

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

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

COMMISSION MEMBERS

Sheryl Lane, Chair	Eduardo Martinez
Roberto Reyes, Secretary	Andrew Butt
Ben Choi	Marilyn Langlois
Melvin Willis	

Chair Lane welcomed the Commission's newest member, Eduardo Martinez.

The regular meeting was called to order by Chair Lane at 6:35 p.m.

Chair Lane led in the Pledge of Allegiance.

ROLL CALL

Present: Chair Lane, Secretary Reyes, and Commissioners Butt, Choi, Langlois, Martinez and Willis

Absent: None

INTRODUCTIONS

Staff Present: Kieron Slaughter, Associate Planner; Lina Velasco, Senior Planner; Carlos Privat, Assistant City Attorney

MINUTES

April 4, 2013:

ACTION: It was M/S (Butt/Willis) to approve the April 4, 2013 minutes, as submitted; unanimously carried.
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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, June 17, 2013, by 5:00 p.m. and as needed, announced the appeal process after each affected item.

CONSENT CALENDAR

Chair Lane asked if there were any members of the Commission, staff or public who wished to make any changes or recommendations regarding any of the items on the Consent Calendar.

Ms. Velasco noted one speaker for Item 1 and that staff was requesting to hold Item 2 over to the next meeting of the Planning Commission.

ACTION: It was M/S (Reyes/Willis) to remove Item 1 from the Consent Calendar and continue Consent Calendar Item 2 to the next meeting of the Planning Commission; unanimously carried.

Consent Calendar Item Approved:

- 2. PLN13-063: 62-Unit Senior Housing Development on Harbour Way - PUBLIC HEARING** to consider a Conditional Use Permit to allow a 25% increase in density over the maximum allowable density under the General Plan to construct a 62-unit Senior Housing Development of approximately 42,000 s.f. at 20 and 25 Harbour Way (APN: 538-430-014 and 538-430-019). The project proposal includes a request for city concessions related to parking and open space reductions. C-2, General Commercial and MFR-1, Multi-Family Residential Districts. Andre Pessis Tre, owner; AMG and Associate-Gene Broussard, applicants; Planner: Hector Lopez; Tentative Recommendation: Hold Over to July 11, 2013.

BROWN ACT – PUBLIC FORUM

Roger Lin, Staff Attorney with Communities for a Better Environment (CBE), referred to the organization's petition dated April 15, 2013 which asked the Commission to declare portions of the Chevron Refinery as "dangerous building conditions." He provided a timeline of subsequent events that include a response from the City Attorney dated April 18th, in which the City Attorney noted that the authority to abate dangerous building conditions was with the City Building Official and not the Planning Commission. The same letter also noted that the General Plan did not authorize the Planning Commission to implement the General Plan and promised that either the Building Official or Fire Marshal would get back to CBE as soon as possible. He reported that neither member of staff has made such contact. On April 23rd, CBE provided an email response referencing relevant government code that demonstrates the Planning Commission's duty to implement the General Plan. The response also clarified that CBE is seeking a declaration, not necessarily abatement, regarding the building conditions. On April 24th City staff responded that it was not persuaded by CBE's argument. Mr. Lin stated that certain members of the Commission had expressed interest in placing the item on the May agenda, after which Planning Staff cancelled the regular May meeting and called a special meeting of the Commission for May 11th. While the special meeting contained considerable discussion on the item, no notice was provided to CBE or the Asian Pacific Environmental Network. He asked when, in light of the Chemical Safety Board's urgent recommendation that the Planning Commission implement California Building Code to address the areas identified, the Commission intends to hear the item.

Andres Soto, CBE and former Vice-Chair of the Planning Commission, said the Chemical Safety Board's report clearly articulated the City's authority to address the Chevron situation through its Industrial Safety Ordinance, the General Plan and the Planning Commission's role in land use. He urged the Commission to disregard the erroneous and unsubstantiated recommendation of the City Attorney, uphold its responsibility to the community, and agendaize a public hearing on the matter.

