

**PLANNING COMMISSION MEETING**  
**COUNCIL CHAMBERS, RICHMOND CITY HALL**  
1401 Marina Way South, Richmond, CA  
January 7, 2010  
7:00 p.m.

**COMMISSION MEMBERS**

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

Nagarajo Rao  
Charles Duncan  
Sheryl Lane

The meeting was called to order by Chair Finlay at 7:01 p.m.

Acting Chair Lee led in the Pledge of Allegiance.

**ROLL CALL**

**Present:** Acting Chair Lee, Secretary Duncan, and Commissioners Lane, Rao and Teltschick-Fall

**Absent:** Chair Finlay and Commissioner Beckles

**INTRODUCTIONS**

**Staff Present:** Richard Mitchell, Hector Rojas, Hector Lopez, Kieron Slaughter, Allen Wolken and Carlos Privat

**MINUTES**

**November 2, 2006**

Commissioner Duncan noted Mike Woldemar was cited as making the motion and he is on the Design Review Board.

**ACTION: It was M/S (Rao/Lee) to approve the minutes of November 2, 2006, as amended; unanimously approved (Duncan and Teltschick-Fall abstained).**

**April 19, 2007**

**ACTION: It was M/S (Rao/Lee) to approve the minutes of April 19, 2007, as written; unanimously approved (Lee, Duncan and Teltschick-Fall abstained).**

**December 3, 2009**

**ACTION: It was M/S (Rao/Duncan) to approve the minutes of December 3, 2009, as written; unanimously approved.**

## **CONSENT CALENDAR**

Acting Chair Lee noted there were no Consent Calendar items on the agenda.

### **Brown Act – Public Forum – No speakers**

Acting Chair Lee briefly discussed public hearing and meeting protocols and speaker order and presentation of items.

## **INFORMATION ITEM**

- 1. PLN 09-029: Barrett Avenue Bike Lanes** - The Richmond Community Redevelopment Agency (Agency) proposes to install Class II and III bicycle lanes along Barrett Avenue between Garrard Boulevard and San Pablo Avenue. M-2, Light Industrial, MFR-1, Multifamily Residential, SFR-3, Single Family Residential, MFR-2, Multifamily Medium Residential, C-2, General Commercial, MFR-3, Multifamily High Density Residential, C-B, Central Business, PC, Public and Civic Uses District. City of Richmond, owner; Richmond Redevelopment Agency, applicant. Planner: Kieron Slaughter

Kieron Slaughter gave the presentation, a brief description of the proposal to install Class II and III bicycle lanes. The item requires no formal action; however, staff would like the Commission to provide comments to the Agency for consideration in the development of the construction documents.

He discussed MTC's identification of an east/west route traversing central Richmond in the vicinity of Barrett Avenue as a bicycle corridor of regional significance. This fact, coupled with the function of Barrett Avenue as a direct cross-town route that serves several significant activity centers, including the Kaiser Hospital, the Social Security Administrative Office, the Metro Walk Transit Village, and the Civic Center has made the installation of bike lanes along Barrett Avenue project for funding assistance. He stated Allen Wolken and Chaz Smalley are available for further discussion as well as the consultant team.

Acting Chair Lee opened for public comments

### **Public Comments:**

Nancy Baer, Richmond Bicycle Pedestrian Advisory Committee, stated that she works in providing technical assistance to the City on injury prevention and physical activity promotion issues, works a lot on bike and pedestrian issues as inexpensive and accessible ways to be physically active. The Committee supports the proposal as providing more opportunities to get people out of their cars which, in turn, provides exercise, improves air quality, and reduces congestion and traffic collisions.

Mr. Slaughter questioned and confirmed that the Commission wished to hear a presentation by the applicant.

Allen Wolken, Richmond Community Redevelopment Agency, said the proposal is a continuation of one of the Redevelopment Agency public improvements, pedestrian-oriented projects going on throughout the City, described similar projects and said the Agency went through an extensive public participation process to receive input on improvements. During the

construction planning process of the project, MacDonald Avenue did not have the widths to support Class II bike lanes and staff decided, after working with various bike groups and the County coalition, to relocate the east/west bike connection to Barrett Avenue. Improvements proposed will also help to calm traffic.

