

**PLANNING COMMISSION REGULAR MEETING  
COUNCIL CHAMBERS, RICHMOND CITY HALL**

450 Civic Center Drive, Richmond, CA  
March 7, 2013  
6:30 p.m.

**COMMISSION MEMBERS**

Sheryl Lane, Chair	Andrés Soto, Vice Chair
Roberto Reyes, Secretary	Andrew Butt
Ben Choi	Carol Teltschick-Fall
Marilyn Langlois	Melvin Willis

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

Chair Lane led in the Pledge of Allegiance.

**ROLL CALL**

**Present:** Chair Lane, Vice Chair Soto, and Commissioners Butt, Choi, Langlois and Willis, Secretary Reyes (arrived late)

**Absent:** None

**INTRODUCTIONS**

**Staff Present:** Lina Velasco, Senior Planner; Hector Rojas, Senior Planner; Hector Lopez, Senior Planner and Carlos Privat, Assistant City Attorney

**MINUTES**

December 6, 2012:

**ACTION: It was M/S (Soto/Willis) to approve the December 6, 2012 minutes; unanimously carried (Langlois abstained).**

January 17, 2013:

**ACTION: It was M/S (Choi/Langlois) to approve the January 17, 2013 minutes; unanimously carried (Butt and Soto abstained).**

**AGENDA**

Chair Lane provided an overview of meeting procedures for speaker registration, public comment and public hearing functions. She said items approved by the Commission may be appealed in writing to the City Clerk by Monday, March 18, 2013, by 5:00 p.m. and as needed, announced the appeal process after each affected item.

**CONSENT CALENDAR**

Chair Lane reported there is one item on the Consent Calendar. She asked if there were any members of the Commission, staff or the public who wished to remove Item 2. Mr. Rojas stated there are two speakers; one in favor and one stating no position. Chair Lane confirmed that the item could remain on the Consent Calendar at the Commission's discretion. Staff stated the speaker with no position was okay leaving the item on the consent calendar.

**ACTION: It was M/S (Choi/Soto) to approve Item 2 on the Consent Calendar; unanimously carried.**

**Consent Calendar Approved:**

- 2. PLN13-010: Chaiyo Muay Thai Academy** - PUBLIC HEARING to consider a Conditional Use Permit to establish a new martial arts and fitness gym at 12260-B San Pablo Ave. (APN: 519-290-019). C-2, General Commercial District. Cheung Ka Yin & Lai, owners; Chansadeth Chanthanao, applicant; Planner: Hector Lopez; Tentative Recommendation: Conditional Approval.

**BROWN ACT – PUBLIC FORUM**

Cordell Hindler, Richmond, suggested that the former Kaiser Hospital on Cutting Blvd. be turned into a hotel which would bring in jobs, revenue, and be closer to the marina and to businesses.

**Items Removed from the Consent Calendar:** None

**NEW ITEMS**

- 1. PLN12-355: La Flor De Jalisco Taco Truck** - PUBLIC HEARING to consider renewal of a Conditional Use Permit to operate an existing mobile vending unit at 12955 San Pablo Ave. (APN: 526-040-023). C-2, General Commercial District. Joaquin Rodriguez, owner/applicant; Planner: Hector Rojas; Tentative Recommendation: Direct staff to prepare a resolution with findings.

Senior Planner Rojas gave the staff report, request to renew a conditional use permit (CUP) to operate a taco truck for an additional two year period. He said the applicant is in compliance with the original CUP and the City's outdoor vendor ordinance. Staff has not included a recommendation to approve the project due to opposition expressed by an existing business located 160 feet south of the taco truck site. Mr. Fierro, owner of Tacqueria Los Americas submitted 9 letters from surrounding businesses opposing the taco truck's operation due to the detrimental impact on surrounding restaurants selling food nearby. No recent letters have been submitted and those in the packet date back to November 5, 2010. However, Mr. Fierro does remain in opposition to the application.

