

PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, RICHMOND CITY HALL
1401 Marina Way South, Richmond, CA
September 3, 2009, 2009
7:00 p.m.

COMMISSION MEMBERS

Virginia Finlay, Chair
Jeff Lee, Secretary
Jovanka Beckles
Carol Teltschick-Fall

Vice Chair Nagarajo Rao
Charles Duncan
Sheryl Lane

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

Commissioner Lee led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Finlay, Vice Chair Lee, Secretary Duncan, and Commissioners Beckles, Lane, Rao and Teltschick-Fall

Absent: None

INTRODUCTIONS

Staff Present: Hector Rojas, Janet Harbin, Carlos Privat, Richard Mitchell and Kieron Slaughter

MINUTES

April 6, 2006

Chair Finlay said she and Commissioner Rao were the only current Commissioners for approval of minutes of the April 6, 2006 Commission meeting, as well as the June 22, 2006 meeting.

ACTION: It was M/S (Rao/Finlay) to approve the minutes of April 6, 2006, with minor corrections; unanimously approved (Beckles, Duncan, Lane and Teltschick-Fall abstained).

June 22, 2006

ACTION: It was M/S (Rao/Finlay) to approve the minutes of June 22, 2006, as submitted; unanimously approved (Beckles, Duncan, Lane and Teltschick-Fall abstained).

August 6, 2009

Chair Finlay and Secretary Duncan submitted minor corrections to the minutes.

ACTION: It was M/S (Duncan/Teltschick-Fall) to approve the minutes of August 6, 2009, with minor corrections; unanimously approved.

August 20, 2009

ACTION: It was M/S (Beckles/Lee) to approve the minutes of August 20, 2009, as submitted; unanimously approved (Duncan abstained).

CONSENT CALENDAR

Chair Finlay provided an overview of the Consent Calendar, meeting procedures for speaker registration and public hearing functions and procedures. She said certain items approved by the Commission may be appealed in writing to the City Clerk by Monday, September 14, 2009, by 5:00 p.m. and she read them after each affected item.

Chair Finlay stated that the Consent Calendar consisted of Items 3, 4 and 5. Ms. Harbin said staff had no changes to items on the Consent Calendar. Commissioner Duncan referred to Item 1 which is recommended for continuance to November and he suggested it be moved to the Consent Calendar for continuance to November 5, 2009.

Chair Finlay confirmed that items for removal from the Consent Calendar were Items 5 (Duncan). Chair Finlay noted Items 3 and 4 are recommended to be moved to future meetings as hold over items. Commissioner Lee noted that Items 3 and 4 continue to operate and he recommended not holding them over any further into the future.

Ms. Harbin clarified that the State has enacted a new licensing procedure, effective September 1, 2009 for massage establishments. The State will be the only approval agency for such uses. The Planning Commission will not be issuing CUP's unless there are environmental or adverse effects on the establishments to be in certain locations. Staff will provide an update on November 5th regarding how their applications are moving along with the State, as well as changes which will be reflected in a draft ordinance to be consistent with State legislation.

Chair Finlay voiced the need for pertinent information on such establishments, noting it may cause concern within the community, and she looks forward to discussion on November 5, 2009. Ms. Harbin agreed to provide the legislation prior to the meeting, along with staff reports and supporting legal opinions.

Chair Finlay confirmed there were no speakers on current Consent Calendar Items, which Secretary Duncan read in the record as Items 1, 3 and 4. A member of the audience agreed to sign up to speak on Items 3 and 4 under the Brown Act.

ACTION: It was M/S (Duncan/Lane) to adopt the Consent Calendar consisting of Items 1, 3 and 4; unanimously approved.

Items Approved:

- 1. PLN 09-014: PENG SECOND UNIT – VARIANCE TO SIDEYARD SETBACK - PUBLIC HEARING** to consider a Variance request to reduce the required 5-foot side yard setback

(2.5 feet proposed) for an addition to an existing dwelling unit located in the rear of the property at 440 and 442 20th Street (APN: 514-120-021). MFR-3, Multifamily High Density Residential District. Sharon Peng, owner; Richard Tapp, applicant. Planner: Hector Lopez. Tentative Recommendation: Move Item to November 5, 2009.

3. **CU 1104701: Aiming Huang Liu – Conditional Use Permit for a Therapeutic Massage Establishment** - PUBLIC HEARING to consider a Conditional Use Permit request to operate a therapeutic massage establishment located at 10525 and 10527 San Pablo Avenue (APN: 507-080-017). C-2, General Commercial District. Aiming Huang Liu, owner/applicant. Planner: Hector Lopez. Tentative Recommendation: Move Item To November 5, 2009.
4. **CU 1104638: Hiu Ping Liu – Conditional Use Permit for a Therapeutic Massage Establishment** - PUBLIC HEARING to consider a Conditional Use Permit request to operate a therapeutic massage establishment located at 10819 San Pablo Avenue (APN: 508-332-016). C-2, General Commercial District. Hiu Ping Liu, owner/applicant. Planner: Hector Lopez. Tentative Recommendation: Move Item To November 5, 2009.

Brown Act

Garland Ellis, Vice President, Richmond Annex Neighborhood Council, Richmond, referred to the massage establishments and proposed law, stating the State law was enacted one year ago and the Police Chief had provided him with a copy last December. After the City Council voted on a moratorium for massage parlors for 60 days in June 2008, the Planning Department did not recognize the moratorium as being in place. He discussed initial work on the ordinance which was halted. He spoke with the Mayor and other staff who did not wish to pursue the matter. He referred to page 11 under Chapter 384, Item 3, subdivision b, which read, "Nothing in this section shall be interpreted to prevent a City, County, or City and County from adopting or enforcing local ordinances governing zoning, business licensing and reasonable health and safety requirements from massage establishments or businesses." Other sections state that zoning is not affected by this law; that cities can affect whatever zoning it wishes and he asked that this be done.

Mr. Ellis said that as of May 19, 2009, well after the law was passed, the City/County of San Francisco tightened up their ordinance and placed CUP's on massage parlors. There have been several television programs and articles in newspapers recently which indicate that prostitution as well as trafficking occurs. It is estimated that 50% who work in massage parlors work in this background and are being trafficked and this is why he is requesting the City do a lot more to write laws, clarify zoning, and to keep San Pablo from becoming an adult business district so that the City can arrive at something that is equitable for all communities in Richmond. He said many other cities have enacted laws since the state ordinance has been adopted; some tightened and some have added provisions and very few attorneys will state that cities cannot simply do nothing. He hoped the City Attorney is well versed in the State's definitions and asked for something to be done, voicing the potential for challenge if nothing is done.

Items Heard:

2. **PLN 09-081: NEW HOPE CHURCH - CONDITIONAL USE PERMIT - PUBLIC HEARING** to consider a request for a Conditional Use Permit to establish a religious facility at the former Franks Market at 381 South 36th Street. (APN: 513-153-033). SFR-3, Single-Family Low Density Residential District. Mohamad Dabwan & Fakeha Dabwan, owners; Claudia

Falconer Architects, applicant. Planner: Kieron Slaughter. Tentative Recommendation: Conditional Approval.

