

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
January 20, 2011
7:00 p.m.

COMMISSION MEMBERS

Charles Duncan, Chair	Sheryl Lane, Vice Chair
Jeff Lee, Secretary	Carol Teltschick-Fall
Ben Choi	Andrés Soto
Vacant	

The meeting was called to order by Chair Duncan at 7:05 p.m.

On behalf of the Commission, Chair Duncan recognized former Commissioner Ted Smith's dedication to the City of Richmond, commended him for his work on the Planning Commission, and expressed personal sentiments and sympathies to his family and friends, dedicating tonight's meeting proceedings to him.

Vice Chair Lane led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Duncan, Vice Chair Lane, Secretary Lee, and Commissioners Choi, Soto, and Teltschick-Fall

Absent: None

INTRODUCTIONS

Chair Duncan welcomed back Mr. Mitchell and thanked Ms. Velasco for her acting on his behalf during his leave.

Staff Present: Richard Mitchell, Lamont Thompson, Kieron Slaughter, Lina Velasco, Hector Rojas, Hector Lopez, and Mary Renfro

MINUTES

December 2, 2010

Chair Duncan reported not receiving the minutes and said he would abstain from voting on them. Commissioner Teltschick-Fall reported she had minor typographical corrections and submitted them to staff.

ACTION: It was M/S (Choi/Lane) to approve the minutes of December 2, 2010, as amended; unanimously approved (Duncan abstained).

Chair Duncan provided an overview of meeting procedures for speaker registration and public, Consent Calendar and hearing functions and procedures. He said items approved by the

Commission may be appealed in writing to the City Clerk by Monday, December 31, 2010, by 5:00 p.m. and read off the appeal process after each affected item.

CONSENT CALENDAR

Chair Duncan noted the Consent Calendar included items 4, 5, 6, and 7 on the agenda. He confirmed that staff had no requests for amendments to the agenda or Consent Calendar. Items requested for removal were Item 7 (Lane) and Item 4 (Teltschick-Fall). Secretary Lee requested adding Item 1 to the Consent Calendar, noting the issues resulting in the item returning to the Commission have been resolved. Item 5 was requested for removal by a member of the public. Chair Duncan confirmed there were speakers present to discuss Item 1, and the item was not moved to the Consent Calendar.

Consent Calendar Items Approved:

- 6. PLN11-002: Zoning Text Amendment (ZTC11-01)** - PUBLIC HEARING to consider an Amendment to the City of Richmond Municipal Code Chapters 15.04 of the Zoning Ordinance to correct typographical errors and expand the definition of small recycling centers to include clothing donation boxes for recycling textiles. City of Richmond, applicant. Planner: Jonelyn Whales. Tentative Recommendation: Recommend Adoption by City Council.

ACTION: It was M/S (Soto/Teltschick-Fall) to adopt the Consent Calendar consisting of Item 6; unanimously approved.
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Brown Act – Public Forum

Luis Fierro, Richmond, spoke of illegal nightclub use in the Gonzales Restaurant where a taco truck is located next to his business, requested removal of the taco truck and address violations of the restaurant.

HOLD OVER ITEMS

Chair Duncan reviewed public hearing protocols.

- 1. PLN10-123: New Vocational School** - PUBLIC HEARING to consider a conditional use permit for a vocational education school at 228 W. Richmond Avenue (APN: 558-140-022). MFR-1, Multi-Family Residential District. Georgena Mcdonald, owner; Kevin Mcdonald, applicant. Planner: Lamont Thompson. Tentative Recommendation: Conditional Approval.

Joshua Genser, legal counsel representing the applicant, said the applicant went before the Pt. Richmond Neighborhood Council who voted to support the application unanimously and unconditionally. The conditions imposed by the Planning Department are amenable to the applicant, except a condition relating to the requirement for parking. The applicant has secured 3 off-street parking spaces in the church across the street; however, he reiterated that the Commission should require parking as a condition for a CUP only if the parking impact of the conditional use exceeds what would have been the parking impact for the permitted use. In the absence of evidence, the Commission should not impose such a condition, even though the applicant is able to meet the condition.

Chair Duncan questioned and confirmed with Mr. Genser that the building has been fallow for 10-15 years and prior to this, it was used as a warehouse for the owner's machine shop located elsewhere.

Secretary Lee reported that a statement was found through his research on the Internet that the "CUP imposes special development requirements to ensure the use will not be detrimental to its surroundings. Requirements may include, for example, additional landscaping, sound proofing, limiting house of operation, additional parking or road improvements." Therefore, this appears to imply that it is within the purview of the Commission to condition a project with additional parking.

Mr. Thompson agreed and said the Commission can impose conditions, but there must be a nexus to the impact. In this case, the ordinance clearly states it is up to the discretion of the Commission to determine parking for an educational facility. Staff had previously conducted a survey of schools and found a large range of requirements from zero to 1 space per student. Since the last meeting, staff conducted drive-by surveys in early morning, mid-day and late afternoon on Monday, Wednesday and Friday and he found a lot of available parking within a 2-block distance within the residential portion near the school. This was most likely due to the fact that residents commute away from their homes which avails parking space. He also noted that the commercial area is limited to 2-hour parking, and this more than likely would remain available for commercial businesses in the area.

Commissioner Teltschick-Fall said the school is designed for 12 students, and she questioned if like parking requirements would be necessary. Mr. Thompson said there is a range; not all students have cars and they may also take public transportation, carpool, or cycle to classes. He said they have 3 parking spaces at the church which would address staff and 1 additional space, as well as availability in the neighborhood. Commissioner Teltschick-Fall said she believes parking should be based upon estimated use and what is available.

Chair Duncan concurs and said availability is the issue. The ordinance does not require any parking, but it is more about common sense. If there are 3 spaces the applicant is willing to secure with the church, he thinks this is the best hoped, assuming the students who drive will have to find parking in the neighborhood, which is available.

The public hearing was closed.

Secretary Lee questioned whether or not the school would be allowed to operate if the requirement for the 3 spaces is not imposed. Chair Duncan said the fact that there is no parking required has to do with the age of the town. The fact that the applicant is willing to secure the 3 parking spaces to take the implied pressure off of parking is an asset. If those spaces were not available, there is not much the Commission could do than to assume there is parking in the neighborhood, which has been confirmed by staff.

Commissioner Soto agreed and said should this prove to be too onerous in the future, the applicant could return and request modification.

ACTION: It was M/S (Duncan/Lane) to approve PLN10-123, with the additional condition for 3 additional parking spaces; unanimously approved.

2. **PLN10-136: Subway Sandwich Shop** - PUBLIC HEARING to consider a conditional use permit to operate and establish a Subway eating establishment (fast food) at an existing commercial space at 213 Tewksbury Avenue (APN: 558-312-002). C-1, Neighborhood Commercial District. Douglas Pryne, owner; Manoj Trpathi, applicant. Planner: Hector Lopez. Tentative Recommendation: Conditional Approval.

Hector Lopez gave the staff report and a description of the request.