Mr. Rojas stated he and the applicant attended the neighborhood council meeting and no vote was taken. The association decided to take no vote because some members encouraged the applicant to improve the property and open up a restaurant, but most concerns were health-related. He also noted that a representative from the 23<sup>rd</sup> Street Merchants Association was present supporting the applicant and interestingly, there are many taco trucks along 23<sup>rd</sup> Street with several brick and mortar establishments selling the same types of food. For the most part, the representative indicated they have co-existed successfully.

Mr. Rojas stated Mr. Rodriguez submitted several letters of support. Some businesses in opposition in 2010 are now in favor of the application, and the Planning Division would recommend that the Planning Commission direct staff to make findings and statements of fact in

support or opposition of the application. Staff feels that the General Plan has numerous policies to support small businesses and it is up to interpretation where findings could be made either way.

Vice Chair Soto said there are numerous examples where mobile vendors and brick and mortar establishments exist because they are catering to different clientele. He was glad to see that 23<sup>rd</sup> Street Merchants Association attended the neighborhood council meeting and answered questions, given there are perceptions creating a problem for some people, i.e., competitiveness and cleanliness.

Commissioner Langlois asked if any written letters were received in opposition regarding the renewal of the CUP. Mr. Rojas said Joshua Genser of North and East Neighborhood Council was the only letter of opposition.

Vice Chair Soto noted that for the record, Mr. Genser does not live in the North and East Neighborhood Council. Commissioner Langlois asked and confirmed that no correspondence was received from anyone living in the North and East Neighborhood Council.

Chair Lane called upon the applicant.

John Marquez, Richmond, said he was asked to speak on Mr. Rodriguez's behalf. He attended the neighborhood council meeting last night where the majority of those present were in favor of the vendor truck. He has frequented the restaurant owned by the person opposing the request, and they serve good food, but Mr. Rodriguez owns the entire property where his truck is located, and he noted that the Gonzalez Restaurant has been there since the 1950's when the opponent began the business. Therefore, Mr. Rodriguez owns the property, pays property taxes, keeps the place clean, and those attending the neighborhood council meeting indicated they would rather have a vendor truck than a vacant property. He was asked and confirmed that he does plan to open up a restaurant in the future and is building up his financial status to open something more permanent.

In response to Boardmember Willis' question, Mr. Marquez indicated that the owner does intend to open up a restaurant in the future and that the neighborhood council supports the owner's mobile vending operation.

Mr. Rojas clarified that feedback was received from the neighborhood council back when approval of the first truck occurred. He also clarified that Mr. Rodriguez is not the original permittee, but Mr. Hector Montez of Tacqueria Los Brienzas, who operated there for six months when Mr. Rodriguez purchased the site with a replacement truck. As the Commission knows, the CUP is tied to the land and Mr. Rodriguez received the right to exercise the right on the CUP. About four months after approval of the permit and once the previous applicant had begun to operate, this is when Mr. Fierro took note of the operation and objected to it, which then led to comments received by the neighborhood council.

Commissioner Willis thanked Mr. Rojas for the clarification.

Commissioner Langlois stated and clarified with Mr. Marquez that right after the first permit was issued over two years ago, there had been some opposition voiced by members of the East Richmond Heights Neighborhood Council. However, since then, two years have gone by and recently, it looks like there has been no opposition. At last night's meeting of the neighborhood council, there was no vote taken but many positive comments made.

Commissioner Langlois said since Mr. Rodriguez had purchased the property over a year ago, she said she knows he operates other taco trucks in the City which are great, and she asked if there were any problems with the Health Department. Mr. Marquez said he was not aware of any. He added that Mr. Rodriguez was the second taco truck operator and worked on the

regulations that are now in place which have since been refined. He has always been law abiding and a good operator and business person. He noted that both the mobile vendors and brick and mortar restaurants are successful given customers' needs.