Chair Finlay confirmed with staff that there were more than 10 speakers, who would be limited to 2 minutes each for public comment.

Mr. Slaughter described the request for a CUP, noting that the Planning Commission met on August 20, 2009 wherein they reviewed a letter of concern regarding noise and asked that the applicant return on September 3, 2009 with additional details and sound mitigation. The Commission also asked that the applicant meet with the Pullman Neighborhood Council to discuss solutions. The applicant met with the neighborhood council on August 21, 2009 at the project site and submitted additional details on proposed sound mitigations, which are reflected in Attachments 6 and 7 and as Condition of Approval No. 9.

Staff evaluated the proposed parking arrangement and van pool program and determined that the proposal is adequate. Staff continues to recommend approval with the added condition.

Samuel Lopez, El Sobrante, Applicant, informed the Commission they were still in the process of purchasing the building and asked for approval first. They believe the location will serve families of the community with religious pursuits, serve to divert those in the community from drugs and crime, and the building provides sufficient parking and van pool transportation. They spoke with Naomi Williams who is concerned with noise; they assured her that during remodeling they will install special sheetrock which is made specifically to address noise, as well as sound-proof window installation. Details of products are provided in the staff report and asked those supportive of the application in attendance to stand up, which he said did not include the many youth who could not attend the meeting.

Chair Finlay confirmed with Mr. Lopez that the church has been in operation for 9 years; that the congregation began with 25 members which has increased to approximately 60 members over the years. Mr. Lopez said they do not want to overcrowd their church in Fairfield, they recognize overcrowding and they expect their location to maintain approximately 50 members.

Chair Finlay said the two issues involve noise and parking. She suggested the Commission consider capping membership so as to limit parking. If the church exceeds the cap, they would need to return to the Commission to revisit the CUP. She confirmed Mr. Lopez was amenable to this suggestion.

Commissioner Teltschick-Fall referred to the noise-proofing statistics, Attachment 7 describing the installation instructions, and she said it states that one can expect a noise reduction from 25% to 65% depending on how it is used. She asked the applicant to describe the level of reduction proposed. Mr. Lopez said there are many variables depending upon the premises and products, and he agreed to work with the neighborhood to ensure sound is not a problem.

Commissioner Teltschick-Fall questioned and confirmed with Mr. Lopez that until the building is remodeled, they cannot determine what is needed, and Mr. Lopez agreed they could work to achieve the 65% noise reduction levels noting that a Sunnyvale firm has agreed to inspect the project and work to achieve reduction levels.

Chair Finlay stated that Condition No. 9 is very specific and she read it into the record. Commissioner Duncan suggested that the condition specify, "Quietrock QR 525 or better".

Commissioner Rao questioned how close adjacent homes were and what the noise levels were coming from the facility. Mr. Lopez said there is one home on the south side which is very close. A driveway separates the facility and a brick home, which he felt would support better noise reduction.

Commissioner Rao questioned whether it was constitutionally legal to place a cap on the number of worshippers in a church which he also felt would be difficult to monitor.

Commissioner Beckles said the Fire Department makes recommendations about maximum capacity or the number of people who can fit into buildings and signs are typically required to be posted in buildings. Assistant City Attorney Privat suggested a better course of action would be to place a cap on the number of individuals who can be in the church and not the number of actual parishioners. He said the applicant has agreed to this and the project could be conditioned.

Commissioner Lee said the intent is to limit attendance to 50-60 people but the Commission does not know what the maximum capacity would be. He felt the other approach might be to allow a maximum number of seating pews. Chair Finlay said her intent is to identify that the church has grown, but there is only so much a neighborhood can support and she suggested flushing out what the Commission would like to do.

Commissioner Rao said he has lived very close to religious institutions and what he has observed in Richmond is that City departments do not have the time or manpower to enforce the condition. He sees double-parked cars on Sundays, in red zones, and no tickets are issued.

Secretary Duncan said there is the natural limit created by the square footage; however, the square footage was not identified and unknown. He said that the applicant has indicated he was willing to self-impose a limit of 60 people based upon the community. Also, if other parishioners come in from other locations and the facility becomes too full, they can move to another location. Therefore, he questioned if the applicant would be self-imposing at 60 people.

Mr. Lopez said he did not say the cap would be 60, but between 50-60 people attend; however, sometimes people come over from Fairfield. They do not want to be a burden on the neighborhood, they teach respect of others in their church, and if the Commission wants to cap them as a condition, they would accept this.

Secretary Duncan questioned what a cap might be based upon the church's growth. Mr. Lopez said he feels they may grow a little more in the next couple of years by about 5 or 6 people, but this was truly unknown.

Chair Finlay suggested the solution as capping the number of seats in the congregation. While some people may stand, it imposes some limit. Commissioner Lee noted that the staff report indicates an installation of 60 seats. Commissioner Teltschick-Fall interjected that the issue is parking and she was not sure why the Commission was limiting people as opposed to cars. She questioned if there was a way to place a condition on what they want to control as opposed to the headcount.

Chair Finlay confirmed with Mr. Slaughter that there are 16 parking spaces, an area for 2 vans, 870 square feet in the congregation hall and 2 adjacent rooms at about 1,000 square feet each. Chair Finlay believed it was not so much a problem for Sunday service but rather when there is a baptism or funeral or wedding.

Public Comment:

Naomi Williams, President, Pullman Neighborhood Council, said she still believes noise will be an issue as well as parking for their neighborhood. The installation of all walls and ceilings should be reviewed and inspected so that it is completed. They should be made to use double pane windows and special treatment of a GIP board to address noise. She said the applicant also noted service is from 9:00 a.m. to 12:00 noon on Sunday mornings, but if they have more people, they would have to have a double service. She asked if the applicant would be required to return to the Planning Commission if they held double service. She noted that during the week, the church proposes having hours from 6:00 to 10:00 p.m., which she believed was too late, as many people work. She suggested changing it to 6:30 p.m. so residents will be able to park their cars after work and suggested changing the 10:00 p.m. to between 8:30 or 9:00 p.m. to close.

Regarding parking, the applicant proposed tearing down one of the buildings to provide additional parking. She felt 16 spaces was not enough, did not believe van pooling works, and not tearing down the building was a great change to the application which would cause great hardship. Ms. Williams said the neighborhood council is trying to address crime now and more people coming into the area would cause more problems. Also, the applicant indicated 90 people coming to the church initially, then he changed it to 50-60 people, and she felt a cap could not be put on the number of people attending church. She said additional cars would also create more pollution and she suggested they find another location, feeling that the site was better used for homes. If the applicant receives approval, she also suggested moving the entrance door from the front of the building to the parking area.

