

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

450 Civic Center Drive, Richmond, CA

August 1, 2013

6:30 p.m.

COMMISSION MEMBERS

Sheryl Lane, Chair
Ben Choi, Vice Chair
Marilyn Langlois, Secretary
Melvin Willis

Eduardo Martinez
Andrew Butt
Roberto Reyes

The regular meeting was called to order by Chair Lane at 6:32 p.m.

Chair Lane led in the Pledge of Allegiance.

ROLL CALL

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

Absent: Commissioner Butt

Staff Present: Richard Mitchell, Jonelyn Whales, Hector Rojas, and James Atencio

MINUTES - None

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, August 12, 2013, by 5:00 p.m. and as needed, announced the appeal process after each affected item.

CONSENT CALENDAR

Chair Lane reported there were two items on the Consent Calendar and 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. Whales noted one speaker for Item 2, with no position. Chair Lane confirmed the item could remain on the Consent Calendar; however, she removed the item from the Consent Calendar.

BROWN ACT – PUBLIC FORUM

Ms. Whales reported there was one speaker.

Cordell Hindler, Richmond, spoke on the need for safe and affordable senior housing in Richmond. He suggested that a beach like stop in the marina would provide a much needed increase in local business and thought his neighborhood would be well served by a new store.

Commissioner Reyes asked his opinion on developing a senior housing complex over a senior accessible clinic near the former Bank of the West building.

Mr. Hindler said he spoke with the property owner and believes it is a good idea.

Item Removed from the Consent Calendar:

- 2. PLN13-113: Moore Residential Addition and Variance - PUBLIC HEARING** to consider a Design Review Permit to construct a rear addition consisting of a ±400 square-foot deck and ±209 square-foot storage area at 126 Crest Ave. (APN:558-051-006). The Design Review Board recommended Conditional Approval of the subject Design Review Permit. SFR-2, Single-Family Very Low Density Residential District. Mark & Claire Moore, owners / applicants; Planner: Hector Rojas; Tentative Recommendation: Conditional Approval

Ms. Whales gave the staff report and brief overview of project, which is a proposal to construct a new 400 square foot deck at the rear of the lower level as well as a 200 square foot enclosed green roof with landscaping and native plants. The Design Review Board heard the item on July 10, 2013 and recommended approval of the variance and related Design Review Permit.

Chair Lane called upon the applicant.

Claire Moore, applicant, stated that while she and her husband have been improving their home for some time, this is the first permit they have requested for exterior work. The primary intent of the improvements is to provide outdoor play space for their two children and a small storage space for tools. The request for a variance is to enable them to work around existing concrete foundations from a previous residence that was destroyed by fire sometime in the early 1900s.

Chair Lane opened the hearing.

Public Comment:

Cordell Hindler was unable to recall his comments and opted to forego his time.

Commissioner Martinez asked and Ms. Moore confirmed that the Design Review Permit includes legalization of two bedrooms. He inquired about the size as well as ventilation and light in each room.

Ms. Moore explained that both rooms were designed with proper egress windows, natural ventilation, fire sprinklers, alarms and everything required to meet the California Building Code requirements for a bedroom. She also explained that the rooms were constructed as part of the last permit but are now being migrated into current permit to legalize them.

Mr. Rojas summarized staff's recommendation: conditional approval.

The public hearing was closed.

ACTION: It was M/S (Langlois/Choi) to approve PLN 13-113, with the findings and conditions noted by staff; unanimously carried.

Hold Over Item:

1. **PLN13-154: Formula Restaurant Ordinance** - PUBLIC HEARING to consider making a recommendation to the City Council to adopt an ordinance placing restrictions on formula Eating Establishments in the C-1 Neighborhood Commercial District of Point Richmond. C-1, Neighborhood Commercial District. City of Richmond, applicant; Planner: Hector Rojas; Tentative Recommendation: Recommend Approval to City Council.

Hector Rojas noted there were a total of 5 speakers on the item, 3 in favor, 1 opposed and 1 taking no position.

Mr. Rojas gave the staff report and a brief overview of the item. The proposed ordinance characterizes formula restaurants as food establishments with standardized menus, ingredients, uniforms and layouts which are identical to 5 or more restaurants, regardless of ownership or location. On March 11, 2013, planning staff attended the Richmond Neighborhood Coordinating Council meeting and informed all neighborhood groups of the possibility of establishing a formula restaurant prohibition in C-1 districts, which include 14 commercial clusters spread throughout the city. The Pt. Richmond Neighborhood Council was the only neighborhood to express an interest, based on the concern that the addition of formula restaurant establishments would impact the unique character of the Pt. Richmond historic district. Staff believes the proposed ordinance falls within the City's police power and is consistent with State law and the City's General Plan.