Mr. Wolken said the largest section of Class II bike lanes will be from 24<sup>th</sup> Street to San Pablo Avenue, which will reduce travel lanes on Barrett Avenue from two lanes in each direction to one lane in each direction, with a five foot bike lane on either side, and with on-street parking. There will also be a center left turn lane continuous through the section and signage, thereby improving safety for bicyclists. The improvements will also connect the Transit Village project.

Commissioner Teltschick-Fall supported the proposal and felt Barrett Avenue was a good choice over MacDonald Street. She questioned the need for traffic lights when traveling over the highway intersection to San Pablo Avenue.

Mr. Wolken noted staff was bringing the first phase of the proposal this evening, which is the design. The Agency received a grant from ABAG to help facilitate the design, and after the design is completed, additional funding sources will be solicited to install the bike lanes, and they will looking at additional enhancements such as increased lighting and additional signage leading to San Pablo Avenue.

Commissioner Teltschick-Fall asked staff to consider a turn signal there because the intersection is becoming congested with drivers wanting to turn onto the highway. She asked for an explanation of the difference between Class II and III and the location of the lanes. Mr. Wolken replied that a Class II is a dedicated, five-foot wide striped bike lane, and he displayed a map showing locations of Class II lanes. He said a Class III is a sharrow. There is not enough width in the street right-of-way to have a dedicated, five foot wide bike lane, and therefore, a bike insignia is painted on the asphalt. Staff wanted to do all improvements within the existing curb right-of-way to keep costs way. Also, staff did not want to remove on-street parking, as it is vital to neighborhoods.

Commissioner Rao questioned the timeline for funding to establish the lanes. Mr. Woken said the design work will be completed once comments are received, and staff will look for funding. The striping, signage, and loop detectors or phasing to tie in with signalization will cost \$400,000, and it is hard to estimate how long the improvements will take.

Commissioner Rao requested a description of signage, and Mr. Wolken said there will be signage on various poles along Barrett Avenue with arrows which will visually make motorists aware there are bicyclists in the area. Commissioner Rao questioned if motorized bikes were restricted from using the bike lanes, and Mr. Slaughter noted this would need to be enforced by the police department.

Commissioner Rao questioned if some of the funding will come from the Redevelopment Agency, and Mr. Wolken said there are no funds currently budgeted, but if funding becomes available or funds can be reprogrammed due to projects coming in under budget, they can be shifted into the project.

Commissioner Lane supported the project and said it will greatly enhance traffic calming. She believed that when coming west from Barrett into the BART station requires a crosswalk, signage, lighting or some form of traffic calming due to safety hazards. Mr. Woken said there will be some traffic calming improvements to that intersection when Phase II of the Transit Village is

developed. Coming eastbound on Barrett from the overpass, people cross there getting to BART and he agreed it is a very unsafe area to cross.

Commissioner Duncan referred to Sheet PR-2, at the BART overpass, he noticed that the red lines which indicate the lanes for cars and bikes do not occur over the length of the entire dip underneath the underpass. He asked if these would be striped. Mr. Wolken said yes, it will be striped.

Commissioner Duncan said as a bicyclist, he believed it is a marvelous project. He confirmed that Class II striped lanes work very well, as they are safe and cars see bicyclists. Where the Class II lane goes into Class III, bicyclists lose a measure of safety, and he asked for some sort of signage at the transition. Mr. Wolken agreed and noted there will be more vertical signage at that location.

Acting Chair Lee questioned whether the Commission had any questions of Ms. Baer before moving onto additional speakers, and there were none.

Tony Sustak, Richmond, East Bay Bike Coalition and Richmond Bicycle and Pedestrian Advisory Committee, thanked Mr. Wolken and Smalley for extensively working with both groups. He felt it was great to have the plans and input in place prior to securing funding. He referred to Market Street in Oakland as having similar transition from Class II to Class III and hoped the bike lanes will affect increased use of the Transit Village.

Adrienne Harris, Recreation and Parks Commissioner and Richmond Bicycle and Pedestrian Advisory Committee, discussed the ride taken by about 12-15 people down Barrett Avenue which is on the website, and she is appreciative that the Redevelopment Agency is allowing input and coordination of the project. This will ultimately result in a Bicycle Master Plan for the City which will address education, connectivity, and exercise and invited the Commission to participate in upcoming rides. While the plan is not perfect, she felt it is a great start and issues can be addressed moving forward.