Margaret Freeman, Richmond, said she is not totally opposed to the project, but has lived on the street and through 4 proprietors of the building, and it has been very peaceful without any operation. Parking is a concern, as most people have more than one vehicle. Even though they are going to park in the back and they have two vans, she was not sure it would work well. She also noted that this is the first she heard of interest in the adjacent building, which is a duplex with people living in it. She questioned what the use of it would be, and said at the last meeting the applicant indicated they would only be there one day of the week but tonight they have additional evenings planned. She said there are churches on both corners; she can hear meetings on various occasions, and during special occasions people park all the way down Cutting and 36th Street, even though the churches have parking lots.

Tanisha Gainer, Richmond, said she purchased a home directly across the street from the building and moved there because it was quiet. While understanding the church is saving souls, a cap cannot be put on how many members come to the church. She has a 17 month old daughter who wakes up from any noise and she asked that if approved, the church be soundproof. She voiced concern with the parking and noise and asked that the Commission confirm it will not pose a problem. She did not see 16 available parking spaces at all unless the cars would be being parked in front of each other.

Commissioner Rao questioned how often the church would meet for prayer service. Ms. Gainer said originally the proposal was for Sunday from 9:00 to 12:00 and now the applicant is adding weeknights from 6:00 p.m. to 10:00 p.m. which she objected to. She felt the information was conflicting and nothing is set in stone. She asked the Commission to verify what will actually happen.

Rebuttal – Applicant

Mr. Lopez clarified that information identified was 6:00 p.m. to 10:00 p.m., but it is actually from 7:00 p.m. to 9:00 p.m. He said possibly once a year, the hours would move to 6:00 to 10:00 p.m. Sunday services are from 10:00 a.m. to 1:00 p.m. because they usually do not eat much breakfast and by 1:00 p.m. people are ready to eat. In addition, they do not hold funerals in the church. When there are weddings, most members like to go to large, rented halls. Regarding the duplex, if they utilize the large building for the church, there will not be much space for Sunday school and also they plan to utilize the duplex as a conference room which can also be used by the neighborhood.

Commissioner Lee said the staff report states the applicant originally proposed demolishing the duplex. He questioned the actual amount of parking. Mr. Lopez said this was proposed because they did not know what the Commission would do. They looked again at the building. A shed needs to be demolished and he was not sure exactly how many parking spaces they would have.

Commissioner Lee said an opponent suggested moving the entrance to the parking lot and he asked if this was feasible, and Mr. Lopez agreed that this was not a problem.

Commissioner Lane questioned and confirmed that services will be held on Tuesdays, Fridays and Sundays and teachings will be held on Thursdays with about 40-45 people attending.

Commissioner Lane questioned if the current duplex would be transferred from residential living space to meeting space. Mr. Lopez said the duplex has bathrooms, kitchens, and a large living room which he felt could be utilized.

Commissioner Beckles questioned Mr. Lopez to restate the days of service and meetings. Mr. Lopez said on Tuesdays, they would hold a women's' or men's' service from 7:00 to 9:00 p.m., on Thursdays they have bible teaching, and on Fridays they have youth services. On Sunday, they hold Sunday School. Commissioner Beckles questioned if any of the services include amplified music or instruments. Mr. Lopez said they do, their musicians are not professionals, they learn and play music but they are not noisy. He said they have electrified guitars, drums, and a bass guitar, and the instruments would be played at each services with varying levels.

Commissioner Beckles said at the previous meeting, there was adding additional parking spaces and she asked if there was a way to add parking spaces somewhere on the property. Mr. Lopez said originally, they proposed to demolish the property but it was inspected and found that it could be used for parking. However, if they must demolish it, they would.

Commissioner Beckles confirmed that with demolition, there is a possibility for adding 12 parking spaces.

Mr. Slaughter said he and Janet Harbin took a site visit and evaluated the proposal. When looking at requirements for a new civic use or religious facility with 60 seats, the requirement is 12 off-street parking spaces. In light of this, they evaluated the current structure and felt it would better suit the neighborhood to save and remediate the structure as opposed to tearing it down for asphalt. In conjunction with that, the applicant provided additional information regarding the van pool which allows for an additional 10% reduction. So, according to the zoning ordinance, the applicant is required to have 11 off-street parking spaces.

Commissioner Beckles questioned how realistic and serious a plan is it for the church to have most of the members arrive/depart via use of the van pool. She knows the area, thinks there are a lot of cars on the street already from residents, and she voiced concern with more cars. She acknowledged the applicant's efforts to be respectful, but said parking remained a huge concern. Mr. Lopez said they have two vans that can fit 16 passengers each and they will use them as much as possible to be respectful to neighbors.

Chair Finlay also reminded Commissioners that not every individual will drive with only one person in the car. Commissioner Teltschick-Fall said if three people come per car with 16 spaces, it adds up to 48 people, and she felt they were very close to accommodating the situation.

Rebuttal – Opponent

Naomi Williams said Mr. Lopez indicated the time of services and teachings were actually from 7:00 p.m. to 9:00 p.m. and she questioned when this change was made. She felt the church would be good for the area, but asked for something specific as to operations in writing. In addition, the applicant indicated on Tuesdays, Thursdays and Fridays they would operate, which she said will bring noise to the neighborhood. She also felt that parking was still a big concern and problem.

Mr. Privat reminded the Commission that it cannot apply a condition on a church that would be different than another facility. If the zoning code provides for a certain amount of parking, the Commission cannot mandate an increase solely because it is a religious institution, and he said this would be a violation of the Religious Land Use and Institutionalized Persons Act (RLUIPA).

Chair Finlay noted that with the start of meetings at 7:00 p.m., there would be a need to set up and have people present before 7:00 p.m. as well as time to shut down the facility. Also, even if the room is used once during the week, she believed there must be flexibility in the use permit, and asked for staff summation and recommendation.

Mr. Slaughter noted that staff evaluated and spoke with the applicant regarding moving the front entrance to the parking area. For safety and other reasons, staff believes it should remain in the front. Staff recommends approval with the four statements of fact and 16 conditions before the Commission.

Secretary Duncan said based on occupancy, the church could have 58 people in the worship space not including the two other 1,000 square foot spaces, which could be simultaneously occupied. He said that administratively-handled parking always makes him a bit nervous and he questioned what would happen if the church could not afford insurance, gas and maintenance, or if the remote parking lot lease were removed. There are supportive parking mechanisms historically in Richmond and when he served on the DRB, they looked favorably on these mechanisms. He thinks it behooves the congregation to be mindful of the condition that talks about respecting the community because double parking and parking on lawns is not acceptable. The Commission will not hear when the van pool fails but it will hear when the community complains, which will put the church's CUP at risk.

The public hearing was closed.

MOTION: It was M/S (Rao/Duncan) to adopt Resolution 09-13 in Attachment 1, and approve PLN 09-081 subject to conditions 1-16, with a friendly amendment by Commissioner Duncan to

Condition 9 which shall read, the applicant shall install Quietrock or better QR25 acoustic drywall...and that any changes shall be overseen by the Planning Director or his designee”.

Commissioner Lee asked that the hours be moved up from 6:00 p.m. to 7:00 p.m. during the week. Commissioner Rao said he did not accept the friendly amendment and suggested voting on the original motion.