Commissioner Reyes noted that the proposed ordinance contained nearly two pages of legal background and Mr. Rojas confirmed that this is intended to support the argument that the City possesses the police power to approve such an ordinance.

Chair Lane called upon the designated speaker for those in favor.

Jeff Lee, Richmond, stated that Mr. Rojas did an excellent job of identifying the pertinent issues. He stated that the proposed ordinance evolved concurrently with the General Plan with the intent of continuing to foster neighborhood definition and the small community base of locally-owned businesses in the C-1 district. He reviewed the C-1 district, as defined by the City's Zoning Code, noting that it is intended to create, preserve and enhance areas of small scale retail establishments serving the immediate neighborhood. He stated that considerable community outreach and collaboration went into making this an ordinance that others may use as a template to help better define and protect the character of their own neighborhoods.

Chair Lane asked him to describe the outreach process. Mr. Lee deferred to the following speakers.

Public Comments:

Marsha Tomassi, Richmond, provided background on the Point Richmond Neighborhood Council's efforts, which began in December 2010 with the adoption of a resolution authorizing the creation of a committee to analyze the potential impacts of restricting formal restaurants and retail establishments. The committee, comprised of 6 members from the neighborhood council and local business association, reached out to 22 cities nationwide that had adopted something similar and prepared a draft definition of the Point Richmond C-1 district that was submitted to the City Attorney's office in August 2011. After numerous meetings with various city

departments and community groups, the committee drafted an ordinance based on this definition for the City's consideration.

Margaret Jordan, Point Richmond Neighborhood Council President, said the catalyst for this movement was an application from Subway to operate in Pt. Richmond. This generated considerable community concern for maintaining the smaller and locally owned business trend in historic Point Richmond. She noted several changes being proposed after additional discussion with the Pt. Richmond Business Association and reported that the neighborhood council informally voted 25-2 in favor of the ordinance at last night's meeting. She said that the neighborhood council, business association and community are committed to working together to leverage the advantages of being a community of small businesses and see this as an opportunity for other neighborhoods with C-1 districts to do something similar.

Commissioner Langlois asked and Ms. Jordan confirmed that the definition of a formula restaurant has been amended to describe a restaurant with substantially similar standardized features to more than 5, rather than 3, other restaurants.

Richard Lompa said he is both a Pt. Richmond resident and owner of the property currently occupied by Up & Under Pub and Grill. He said he was flabbergasted to see that this was given agenda time and, while he had no great love for formula restaurants, he was strongly opposed to any sort of discrimination against people or businesses. He noted that larger businesses, such as Hotel Mac, are supported largely by people outside of the local community and also that no one seemed to be opposed to the Starbucks in Pt. Richmond. He pointed out that a number of commercial buildings in Pt. Richmond are currently vacant and said that instead of discriminating he would focus on encouraging anyone with an interest to open a business in town.

Cordell Hindler stated no position. He said he supports Pt. Richmond businesses and prefers not to judge any business on its ownership or location. He asked the Commission to support the proposed ordinance.

Rebuttal - Proponent

Mr. Lee said he did not particularly agree with Mr. Lompa's position, which is more of any business is good business philosophy that doesn't necessarily lend itself to the intent of the ordinance. He suggested that any ordinance, by definition, would seem to discriminate against something.

Commissioner Reyes asked whether the Chamber of Commerce has expressed a position.

Mr. Lee said "no" though noted that Josh Genser, one of the original committee members, is also an active member of the Chamber. When asked if Mr. Genser continued to participate in and support the ordinance, Mr. Lee could not say.

Mr. Lompa said his own brief discussion with the Chamber did not indicate the kind of support being suggested by the proponent, largely because of its discriminatory nature. He said that to pick and choose the types of businesses allowed here is juvenile. He also noted that over 85% of McDonald's restaurants are franchise owned, with supplies coming from local sources and supporting the local economy. He also asked the Commission to recognize that well established local businesses such as Spenger's in Berkeley, which are at some level of disadvantage

against larger franchises, are still able to hold their own because of their image, the local environment, and the level of service they provide.

Mr. Rojas summarized staff's recommendation: recommend approval to the City Council.

Commissioner Willis moved the staff recommendation. He acknowledged the inventory of commercial properties in town but said it is still good to set something aside where the smaller, more unique business can get a good and fair start. He stressed that it is not a matter of discrimination; rather it is about preserving a certain stat, art and culture that the local community can appreciate.