Commissioner Soto questioned whether the Council was looking to develop a special exemption for certain restaurants in Pt. Richmond. Ms. Renfro said the Council introduced a regular ordinance which requires two readings that would place a temporary moratorium on the acceptance of processing applications to establish what is defined as "formula restaurants" in the C1 neighborhood commercial district in the Pt. Richmond area. She believes this application would fall within that definition. However, the ordinance is not law at this time; it was introduced and will have a second reading. If adopted, it would become effective 30 days later.

Manoj Trpathi, applicant, said they met with the neighborhood council who were in opposition. They have done everything asked and interestingly, the reason for opposition was because people felt it would introduce competition.

Commissioner Soto questioned if there were other concerns raised during the course of the neighborhood council meeting. Mr. Trpathi said two issues were raised which was signage which will exactly match the existing Pt. Richmond sign. The other issue was delivery, and he noted they get one delivery per week and he offered to have delivery done at any time. He said there was a sense that this is a zero sum game, and there is no such thing.

Secretary Lee said the staff report talks about anticipated patronage during peak periods of 8 people, yet there are 19 seats. Mr. Trpathi said what he typically sees in his other restaurants, not every seat is occupied. One person could take the space of 3-4 people. The ratio varies at about 2 to 1.

Secretary Lee cited the proposed delivery of food once a week and the marketing of Subway as being fresh food.

Public Comments:

Braith Clery, Pt. Richmond, requested the Commission deny the application due to incompatibility and the location of existing businesses, distributed photos and cited the existing and added problems of garbage disposal, recycling, sanitation and health, public safety, health and welfare, and said it will create problems with parking.

Marsha Tomassi, Pt. Richmond, requested the Commission deny the application. There has been no presentation made to the Pt. Richmond Business Association and they currently have in excess of 15 restaurants in the area. More than 200 signatures were presented to the Council opposing the business, and referring to the precedence issue of Starbucks and Extreme Pizza, Starbucks when first opened was only about coffee and is a small percentage of the businesses there today. Extreme Pizza was opened and owned by the family who owns Pt. Richmond Market across the street and was not viewed as a franchise. She asked the Commission to consider the moratorium, to allow the community to come up with some solutions, and to be able to deal with it.

Commissioner Choi questioned if Ms. Tomassi would be opposed to any new restaurants in Pt. Richmond. Ms. Tomassi agrees the franchise is an issue, stating they hurt the 99% of existing struggling businesses which individually owned and operated. On the bigger front, they look at the retail formula as a potential solution to maintain the preservation of the historic district. An example is Benicia, which has made accommodation for other types of restaurant and non-restaurant franchises outside of the historic designation.

Commissioner Choi noted the issue was before business owners since September, and Ms. Tomassi could not confirm, but said her understanding is that the applicant did not appear before the neighborhood council at that time.

Chair Duncan noted the moratorium is proposed and must have a second reading, which cannot enter into this consideration.

Margaret S. Morkowski, Richmond, said she attended previous neighborhood council meetings and the Pt. Richmond Land Use group did talk with the applicant, but he did not attend the meeting. Therefore, the neighborhood council only had the last 12 days to convene on this matter and they did discuss issues relating to signage, litter, seating, parking, clarification with the number of employees, and hours of operation, as well as delivery of food and its freshness. When Starbucks located in Pt. Richmond, a bakery and a restaurant went out of business. She noted that the franchisee would not be at the business very often, would hire a manager, and the lease is 10-years with Subway. She noted the intent of the ordinance is to provide the community with an opportunity to provide input and there are also at least 40 cities in California who have this type of ordinance.

Commissioner Teltschick-Fall questioned how long the property has been vacant.

Kevin Pryne, Santa Rosa, trustee, part-owner and manager of the property, confirmed that property has been vacant since at least February 2005. He said he does not know there is any specific designated use involved in the approval of the building permit, but the use was rented as a warehouse for a local antique shop, and when built in 2000, it was a curio shop there.

Elona Oliver, 20 year owner of Edibles next door, said the building was never designed for a storefront restaurant. There was an antique shop with the owner living and sleeping there and an arts studio. The property got flooded badly 4 years ago due to Douglas Payne driving a truck through the front wall which was never corrected. It took her three days to clean the water out. She had to replace pipes for her restaurant business, and the proposed Subway does not have proper pipes which are designed for residential or retail. She said there are already 7 businesses on the block and it is difficult to park, get delivery, and manage the smell and littering of trash.

Rebuttal-Applicant

Manoj Trpathi, applicant, said five issues were raised. 1) Trash: The Contra Costa Health Department must approve the restaurant and should discuss trash and whether the situation is unsanitary; 2) parking: There is a code and ordinance for no off-street parking for no less than 5,000 square feet; 3) Pt. Richmond Business Association meeting: This was not done because they came to the Commission in December and were directed to the Pt. Richmond Neighborhood Council. If they were told to go before the Pt. Richmond Business Association, they would have; 4) number of employees: He hoped business is good so he must have 4 employees which would benefit the City and him; 5) communication: In this day and age, he is

able to communicate with his employees without being next to them; and 6) the moratorium: They applied in August 2010.

Braith Clery, Pt. Richmond, reiterated that an actual office space does not facilitate the impacts of a Subway restaurant business. He spoke of the situation and impacts created because of the numerous trash containers as well as health and safety concerns, and he asked the Commission to deny the application.

The public hearing was closed.

Secretary Lee read into the record the City's code, which states "a CUP is an administrative permission for uses not allowed as a matter of right in a district. A use permit is typically required for use classification having unusual site development features or operating characteristics requiring special consideration so that the use may be designed, located and operated compatibly with uses on adjoining properties in the surrounding area."

Commissioner Soto thanked everyone for their comments, said the applicant has followed all of the rules, has done everything asked of the Commission, and there is nothing in the rules to say he should not be allowed to operate and it then becomes discretionary. He expressed disappointment and concern with the Council's decision for a proposed moratorium for "formula restaurants" to only apply to Pt. Richmond, hopes it can apply to the entire City, and cannot find any compelling reason to deny the application. Regarding capitalism, competition will lead to more choice and people will choose of their own free will as to their preferences.

Commissioner Teltschick-Fall said in listening to the arguments on both sides, she appreciates the straight-forwardness of the applicant, believes this comes down to a discretionary decision and she stands for the health of the entire City and is concerned with proliferation of chain and fast food restaurants. She thinks it should be reviewed in terms of the entire City and for it to apply to all neighborhoods.

Secretary Lee said this is why he was trying to get to the core of why the Commission is considering a CUP. Obviously, it is not a given that a restaurant should be allowed, and therefore, the Commission must consider the CUP as it applies to issues stated, such as its compatibility on adjoining properties and in the surrounding areas. He was impressed with opponent's summary of why this is forcing the space and making it into a restaurant and agrees the space does not function easily as a restaurant. The property has 3 apartment buildings, 1,000 square feet of office and living space above, and the proposed restaurant, with no parking. Given there is discretion and problems with parking and trash, he does not believe the building works for this application and would oppose Subway locating at this building.

Vice Chair Lane thinks in Pt. Richmond, it is an issue as to whether neighbors want formula restaurants or not, and because of their advocacy, they were able to bring forth a draft ordinance to the City Council. She echoes comments of Commissioner Soto and Teltschick-Fall and said this type of ordinance should apply to all Richmond neighborhoods. Issues regarding the building, parking, engineering, trash enclosures also must be dealt with by other businesses. She applauded the neighborhood for their advocacy, and lastly the applicants did go to the neighborhood council and presented their project.