ACTION: It was M/S (Rao/Duncan) to adopt Resolution 09-13 in Attachment 1, and approve PLN 09-081 subject to conditions 1-16; an amendment to Condition 9 which shall read, “The applicant shall install Quietrock or better QR25 acoustic drywall...and that any changes shall be overseen by the Planning Director or his designee”; which carried unanimously.

5. PLN 09-054: La Selva Restaurant Barbeque & Seating Area – Conditional Use Permit - PUBLIC HEARING to consider a Conditional Use Permit to operate a commercial barbeque grill and establish an outdoor restaurant seating area on a vacant parcel located on the western side of 23rd Street between Hellings and Dunn Avenue (APN: 530-210-034). C-2, General Commercial District. Dario & Angela Rabak, owners; Cesar Segura. Applicant. Planner: Hector Rojas. Tentative Recommendation: Conditional Approval.

Hector Rojas gave the staff report, described the request and location of the establishment which will be operated in conjunction with the applicant’s existing restaurant located on the adjacent parcel. He said several improvements are proposed which he briefly described and issues of concerns relate to noise, odors and security. He said staff recommends that because of the context of the proposed use next to a residential area abutting the two lots, the outdoor seating hours be limited from 9:00 a.m. to 9:00 p.m., that any outdoor live entertainment be limited to the same hours and that the outdoor seating capacity be limited to 50 people. He said an 8- foot high concrete block fence would be installed at the rear of the property, impacts from odor and air emissions will be addressed by the grill having an integrated commercial grade capture infiltration system which has been reviewed by the BAAQMD and Building Division, and regarding nighttime operation and safety, staff proposed that a security camera be installed to record activity in the outdoor seating area and that area lighting be maintained on from dusk to dawn.

Mr. Rojas said staff received comments from residents in the neighborhood, a one page letter that discusses concerns of neighbors regarding smoke, late hours of operation, and he said a few people called the department regarding parking concerns. He reiterated that the ventilation system installed will filter out and enclose and capture smoke.

Regarding late hours of operation, the staff report indicates the business is currently open from 9AM to 9PM, but he verified with the owner that the restaurant is open from Fridays through Saturday from 9AM to 12:30AM and on Sundays from 9AM to 10PM. A concern voiced is that food service is being provided until 12:30AM and alcohol service is being provided until those times. Staff sees this as a legitimate concern, especially given incidents that have occurred in the back parking area such as fights, people throwing bottles, and staff proposes amending conditions in the resolution recommending the Planning Commission limit the hours of alcohol service from 9AM to 10PM daily. He said the Planning Commission could also discuss food service hours on Saturdays would be limited to.

Lastly, as noted in the staff report, Mr. Rojas said there is parking provided in the back lot area. There are two other businesses that also park in the lot; however, they are closed at night and parking is available. There is also plenty of on street parking.

Chair Finlay questioned how many seats the current restaurant has and she asked if there was a bar in the restaurant. Mr. Rojas said the owners have an ABC license for a Type 41 on-sale permit of beer and wine, but there is no formal bar built inside the restaurant. He confirmed with the applicant that there are 29 seats in the restaurant.

Hector Rogosa, Richmond, said that imperil to the renovation of the 23rd Street corridor, Mr. Segura would like to improve the parcel adjacent to his restaurant. They believe they have a good relationship with the neighbors but were not aware of the situation cited in the anonymous letter. He said they support creating a safe environment, thinks that the letter could have been sent from another competing restaurant, and they will agree to meet all conditions imposed of the Commission.

Commissioner Teltschick-Fall asked the applicant to describe the number of people at the restaurant for lunch versus dinner, and how this is expected to change with the expansion. Mr. Rogosa said during lunch and dinner the restaurant is full, and depending upon how more pedestrian-friendly 23rd Street is, they expect more customers who will be able to use the patio grill. He said they will adhere to the maximum number of occupancy, but are hoping to be able to be fully occupied during lunch and dinner, which are the two peak times.

Chair Finlay questioned if the restaurant currently had live music. Mr. Rogosa said yes, during the weekends; it is not loud, only is played at tables, and they do not expect any negative effects to the neighborhood. He confirmed with Chair Finlay that they have operated at the site since 1999, and she asked about operating without a CUP. Mr. Rojas said in terms of the open air barbeque, a notice of violation was issued to the property recently. The applicant was not aware that the barbeque pit required a CUP, which was clarified after the notice of violation. The applicant then came to the City, applied for the application, and since then staff has been working with the applicant to address capture of smoke, putting in a ventilation system and it has taken awhile.

Chair Finlay questioned and confirmed that the CUP is for the outdoor restaurant, and Mr. Rojas said this is true but given the fact there are concerns relating to hours of operation and noise issues, the Commission was able to place further restrictions on the restaurant since it is linked to the barbeque and seating area. Mr. Privat agreed with Mr. Rojas' description for the CUP.

Commissioner Lane questioned how customers will access the proposed outdoor space, and Mr. Rogosa said access will occur through a new back gate that connects the existing parking lot, which is vacant. Mr. Rojas clarified that the properties are under two different ownerships. The applicant came in with a clearer way to access the outdoor area, but because the opening was proposed on the property line, no direct access from the kitchen or lobby area can go to the outdoor area. Patrons would sit in the outdoor area and a separate waiter would take orders and go inside the restaurant's front door to access the kitchen. He contacted the County Health Department who said this was okay as long as the actual preparation of the food was taking place in the kitchen. Food would be taken directly from the barbeque area to the kitchen and again back out to the patio.

Chair Finlay questioned whether the ABC would allow drinks to be taken out the front door and walk it down the street. Mr. Rojas clarified that alcohol service is not proposed for the outdoor area, which was not included in the staff report. He said the patio is for food service only.

Chair Finlay said her inclination is to restrict live music in the patio area due to her concern with neighbors. Mr. Rogosa said they discussed this with planning staff who felt that the 8-foot wall would mitigate any sound. If this is not allowed, they would comply with the restriction for outdoor music. Chair Finlay said typical condition is that music cannot be heard outside of the envelope of the restaurant and she pointed out that the request is adding 2/3 expansion to the restaurant. Mr. Rogosa said the three instruments—a guitar, bass and an accordion are very low and they believe that an 8-foot wall would protect neighbors from decibels created.

Chair Finlay felt it would be difficult to prevent patron's voices from coming over the 8-foot wall let alone music, and Mr. Rogosa noted seating is located approximately 40-45 feet away from the nearest adjacent neighbor.

Commissioner Beckles referred to the live music being proposed outside and she confirmed it would not involve microphones, speakers, but simply acoustical instruments.