Greg Karras, CBE, demanded that the Planning Commission take clear and definite action to schedule and hold a public hearing on what is clearly a significant health and safety issue. He

said following the misguided advice of City staff could allow for a catastrophic event at the refinery which violates public process rights and requirements. It weakens the integrity of the Commission. He called the Commission's attention to a proposed resolution he submitted that day, which CBE believes would resolve the substantive issues raised in the petition.

Commissioner Martinez requested that CBE provide a copy of the timeline reviewed by Mr. Lin.

Mr. Karras agreed and clarified that CBE is asking only for a hearing at which the public has an opportunity to share its concerns, not that the Commission agree with the substance of the petition.

Commissioner Reyes said Mr. Lin's depiction of events was fairly accurate, particularly the succinct final response from the City Attorney. He was compelled to demand the May hearing and bothered by staff's action to cancel that meeting, though the Commission had an opportunity to learn more about its duties and authorities at the special meeting. He asked if revisiting the General Plan with regards to the authorities of the Planning Commission is one way to address the desires of CBE.

Mr. Lin said it is certainly worth discussing in the context of a public hearing.

Commissioner Reyes noted that revisiting the General Plan is a long process and said it would be best to get moving towards some sort of answer sooner rather than later.

Commissioner Langlois requested procedural clarification on how to request that the resolution be placed on the agenda of the next meeting.

Chair Lane said a Commissioner could state their interest under Reports of Officers and deferred to Mr. Privat for further direction. Commissioner Langlois indicated that she would bring this up later under Reports of Officers.

Mr. Privat explained that planning staff typically agendizes matters that are appropriate for the Planning Commission to hear.

Commissioner Butt said that both issues, safety at the refinery and the responsibilities of the Commission, are at the forefront for many in the City including him. He admitted to struggling with how to best approach this given the advice of the City Attorney and the current efforts of the City Council. In order to move forward with confidence that it is within the purview of the Commission and that whatever action they take does not subject them to personal liability, he would like an outside legal opinion.

Commissioner Reyes reminded Commissioner Butt that the request is simply for a public hearing and not a ruling of any kind.

Mr. Privat clarified that the Planning Commission holds public hearing on matters of planning and land use that are within its jurisdiction. The City Attorney's office has done its research carefully and finds that the jurisdiction over the issues raised here lie solely with the Building Official and Fire Marshal, not the Planning Commission. In terms of implementing the General Plan, the Planning Commission's role is only to examine specific land use projects for consistency with the provisions of the General Plan.

Chair Lane asked the Commission to reserve any further comments on the matter for Reports of Officers.

Cordell Hendler, Richmond, suggested that a nightclub or old-fashioned discoteca would be a wonderful addition to Richmond, increase revenue and give something back to the community.

Mr. Slaughter advised Chair Lane that one additional speaker registered after the item was called and received permission for them to speak.

Victoria Sawicke, Richmond, said she attended the meeting at which the dangers of the Chevron refinery were detailed. Chevron has proven itself dishonest and undependable, Richmond has failed its community and the public deserves an open hearing on the matter.

Item Removed from the Consent Calendar:

- 1. PLN13-050: Chika Japanese Restaurant Beer And Wine Sales - PUBLIC HEARING** to consider a Conditional Use Permit to allow an existing eating establishment in the Pacific East Mall to obtain a Type-41 ABC license for on-sale beer and wine sales at 3288 Pierce Street, Suite A-107 (APN:510-060-006). C-3, Regional Commercial District. Terry Kwong, owner; Martin Yuan, applicant; Planner: Kieron Slaughter; Tentative Recommendation: Conditional Approval

Associate Planner Slaughter gave the staff report, CUP for a Type-41 ABC license for the sale of beer and wine at the existing Chika Japanese restaurant located within the Pacific East Mall. A Master CUP for Pacific East Mall was approved in 1996 and granted five individual retailers the opportunity to sell beer and wine; any subsequent retailers were required to apply for their own CUP. He said staff finds the application to be consistent with the General Plan's land use designation for the C-3 District, specifically policies ED 2.3 and ED 2.9.