Commissioner Choi agrees with Commissioner Soto that the applicants have followed the process and have acted in good faith. He thinks the application fits within the discretion of the Commission, said many objections have more emotion and used disingenuously at times. He

admitted he has had much lower fat meals at Subway than at Hotel Mac and other restaurants in the area, and he pointed out that it is a restaurant proposed to go in next to a restaurant and not an alien use of the space. It has also been 6 years since there was a business and supported the applicant's good faith efforts.

Chair Duncan voiced reservations on the application primarily located in Finding B, which he read out loud regarding compatibility with the surrounding neighborhood. Given there is the start of franchise restaurants in Pt. Richmond, he asked when is too much too much. The Pt. Richmond Neighborhood is a National Register District that has a defined character and does not include franchise businesses, but a business core that has always been unique, locally owned businesses. He was concerned that the area would become a food court simply in the interest of drumming up business. He does not believe that business at all cost is worth it because in the end it can become very expensive in terms of lost culture, sense of place and community. The visual and qualitative character of the town will change and he cannot support this.

ACTION: It was M/S (Soto/Choi) to approve PLN10-136 subject to the four findings and recommended 16 conditions. Vote: Ayes: Soto, Choi, Lane. Noes: Teltschick-Fall, Duncan, and Lee. The motion fails due to a tie vote.

Chair Duncan questioned if a substitute motion to deny was needed. Ms. Renfro said the motion fails with a tie vote and approval is denied. She said the Commission did not need to motion to approve to clarify the record, but if this motion fails as well, it is de facto denied.

Chair Duncan restated the appeal procedure.

3. PLN10-213: La Perla Taco Truck - PUBLIC HEARING to consider a conditional use permit to operate a new taco truck at 12277 San Pablo Avenue (APN: 517-100-001). C-2, General Commercial District. David & Leslie Vallerga, owner; Maria Arechiga, applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval.

Hector Rojas gave the staff report, and discussed the applicant's attendance to the neighborhood council meeting and issued a letter to the Commission regarding their position on the application, as Attachment 5. Staff addresses each of the 5 concerns as located on page 4 of the staff report, which he restated.

Chair Duncan cautioned that the moratorium cannot affect this particular decision because it is not in place; however, he said there is a direction in which mobile vendor use is headed.

Martin Garcia, applicant, Vallejo, agrees with Mr. Rojas' statements regarding the neighborhood council, said taco truck businesses do pay taxes, provide revenues, does not compete with local businesses, it creates a positive atmosphere for the use of the property which has been vacant for some time.

Commissioner Soto said similar to the previous applicant, he asked to describe the experience at the neighborhood council meeting and questions and comments, and what the response has been. Mr. Garcia said he was not present, but Mr. Rodriguez was. The atmosphere was hostile, and he was not very welcomed during the meeting and they limited his discussion. Commissioner Soto questioned and confirmed that the neighborhood council was prejudice and had already made up their minds.

Maria Arechiga, applicant, attested to this fact, stating her mother was also present at the Council meeting and was shaken when she returned. However, she assured her that there may be people more open-minded and who may consider allowing her to park there.

Commissioner Soto questioned if her parents are bilingual and questioned if translation was provided. Ms. Arechiga said her mother and father are not bilingual; they understand some English and are trying to learn. She is going to college and has a job she works at, and was unable to attend the meeting.

Secretary Lee questioned if Maria Arechiga was related family wise to the people who run La Perla on 4th and Nevin. Mr. Garcia and Ms. Arechiga said no.

Vice Chair Lane questioned and confirmed that City staff attended the Richmond Neighborhood Council meeting.

Public Comments:

Charles Smith, Richmond, spoke of his activism and volunteer work for the City in cleaning up graffiti, removing garbage from parks, removing abandoned newspaper boxes, and other work. At the December neighborhood council meeting, there was a discussion regarding the proposed taco truck. Mr. Rojas explained the applicant's proposal uninterrupted. The neighborhood council discussed the issue and voted against it, and nevertheless, staff continues to support it. He spoke of the significant blight in the corridor, amplification of music, business that left who used to smoke marijuana, harass people, cut down trees, and there have been 5 murders over the past 3 years; three occurring at restaurants. He spoke of a prostitution raid and massage parlor very close to the taco truck which affects their quality of life and lowers property values. He asked the Commission not to allow their neighborhood to be a dumping ground for projects that would never be considered for more upscale neighborhoods. He spoke of residents demanding a moratorium for Subway restaurants in the Pt. Richmond neighborhood and he asked for the same consideration and asked to show all neighborhoods the same respect.

He said there are three taco trucks at Home Depot, one down the block which is creating a problem, and he anticipates that if this problem will come to their neighborhood and be dumped there. He thinks said it is absolute nonsense that people in the neighborhood were biased before they even arrived at the meeting. There will be people who heard about it and may have something against taco trucks, but there were people who voted for it. But, the people in the community are fighting to have a good community where people are interested in the well-being of the community. He and the police department know what goes on along the street, and there will be problems with a taco truck on the street from 7AM to 9PM at night. It is interesting that staff missed LaBamba in their 300 foot radius, which is a very well known and popular restaurant. He also probably does not know one of the best health food stores is Williams, who has problems with people parking in their lot. He noted they have some of the best Vietnamese, Thai, Indian Restaurant, and Mississippi Catfish restaurants, and they do not need a taco truck which will cut into the profits of brick and mortar restaurants that are already paying taxes. If there is a moratorium, there is obviously a reason why. Therefore, if there are rules, make them for the entire City, and he asked the Commission to deny the request. If it comes in, he anticipates a lot of trouble.

Secretary Lee noted that the most recent taco truck approved by the Commission is in Pt. Richmond and there have been no problems with that truck at all.

Bea Roberson, President, Richmond Neighborhood Coordinating Council, said they just had a presentation at the last meeting regarding outdoor vendors and difficulty in regulating food sanitation standards, and support more brick and mortar restaurants. If granted, she asked that they be mandated to change their name because it is not LaPerla's food.

Commissioner Soto referred to comments regarding sanitation standards, and confirmed with Ms. Roberson that the County Environmental Health Department reported numerous complaints from mobile vendors, with the largest problems being in Richmond and San Pablo.

Owen Martin, Jr., Richmond Neighborhood Coordinating Council, stated that having a mobile vendor sit still and not move for 14 hours is identical to a brick and mortar operation. He noted that the request would lock in approval for two years in the parking lot and it did not seem feasible that the building would be rentable. He hoped to improve Richmond and not be stuck with a truck for two years that cannot move.

Commissioner Soto said he believes the truck moves off site each night and brought back each morning. Mr. Martin said it is still on site for 14 hours a day and not moving every 15 minutes as done in the past from site to site. If locked in on site for two years, it reduces the ability for parking from other businesses that want to rent the building. Commissioner Soto said in his staff report, because the truck will not have any restroom facilities, staff recommends customers be prohibited from consuming items on site as part of the recommended conditions of approval. Mr. Martin said according to Mr. Lopez, the buildings were allowing staff and customers to go into the building and use their restrooms, but if customers cannot consume food there and tables and chairs are removed, the situation would improve somewhat.