Public Comments:

Angela Cox, Richmond, said although the restaurant is not in her neighborhood council, she is well aware of the establishment. She is supportive of people expanding their businesses, she has patronized the restaurant and it has good food, but she takes great issue with the noise. She has lived in the block since 1988 and there are times from 11PM through 1AM where she has called the police on numerous occasions due to noise. She disagreed with the speaker indicating there are no microphones, as there are microphones and she compared the restaurant to a nightclub. She felt the 8-foot wall may serve residents to the west but it would do nothing for residents living to the east of the restaurant. In terms of the grill itself, it will be nice if smoke is contained, as previously she could see it all the way down to 23rd Avenue and hoped this is mitigated. Regarding the report talking about violations for six consecutive months, she felt this totally goes against any logic where citizens will have any redress at all. When the weather is intermittent, they will not have outdoor seating. A more logical way to look at this is when 10 consecutive complaints are received because only sometimes are her complaints addressed by the police, as ordinances are not always enforced.

Chair Finlay questioned if Ms. Cox was referring to Clause 17; revocation, and Ms. Cox said yes. Chair Finlay noted this has to do with use of the facility being discontinued for six months and it has nothing to do with the timeframe for complaints.

Gerald Rassmussen, Richmond, said the restaurant is immediately across the street from his neighborhood. It has had direct negative impacts on them and he asked at the very least that the item be held over for a month to allow their neighborhood council to have some official review process. Generally, he said the staff report is far too vague and perfunctory and many of the conditions should be tightened. He referred to condition 11 regarding security cameras, which he felt was boilerplate and needed to be tailored to specific conditions of the site. Additionally, the drawings are vague and difficult to understand and do not identify that the service would be via the sidewalk, which he said is not clear as to whether or not there is direct access to the parking lot. He thanked the Chair for pointing out that the parking requirement tied to the existing capacity of the restaurant is tenuous and the actual seating area is no more than 1,400 square feet, which is one-quarter the area of the new patio seating area. Therefore, the

patio could seat about 120 people even though the recommendation indicates a cap of 50, which will be difficult to enforce.

Commissioner Rao referred to deferment of the item, stating the restaurant has operated for a long time. He questioned what an extra 30 days would do for the neighborhood council. Mr. Rassmussen said it would allow them to meet and take an official position since they had no notification. He said the use is new, the lot is currently vacant, and other than posting on the front of the site they had no way of knowing this would occur. He also said the Commission could also choose to deny it, as it is quadrupling of the seating area for a restaurant that has 7 parking spaces and potentially dozens of other issues.

Commissioner Rao confirmed Mr. Rassmussen that he did not receive notification from the City, and acknowledged that his radius may not be 300 feet. Mr. Rassmussen said his neighbor has testified that she has heard obnoxious noise from the restaurant from a distance of 300 feet despite the applicant's assertion that it will be non-amplified, acoustical music only, which he believed was not credible.

Chair Finlay said the staff report indicates that there was an attempt to reach the Belding Woods Neighborhood Council, but speakers are in the North and East Neighborhood Council and directly across the street. Ms. Harbin agreed and said when applications are received, the planning technician prepares a list by neighborhood council and sends it out to all of them so they know what is being proposed in their neighborhood at the time.

Rebuttal – Applicant

Hector Rogosa said if it is a detriment to the neighborhood, they can remove live music from the outside proposal, and if removed completely, they would like to be able to review this requirement. They will do anything to not be a burden to the neighborhood. Parallel with what the City of Richmond is doing, they envision being a part of those improvements along 23rd Street.

Commissioner Lee questioned if food would be served from the front door, down the sidewalk and into the patio. Mr. Rogosa said there will be two access areas; via the front of the property or the back of the property. There is direct access to the kitchen from the back of the existing building and he referred to plans. Commissioner Lee questioned if there was a way for customers to access the back, and Mr. Rogosa said this was what they are proposing.

Commissioner Teltschick-Fall questioned why they need to be able to walk out the front door facing 23rd Street and then come into the patio area by the Health Department. Mr. Rogosa said Mr. Rojas checked with the Health Department and they were trying to arrive at the best way to serve their patrons. Commissioner Teltschick-Fall felt it was very awkward to come out onto the front of the entrance and then go into an entrance to the patio on the same street. She did not understand why they could simply come out the back door of the restaurant and enter the patio entrance to deliver food. Mr. Rogosa said the front gate will be mostly for access for patrons to come in where a host will seat them. The food will come via the back, and he clarified that food will not be delivered from the front door and into the patio area.

Rebuttal – Opponents

Gerald Rassmussen said his primary concern is the noise factor and negative track record to date with regard to noise. The building of an 8-foot block wall will serve as a reflecting surface to

make the noise in the North and East neighborhoods worse. He would like the item continued for at least one month so that, among other things, they can obtain a clear diagram of the interior function of the site will occur. The drawings are difficult to read and it was not apparent that there was no direct north/south access from the existing building to the proposed new seating area, which will serve to possibly seat three times the existing 29 seats inside the building, with no new increase in parking.

Mr. Rojas gave a staff summation and recommendation, stating staff believes that the CUP would allow the property to come back in active use, it would be a unique dining spot in Richmond, and staff continues to recommend approval based upon conditions of approval, as well as any additional conditions the Commission may want to add.

Commissioner Teltschick-Fall asked if the North and East Neighborhood would be willing to meet with the owners of the restaurant and discuss noise abatement with or without an extension. Mr. Rassmussen said implicit in his request to hold the item over would be to meet with the applicant and clarify how the operation will function, as it would be fruitless to meet after the Commission has taken a position on the application. He said the neighborhood council will meet on the third Monday of September and with a 30 day hold over, it would allow time to invite the applicant to the planning and zoning meeting, who then makes a recommendation to the full neighborhood council. He also agreed that an emergency council meeting could be called.

Commissioner Teltschick-Fall said she is very much in favor of having viable restaurants and businesses in the City. She is excited about the 23rd Street corridor renovations, but also takes seriously the noise and music comments. She suggested that there be no live music inside and outside, some sort of stipulation about the number of complaints before the CUP is brought back to the Commission, and she likes the idea of the neighborhood council and applicant meeting.

Commissioner Beckles echoed Commissioner Teltschick-Fall's comments regarding business growth, improvements to streetscape, but her biggest concern is that the neighborhood council did not have an opportunity to discuss this and she supported holding over the item.

Commissioner Lane said a condition is for a surveillance camera system in a convenience store. She questioned if this would actually be installed for the restaurant. Mr. Rojas said this condition was for his last CUP for a convenience store and he copied and pasted the information, which he apologized for, stating it should be reflective of the restaurant. He said the camera would be placed such that surveillance would occur in the outdoor seating area and he also suggested that since there have been complaints of fights in the parking lot, cameras also be installed in the parking area so that the owners can better manage the complaints and resolve the issues with the police department.

Commissioner Teltschick-Fall questioned and confirmed that the patio would be street print asphalt, which is made with scoring equipment and imprinting with a colored layer treatment.

Commissioner Teltschick-Fall questioned if the permeable asphalt could be utilized. Mr. Rojas said this was something suggested initially; however, there is a cost differential. Pavers would allow water to permeate, but the asphalt installation would also allow adjacent landscape areas to be watered from water runoff.