Mr. Slaughter introduced consultants Marcia Vallier, Vallier Design; Andrew Czekowski with A&N West; Peter Ukland, Traffic Engineer; and Chaz Smalley. Acting Chair Lee thanked all consultants for their work and thanked the speakers for their positive comments.

## **HOLD OVER ITEM**

- 2. PLN 09-014: Peng Second Unit – Variance To Side Yard and Rear Yard Setback - PUBLIC HEARING** to consider a variance request that would allow a 2.5-foot side yard setback, and a 3-foot rear yard setback for a proposed third dwelling unit located in the rear of the property at 440 and 442 20th Street (APN: 514-120-021). The zoning ordinance requires a minimum 5-foot side yard setback and 20-foot rear yard setback. MFR-3, Multifamily High Density Residential District. Sharon Peng, owner; Richard Tapp, applicant. Planner: Hector Lopez. Tentative Recommendation: Denial

Hector Lopez gave a brief description of the request by the architect at the Planning Commission's December 3, 2009 meeting, to consider a variance for side and rear yard setbacks to allow legalization of a third dwelling unit. The architect presented arguments supporting the variance including support from neighbors and neighborhood council, and the Planning Commission continued the item to this meeting so that staff could research variances in the area and determine findings to be made. Based upon permit data, staff found 5 variances

for side and rear yard setbacks, approved based upon findings made because of uniqueness of the lot, shape or topography. Staff requests the Commission provide direction to staff as to whether or not the variances should be approved.

Commissioner Duncan thanked Mr. Lopez for conducting the research, and questioned if staff was aware of whether or not building permits were issued to the previous owner. Mr. Lopez said the previous owner took out an electrical permit for the third meter only and it was at that time the current owner learned of the need to obtain Planning Commission approval. He said the original owner did all of the work seen without obtaining permits.

Mr. Slaughter noted that at the December 3 meeting, the public hearing was closed and the public hearing will need to be re-opened to take public testimony.

The public hearing was opened.

Richard Tapp, Applicant, Kensington, questioned and confirmed with the Commission that a brief presentation could be given, due to the fact that a full presentation had been given at the previous meeting. He said the property was purchased as a foreclosed property, the bank represented that the property had three units; two were completed and one was incomplete. There was an application by the previous owner to install a third electrical meter, which triggered the referral to the Commission. He said he has not been able to determine how long the previous owner had owned the property but work was done within the last 2-3 years and they assume it was done by the previous owner.

He noted there was a legal accessory garage structure which is shown on maps, but it had been doubled in size, and an additional foundation was poured for the additional square footage. There were questions by the new owners about the primary and secondary living units that encroached into the setbacks which he pointed out on the plans. He said more than 50% of the residence encroaches on the side or rear setbacks and over 80% of the accessory structures encroach into the side and rear yard.

Mr. Tapp pointed out the primary residence, existing curb cuts, driveway and informal parking area, the location of the second legal unit and the illegal third unit. They propose improving the driveway, formalize parking at the rear, providing two spaces, and creating a new curb cut on the north side of the property allowing two parking spaces, one of which is tandem to relate to the primary residence. Landscaping features and courtyards would be added to the front, middle, side and rear to the units.

Mr. Tapp said the use is residential, zoning allows for 7 units given parking and open space based on density calculations, parking was not required for the primary units, but there were 1 or 2 informal spaces. Therefore, these are grandfathered in. The third unit is a two-bedroom unit which would require 1.5 parking spaces. They propose converting the front bedroom into a den which would reduce the requirement to a single parking space.

He said the setbacks for the primary residence are 20 feet. Setbacks for secondary units are 5 feet for the rear. For a third unit, it reverts back to the primary unit's setback of 20 feet. He noted the variance request has been presented to the neighborhood council who visited the site and supported it, and Mr. A.J. Jelani is present to speak on the project. The owner also met with many neighbors, obtained 7 letters of support, many of which were immediate neighbors. He said there was only one neighbor who voiced no objection or support. He said the staff report indicates a recommendation for denial, which he understands is a typographical error from the

previous meeting. He said staff is providing two options; 1) to approve with findings; and 2) to deny with findings. The findings for approval are consistent and understandable, and he would question and oppose several findings based on denial.