Robert Herbert, Richmond, opposed granting of a CUP for the business because there are already many food venues available in the neighborhood. He said he lives on the corner and experiences significant trash and debris in the street where much of it comes from Wendy's, Taco Bell's, and noted a produce truck also operates seasonally which causes blockage of crosswalks and people almost getting hit. He said the owner uses the neighborhood as a toilet and is against approval.

Margaret Waldorf, Richmond, said she lives around the corner and she contends with a lot of debris from KFC and Wilson Avenue, as well as many panhandlers in the area, speeding up and down Wilson Avenue, and she thinks this would bring more debris and panhandlers.

Naomi Williams, Richmond, asked the Commission to deny the taco truck. She said she thought the City's rules and conditions for taco trucks or any vendors would be required to move throughout the City and not stay in one specific location all day. She agreed with the neighborhood council and their view on how many restaurants are already in the neighborhood and the requirement for them to change their name.

Rebuttal-Applicant

Martin Garcia, applicant, said there are laws and guidance for them to follow in order to maintain a business, said the Health Department has surprise inspections, there will be trash bins for garbage, but they cannot control wind blowing debris throughout the area, and panhandlers are all over Richmond, there is lighting in the area for security, and little association with violence and taco trucks.

Chair Duncan questioned if the applicants would consider changing their name. Maria Arechiga stated their business name is “LaPerla from Jalisco” and not just “LaPerla”.

Commissioner Soto said it has been his experience with fast-food restaurants, particularly if they have a drive-thru, is that people will park in the parking lot and eat in their car, which becomes a source of trash. He questioned if the applicants can abide by the conditions to not allow consumption on site, and if so, how do they plan to ensure customers leave the site to eat their food and do not leave trash behind.

Mr. Garcia said they will maintain the cleanliness of the area so people will come. Regarding consumption of food in their cars, they have no control over this, but they will notify their customers. They can also address this with signage to indicate food is only for take-out.

Commissioner Teltschick-Fall said the Commission has discussed emerging vision for the neighborhood, the fact that there have been numerous applications for mobile food vendors and that there are no standards, and a moratorium is proposed. She asked if the applicants would be willing to look at entirely different ways of operating in order to have the neighborhood welcome them. She said if they were able to give City staff time to work with communities to think this through and return after the moratorium has been lifted to arrive at something amenable to the neighborhood, and perhaps at a different location away from the gateway to the neighborhood, citing a vegan taco truck which is popular in Berkeley. She also did not see this as a question of putting down the business.

Mr. Garcia said he thinks this is an unfair request because there is a process the City has laid out, they have gone through it. He questioned whether other businesses would be asked to return and follow future rules.

Chair Duncan noted these things cannot be applied retroactively. However, the moratorium is a current attitude because one of the problems with the ordinance is that the nature of the landscape has shifted, as well as mobile vendors from the time the ordinance was instituted. He thinks there has been a momentum to revisit that ordinance and redefine what a mobile vendor is so there is no unintended consequence to damaging brick and mortar businesses. To a great degree, this application was the trigger for the request for a moratorium. He also said relative to Commissioner Soto’s question regarding take-out, he did not believe the applicant answered the question. He said there will be no tables; however, the truck is sited in a large parking lot, and anyone can eat in their vehicle. Therefore, he asked how enforcement of the condition would be addressed.

Mr. Garcia said this is a new condition to the original request, and they can put up signage to alert the customers, and while it will never be 100%, they will make an effort to let them know.

Commissioner Teltschick-Fall said at the last meeting, the Commission was told the application had been turned down for two other sites, and she questioned the reason for this.

Maria Arechiga, applicant, said it was turned down because there was already a fruit vendor within 300 feet.

Commissioner Teltschick-Fall said Ms. Velasco noted that the City had applied for a grant to do a form-based code study for that particular intersection because everyone recognizes improvement is needed. She questioned if the City received the grant and she asked how this request would fit in with a form-based code vision.

Mr. Mitchell said the City did receive a grant to develop a form-based code for a number of key corridors. At this point, it is focused primarily on the brick and mortar environment. It would develop a code to speed up developing of structures and buildings on what are now vacant lots, car lots, and parking lots along major corridors. The City is still in a preliminary phase and he did not envision it developing a design review or approval process for mobile vendors, but rather reconstruct the City's main streets. At this point it is designed to help the City infill the many empty spaces in the City.

Charles Smith, opponent, said when the applicant suggested there were laws to guide them through their business, he suggests the Commission look at the fact that car dealers were also supposed to be guided by law and enforcement never occurred, as well as the house of prostitution. He also questioned why there would be trash bins on site if people should not be allowed to eat there. They do not have a wash room, which will in and of itself also be a problem. He said the only person who can use the washroom with the key was the person running the truck itself, and anybody who leaves the City of Richmond starting at 2:30 p.m. knows that Barrett Avenue is packed with cars and people risk getting tickets making a left turn against the light in order to get onto the freeway. The truck will sit right on the side of that traffic, which blocks traffic along Barrett Avenue for blocks, and the situation is not good for the community. Further, they will have a large truck, there are not that many parking places, and there are small businesses on Wilson behind them.

Commissioner Soto said he believes that the applicants wanted to operate at 37 Macdonald where there was already the produce vendor there, and then staff undertook a search for an alternative site and arrived at this. Mr. Rojas said after the applicant was informed of not being able to locate at the site where the produce vendor was, the applicants undertook a search themselves.

Commissioner Soto said the proposed hours are 9AM to 9PM, or 12 hours and not 14 hours. He said he frequently passes the area, particularly every Wednesday night. He thinks the area is very desolate at around 10:15 p.m. Three of the corners are empty and the only activity is the drive-thru only. The first time he ever saw a taco truck was in San Jose about 30 years ago. It pulled up in a parking lot and people lined up. The idea proliferated here and we are seeing other people who have picked up on the idea selling other types of food. He is somewhat concerned that the notion of mobile vendors are only viewed as taco trucks and not desirable in only some neighborhoods. He sees the operators that have come to the City in good faith, have gone through all appropriate steps and to the neighborhood council. However, the neighborhood councils are not the gatekeepers in the neighborhood and can provide input, which may weigh heavily with some and not others.

One key factor in his decision for supporting this application is the fact that this is a two-year lease. He would not like to see the intersection remain as it is, would like to see it developed out along the concepts discussed in the General Plan Advisory Committee, but until the economy turns around and someone is willing to do something with one of the existing buildings or tear it out, he would be very surprised if he saw a small or large business going into one of the existing structures. So he sees no reason to deny the opportunity to run the business. He is a consumer of taco trucks and while he might want to see some diversity in terms of menu, his issue is the trash and the fact they will not have consumption on site, and he voiced support for approval.

Commissioner Teltschick-Fall said for the same reason she respected the vision of the Pt. Richmond neighborhood, she respects the vision of this neighborhood and does not see this

applicant was as willing to work with the neighborhood to think of something they would welcome. She also said the intersection is extremely congested, thinks mitigations will not be effective, she does not think it is a great corner or parking lot and location, and it will be tough to enforce the condition of not being allowed to eat on site.