Commissioner Duncan questioned if the DRB would review the application. Mr. Rojas said no; since it is surface improvements rather than actual building improvements, the application could

be approved by the Planning Commission. Commissioner Duncan noted there were details for plantings, planters, landscape, and a fountain, and he suggested the DRB review the application, especially because there is a gate and new street frontage being constructed.

Mr. Mitchell said he thinks Commissioner Duncan may have a point. He also felt what needed to be clarified is the technology of the cooking unit itself and he suggested details on it be brought back. Staff can also look into the design review issue, as well.

Chair Finlay reviewed her issues with the Commission, stating that she would like the application continued, as there are a number of things that need revision, rework or rewriting. She asked that hours of operation be revisited and reflected in the staff report, as well as in the resolution and conditions. She asked whether it is still acceptable to do music in the original restaurant as long as it cannot be heard outside the envelope of the restaurant, and not have music in the addition. She asked staff to revisit the parking requirements, understands the statement in the staff report, but said the establishment is being enlarged by 2/3. Whether or not it is an addition, there is still service by the same kitchen and she was not sure the separation could be made.

Chair Finlay asked to revisit Condition 11 and re-look at the language and make it more specific. She also said there is nothing from the police department, yet there is a letter and speakers noting on-going problems. One of the most crucial things not found is the access and egress from the addition and how this will flow between the street and the back, which may influence what happens in the back regarding lighting. This will also need to be reflective of how it affects the neighbors, and the drawings need to be changed. She said the Commission would appreciate information on the cooking unit technology and also determination of whether the DRB should review the application for landscaping, position of the fountain, the gate, lighting needs and parking. She suggested continuing the hearing.

Chair Finlay asked for a straw vote and received affirmation from members on the following items to be addressed:

- Revisit the hours of operation;
- Deletion of music in the addition but not in the original restaurant, provided it does not pose a problem outside of the envelope of the building;
- Revisit the parking requirements;
- Revisit Condition 11;
- Ask the police department for a report on the operations;
- Have the plans for access redrawn to provide clarity;
- Ask for additional information regarding cooking unit technology;
- Ask that there be a clarification and direction regarding DRB review;

She questioned a date specific, and confirmed with Mr. Rojas that he would attempt to complete all items by November 5, 2009. She confirmed that the San Pablo Avenue Specific Plan would also be heard on November 5th.

ACTION: It was M/S (Duncan/Rao) to continue the item to November 5, 2009; unanimously approved.

6. PLN 09-017: City of Richmond – Tobacco-Oriented Retailer Ordinance - PUBLIC HEARING to consider amendments to the City’s Zoning Ordinance to prohibit tobacco-

oriented retail establishments in all Zoning Districts. City of Richmond, applicant. Planner: Hector Rojas. Tentative Recommendation: Recommend Adoption to City Council.

Mr. Rojas gave the staff report, described the zoning text amendment which would prohibit new tobacco oriented retail establishments in all zoning districts in the City. He said there is no land use classification currently for such establishments and they are considered to be under the general retail merchandise or miscellaneous store land use classifications, which are currently permitted without discretionary review.

According to the California Board of Equalization, the City has 98 licensed tobacco retailers in the City and 8 of them are considered to be tobacco oriented located along highly visible retail corridors that primarily abut single family residential uses. The establishments can have adverse secondary effects on the health and safety and economic vitality of neighborhoods, they are disproportionately more likely to sell paraphernalia and more likely to sell products to minors. They can also promote illegal cigarette and tobacco consumption among youth, as they typically locate near youth-oriented uses which contribute to the deterioration of neighborhoods, devaluation of real property and affect the City's ability to attract and retain more desirable commercial uses.

The proposed amendments would prevent new tobacco oriented retail establishments in all zoning districts of the City. The 8 existing establishments would become legal, non-conforming uses and subject to any sunset or amortization provisions in the upcoming comprehensive zoning update once the General Plan update is completed. He said the amendments consist of basic definitions of tobacco oriented establishments, provisions of where the establishments would be prohibited. This would affect any commercial establishment which has a total sales area less than 10,000 square feet and devotes 15 cubic feet or more of product display area to the sale of tobacco products or tobacco paraphernalia, and they are also defined as any commercial establishment that has a total sales area of 10,000 square feet or more and devotes 20% or more to the product display area to sell tobacco products and tobacco paraphernalia. The intent is to not impose a restriction on the large commercial retail establishments, which tend to have better security measures and oversight of products.

Mr. Rojas said the City of Albany passed an ordinance that requires any tobacco retailer that derives 75% or more of their gross sales receipts to the exchange of products and paraphernalia to obtain a use permit from their Planning Commission. The problem that has arisen from that ordinance in other cities that have applied the same type of policy is that 75% is quite a bit of sales, so most tobacco retailers fall under the 75% rule and those are the uses that generate the nuisance. He said the City of Oakland had that type of ordinance in place prior to their current ordinance, which requires a CUP for anybody that retails tobacco.

He said staff wanted to identify specifically the types of uses they do not want to see in the City and outright prohibit them. With the City of Oakland's CUP requirement, they would look at each and every tobacco retailers, and given an appropriate amount of the product, most retailers would not have a negative impact on neighborhoods. Staff wanted to identify those that do and do not create nuisances and set thresholds. Staff requests discussion from the Commission on the matter, and he said staff wanted to take the strictest route and move from there. If an alternative approach is identified, staff can return with a modified ordinance.

Mr. Rojas noted that a letter from the Richmond Annex Neighborhood Council was received, and they conducted some research on the cities of Oakland and Vallejo's ordinances. The City of Oakland has some limitations within a 1,000-foot radius of any tobacco retailer which are

youth oriented, and the City of Vallejo's is similar, but their distance requirement is slightly smaller at 600 feet.

Chair Finlay questioned why the Commission was being asked to take an item which is legal and being asked to not accept or prohibit it. Mr. Privat said the Commission is not disallowing cigarettes in the City, but for health and safety reasons, disallowing a particular use. He understands from the Planning Department that Ms. Renfro has reviewed this and she has advised that the action is appropriate and something that the City Council could eventually adopt through an ordinance.

Mr. Rojas said staff is taking a product that is legal, but not prohibiting the sale in the City; just saying it is appropriate to sell a certain amount, and if retailers only sell tobacco, it is unacceptable for reasons stated earlier. Richmond has a huge image issue with the types of uses that come into the City, such as smoke shops. If the Commission feels staff is overstepping its regulatory power, staff could return with a different ordinance similar to what Albany or Oakland is proposing, which is less but having retailers come before the Planning Commission.

Commissioner Duncan questioned if there were any reports on the success with the City of Albany's ordinance. Mr. Rojas said most cities are in the process of developing them, some are taking Oakland's approach which is to require a CUP for all tobacco sales, and this would be the first type of approval required, but there is also subject to the City and State approval for tobacco licensing.

Commissioner Duncan questioned whether the Commission's action is to provide advice to the Planning Division to continue to study the matter. Mr. Rojas said if the Commission sees merit in this policy approach, the Commission can recommend it to the City Council as is, make specific amendments, or direct staff to return with an alternative ordinance that would strike a balance.