Mr. Slaughter stated that no public comments were received by staff prior to the writing of the staff report. Staff provided the applicant with contact information for the neighborhood council and was told he was making his best efforts to contact them. Staff also recommended that the applicant contact the West Contra Costa County Alcohol Policy Working Group and today received a letter from its Chair, Naomi Williams, supporting the application.

Mr. Slaughter noted the requirement of four additional findings related to public convenience and necessity, two of which staff feels the applicant was able to make. Staff believes the proposed project meets or exceeds the development standards for the C-3 District, will take place in an existing eating establishment and continue to provide an attractive and safe location, is compatible with the surrounding area, and will provide benefits to the local community.

Chair Lane confirmed with staff that the applicant was not present.

Public Comment:

Cordell Hendler asked the Commission to support the application. The addition of beer and wine service at Chika Japanese Restaurant would be appreciated by the community and help to increase business.

Commissioner Choi advised Mr. Hendler that registering to speak on a Consent Calendar item pulls it off the Consent Calendar and, at least in this instance, delays the very action that he seemed to support.

Mr. Slaughter summarized staff's recommendation; to adopt Conditional Use Permit Findings 1-4 with statements of fact, approve PLN 13-050 for a Conditional Use Permit for a Type-41 ABC License, with the eleven conditions and attached Resolution No. 13-08.

Commissioner Butt said it had come as a surprise to him that Pacific East Mall was a part of Richmond rather than El Cerrito.

The public hearing was closed.

ACTION: It was M/S (Butt/Langlois) to approve PLN 13-050, with the findings and conditions noted by staff, and adopt Resolution No. 13-08; unanimously carried.
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COMMISSION BUSINESS

3. Selection of the Nominating Committee

Chair Lane explained that the Nominating Committee is tasked with selecting a nominee for the Board of Officers which is comprised of Chair, Vice-Chair and Secretary. The Committee may have no more than three Commissioners who will work together to nominate a person for each of the seats, with a selection and vote to occur at the Commission's July meeting. Any Commissioner may also nominate themselves for a seat at the same July meeting. She noted her own interest in serving on the committee and after indicating their respective interest, she, Commissioner Butt and Commissioner Reyes were assigned to the Nominating Committee.

4. Reports of Officers, Commissioners and Staff

Chair Lane asked and confirmed that staff has proposed July 11, 2013 for the Commission's next meeting. Ms. Velasco noted Item 2 would be held over to that same meeting.

Ms. Velasco reported that the City will be kicking off the community planning process for the South Shoreline Specific Plan on Monday June 24, 2013, at the conference center at the Richmond Field Station. The public may review the City Manager's weekly report for more information and is invited to participate in the process.

UC Berkeley and LBNL will be presenting their long range development plan for the Richmond Bay Campus on June 20, 2013. The City Manager's weekly report will contain more information about the event.

Commissioner Reyes said he had intended to report on the findings regarding the refinery fire at the last meeting and guessed that most had since had an opportunity to review the report themselves. It is clearly an important issue to many and he is anxious to hear how the other Commission members would like to proceed. He learned a lot about the Commission's procedural duties and abilities at the retreat and is hoping they can work together to find a way to address the public's concerns. Having said this he had some questions and reservations regarding the resolution proposed by CBE.

Commissioner Martinez thanked everyone for welcoming him to the Commission.

Commissioner Willis reported that on April 15, 2013 at 10:30 a.m. at the Nevin Community Center, ACCE is hosting a town hall meeting about a new program to help underwater homeowners with principal write downs.

Given the number and nature of comments received regarding the refinery, he would support an effort to agendize a public hearing on the matter.

Commissioner Choi welcomed Commissioner Martinez to the Planning Commission.

Commissioner Langlois announced several upcoming events. June 22, 2013 is the Juneteenth parade and festival culminating at Nichol Park. The same day at Wendell Park is the fourth annual Richmond Native American Pow Wow and the public is welcome to attend both events.