Vice Chair Soto confirmed that the property is in the North and East Neighborhood Council district on the west side of San Pablo Avenue. He said he found it ironic that those east of it would be so concerned. Vice Chair Soto noted that about one year ago, there was an applicant ready to open a truck at Barrett and San Pablo and members of the East Richmond Heights Neighborhood Council came and argued against it, indicating that it would bring crime, prostitutes, drugs and other things. He asked them to substantiate evidence, and nothing was received or had ever occurred. He asked if any of this sort of discussion came up in the meeting last night. Mr. Marquez said no, but there was a presentation by an officer who spoke about parking issues on San Pablo Avenue and future plans.

Secretary Reyes asked and confirmed that Mr. Marquez was not representing the 23<sup>rd</sup> Street Merchants Association, but rather their President was at the meeting.

#### Public Comments:

Luis Fierro, Taqueria Las Americas, Richmond, said the taco truck is located 140 ft. from his business. He said the CUP was issued to another truck operator, and understands that CUPs are not transferable. When Mr. Rodriguez took over the business, they had three events in the building which were illegal. He said he never received any letter or information from the City regarding the previous CUP application. He hopes his future truck will be approved.

Secretary Reyes said as he looks and watches 23<sup>rd</sup> Street, there are many trucks next to one another as well as brick and mortar businesses. He thinks there is plenty of business for everyone. He said everybody is taking a chance and there needs to be a way for people to work together. He thinks the situation is divisive and he hopes good things will continue to be done.

Mr. Fierro noted that people from the City came to him and indicated that they will be fixing up the area and he asked that the City give him a chance to operate his taco truck. He discussed a situation with Vice Chair Soto and the applicant and did not believe it was fair.

Commissioner Willis said the idea is not to have vacant buildings but for occupancy. He was not sure how Mr. Fierro's business was doing with the taco trucks located in the area, but understands that the applicant is building up to operate a brick and mortar restaurant and hopes to eventually occupy the existing building. Mr. Fierro said the applicant will not open a restaurant, as he has had many taco trucks throughout the cities for years and will continue to. Established businesses offer jobs and taco trucks do not, and 23<sup>rd</sup> Street has had them for years. He asked when there will be a change to the outdoor vendor ordinance, as they do not produce money or jobs and the taco trucks are controlled by one to two people at the maximum.

Commissioner Langlois said she met Mr. Fierro a couple of years ago and understands he was upset at the time the last CUP was approved because he had not received the notice which she agreed was frustrating. A lot of time has gone by and she notices that his restaurant is still there and in business. Mr. Fierro said he is still open. Commissioner Langlois said she is confused as to a taco truck having an advantage. As Vice Chair Soto said, it is two different businesses. The prices at the restaurant are not any higher and the restaurant offers respite from the cold and rain, whereas a taco truck is outdoors. Mr. Fierro said many people are looking for something practical and fast, and if one is allowed, many will operate and it is up to the City as to what they want. He asked that the Commission make a common sense decision.

Vice Chair Soto apologized to Mr. Fierro and was sorry if he offended him. He explained that regarding the business on Barrett and San Pablo, someone from the neighborhood council was

making allegations and it came across to him as very racist and NIMBYist, and he was deeply offended. He said the applicants did everything right. There was nothing in the regulations prohibiting them from establishing their business there. They had developed a relationship with the tile business to use their restroom, yet the Commission did not give them permission due to opposition from what he considered to be a racist argument. Therefore, he felt personally offended and exercised his rights to apologize to the applicant for himself.

Owen Louis Martin, Jr., Richmond, asked and confirmed that Vice Chair Soto does not consider him to be the racist from two years ago and that it was not his comments he was offended by. Mr. Martin said both sides of San Pablo Avenue from El Cerrito city line to the San Pablo city line are the Richmond Heights Neighborhood Council. It was agreed that everything east of I-80 was Richmond Heights and everything west of San Pablo and 23<sup>rd</sup> was North and East Neighborhood Council. The area between San Pablo and the freeway was called the orphaned area for many years. He thinks it would be great if San Pablo had their own Merchants Association and had both neighborhood councils in their corner. The reason he is opposed to the truck is not for what it sells or its cleanliness. He looks at the City's Livable Corridors Plan for the future and he sees multi-story businesses with residents on top. He is not against having any food or taco trucks on the property and moving up into the restaurant that is already there. When he wanted to open up at San Pablo and Barrett, they had a two year lease and a business did not want to rent the building and have no parking because the truck was there. The building sits empty and it may sit empty longer, but if a taco or other truck is located there in the parking lot, customers are limited for parking which is a set up to fail.