Commissioner Duncan questioned the genesis for the more extreme approach. Mr. Rojas said it is because uses have certain secondary impacts on neighborhoods as they tend to attract uses like gold teeth shops and tattoo parlors, which drives away high quality retailers and because they also tend to attract nearby youth. He said staff felt it was also an additional layer of review staff thought would be appropriate in addition to the tobacco license, since that license does not focus on land use.

Chair Finlay said she would have been more comfortable starting discussion with a study session because she is still trying to determine the social and retail implications of the item.

Commissioner Duncan said the more extreme version of this smacks of prohibition, which has never worked. He felt this is much like treating the issue of alcohol and both the City of Albany and Oakland ordinances both tackle it very similarly, where the Planning Commission has a purview over the location and type of sales. He thinks it would make sense that the Commission should follow one or both of those cities' ordinance models and favors restriction over prohibition.

Commissioner Lee confirmed with Chair Finlay that the proposal is for the 8 retailers to be grandfathered in. Chair Finlay questioned where the City was with cannabis sales ordinance, and Mr. Mitchell said this is forthcoming; staff is studying it and soon believes they will have enough information to come forward with a recommendation. At the moment, it is prohibited in

the City. Chair Finlay also cited current differences between State and Federal law on the matter.

Commissioner Teltschick-Fall clarified that there are existing 8 shops and for no action to be taken affecting them. She questioned whether there could be restrictions made on those or not. Mr. Rojas said there could be; what he has seen with other cities is a “deemed approved” status. If the City requires a CUP for tobacco retailers, the existing outlets would be considered deemed approved by the City but would be granted a CUP with specific conditions. If they break a rule, the CUP could be revoked. The other reason staff considers them grandfathered is because the zoning update being developed will have sunset clauses and amortization provisions and they wanted to treat this use like all of the other uses that will fall under the amortization.

Commissioner Teltschick-Fall asked how long the sunset clauses last. Mr. Rojas said this must be determined based upon the retailer’s investment and the time the business would need to recoup the investment, which might be different on a case-by-case basis.

Commissioner Teltschick-Fall referred to gold teeth, tattoos, paraphernalia, baggy pants, and other items for sale, and noted that staff was formulating a policy to regulate tobacco. She did not understand how the City can bundle those up without getting too convoluted. Commissioner Duncan felt the City must be very careful with calling out such items and likened a time when long hair and bell bottoms were in, which he felt was all relative. He suggested separating these out.

Chair Finlay said tobacco sales could be regulated similar to alcohol sales, where the Commission could indicate no more than 25% of gross receipts can be generated by the sale of alcohol. She said this is hard to enforce, but it can be regulated. She asked to see the findings for a CUP being granted and for not being granted for the City of Oakland. If the City proposes a hybrid ordinance, she wanted to understand it better and suggested findings be provided.

Chair Finlay questioned if the Commission wanted to provide direction to staff. Commissioner Duncan confirmed that the matter was not pressing. Ms. Harbin suggested that the Commission could direct staff to conduct further research and report back with information once completed.

Commissioner Lee said he thinks Mr. Rojas has done a lot of research, agreed it was important to see what other cities are doing and did not believe reinvention of the wheel was needed. He suggested taking the recommendation in the staff report, change Section 2, Part A to strike the “15 cubic feet or more of sales of product display” wording and substitute it with “any floor”. If this is not supportable, he was happy with the suggestion that the Richmond Annex Neighborhood put together.

Commissioner Rao agreed with Commissioner Lee, and he questioned what, if any, impacts to the City were seen since the ordinances were created in Oakland and Vallejo.

Chair Finlay questioned what 15 cubic feet was, and Mr. Rojas said it would be 1’x3’x5’ three-dimensional space. The reason it was selected was because it was based on his field visits to different establishments that had a mix of products. Some other cities did it by percentage of floor area and surface area on walls. So, it would be hard for planning staff and code enforcement to visit the store, measure the entire space, and measure the dedicated tobacco space, whereas they could simply measure the square footage of the entire establishment.

Commissioner Teltschick-Fall said she found the modifications by the Richmond Annex Neighborhood Council to be very straight forward and thinks they could easily be added. She would; however, like to see how the use permit versus sunset works in reality, and how ordinances have worked in other cities. Chair Finlay noted the sunset clause will not come into play until the zoning ordinance is updated next year.

Mr. Rojas said he is hearing from the Commission that it desires having the uses be required to obtain a CUP regardless of the size dedicated to tobacco products, and bringing back results from what cities have experienced since implementing their ordinances.

Chair Finlay said it sounded like Commissioner Lee was ready to make a motion.

Commissioner Lane suggested holding public comment.

Public Comments:

Mary Selva, President of the Richmond Annex Neighborhood Council, said they have looked at cities that are having problems with the small smoke shops which was one of the main reasons why Oakland decided to require all smoke shops 10,000 square feet or less require CUP's. The smoke shops she visited have small areas that could be 15 cubic feet or less that sell tobacco and tobacco paraphernalia. These are the ones that are creating a nuisance and the ones Oakland wants to clean up. She said they are trying to clean up their neighborhood along San Pablo Avenue and cited significant negative activity. She suggested, at the minimum, there be a distance established between a smoke shop and a school, park, day care center, and possibly a residential neighborhood. Some cities have ordinance just for smoke or head shops and the City might want to look at those cities instead of lumping all of the shops together. Vallejo is following Oakland's lead and actually coming up with stricter requirements for smaller smoke shops. They do not want to see 15 cubic feet exempt because the City will end up with a small smoke shop and no way to address it through distance requirements either.

Chair Finlay asked Ms. Selva what went into her decision-making to bring in Oakland and Vallejo as superior to using the first example in the staff report. Ms. Selva said the amendment in the staff report exempts 15 cubic feet, meaning that you can sell 15 cubic feet of tobacco and related paraphernalia in a small shop with no CUP, so you end up with small smoke shops, and this is what they are strongly opposed to. She suggested looking at the City of Vallejo's draft ordinance, as they are not outright banning the shops but they are imposing distance requirements from sensitive uses.

Commissioner Teltschick-Fall questioned the neighborhood stance on existing smoke shops. Ms. Selva said they do not have any in their neighborhood, but they could end up with one if the ordinance passes the way it is. They also currently have problems with an adult book store that gets robbed, transient motels that harbor illegal activity and house parolees.

Mr. Rojas noted that the current ordinance allows these types of uses without any discretionary review. Staff is trying to be proactive, but whether this is the correct approach or not is up for discussion. The ordinance would not make the situation worse; it would impose some restrictions. Chair Finlay felt that the Commission could deal with the workload of another CUP.