She announced that June 29, 2013 from 10 or 11 a.m. to 3 p.m. at Civic Center Plaza is the first Clean Fest, spearheaded by the Asian Pacific Environmental Network and cosponsored by Richmond Progressive Alliance, Marin Clean Energy, City of Richmond, and CBE. The festival is a celebration of clean and alternative energy and some of its creative uses. Also, June 20, 2013 from 6 to 8 p.m. at Bridge Art Space is a reception and exhibition titled "The Art of Point Molate."

Commissioner Langlois said she would like to agendize a public hearing item regarding CBE's resolution. While she hadn't had an opportunity to read it thoroughly, it appeared to be a declaration of the Planning Commission's opinion that a dangerous situation exists at the refinery for the reasons enumerated, a recommendation that the City Council take certain action, and a request that the Commission schedule ongoing agenda items to update the public. She said she appreciated the City Attorney's office providing the Commission with copies of the duties and procedural rules of the Commission, as outlined in the Municipal Code. She noted that Item E of Section 3.20.080 requires the Commission to "engage in a program of acquainting the public with the problems and alternate solutions relating to the local physical environment" and said she felt this awarded the Commission the authority to schedule such an item. She requested support for and moved to place an item on the agenda to allow for public discussion and consideration of CBE's resolution, as written.

Chair Lane said her understanding is that either she could work with staff to place it on the agenda or the Commission to vote to do so with an affirmative vote from four members.

Commissioner Butt said he generally agreed but had concerns with staff's position that the Commission lacks the ability to agendize an item of this nature. He also expressed concern with the precedent of allowing a community group to do what is traditionally the work of staff in crafting a resolution. He asked whether staff might prepare an alternate and legally appropriate resolution.

Mr. Privat said staff could not formulate a reasonable legal opinion within the scope of this meeting. Both Planning staff and the City Attorney's office would appreciate an opportunity to review the resolution and discuss it with the Chair at a later time. With respect to the Municipal Code reference made by Commissioner Langlois, he noted that what is stated there is something considerably less than granting the Commission the authority and jurisdiction to declare a facility a dangerous condition.

Commissioner Butt said the majority appeared to favor some type of public discussion but again, some have concerns. He asked if Commissioner Langlois would be willing to allow time for staff review and an outside legal opinion before committing to an agenda item.

Commissioner Langlois agreed that the resolution warrants more thorough review, as does the information already released by OSHA and the Chemical Safety Board. She felt that it was fair, based on this evidence, to ask whether it is the opinion of the Commission that a situation is dangerous and asked what other legal consequences the City Attorney felt that declaration might carry.

Mr. Privat said it may be reasonable for the Commission to express an opinion about the safety of the facility but again requested that staff be allowed time to prepare a reasonable legal opinion. He suggested that staff be allowed this time and the opportunity to discuss its position with either the Chair or a committee of three appointed by the Chair.

Commissioner Langlois said she would like to at least secure a place holder on the next agenda and in the meantime, is very willing to participate on a subcommittee to examine the issues.

Chair Lane agreed that most feel something needs to be done regarding the refinery but it remains unclear whether it is under the purview of the Commission to declare portions of the refinery dangerous. Given that, she is not prepared to vote in support of placing the resolution on the agenda without further research. She reviewed the Commission's other options which would be to create a subcommittee and/or consult with outside counsel. She also noted that if the Commission chooses not to act tonight, it retains the ability to place the item on the agenda any time before July 11, 2013.

Commissioner Reyes said he personally felt this had been delayed long enough and was disappointed staff didn't feel the same, although he understood their position. He said that he did not feel particularly comfortable placing a resolution the Commission and staff have not reviewed on the agenda verbatim but did want to allow the public an opportunity to discuss this in a public hearing.

Mr. Karras clarified that while CBE would love for the Commission to adopt the resolution, the real request is that a hearing be scheduled to decide the substance of the issue including whether the statements contained in the resolution are accurate.

Commissioner Langlois modified her motion to request a placeholder on the July 11, 2013 meeting for an agenda item relating to the points outlined in the resolution, with direction that a subcommittee of the Commission work with staff to review and provide recommendations regarding the resolution.