Commissioner Duncan questioned how much had been built out at the time the Peng's purchased the property, and he asked whether it was complete or not. Mr. Tapp said the Peng's have done nothing to the third unit; however, they have done some improvements to the first and second units. He said the stucco is not yet complete, the structure's footprint, roof, and the interior is the same which he briefly described and there is no electricity yet.

Commissioner Rao noted there were many variances for encroachment in the area, and he questioned whether they included three detached units, similar to the proposal. Mr. Tapp said he was not sure whether they included three units, but there are multi-family unit buildings with 3, 4 and 6 units, the location of which he pointed out on a map.

Acting Chair Lee stated Mr. Tapp referred to the property as "our property" and asked if he had a financial interest in it, and Mr. Tapp said no, he does not.

#### Public Comments:

A.J. Jelani, Belding Woods Neighborhood Council President, said the project was presented twice to the neighborhood council, he supports the project, thinks it will enhance the bike trail, said the unit is a nice mother-in-law cottage that could be used for a student or a couple going to Contra Costa College, using BART and bicycling or using one car. He felt the unit would cost the same to build out or tear down, it is not jammed in the area, there is a very large tree in the back yard, and they support immediate approval of the request.

David Peng said he and his wife bought the property, do not know a lot of English, found out about the third unit being illegal, and said they have little money to tear down the structure.

Richard Mitchell, Planning and Building Services Director, stated he and Mr. Lopez visited the site and neighborhood, said the reason for approval and denial was due to the property changing hands and concerns with precedence. There are unique circumstances related to properties that people purchase out of foreclosure with unusual situations. He said the surrounding neighborhood is interesting, homes dating back to 1910 with accessory structures close to property lines, and staff feels that the reduction in bedrooms going from two to one seems like a reasonable compromise and would recommend approval.

Commissioner Duncan thanked Mr. Mitchell for his comments. He stated at the last meeting, Chair Finlay had voiced concerns with setting a precedent, but one of the roles of the Commission is to adhere to the basic tenants of the zoning ordinance and not to get people out of a jam. If the current owners did not read the fine print or did not know the situation, it is not the Commission's problem, and the Commission's role is to be consistent and uphold zoning laws. However, he said the last finding was previously granted by the Commissioner and given this, he would recommend approval.

The public hearing was closed.

**ACTION: It was M/S (Duncan/Rao) to approve PLN 09-014, with the findings for approval 1-5, with particular notice to finding 3; the exception is consistent with the purposes of the zoning ordinance and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity of the same zoning district; carried unanimously.**

### **NEW ITEMS**

- 3. PLN 09-017: City of Richmond – Tobacco Retailer Ordinance** - PUBLIC HEARING to consider amendments to the City's Zoning Ordinance to require a conditional use permit for all new tobacco retail establishments in all Zoning Districts. City of Richmond, applicant. Planner: Hector Rojas. Tentative Recommendation: Recommend Adoption to City Council.

Hector Rojas gave a brief description of the request, stating that in September 2009, staff presented a draft ordinance, held a public hearing, and received input from the community who voiced concern with loopholes in the ordinance that would allow smoke shops to circumvent the ordinance. Staff returned and redrafted the ordinance and circulated it to the Richmond Annex Neighborhood Council, who support the draft revisions.

Mr. Rojas then reviewed elements of the ordinance, noted the ordinance focuses on small retailers and regulations on where they can locate in the City through a use permit. The main restriction involves restriction of tobacco retailers to be outside of 1,000 feet of any residential or youth-related uses as described in the ordinance. He recommended that the ordinance name be changed to tobacco retailers instead of tobacco establishments, noted that the ordinance applies to all establishments with a total floor area of less than 10,000 square feet. He said there are approximately 99 tobacco retailers in the City and about 70% would require a CUP under the ordinance.

Regarding those who would not require a CUP, staff made specific provisions to exempt large tobacco retailers, which have a floor area of more than 10,000 square feet. The other exempted use would be automobile service stations, such as gas stations, repair shops, and routine and convenience stores where tobacco products are sold but are not the main attraction. He noted that about 30% fall within this category.

Regarding existing tobacco retailers, since none have a CUP, staff would automatically grant them a CUP and mandate that they currently follow conditions of tobacco retail establishments through the tobacco licensing program the City recently enacted, which would provide a mechanism for conditioning their operations. If nuisances occurred, the City would be able to track offenses and conduct a CUP revocation hearing.

