal has implemented considerable dust control measures. He supports the studies under AB 617 because they will provide relevant data. Any action by the Planning Commission should be deferred until the AB 617 studies have been completed. Operations comply with all requirements and regulations of the Bay Area Air Quality Management District (BAAQMD) and the California Air Resources Board (CARB). Health, safety, and the community are the number one priority. The terminal's customers will take their business elsewhere if they know the terminal will have to stop handling their products.

In response to Commissioner Tucker's questions, Mr. Levin reported he had not discussed conversion of the facility with City staff. His conversations with Richmond Employment have concerned increasing the employment of Richmond residents. No one from the City has approached him to discuss alternatives. Three years or anything close to that timeframe is unreasonable for him to convert the facility. At the present time, no amount of time would allow him to find new products for import or export such that he could continue to employ the current number of employees. The company has invested tens of millions of dollars in equipment at the terminal. He has not prepared a study of the economic impact of the proposed ordinance on the terminal. Mr. Levin did not believe City staff has prepared an analysis of an amortization cost or a California Environmental Quality Act (CEQA) analysis of the proposed ordinance's economic impacts on his business. Consideration of the proposed ordinance should be deferred until scientific data is available. He does not believe particulate matter is spreading from the terminal across the community.

In answer to Commissioner Garcia's inquiries, Mr. Levin indicated the terminal had handled scrap metal exports in addition to coal and petroleum coke in recent years. Utah coal companies approached him seeking a terminal to export coal. Japan is purchasing coal from Utah because it is the cleanest coal on the market. Most petroleum coke is stored in an enclosed building or transferred to ships upon arrival. A small amount of petroleum coke is stored on the ground with proper safeguards until it can be loaded into ships. A significant amount of coal is transferred directly from rail cars to ships using the most modern mechanical ship loaders and covered containers. Some amount of coal is stored on the ground until it can be transferred via conveyor to a ship. There are no mountains of coal stored onsite. There is no specific requirement limiting the height of coal piles. Coal piles are contained with windbreaks and are kept moist to prevent the wind from dispersing dust. Director Velasco advised that the goal of AB 617 is to identify sources of air pollution rather than to impose regulations on businesses. AB 617 could lead to regulations being imposed by the BAAQMD, CARB, or cities.

In reply to Commissioner Baer's queries, Mr. Levin confirmed that some petroleum coke is stored temporarily on the ground. He attempts to store the coal in an enclosed system with conveyors and pans and to protect the coal from exposure. In concept, a building could contain coal, but the economics of storing coal in a building must be feasible. Mr. Levin related that in the absence of data, he has no plans to construct a building for coal storage.

With respect to Commissioner Huang's questions, Mr. Levin reported the facility is regulated by BAAQMD, which administers laws under CARB. The facility is also subject to the Clean Water Act. Any stormwater from the facility is processed before it reaches the Bay and reports to the State quarterly. In the 21 years Mr. Levin has run the company, it has not received any citations from BAAQMD.

In response to Commissioner Loy's inquiries, Mr. Levin indicated the facility handles annually an average of 1 million metric tons of coal, approximately 300,000 tons of petroleum coke, and 150,000 tons of scrap metal. The facility employs best management practices and best available technology in the handling of products. Mr. Levin related that he is not aware of any coal-handling facility that utilizes an enclosed building or dome to store coal because of the size and volume of coal. The company will respond in a feasible manner to data that finds the facility is impacting community health.

Commissioner Loy commented that should the AB 617 study lead to new or modified regulations, industry leaders will likely object to those.

In answer to Commissioner Evans' queries, Director Velasco explained that Mr. Levin agreed to fund the cost of an earlier study of pollution. Staff began designing a scope of work and requested BAAQMD review it. BAAQMD expressed concerns that the scope would not define the contribution of Levin-Richmond Terminals to pollution in the environment. Mr. Levin clarified that he agreed to fund air monitoring in the City to determine if the rail or marine terminal impacted air quality. A letter from the BAAQMD Director was critical of the report prepared by Environ and set out specific standards. The study was sidetracked by the proposals of AB 617. Trains enter the Marine Terminal and are unloaded in an enclosed building with a bottom dump. The product travels in conveyors with covers above, pans below, and wind protection on the sides. High-pressure misting systems prevent particles from dispersing. Product is loaded into ships through a closed conveyor system. Three locomotives have the most modern, tier 4 engines. At the Marine Terminal, electricity powers the conveying systems. Portable Caterpillar construction equipment has been outfitted with tier 4 engines to reduce diesel particulate matter. Windbreaks are utilized in addition to portable sprayers. Multiple sweepers clean the grounds and streets. Director Velasco reported the statement that the action would have no financial impact on the City probably refers to the financial impact of the action alone and not the loss of jobs. The proposed ordinance allows Levin-Richmond Terminal to request an extension of the amortization period with submission of supporting evidence.

In reply to Commissioner Tucker's questions, Director Velasco related that Levin-Richmond Terminal may continue its current operations during the three-year amortization period, but it may not increase the quantities of products it handles. The quantities of products will be determined in part by the information Mr. Levin has provided the Planning Commission. The amortization period would begin on the effective date of the ordinance. Mr. Levin reported the facility will respond to requests from BAAQMD and the community to implement additional best practices as required. The proposed ordinance requires the facility to close and does not permit the implementation of best practices as mitigation measures. The amortization period does not resolve the absolute prohibition on the facility continuing to operate. He is committed to complying with regulations and to being a good neighbor. To say that Levin-Richmond Terminal is the sole cause of particulate pollution is not appropriate.