Secretary Lee said he has followed this for awhile and is quite torn. He eats at taco trucks quite often at the Pt. Richmond facility, but the concept is an incubator for brick and mortar businesses. He does not sense this is where this effort is going, and he also feels that much like Subway, this is a forced fit to locate it at the site, given the limited restroom facilities and resistance from neighbors, and he would not be in support.

Vice Chair Lane thinks the issue is a challenge, recalls when the applicant came before the Commission for the last site and working hard to find a location to operate. She also understands the neighborhood and the grander vision for where the site is located which is a major intersection and gateway. Regarding crime and trash, she thinks these can be addressed. She understands the applicant has looked at other sites, and does not think this is the best site for the truck.

Commissioner Choi agrees with Commissioner Lane, thinks the issue is difficult, enjoys patronizing taco trucks, and thinks many of the problems brought forth are mitigated by the convenience of the food to eat it. The food is hand-held as compared to plated food, appreciates the applicants have acted in very good faith, and would suspect they are at the edge of their financial resources to be able to run their business. There has also been a strong response from the neighborhood, but he feels it is somewhat generalized; to compare the business to the used car lot salesman who was abusive is not fair. He is not sure that no business there for an extended period of time is better than not the ideal business the City would want, as the business is appropriate for that area. So, he is inclined to favor the application, but he stressed that he is listening to concerns of the neighborhood. Regarding health concerns, he is sure that if there are any, they will duly be reported.

Commissioner Teltschick-Fall said some people have said there is no business on site, but she clarified that there is a business, and the taco truck would operate in the parking lot of that business. Commissioner Soto noted that he heard that the auto repair shop will be closing and the area will be even more desolate.

The public hearing was closed.

Commissioner Soto made a motion to approve PLN10-213, subject to findings and conditions as indicated in the staff report. Chair Duncan requested amendment to the motion to remove the take-out restriction. Policing this in a way that prohibits people from eating on site is absolutely unenforceable, to which Commissioner Soto agreed, considering the applicant has made a good faith effort to keep the area clean.

ACTION: It was M/S (Soto/Choi) to approve PLN10-213, subject to findings and conditions as indicated in the staff report, as revised to remove the take-out restriction. Vote: Ayes: Soto, Lane, Choi. Noes: Teltschick-Fall, Duncan, Lee.

The motion failed due to a tie vote of 3-3.

ACTION: It was M/S (Soto/Choi) to approve PLN10-213, subject to findings and conditions as indicated in the staff report. Vote: Ayes: Choi, Soto, Lane. Noes: Teltschick-Fall, Duncan and Lee.

The motion failed due to a tie vote of 3-3.

Secretary Lee requested denial without prejudice be added to the vote. Ms. Renfro said unless the Commission finds denial with prejudice, the action is denial without prejudice. She also noted that the applicant has appeal rights, and Chair Duncan restated the appeal procedure.

Items Removed for Discussion:

- 4. PLN09-148: T-Mobile Wireless Facility - PUBLIC HEARING** to consider a conditional use permit to allow a new wireless telecommunication antenna on the roof of an existing commercial building at 12989 San Pablo Avenue (APN: 526-040-003). C-2, General Commercial District. Kim Sang Pil & Nam Im, owners; T-Mobile – Jeff Lienert, applicant. Planner: Hector Lopez. Tentative Recommendation: Conditional Approval.

Hector Lopez gave the staff report and description of the request for conditional use permit, and said staff recommends approval.

Jeff Lienert, applicant, Folsom, said he thinks it was possibly the first application since the moratorium which was submitted in 2009. He said they have made some changes and concessions following the north and east neighborhood council, where they had unanimous approval. The DRB liked the design and they changed one of the side fences to a CMU wall which exists on the rear property line. He added that the ordinance does encourage and they are achieving replacement of antennas on existing structures, placement of antennas in commercial zones, and asks that the design to minimize adverse visual impact. He said the facility is substantially screened, they have minimized a new tower, and the original design endorsed by the neighborhood council was 39'6" and they have since reduced the height down to 33' to be more in scale with the building.

Public Comments:

Elsie Smirekar, Richmond, said she owns a rental adjacent to the fence and confirmed with staff that the wall would be 6 feet.

The public hearing was closed.

Commissioner Teltschick-Fall said she noticed there are this wireless facility and two others coming up soon which will soon be considered by the DRB's agenda. She questioned the differences between a wireless facility, a tower, and a monopole, to which Mr. Lopez described.

Commissioner Teltschick-Fall questioned if they had the same specifications regarding power output and radius. Mr. Lienert replied that all carriers will typically order a 200 amp service, but they operate a different power levels depending upon the footprint they are trying to cover. In a denser, urban area, there will most likely be more users on the network and they will not want the site to cover as big a geographic area because of limited numbers of channels.

Commissioner Teltschick-Fall said there are quite a few sites in the neighborhood already, and she questioned how the moratorium ended, noting there was a lot of discussion when putting a facility in the Pt. Richmond facility. She said some neighborhoods are rejecting these because they feel there are radiation and health effects that have not sufficiently been regulated even though it passes requirements. She questioned radiation levels, health effects, and radius of radiation in terms of a nearby residence.

Mr. Lienert said the federal government sets standards thousands of times below what they know of no known health effects. When T-Mobile submits an RF report with the application, the sites operate at about 1/10 of 1% of what they are allowed to operate. While there are many sites in a coverage map, the reason is because so many people have cell phones and they are not just for voice, and more sites must be installed to handle the usage. He then deferred to the City's legal staff to further address questions.

Ms. Renfro said some Pt. Richmond residents voiced concern about the tower that was installed on Jerry Fagley's building and they would have to speak for themselves, but legally, the health risks are set by the federal government. The City simply reviews the application so that it falls within the standards set and the City has no authority to regulate based on health risk. The City can regulate on aesthetics and local police powers not regulated by the federal government.

Secretary Lee questioned if this situation caused a new ordinance relative to cell sites, and he questioned if this was related to the moratorium. Ms. Renfro said yes; and a new ordinance was developed. The design review standard was upheld by the courts, but Pt. Richmond residents did not like this and a moratorium was initiated with a new ordinance. She said this application has been processed within the new ordinance criteria.

Commissioner Teltschick-Fall asked to explain the difference between the old and new criteria. Ms. Renfro said they have become more stringent; the older version had an over-the-counter approval process, and now there is a complicated process for the applicant to provide a lot of material and go through the CUP process.

John Smirekar, Richmond, questioned whether there would be television or radio interference, and he questioned his rights to get this correct.

Mr. Lienert said the FCC has non-interference rules and they could enforce significant fines or penalties upon T-Mobile for non-compliance. Frequencies are also totally separate from any frequencies used in residential in terms of interference. He added that the site also has a toll free T-Mobile operations center number and any interference would be resolved if there were any.

The public hearing was closed.

ACTION: It was M/S (Lane/Soto) to adopt Resolution 11-3, approving the Conditional Use Permit for PLN09-148, subject to conditions. Vote: 5-0-1 (Teltschick-Fall abstained).