Mr. Rojas stated Denise Dennis, Program Manager from the Contra Costa County Tobacco Prevention Program is present, and there is a reference in the staff report that the State Board of Equalization Tax Fee being used for education and prevention programs, which Ms. Dennis clarified is not correct. Fees are used for enforcement of the actual tobacco program.

Commissioner Teltschick-Fall thanked Mr. Rojas for revising the ordinance.

Acting Chair Lee referred to page 2 of the staff report and noted the Commission initially discussed the fact that 8 out of 9 tobacco retailers are considered to be tobacco-oriented

establishments, meaning these were smoke shops and head shops. It worries him that now the ordinance captures a broader range of establishments and 70% tobacco retailers are now caught up in the requirements to address only 10% which cause real concern.

Mr. Rojas said staff initially presumed wrong; staff looked at the problem uses which they found are smoke shops that focus on the sale of tobacco. However, the Richmond Annex Neighborhood Council brought up the fact that Oakland and Vallejo's problems were not from those selling large quantities but those who were able to get through the loophole and be classified as small distributors. They would sell a combination of products. He felt this time around, staff is capturing the uses they initially wanted to get. He would not say all 70% are creating nuisances, but some are. Whereas, Target or Walgreen's with the larger square footage have more oversight associated with them and do not necessarily focus on tobacco and related paraphernalia.

Denise Dennis, Contra Costa County Tobacco Prevention Program, introduced herself and said she was available for questions.

Commissioner Rao referred to the proposed ordinance and asked for her comments on it. Ms. Dennis said policies that restrict the location and density of tobacco retailers actually do help keep young people away from shops, and they are good public healthy policy.

Acting Chair Lee said he was not sure he would support the ordinance and asked to see the ordinance better defined to identify who is being targeted, rather than simply targeting 70%. His preference would be to further research. He confirmed there were public speakers.

#### Public Comments:

Garland Ellis, Richmond Annex Neighborhood Council Vice President, said gas stations are exempt from the ordinance. Because of new regulations of gas stations, there are some that convert to convenience stores and he suggested considering this loophole. In addition, the City is allowing an establishment within 10,000 square feet to sell 15% of its floor space to tobacco. When considering this size, if they dedicated 15% to tobacco, it ends up being a lot and he suggested reducing the percentage. Also, there are businesses in Richmond and adjoining towns where the building is physically 10,000 square feet as a primary business, like the former Longs which is now CVS Pharmacy. There is a separate watch repair and a photo section included within CVS. The watch repair leases the space and the question becomes one of measurement.

Mary Selva, Richmond Annex Neighborhood Council President, thanked Mr. Rojas for his work on the ordinance, thinks the Commission should approve the ordinance, said it is consistent with Oakland and Vallejo's ordinance, and cited problems with smoke shops. She referred to the first paragraph on page 3 of the staff report; The amendment to Section 15.04.020; definitions, adds a land use definition for tobacco retail establishment: "Tobacco retail establishments are defined as any commercial establishment which sells tobacco, tobacco products or tobacco paraphernalia with the exception of automobile service stations and establishments having a total floor area greater than 10,000 square feet, provided the floor area dedicated to tobacco sales is less than 15% of the total floor area." She suggested changing Exhibit A, page 2, under tobacco retail establishments; a. New Tobacco Retail Establishments, number 2, which is contrary. She asked to clarify the 10,000 square feet in that portion which would make it consistent with the ordinance.

Commissioner Rao questioned how the Commission can address Mr. Ellis' comments. Mr. Rojas said where there is an entire center which is 10,000 square feet with different businesses and separate tenant spaces. Staff would not enforce the ordinance based on the square footage of the entire building, but the individual business, which is clearly defined in the ordinance. With a gas station conversion, the Council passed a tobacco licensing ordinance which sets up a rigid and structured program for every tobacco retailers, annual inspections and this will capture a different or changed use from a gas station to a convenience store.

In conclusion, Mr. Rojas recommended that the Planning Commission recommend adoption of the ordinance to the City Council, with modifications as stated.

The public hearing was closed.

Acting Chair Lee questioned what constituted a majority approval on the item, and Mr. Privat replied a majority would be three ayes.