Secretary Reyes asked if Mr. Martin recalled the effort of a big box store coming into the Lucky's site. Mr. Martin said he understands some of the neighbors did not want a Wal-Mart, but he was not one of them. Secretary Reyes said he received about 75 emails in response to the neighborhood that did not want the big box store. No one fought for the store but the Commission heard the community say what they did not want. He was also able to attend some of the groups conducting meetings and he spoke to many people, but the Commission had to make a decision on what people wanted. Now, they cannot have it both ways, and his message is that now everybody sees what is happening on San Pablo and Macdonald. He appreciates Mr. Martin's comments, but the City cannot be working around the one group of neighborhood residents, and thanked Mr. Martin for his comments.

Mr. Martin said he hopes the applicant will be able to open his business soon, voiced concern with the number of trucks in the entire City and is looking and supporting more actual restaurants in the future.

Cordell Hindler, Richmond, said he attended the Richmond Heights Neighborhood Council meeting and Mr. Rodriguez said he wanted to open a restaurant. He supports the request because the City needs more businesses and Mr. Rodriguez sees the vision of what he wants, regardless of whether it is a truck or restaurant.

### ***Rebuttal – Applicant***

John Marquez, on behalf of the applicant, said the presentation made is clear, said he does not want to take anything away from Mr. Fierro who has a brick and mortar restaurant. He thinks Mr. Rodriguez is working his way up to a restaurant and as long as he is paying taxes and abiding by health department requirements, he should be able to operate his taco truck.

Luis Fierro, Tacqueria Los Americas Richmond, said he had a taco truck far away from San Pablo and when someone wants to develop a business, they move on, but having a taco truck for 25-30 years is not moving on. Mr. Rodriguez owns many properties and never opens them but stays there with the taco truck.

Mr. Rojas gave the staff summary, stating that as far as Mr. Rodriguez coming in and presenting

his plan to develop the property, a number of months ago, he did present preliminary plans to expand the existing restaurant and convert it to several shopping tenant spaces. Once he sat down with him and reviewed all of the development impact fees and the review process, he got a feeling Mr. Rodriguez was taking a step back to regroup and reconsider his ideas for the site. He thinks he is serious about developing the property, but recognizes it is financially challenging. As he said, staff does not have a resolution to consider and if the Commission did want to make a decision, staff can prepare a draft resolution that could be signed by the Chair of the Commission and take action tonight.

Commissioner Langlois asked and confirmed that the timeframe if the CUP were to be approved for renewal would be for two additional years.

Commissioner Choi asked if it was unusual that the applicant owns the property upon which his truck is parked. Mr. Rojas said yes and in this case he has purchased the property, but there are no other vendors to operate a truck on the property. Commissioner Choi said given the discussion about brick and mortar operations, he asked if this was to be a vacant property or is it the case where a business could locate there but would be deterred by a taco truck locating there. He asked what would feasibly be the result if the Commission were to deny the request. Mr. Rojas said the property could be leased, but most likely would remain vacant based on the fact that Mr. Rodriguez had tried to lease the building for several years unsuccessfully. He added that if a higher and better use was available and presented itself, it would be in Mr. Rodriguez's interest to take the offer and lease the space, which could be done.

The public hearing was closed.

Vice Chair Soto made a motion to support the applicant in the renewal of the CUP and for staff to make appropriate findings and supporting statement of facts in the form of a resolution. He said fundamentally, the applicant owns the property and if it is financially infeasible to open the brick and mortar business at this time and this is a method to get to that point, it would be unwise to stifle the effort of helping a small business develop. While the Commission cannot compel the applicant to do this, he has stated his intentions and from the staff report, he will determine what the feasibility is to do this. He also thinks he takes the position that if the rule is permitted, there must be some compelling reasons that would cause the Commission to deny a permitted use. He hears the fear about competing businesses, but there was also a list of nearby businesses on 23<sup>rd</sup> Street but it did not go north on San Pablo Avenue which is the casino, a business that is sucking a lot of money from the community. He questioned what impact this has on surrounding businesses. He understands and hears the emotion from Mr. Fierro and respects considerations given by Mr. Martin, but he does not see that the Commission should block the applicant's aspirations to try and develop a business there is a market for. If both businesses have co-existed for two years already, it seems to be working.