Garland Ellis, Vice President, Richmond Annex Neighborhood Council, said when he saw the proposal, he thought it was great, but then he realized that there are outlets that take up 15 cubic feet and dedicate it to tobacco. They then accentuate this and sell other items in the store

which lend themselves to gang activities, drug paraphernalia, and clothing that may serve to affiliate people with gang activity. Also, many of the outlets sell to minors and this is why the letter was written in such a manner. To limit it would be difficult because there are some honest retailers and some not so honest. Having a CUP would be a way of looking at it, but the Commission does not know if the business owner is saying one thing but doing another. He said currently there is a proposal for a tobacco establishment in their neighborhood. Several are in El Cerrito 300 feet away, but are not counted in Richmond. Mr. Ellis hoped that distance requirements could be looked at, given the inter-city jurisdictions of El Cerrito and Richmond. He felt that if the outlets are automatically allowed in, every store could have 15 cubic feet, which in some ways is already being proposed. Many stores add to their product line, and in essence, a CUP may be a way to restrict such stores. He also asked that the Commission look at the density of how many stores are located in an area, as there is no distinction as to whether or not businesses applying are compatible with the area and with other uses, such as churches, day cares, schools, or even youth oriented facilities. He felt 98 tobacco outlets and 8 or 9 smoke shops were quite a few for a City and he suggested checking with the owners to determine the number of customers they have and compare it to the number of residents there are in the City to determine if they are adequately being served.

Commissioner Rao said if the Commission goes with requiring a CUP, he questioned if Mr. Ellis supported grandfathering in the existing tobacco shops. Mr. Ellis said grandfathering applies to the property, so an owner could sell it to the next owner who runs the same type of business. A better approach would be to have a restriction on the owner of the business and reconsider each new owner and new business when the business changes hands.

Mr. Rojas gave staff summation, stating that staff recommends the Commission provide direction to either modify the ordinance as is or completely revise it such that it takes on a different policy approach.

The public hearing was closed.

Commissioner Lee made a motion to recommend that the City Council adopt the proposed zoning text amendments as shown in Exhibit A, as amended under Section 2, to strike the following words in Section A; "15 cubic feet or more of sales or product display" and insert "any floor".

Mr. Rojas confirmed that adopting staff recommendation would mean that a business is either a tobacco-oriented establishment by the definition provided or a business is not. Those that fall within the definition of a "total sales area of less than 10,000 square feet" would be prohibited in any part of the City. Those that fall outside of the definition would be required to obtain a tobacco retailers license.

Commissioner Teltschick-Fall said she sees that it does take out the loophole, but it is still a blanket okay or not okay, and she would not support the motion. She asked to see more conditional use in certain cases and also wanted to impose some restriction through conditional use on existing businesses.

Commissioner Rao suggested a friendly amendment to add the conditional use permit requirements as provided in the City of Oakland's ordinance, Section 17.102.350, A and 1, both to be included in the motion. Commissioner Lee said this would then effectively eliminate the opportunity to have any smoke shops and, therefore, there is no need for a conditional use definition because there would be none.

Chair Finlay felt that Commissioner Teltschick-Fall would act like a CUP on any size purveyor of tobacco products, and Commissioner Lee confirmed that he did not believe a conditional use was needed on a 10,000 square feet or larger store, which he said is similar to a grocery store.

Commissioner Rao noted no second was provided to the original motion, and Mr. Privat said the Chair could call on a vote that did not receive a second.

Commissioner Teltschick-Fall said she was not sure what should be done. Chair Finlay felt the problem areas seem to be with the smaller "head shops" which are not traditionally 10,000 square feet like a grocery store. These would be prohibited through control of the square footage; they would not extend the CUP process with Commissioner Lee's motion because anything over 10,000 square feet does not typically cause problems, so the size will make the difference.

Commissioner Beckles said by taking or moving the 15 cubic feet, you would remove the need for a CUP for those shops who have less than 15 cubic feet devoted to that use. Commissioner Lee said there would be 9 grandfathered-in shops and no more. He was trying to get a simple summation using the work done and taking the 15 cubic foot exemption out.

Mr. Rojas said the City of Oakland also added another use; gasoline service stations, which could be another consideration to discuss as to whether those generate the same type of uses. Commissioner Lee accepted this as an addition to the motion, and Chair Finlay confirmed that the motion would include the addition of service stations.

Mr. Rojas said there is no impetus to move forward, but he wanted to understand what the Commission concurs with. In terms of large franchise outlets, they could be managed by being limited to a percentage of gross tobacco sales.

Commissioners continued discussion on the motion and what action to take. Commissioner Beckles noted there are issues of wording, definitions, clarity on various issues, and she made a motion to hold the item over so staff can amend wording.

Commissioner Lane stated the issues are clear, but she suggested the Commission give additional direction to staff.

Chair Finlay confirmed that Commissioner Beckles was making a substitute motion, with the addition of specificity to the motion. Commissioner Teltschick-Fall suggested seeing how a CUP could be used to regulate problem areas that exist, some comparative information on how conditional use works for Oakland versus a blanket prohibition. Commissioner Duncan added that the Chair's request include examples of findings for and against. Commissioner Lee agreed with the substitute motion.

Chair Finlay confirmed with Mr. Rojas that he had enough information and he would update the draft and address and prepare information on outstanding issues.

ACTION: It was M/S (Beckles/Duncan) to continue the matter to December 3, 2009; unanimously approved (Lee abstained).

Noted Absent:

Chair Finlay announced that Commissioner Rao was noted absent at 10:32 p.m.

- 7. PLN 09-079: City of Richmond – Eating Establishments Ordinance - PUBLIC HEARING** to consider amendments to the City’s Zoning Ordinance to establish a process for the administrative review and approval of eating establishments without live entertainment or Alcohol Sales. City of Richmond, applicant. Planner: Hector Rojas. Tentative Recommendation: Recommend Adoption to City Council.

Chair Finlay questioned if the Commission wanted to address the matter given that it was 10:42 p.m. The majority of Commissioners preferred to continue the matter.

ACTION: It was M/S (Duncan/Teltschick-Fall) to hold over PLN 09-079 to December 3, 2009; unanimously approved.

COMMISSION BUSINESS

8. Reports of Officers, Commissioners and Staff

Mr. Mitchell said based upon discussions, staff will extend the comment period for the General Plan until September 30, 2009. Chair Finlay noted a Study Session was scheduled for October 1st and she confirmed with staff this would still be held and public comment could be received.

Ms. Harbin reminded Commissioners of the following meeting dates and items:

- September 17, 2009 Pt. Molate EIS/EIR at 6:00 p.m. in the Auditorium.
- October 1, 2009: Mira Flores project, General Plan Study Session, and two massage establishments, and an amendment to the Zoning Ordinance.
- November 5, 2009: State Licensing requirements for massage establishments which were continued, the San Pablo Avenue Specific Plan, PLN 09-054: La Selva Restaurant Barbeque & Seating Area – Conditional Use Permit.
- December 3, 2009: The Tobacco Establishments and Eating Establishment Ordinances, which is flexible.

Chair Finlay noted the Commission has not yet scheduled mid-month meetings for October and November.

Commissioner Duncan asked that additional documentation be submitted to the Commission a couple of days in advance, as it is impossible to address.

Public Forum - None

Adjournment

The meeting was adjourned at 10:45 p.m.