**ACTION: It was M/S (Duncan/Lane) to recommend approval of PLN 09-017; the tobacco retail establishment ordinance to the City Council, with the amendment to paragraph clarifying relationship between gasoline stations and gasoline/convenience stores, with the additional amendment of adding 10,000 square feet under Item 2, and that the language change using the term "tobacco retail"; which carried by the following roll call vote (4-1-1): Ayes: Duncan, Lane, Rao and Teltschick-Fall. Noes: Lee. Absent: Beckles.**

- 4. 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.

Hector Rojas distributed a copy of a letter the Richmond Annex Neighborhood Council submitted this date, and provided a brief description of the ordinance for eating establishments. He said the purpose of the ordinance is to streamline the City's current process for approving small restaurants and those eating establishments that have no live entertainment or alcoholic service, such as cafes or diners. He said staff have brought forward such proposals in the past as routine Consent Calendar items, which are typically approved with conditions.

Mr. Rojas said staff is proposing having the Planning Commission approve a CUP for specific uses, but the Zoning Administrator authorized to review and approve eating establishments in specific zoning districts which include C1, C2, CB, M1, and M3 districts. Staff wants to establish a standard set of conditions which would allow for accountability and provide an expectation for the neighborhood.

He briefly reviewed standard conditions, which included definition of specific establishments, hours of operation, limitations on cooking oil pick up and restaurant supply deliveries, no Styrofoam or plastic food ware, prohibition of amplified sounds that can be heard on the outside of the building, requirement for Environmental Health Permit review, building permits, zoning ordinance performance standards that deal with odor, noise and particulate matter, and conditions from the RANC for locating roof fans, exhaust, and refrigeration units away from residential uses as much as possible, and locating trash and garbage receptacles away from the fence line, providing appropriate number of receptacles, providing a combination of

landscaping and 6 foot high solid fencing when there is an abutting residential use, and requiring litter control within a 50 foot radius.

He said the RANC submitted additional conditions, and staff will work with them prior to the matter being considered by the City Council to further modify the conditions. Mr. Rojas then outlined the process for review and approval of eating establishments. He highlighted the zone districts affected by the ordinance, noting that staff has removed the CC designation.

Public input was received from RANC focusing on parking and concerns with allowing the process to take place in the M1 and M3 districts along shoreline areas. Regarding parking, there may be limited amounts of parking and it spilling over into residential areas. Mr. Rojas said regardless, parking requirements will have to be met regardless of whether it goes to the Planning Commission or Zoning Administrator. Regarding sensitive shoreline areas, there is a provision in the Resource Management Overlay ordinance for shoreline and tidal areas, which states that no matter what the use is in such a district, one must always go before the Planning Commission. He stated that staff's real focus of the ordinance is to have more vitality and eating establishments along 23<sup>rd</sup>, MacDonald, San Pablo avenues.

Commissioner Teltschick-Fall supported streamlining and less paperwork, but questioned a situation where one person approves the establishment and neighbors are unhappy. She questioned how the dispute process would work. Mr. Rojas said the planning department would receive an application, staff would review applications received from the previous week, projects are assigned to staff members and discuss issues that may arise, and Mr. Mitchell would not be the only person reviewing the matter. Staff enters applications into the CRW tracking system which produces a report. The reports are distributed to neighborhood councils, they are also available on-line, and staff also conducts outreach to neighborhood councils.

Commissioner Teltschick-Fall questioned the situation of a complaint when an application is approved and the business in operation. Mr. Rojas noted the streamlined process takes some time, but the complainant can contact planning staff and operators of the establishments.

Commissioner Teltschick-Fall said there is an item on the list that establishments must conform to scrubbers and odor standards. She questioned whether the standards were the same for all establishments. Mr. Rojas was not sure whether scrubbers are mandated given specific eating establishment, and this was something the County Environmental Health Department would determine.

Mr. Thompson added that the review process would be similar to any CUP received and, more likely, if there are odors or problems with the proposal, it would be heard by the Planning Commission and Zoning Administrator.

Commissioner Lane questioned whether the definition would change and be applicable to both establishments that have live entertainment and alcohol sales. Mr. Rojas said in the ordinance, there is currently no definition for the new category and this will be reviewed and provided, as either eating establishment without live entertainment or alcoholic beverage sales. If the Commission recommends the ordinance to the City Council, he suggested directing staff to include a specific definition for the land use category being created.

Commissioner Lane said if approved, she asked that public outreach be conducted.