In response to Vice Chair Butt's inquiries, Director Velasco advised that petroleum coke and coal are not the only sources of air pollution in Richmond. However, the City can affect certain things through land use controls and cannot affect other things in the community. Regardless of the number of best practices implemented, dust will be distributed throughout the community. Richmond is a burden community with respect to air quality. The Levin-Richmond Terminal is not subject to a CUP. Mr. Atencio would not estimate the length nor cost of litigation should the Council adopt the proposed ordinance. Mr. Levin reiterated that the facility has been handling petroleum coke for approximately 30 years and coal for approximately six years. The terminal has handled coal prior to the six-year period but in much smaller volumes. In the early years, the terminal handled imported raw materials. The amount of imported raw materials dropped drastically, and the terminal began handling iron ore. The amount of iron ore handled annually increased and decreased until the client went out of business. The Utah coal companies approached Levin, and the facility began handling coal. Mr. Levin concurred with Vice Chair Butt's statement that the coal business saved the terminal. On average, the facility handles 900,000 to 1 million metric tons of coal annually. On a daily basis, the number of trucks operating varies from perhaps four to nine. Maybe 8,000 to 9,000 railcars come through the terminal. Railcars are queued on storage tracks. At times, no railcars are queued on the tracks. At other times, 100 railcars may be queued on the tracks. The railcars are not covered, but the coal is sprayed at the beginning of the trip. There are many physical problems with covering a

railcar. Under his direction, the company has invested a total of tens of millions of dollars for such things as paving the yard, installing stormwater filtration systems, converting construction equipment and trucks, and installing conveying systems. Trucks coming into the facility are covered and clean, and the covers remain on the trucks while they dump their loads. He concurred with Vice Chair Butt's comment that the improvements were made to accommodate the shift to coal. The paving and groundwater collection systems were permitted by the City of Richmond. Director Velasco advised that expansions of permitted uses are not subject to CEQA review. Stacked containers have been issues at various industrial sites. She would have to review City requirements and the existing circumstances at the site to determine if a permit is needed for the stacked containers.

At Commissioner Baer's request, a member of the public explained that risks are measured and engineering controls are implemented to mitigate these risks. Levin-Richmond Terminal does a really nice job of mitigating risks.

The public hearing was closed.

Commissioner Garcia expressed disappointment that a study of alternative commodities that could be processed through the terminal has not been prepared.

Commissioner Loy remarked that the action before the Planning Commission is a recommendation to the City Council, where further deliberation of the issues will occur.

Commissioner Baer related that she had assumed the facility could handle other products until Mr. Levin addressed the Planning Commission. She appreciated both sides of the issue but is inclined to support the proposed ordinance.

Commissioner Tucker indicated the Planning Commission is tasked with making a decision without sufficient information regarding the economic impact of the proposed ordinance.

Commissioner Loy inquired whether the motion is contingent on receiving data from the AB 617 program, which may not be available until 2023, or on data prepared by the City and Mr. Levin. Commissioner Tucker responded his preference is to obtain air quality data from an independent study.

Mr. Atencio concurred with Commissioner Loy's statement that the City has to provide an amortization period. Director Velasco added that staff would consider any time that elapses until a decision is reached regarding the proposed ordinance when recommending an amortization period.

ACTION: It was M/S/C (Butt, Huang) to extend the meeting to 11:30; which carried by the following vote: 7-0-0 (Ayes: Butt, Baer, Loy, Garcia, Huang, Tucker, Evans; Noes: None; Absent: None).

Director Velasco reported staff can revise the resolution of the Planning Commission's action to reflect the motion's recommendation and the appropriate findings. The City does not have the resources to fund an independent air monitoring study. She inquired whether the Planning Commission anticipates the operator will assist in the funding of an air monitoring study. Commissioner Tucker assumed the operator would assist with funding as the study would support the operator's position.

Vice Chair Butt suggested the Planning Commission recommend the operator/applicant fund an air quality study such that the study is complete within 12 months.

Director Velasco interpreted the Planning Commission's comments as not recommending adoption of the proposed ordinance because an additional study is needed. The Planning Commission's recommendation will be forwarded to the Council, but the Council will consider the proposed ordinance.

ACTION: It was M/S/C (Tucker, Huang) not to recommend the City Council adopt an ordinance adding Article 15.04.615 to the Richmond Municipal Code ("RMC") to prohibit new land uses and phase out existing land uses related to the storage and handling of coal and petroleum coke; which carried by the following vote: 7-0-0 (Ayes: Butt, Baer, Loy, Garcia, Huang, Tucker, Evans; Noes: None; Absent: None).

COMMISSION BUSINESS

4. Appoint Nominating Committee for Officer Elections –

Vice Chair Butt announced Commissioners Loy and Tucker have volunteered for the Nominating Committee. With the agreement of the Planning Commission, Vice Chair Butt appointed the two Commissioners and himself to the committee.

Director Velasco reported staff had scheduled the election of officers for the August 1 meeting of the Planning Commission. The deadline to submit a list of candidates is Monday.

5. Reports of Officers, Commissioners, and Staff –

No reports.

8. Adjournment - The meeting was adjourned at 11:12 p.m. to the next regular meeting on August 8, 2019.