Chair Duncan restated the appeal procedure.

5. PLN10-201: Wuling Karaoke Restaurant Beer & Wine Sales - PUBLIC HEARING to consider a conditional use permit to allow live entertainment and beer & wine service for an existing restaurant at 10561 San Pablo Avenue (APN: 507-070-009). C-2, General

Commercial District. Lisa Lee, owner; Ya-En Lee, applicant. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval.

Kieron Slaughter gave the staff report and request for a conditional use permit. Staff recommended, and the applicant agreed, to meet with the Richmond Annex Neighborhood Council who provided a letter as Attachment 7, and staff has had several conversations with the President. In addition, the applicant is asked to contact the West Contra Costa Alcohol Policy Working Group, chaired by Naomi Williams, who conducted a site visit. Staff recommends approval, with findings and conditions, as amended to include the modification before the Commission.

Chair Duncan noted the amendment to the condition requests proposed hours of operation be modified in condition 2 of Resolution 11-04 in Attachment 1 from 8:00 p.m. to 2:00 a.m. daily to 5:00 p.m. to 2:00 a.m. daily.

Richard Ong, interpreter for Ya-En Lee, applicant, said she has been in business since 1993 and said there are many patrons present to support their request, as well as letters, and he noted the business is safe, has good food, with the ability to sing and dance.

Public Comments:

Naomi Williams, West Contra Costa County Alcohol Policy Working Group, apologized the item was taken off the Consent Calendar, but she re-emphasized the business has conditions. The only condition she thinks the neighborhood council was interested in was that they keep their back door closed at all times because it abuts a residential neighborhood.

Garland Ellis, Vice President, Richmond Annex Neighborhood Council and Director on the Richmond Neighborhood Coordinating Council, said there has been several misrepresentations of their council that he would like to clarify. They did ask the applicant to attend the meeting and they declined. At first, they were unaware of any problems in the area until residents that live directly behind the facility came forward this week. Also, several board members went to the facility last Friday night. Typically the windows are closed and it is difficult to tell whether or not they are open. The door was locked and they had to knock to get in. They wanted a cover fee and were allowed to stay for a few minutes. Presently, they have no ABC license, although there was alcohol being consumed and on the premises. The music can be heard when leaving the facility from several doors down with the facility being shut. The music goes on past 12 midnight, and there are issues with neighbors behind the facility. There are also more facilities in the neighborhood that serve alcohol than what is in the report; at least 2 more that have beer/wine sales within $\frac{1}{4}$ to $\frac{1}{2}$ mile as well as another, and this does not take into account the many facilities in El Cerrito right across the street. Regarding police reports, the City of Richmond does not patrol San Pablo Avenue unless they go to eat. The City of El Cerrito patrols San Pablo Avenue and any incident that occurs in Richmond is not reported because it is in another jurisdiction. This is their policy and they have been asked time and time again to change it, and there is also an adult book store two doors down.

Commissioner Soto referred to jurisdictional dilemma, and he questioned if either Richmond or El Cerrito Police Departments indicated there had been previous problems with violence or bar related problems. Mr. Ellis said there have been none.

Chair Duncan confirmed the applicant had not appeared before the neighborhood council.

Nasario Bernal, Richmond, said he lives directly behind the business and has fought for many years with them. They like to leave the back door open because it is hot in the kitchen, their customers heavily smoke, drink and talk in the back and noise carries into his house, and the owners do not seem to care when he complains. With them staying open until 2:00 a.m. 7 days a week is ridiculous and departing cars make significant noise, as well.

Commissioner Soto confirmed with Mr. Bernal that the problem has been going on about 7 years. The restaurant fixed up the backyard area, had barbecues and wanted to serve lunches in the area and did not have authorization. He called the code enforcement officer to determine whether they had a permit and they did not.

Commissioner Soto questioned the current separation between properties. Mr. Bernal said there is only a fence separating them which is about 60 feet.

Commissioner Teltschick-Fall referred to the neighborhood council conditions they requested which address Mr. Bernal's concerns, confirmed with Mr. Slaughter that neighbors could make complaints to code enforcement or police, and she asked whether Mr. Bernal would be amenable to the process. Mr. Bernal said he has been doing this all along and his complaints were not addressed. Mr. Slaughter said currently, there is no conditional use permit on file, there is the Municipal Code relating to noise; however, there are no code enforcement complaints on file and Mr. Bernal can contact code enforcement and insist they create a report, given any violations.

Mr. Bernal said his wife must get up at 4:00 a.m. and the business interferes with her sleep. Commissioner Teltschick-Fall said the only condition that she does not see addressed in the neighborhood council list is that cars would still be leaving at 2:00 a.m. and she asked if this would satisfy him or not.

Mr. Bernal questioned if they would also be serving food at night. He said the fans are mounted on top of the building, which is also quite noisy.

Commissioner Soto referred to Item 6, it states, "They shall not be towards the rear of the building but moved to the front or the midway to the building."

Chair Duncan questioned and confirmed Mr. Bernal has read all conditions, and said the hour the business stays open is a different issue.

Vice Chair Lane said she did not see a condition regarding smoking in the rear yard, and Mr. Slaughter said some neighborhood councils have lengthy and short conditions. The ones relevant were included; however, he did not see the relevance for usage of the back patio for a beer and wine license. He had not received any complaints or comments, and therefore he did not see this as an issue.

Chair Duncan said the matter of smoking is one of state law and not local ordinance. He said the issue of hours is another matter and asked for additional speakers.

Jerry Yoshida, Richmond Annex Neighborhood Council and RNCC, said he thinks the more important issues are the noise and hours of operation. The business is fine, but the matter is one of protecting citizens for a use. He asked to modify Conditions 2 and 9 as well as adding on the neighborhood council's conditions, particularly Conditions 2 and 15. He said the reason there were no police reports, the only way a report can be filed is to go to the office and file an

official one. Complaints were made many times for prostitution in the past, and the location is also a drop-off place for ex cons. He said staff's condition 3 addresses noise from music or amplified sound, but there is also noise from the kitchen fan, which he believes was installed illegally after the addition was added on to the back. He suggested amending the condition to state, "At no time shall any noise, music, or amplified music...." He also asked that the front of the building also be addressed in the condition that reads, "Speakers shall not be audible with 10 feet of the exterior of the premise" because the back 10 feet is on the neighbor's property. Condition 2 relates to operations, Monday through Sunday from 8PM to 2AM, and he asked to change it to the council's recommendation for 11:00 and midnight. He also asked to add two neighborhood council conditions 6 and 15.

Chair Duncan questioned if the applicant would object to reducing the hours from 2AM to 12 midnight as the closing time.

Richard Ong, interpreter for Ya-En Lee, applicant, said the business has been in operation since 1993 and has always operated up to that time. They have had no complaints, understands there had been noise in the backyard from the previous owner. Now because the business is not operating, she decided to return from requests from patrons and re-applied for an ABC license because it was canceled in the past.

Chair Duncan questioned the time the previous owner leave the business and the new owner take over. Mr. Ong said the last owner left close to one year ago, and Ms. Ong returned in October or November. He described the backyard and agrees there may have been a barbecue July 4th, but no lunches being served outside. There may have been people smoking outside in the back also because they were not allowed to smoke inside. The back door may have been opened in the past, but the building has air conditioning and normally the doors are closed.