Ms. Velasco noted that the Commission typically holds an evidentiary hearing without a resolution when considering the revocation of a CUP. While there is no CUP under consideration here, it could be a reasonable path. Alternatively, the Commission might ask staff to prepare two resolutions; one declaring it safe to continue operations and another declaring it unsafe due to dangerous conditions. She said her recommendation would be the former, with the Commission taking public testimony and then providing direction to staff to return at a later time with a resolution that supports the Commission's findings. Given that there is still a question regarding the Commission's purview, recommendations regarding findings and a resolution by a subcommittee is in some way predetermining a position and may not be advisable.

Commissioner Choi said he was actually very heartened by and supportive of the idea of a subcommittee.

Commissioner Langlois assured staff that her intent was to work to identify an appropriate format for discussion and public input, not to come at it from any particular purview.

Chair Lane said Commissioner Langlois' point was that the Commission could hold a hearing, take public comment on the issue and from that meeting, decide what it wants to do, including developing a resolution. Another option for the next meeting is to develop a resolution and take public comment. Ms. Velasco concurred. Chair Lane suggested that a subcommittee should be formed of 3 commissioners to work between now and the next meeting to develop a resolution based on the items that CBE has crafted, and then hold a hearing for the July 11th meeting.

Commissioner Choi made a motion to continue the item to July 11th.

Commissioner Butt asked to amend the motion to include outside legal consultation. He noted it is not uncommon for the Commission to obtain outside assistance in special situations.

Commissioner Langlois said she supported the concept and asked whether there is any budget for such a thing.

Chair Lane and Commissioner Butt agreed that consultation would be idea but were unsure regarding the mechanism or timing required to retain that kind of expert opinion. Commissioner Langlois welcomed additional legal input and Commissioner Choi felt time was of the essence and voiced concern over the mechanism. He would like to go forward and retain that kind of expert opinion. Chair Lane said the motion could include this as a primary task the committee could work on as soon as possible.

Commissioner Reyes said he discussed getting an outside legal opinion with the City Attorney who said there were no resources for such a thing.

Mr. Privat explained that Planning staff has resources and a budget for consultants, typically limited to environmental and land use consultants. The City Attorney's office does not have a budget for third party consultants for this type of action.

Chair Lane thought it might not be productive to request staff's assistance in finding a land use attorney to consult with when staff has been clear that they do not consider this to be a land use issue. She recommended that the task be assigned to the subcommittee. She requested a vote.

Commissioner Reyes indicated his support and thanked Commissioners Langlois and Choi for bringing the motion forward.

Commissioner Martinez also indicated his support. He said that in failing to act in a timely fashion on what is clearly an important issue, staff has forced the community to do so. He said he saw no issue with placing this on the agenda knowing that the Commission has the ability to table or postpone the matter based on what comes out of the subcommittee.

Commissioner Willis said it is important to push this as far as the Commission's jurisdiction will allow and volunteered to serve on the subcommittee.

Chair Lane said she would abstain.

Commissioner Butt indicated his support but also reiterated his reservations, said he was eager to hear another expert opinion, and agreed to serve on the subcommittee.

Commissioner Choi indicated his support, stressed that he did not dispute the importance of the resolution in any way but reiterated his concerns about preserving the independence of the Commission.

ACTION: It was M/S (Langlois/Choi) to agendize a public hearing for consideration of a resolution declaring portions of the Chevron refinery unsafe and to create a subcommittee comprised of Commissioners Butt, Langlois and Willis to prepare the resolution and look into obtaining a third party legal opinion; motion carried by a vote of 6-0-1 (Lane abstained).

Chair Lane said that while she did abstain, she supported CBE's advocacy and commended the Commission for wanting to see the issue aired in a public setting.

Commissioner Butt welcomed Commissioner Martinez. He stated the Pt. Richmond summer concert series, with which he has been involved with for the last twelve years, begins in June and will include five concerts. He also reminded the public of the city's three farmers' markets – Pt. Richmond on Thursdays, Main Street on Wednesdays and City Hall on Fridays.

Adjournment - The meeting was adjourned at 8:01 p.m. to the next regular meeting on July 11, 2013.