Acting Chair Lee said he got the impression that large, chain restaurants were already in a separate category and nothing else was needed to further differentiate between them. Mr. Rojas said the City does, but he has found confusion in definitions, and the clearer the City can be, it is worth enhancing the definition.

Commissioner Rao questioned the number of applications were before the Planning Commission on an annual basis. Mr. Mitchell said it is a function of the economy and there was a time staff was reviewing many. He said staff is trying to repopulate the main streets of the City and the numbers of applications vary.

Commissioner Rao questioned how many were received when the economy was better, and Mr. Rojas said it was enough to cause the business community some concern because businesses would sign a lease for a year without first obtaining their business license. Therefore, the process would benefit business owners and operators.

#### Public Comments:

Garland Ellis, RANC Vice President and Richmond Neighborhood Coordinating Board, said Mr. Thompson provides reports to neighborhood councils, but there are items that are not included in the report staff does not always include applications in the report and follow up must be done. He noted business licenses and business classifications were incorrectly issued at the counter, people received CUP's without follow up of conditions imposed, code enforcement do not always check, questioned background checks and said inspections of restaurants are only given when health issues are reported. He cited trash, litter, noise, former complaints, and the inability for staff to enforce a business with no CUP in place. He said there are on-going parking controversies due to misinterpretation of requirements. He also asked for nighttime public hearings.

Mary Selva, RANC President, feels it is critical that restaurants, even without alcohol, require a CUP, which is consistent with neighboring cities along the shoreline because it depends on compatibility of the operation and it protects the public. She said the intent of the ordinance is for commercial areas in C1 or C2, but she did not support shoreline areas being included. The Point Isabel area should be exempt, people feel restaurants are controversial, and she asked that the process not be streamlined. She said she provided information on abutting commercial residential, stating if parking issues are not addressed and conditions are not included, the ordinance should be changed to "any commercial district that abuts residential, the restaurant shall require a CUP in all situations."

Mr. Rojas gave a staff summary, stating Mr. Ellis' main concern is parking. He was not aware that some planners interpret the code differently than others, and he will discuss this further with the City Attorney's office so as to operate under the same ground rules. Regarding daytime versus nighttime hearings, the hearing would most likely be a late afternoon hearing which could be reviewed so as to be more accessible to people.

Regarding Ms. Selva's comments on shoreline areas, staff's main focus is the corridors, and this can be revisited to determine whether it is an important objective. Staff extended an exemption for the coastal commercial areas because it tends to be located in more rural, pristine areas. The M1 and M3 districts tend to have high levels of industrial uses and staff felt they were less sensitive; however, staff can consider leaving this out.

Commissioner Teltschick-Fall supported Mr. Ellis' request to ask the City to perform a background check on businesses. Mr. Mitchell said staff has held discussion on criminal background checks with the police chief who indicated it is a fairly ineffective way to address whatever people are trying to address. She said it is not a criminal background check but more a business background check.

Commissioner Duncan questioned if the municipality would be contacted from where businesses were located to determine the existence of nuisance complaints. Mr. Mitchell said if a family never operated a restaurant but has a space in the commercial corridor, and he questioned who would be called and what would staff look for. He noted that if businesses meet conditions for a restaurant to open, this is the basis that an approval would be issued. Similarly, the Commission does not have a mechanism to make a decision other than facts before them in an application.

Mr. Rojas acknowledged the concern, but staff is operating on what business owners tell them, and fact finding would be difficult.

Commissioner Lane asked for flexibility in hearing times be allowed if a request is made.

Acting Chair Lee felt the ordinance was well done. He would like well-established parking requirements, noting a restaurant under 5,000 square feet is slated to be opened soon that has no parking requirements, which is of concern to him.

The public hearing was closed.

**ACTION** It was M/S (Duncan/Rao) to recommend approval of PLN 09-079; the eating establishment ordinance, to the City Council, as amended to add a more prescribed definition, and that the parking issue be addressed; unanimously approved.

## **COMMISSION BUSINESS**

### **5. Reports of Officers, Commissioners and Staff**

Mr. Mitchell announced that the City Council would hold a General Plan Study Session at their meeting of January 26, 2010.

Acting Chair Lee extended thoughts and hopes to Chair Finlay, who was excused to assist with a family medical matter.

### **Adjournment**

The meeting was adjourned at 9:14 p.m.