Assistant City Attorney Privat suggested that staff prepare a resolution with findings and conditions of approval and bring it back to the Commission at the next regularly scheduled meeting.

Commissioner Butt concurred with Vice Chair Soto's comments. He can appreciate the argument about the competition and aesthetic issues. If there was an extended proliferation of mobile vendors throughout the City for more than a decade, this might start to have a negative impact. But the nature is temporary and he strongly believes that the economics will dictate when these areas get infill development. But until that happens, the operation is logical, as there is a demand and need for them, and he voiced support.

Commissioner Willis said he was somewhat troubled with the request initially and conducted some background information. It looks like the property has changed hands and it relieves him to know that the owner is looking to expand and open up his own restaurant and that the taco truck is a start. As long as the owner is willing to plan and upgrade for the future, he voiced

support. He noticed that 23<sup>rd</sup> street brick and mortar establishments and taco trucks seem to have a working relationship together, and while this may not be the case, the owner may be able to someday open up his own restaurant on the property, and he voiced support.

Commissioner Langlois said there was reference made earlier regarding the decision for a taco truck on Barrett and San Pablo. She was not on the Commission, although she lives near there and she would have supported it. The space has been empty and she personally would have preferred a taco truck to the business across the street which is a chain fast-food restaurant. She also supports having a variety of mobile vendors in the area, favors granting the CUP renewal for a variety of reasons. The feedback via letters and petitions from the community is very supportive of the application. She went out and rode her bike there. As she approached from the south, the south side of the truck is fully painted with an attractive mural depicting the Mexican and American flags, a landscape and cactus. She thought the food was very good. The next day she rode her bike to Mr. Fierro's tacqueria. She had lunch there and the food was very good, and she noticed there were many more menu choices. Clearly, they have co-existed for the last couple of years, hopes that the brick and mortar restaurant can open at some point in the future, and she voiced vibrant entrepreneurship to the City and supported the application.

Secretary Reyes voiced his support of the motion for the reasons voiced by Commissioners.

**ACTION: It was M/S (Soto/Langlois) to direct staff to prepare a resolution with findings and supporting statements of fact to conditionally approve the renewal of PLN12-355 and continue it to the next regular Commission meeting; which carried unanimously.**

## **COMMISSION BUSINESS**

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

Vice Chair Soto reported that Cal OSHA finally delivered their reports and findings, and issued 25 citations indicating willful violations of the law by Chevron. In the investigation of the August 6<sup>th</sup> toxic fire and explosion at Chevron, he is disturbed that the City went and issued permits for Chevron to continue to rebuild crude unit #4 without any real consideration about improving safety, as it was clear from the findings that the management culture at the refinery is one of negligence and one that is seeking to run the refinery at deep risk to workers and the community.

Commissioner Willis reported that this Saturday at 10am at the ACCE office at 322 Harbour Way, Suite 25, a meeting will be held for homeowners about a potential program that can help those looking to refinance their home loans.

Commissioner Choi wished his brother Tom a very happy 44<sup>th</sup> birthday.

Commissioner Langlois invited the community to come out on Saturday from 10am to 3pm at Lovonya DeJean Middle School, 3400 Macdonald Avenue, where the 6<sup>th</sup> annual celebration of International Women's Day; Sisters in Solidarity United, Promoting Peace and Well-Being Across Generations and Cultures will be held. The keynote speaker will be Dolores Huerta with performances, speakers, and activities.

**Adjournment** - The meeting was adjourned at 7:48 p.m. to the next regular meeting on April 4, 2013.