Commissioner Langlois thanked everyone for working through such an open and collaborative process. She said that discrimination in her opinion constitutes unfair or unjust behavior towards a whole group of people. The proposed ordinance simply makes the case that a certain type of business, which happens to be standardized, is not appropriate for a particular neighborhood while still allowing any other type of business that fits within the zoning parameters established. She noted similar land use and zoning restrictions throughout town, such as those related to liquor stores or hazardous operations. She said it is important to support the community in its proposal to preserve the very attractive, homey and personable character of the Pt. Richmond neighborhood.

Commissioner Choi concurred. He acknowledged that when the Subway proposal first came forward, he was dubious of fostering a situation where people could choose their neighbors or discriminate against the franchise. He applauded the neighborhood council for moving forward and creating a framework that helps anyone looking to do business here to understand the community's position. He also acknowledged that some might argue a business without community support will fail, but said this isn't always true. He referred to Mr. Lompa's example of Spenger's and said it is really a shadow of what it once was and if not for the low rents he suspects were grandfathered in, it would not be able to compete against some of the larger upscale chains that have taken much of its business. He agreed that this is not the same type of discrimination referred to by Mr. Lompa and that any ordinance, by its very nature, discriminates between certain elements. He stressed that what frustrated him most with regards to the Subway application was the lack of a coherent message that could have saved the applicant considerable time and expense.

Chair Lane echoed his comments. She said this provides clear guidance for business owners looking to operate in the area and thought a number of other C-1 neighborhoods would be interested in adapting this to their own needs. She questioned whether other neighborhoods and businesses are as well organized as those in Pt. Richmond and said she would like to see a more formal outreach process if this comes forward for another neighborhood in the future.

Commissioner Reyes said he had agreed in part with Commissioner Choi when this first came forward. He was pleased to see that the committee took its time and washed away any notions of exclusion. He felt this presents something that others could use as a model. He said he appreciated the ability for communities to define themselves, stressed the value of self-identification and said he saw this as the start of something great.

Commissioner Martinez praised the committee's work. He also agreed that this is not discrimination; it is a reflection of the community's desire to preserve what exists. He noted that ordinances typically come about when someone attempts to push beyond the accepted

envelope and that it is the right and responsibility of the community to ensure that its city remains as envisioned.

ACTION: It was M/S (Willis/Choi) to recommend Conditional Approval of PLN13-154 to the City Council; unanimously carried.

COMMISSION BUSINESS

3. Reports of Officers, Commissioners and Staff

Richard Mitchell, Director of Planning and Building Services, said the City is reportedly seeing strong activity in terms of housing projects that are currently under consideration and will eventually come before the Commission. He reported that Councilmember Gary Bell passed away that morning and suggested the Commission adjourn tonight's meeting in his memory.

Commissioner Reyes stated that he was disappointed with the City Council for not taking definitive action on the proposal regarding the Chevron refinery at its latest meeting. He asked how staff is able to provide two pages of legalese on police power relative to formula restaurants but cannot manage to do the same on a much more critical issue for the community.

Commissioner Martinez stated that the very argument used to establish the Commission's authority relative to the ordinance just passed also lends itself to establishing the Commission's ability to address the Chevron refinery. He said he feels privileged to be part of the Commission and to have access to the wonderful information and opportunities that his position affords.

Commissioner Willis invited the public to participate in a Community March, to begin at 10 a.m. on August 3 at the Richmond BART station, on the Chevron refinery.

Commissioner Choi had nothing to report but did state that corporations are not people.

Commissioner Langlois extended her heartfelt condolences to the family of Gary Bell. She noted that The Mayor's office issued a press release concerning the suit the City of Richmond will be filing against Chevron. A press conference is also planned tomorrow at 11 a.m. on the steps of City Hall. While legal documents will not be made available to the public until tomorrow, her understanding is that the lawsuit is largely related to safety issues at the refinery. As indicated by Commissioner Willis, concerned community members will be gathering at 10 a.m. on Saturday at the Richmond BART station for a march and rally at the refinery gates. Everyone is welcome.

Chair Lane noted she had some professional familiarity with Mr. Bell through some of his advocacy efforts related to consumer finance. She noted he also served on a committee of the Consumer Financial Protection Bureau and said his voice would be deeply missed in that arena.

Adjournment - The meeting was adjourned at 7:46 p.m., in memory of Gary Bell, to the next regular meeting on September 5, 2013.