Chair Duncan confirmed the kitchen was also air conditioned. Mr. Ong said chances are that when the doors are closed, music cannot be heard, so he thinks the issues were from the past owner.

Chair Duncan questioned if Mr. Ong was amenable to cutting back hours to 12 midnight. Commissioner Soto noted that the letter included in the packet signed by Ya-En Lee, dated December 6, 2010 in response to Mr. Slaughter indicates an acceptance of Sunday through Thursday terminating at 12 midnight, with karaoke to terminate at 11:30 p.m. and Friday and Saturday at 2:00 a.m.

Mr. Ong added that at times they close the doors early. He said the business is not just for karaoke, but a place to eat snacks and does not include large food venues. He invited the Commission to come to the business.

Commissioner Choi said having sung at the establishment, while not speaking for the back, the sound is inaudible once leaving the front door and it is quite soundproof. It is also a well visited community establishment, and he admitted he may have been the only person singing in English.

Vice Chair Lane confirmed revised hours of operation proposed by Ms. Lee in her letter.

Commissioner Teltschick-Fall said she feels the noise and hours are the two main concerns of the neighborhood and she supported approval if those could be addressed.

Commissioner Soto said the only other concern he heard which he hopes is addressed is smoking in the back. He asked that this be restricted to the front only. He asked Mr. Ong if he would be amenable to the condition, and Mr. Ong said yes.

The public hearing was closed.

Chair Duncan recognized that there were 14 speakers in the audience who waived their time and comments, and who support approval of the conditional use permit.

ACTION: It was M/S (Soto/Choi) to approve Resolution 11-04, and approve PLN10-201 with conditions and findings, with additional conditions by Chair Duncan; to amend Condition 9 that “the rear door shall remain closed to contain noise and remain unlocked”; and to add Condition 18(a) that “smoking shall not be allowed at the rear of the property”; unanimously approved.

Secretary Lee requesting moving Item 8 to the February 3, 2011 Commission meeting. Vice Chair Lane voiced opposition, stating there were 5 speakers who have waited for the item to be heard. Chair Duncan announced that the item would be heard.

7. PLN09-114: Outdoor Vendor Moratorium - PUBLIC HEARING to consider a temporary moratorium on the acceptance, processing and approval of applications and permits for all outdoor vendors citywide. City of Richmond, applicant. Planner: Hector Rojas. Tentative Recommendation: Recommend Adoption by City Council.

Hector Rojas gave the staff report and description of the draft ordinance for an emergency moratorium for consideration by the City Council. Ms. Renfro clarified the emergency ordinance would have one reading and if approved, would be in effect for 45 days.

Commissioner Soto questioned the proposed plan to garner community input. Mr. Rojas noted the Commission appointed a subcommittee who would meet in a series of workshops with mobile vendors, RNCC and neighborhood councils.

Commissioner Teltschick-Fall suggested the County Health Department be notified and included, and she questioned if 45 days would be enough time to carry out the process. Ms. Renfro noted that for an emergency moratorium, noticing and the two reading procedures are not necessary. The urgency provisions are in place for 45 days, it can be renewed within the 45 days for another 10 months and 15 days, to make a total of a 2 year moratorium without any legal issues. Therefore, the City has up to 2 years to address its zoning, and she confirmed it can also be made for a shorter period.

Vice Chair Lane said the reason she requested it be removed from Consent is that she did not feel 45 days was sufficient time for meaningful outreach. She and Commissioner Soto are on the subcommittee and she recognized the procedures for renewal of the moratorium.

Commissioner Soto questioned the number of mobile vendor applications in the last 5 years has the City received that were not taco trucks. Mr. Rojas said at the very most there were between 2 to 5, and included a flower, a flag, a catfish, and a produce truck.

The public hearing was closed.

ACTION: It was M/S (Soto/Teltschick-Fall) to recommend to the City Council adoption of a temporary moratorium on the acceptance, processing and approval of applications and permits for all outdoor vendors citywide.

PRESENTATION:

8. **PLN09-137: Housing Element Update** - PRESENTATION to receive Planning Commission input on the city's draft housing element for the current 2007-2014 planning period. The Housing Element is a state mandated element of the general plan which assesses a jurisdiction's housing needs and provides goals and policies to address those needs. The draft Housing Element is available for public review on the City's General Plan website: www.cityofrichmondgeneralplan.org. Planning and Building Services, applicant. Planner: Hector Rojas. Tentative Recommendation: No action.

Hector Rojas gave a PowerPoint presentation on the City's Draft Housing Element.

Commissioner Soto questioned why the Draft Housing Element was submitted to the Department of Housing and Community Development (HCD) prior to coming to the Commission. Mr. Rojas said this was done because of delays and the deadline that the City missed, as well as the fact that HCD takes 60 days to review and provide feedback. Staff is attempting to do things simultaneously and catch up the Housing Element with the General Plan in its entirety. Community input is included in the overall schedule, staff believes there will be opportunities for HCD to review it and provide feedback as well as significant public input over time.

Commissioner Soto confirmed that HCD's review will be to the degree that it conforms to the minimum requirements of the State. They are also required to take into account public comment and input as part of the process, and they have a conference call scheduled for next week to provide the public comments received, and staff will also be forwarding all public comments in written or oral form. He noted that it is staff's position to ensure comments are received from the public and from the Commission.

Commissioners reviewed the HCD and public comment procedure and confirmed that Planning Commission comments and other public comment will be forwarded to HCD. Mr. Rojas and Mr. Mitchell clarified that comments will be forwarded to HCD and the Planning Commission and City Council will determine what is included in the final Housing Element. HCD's role is to ensure all required pieces are contained in the element, and staff's opinion is that they are.

EXTEND MEETING

ACTION: It was M/S (Soto/Choi) to extend the meeting to 11:45 p.m. (at 11:00 p.m.); unanimously approved.

Public Comments:

Del Price, Program Coordinator, Richmond Equitable Development Initiative (REDI), described their coalition, said REDI shares a number of objectives in the City's housing vision incorporated into the element, they believe there is a need to link the Housing Element to the Health, Land Use, Transportation and Climate Change Elements as well. She noted some areas of concern both in the content and process of the element and these are included in the packet and

communicated with staff. She suggested there be a reasonable assessment, inventory and analyses of potential sites for housing, and in its present format, the parcel map makes it difficult to identify barriers to build housing, there are no descriptions or data about sites, current conditions or recommendations. These include the redevelopment areas and housing element site maps, transit map, aerial photos, tax assessment and tax credit neighborhood amenity scoring. They have recommended including an inclusionary housing ordinance to ensure more units are available for low and very low income households, asked to devote 100% in-lieu fees to rehabilitation or new construction, and ask there be more transparent and public reporting of the in-lieu fee amount, expedited permitting and reducing fees for inclusion of affordable housing. She asked that an affordable housing overlay zone be evaluated as one method to accomplish this. Lastly, she asked to consider establishing a percentage of properties that the City will turn over to non-profit developers to rehabilitate foreclosed-upon properties.

Secretary Lee said Ms. Price's information is from Urban Habitat, and Ms. Price said she is a staff person with Urban Habitat out of Oakland, but her position is Program Coordinator for REDI, as a coalition member.

Nita Sisamouth, reiterated that the REDI Coalition believes there is a need to link housing to health, land use transportation and climate change element. She asked to ensure that contaminated land in proximity to residential areas or those planned for residential use are fully remediated, that environmental clean up and assistance funded with City resources will benefit low income communities through green job creation and training programs to include bilingual Richmond residents, to ensure new developments use energy efficient and green building design and construction, and to promote transit-oriented development in a manner that reduces GHG emissions and strengthens and stabilizes communities vulnerable to displacement.

Tejal Taylor, Alliance of California for Community Empowerment (ACCE), thanked staff for including recommended language regarding the community land trust and foreclosure policies and asked that it be made stronger. She discussed key exclusions and said for the community land trust, she asked the City to assist in establishing the trust by providing data, research, technical assistance, finance and organizational development, identify funding sources and dedicated funding streams and designating homes targeted for acquisition and rehab for the community land trust. Regarding foreclosure policies, she asked that establishment of a homeownership revolving loan fund to help Richmond families to acquire foreclosed properties.

Maria Allegria, Richmond Vision, said residents are experiencing a regional economic and housing crisis that includes an unprecedented number of home foreclosures, increasing costs for rental housing, and shrinking supplies of affordable housing. She voiced concern that the draft Housing Element was sent to the State prior to the public and the Commission being able to review the draft for comment. She said this is a standard practice in all cities, and she asked to withdraw the draft, circulate it for public review and Commission review, and incorporate the social equity principles and policies they have outlined prior to re-submission. An additional 45 days will have no significant effect on an already late submission. She also asked to establish a timeframe and process for re-evaluation of the current program.

Antonio Medrano, Richmond Vision, spoke regarding tenant protections, noted that principles and key elements for just cause legislation were adopted by Richmond Vision at their July 2004 meeting and he read them into the record dealing with homelessness, rent increases, foreclosures, establishment of a rent board, a community outreach program on legal rights and protections, enforcement of SB 1137, and bilingual noticing.

Chair Duncan confirmed with Mr. Rojas that staff has a formal packet of letters submitted to date, as well as those submitted tonight. Chair Duncan encouraged speakers with specific requests to put their comments in writing.

Maria Allegria interjected that the recommendations have been submitted since 2009 and they have not been submitted in the Draft Housing Element sent to HCD. This is the reason they are asking that the element be withdrawn and re-circulated.

Mr. Rojas noted the deadline for the current Housing Element was June 2009, and the matter is pressing to adopt this element, and next year, the City will again start again in its next revision. He assured the Commission that all comments from the Planning Commission and the public will be sent to HCD.

Commissioner Teltschick-Fall said she heard comments from speakers that they wanted their comments to be incorporated into the document, and she questioned how this is going to happen. Mr. Mitchell said comments are received from citizen groups and individuals. Comments that go into the document will be the decision of recommendations of this Planning Commission to the City Council and the decision of the City Council. The comments set very specific policy direction of the Council. Community input is welcome and staff tries to represent it as accurately as it can in the document. Therefore, it is the Council who approves the specific policy direction and not any advocacy group or individual. The State has a clear regulatory framework it looks at and does not set policy for the City, but rather the Council's decision.

Ms. Renfro added that Mr. Rojas has sent comments to her for legal review and some things she has rephrased because a document cannot be written that appears to take the budgeting function from the Council. Some statements heard sound very familiar and they have been rephrased and incorporated in a way that would be legally defensible. Funding promises are the prerogative of the Council through the budgeting process. Other than that, she believes comments have been incorporated.

Commissioner Soto said individuals have submitted recommendations, they have been paraphrased, and he questioned if anything was provided to those commenting as to how their input was framed in the document. Ms. Renfro said she had provided a detailed document on how the editing process works to the Planning Commission, and it is not practical to provide such detailed information to individuals, as there were over 10,000 comments, and staff does what it can.

Vice Chair Lane agrees that the process has been very long and arduous from 2006 to now, and she believes that for those parties actively involved, there be an opportunity to communicate what policies and action measures are included, and for the Planning Commission to provide its comments and understand how those will be weighed and voted on. Mr. Mitchell said a complete General Plan and EIR will come out. Through that formal comment process, any remaining issues or comments can be recorded, reviewed and addressed just as the City does with any other project. This is the final route through to complete the process and underway now. He has personally been involved with numerous groups, is checking to see if language is acceptable, and there have been very effective negotiations over time.

Vice Chair Lane confirmed that the next time the documents will come to the Commission will be on April 7, 2011. At that time, the Commission can be specific and address any revised changes and then vote on the document. In-between that time, the public still has an opportunity to provide comments and suggestions. Mr. Mitchell stated there is a schedule for elements to be

released to the public. As they are released, more comments come in. The EIR is also showing up on the schedule as March 17, 2011 for the hearing and for release on February 7, 2011 with a 45 day comment period.

Commissioner Soto said one comment was that there were technical deficiencies regarding information that should have been provided such as the list, and he asked if this was a deficiency in this document. Mr. Mitchell said the state will advise the City of any technical deficiencies and this is the reason staff wants them to review it. The policy issues are a different subject and they are ones that the Commission and Council address. Ms. Renfro said the speaker's comments will be forwarded to HCD in terms of a site inventory and build ability.

Commissioner Soto said if this would strengthen the document, it should have been included before it was submitted. Or, at this point, it should be forwarded in a way that indicates a desire for it to be included.

Chair Duncan thanked Commissioners, staff and the remaining 5 speakers, and suggested they write down precisely what was stated and submit it to the City in order for it to be included and sent to HCD.

COMMISSION BUSINESS

9. Discuss and take action on Proposed Amendment to Procedural Rules

Secretary Lee asked that Hold Over Items be moved to the Consent Calendar and if they needed to be removed for discussion or clarification, they could be heard. Mr. Thompson agreed this could be done.

Chair Duncan stated the agenda item proposes to amend procedures to start the Commission meeting at 6:00 p.m. instead of 7:00 p.m. Other amendments also deal with quorum issues, and miscellaneous amendments in the procedures.

Commissioner Choi noted he heard from many people not in favor moving the meeting time to 6:00 p.m. due to just returning home from their jobs. He proposed a compromise be considered for 6:30 p.m., to which all Commissioners concurred would be favorable.

<p>ACTION: It was M/S (Soto/Choi) to adopt the proposed amendment to procedural rules to start the meetings at 6:30 p.m. and amend the close of business to be at 10:30 p.m. as opposed to 10:00 p.m.; unanimously approved.</p>

10. Reports of Officers, Commissioners and Staff

Chair Duncan reported a subcommittee was formed with Vice Chair Lane and Commissioner Soto.

Commissioner Soto reported the Council adopted the idea of establishing a Citizens Advisory Committee on Pt. Molate open to all Richmond residents. The standard application can be downloaded from the City's website and submit it to the City Clerk in order to be considered. It will be a Mayoral appointment.

Adjournment

The meeting was adjourned at 11:45 p.m.