

**EXCERPT OF THE MINUTES FOR PLANNING COMMISSION  
REGULAR MEETING, DECEMBER 15, 2011**

**Item 7: Public Hearing**

**A.** Consideration of Amendments to the City's Zoning Code Related to Miscellaneous Changes to the NA-2, SA-2, DA-3, DA-5, IL, IG and IP Zoning Districts related to Assembly Uses, Commercial Recreation, Cultural Institutions and Entertainment Activities. (Livermore)

**Senior Planner Livermore** presented her staff report via a PowerPoint presentation and explained the staff recommendations as follows:

- Add Assembly Uses in Commercial Districts NA-2, SA-2 and DA-5 as Conditionally Permitted Uses;
- Add Cultural Institutions in Commercial District DA-3 as a Conditionally Permitted Use;
- Remove Commercial Recreation and Entertainment Activities as Conditionally Permitted Uses from the following Industrial Districts: IG, IL and IP.

**Senior Planner Livermore** said the City has conducted several in-depth studies of Commercial Districts. As for the stretch of East 14th Street devoted to commercial use, residents have indicated areas they felt should be reserved for vital, vibrant retail activity as well as residential and mixed-use development.

Because Assembly Uses are conditionally permitted in residential areas, she said, staff also recommends allowing such uses in commercial districts with residential components such as NA-2 (East 14th Street from Georgia Way to the Oakland border), SA-2 (East 14th Street from Sybil Avenue to 136th Avenue) and DA-5 (on Alvarado and Martinez Streets between West Estudillo Avenue and West Juana Avenue).

In terms of the Industrial Districts, she noted, the 1992-2002 General Plan update represented input from a 52-member advisory committee. The committee recommended goals designed to retain a strong industrial base, including attracting high-tech companies and facilitating adaptive reuse of older industrial buildings. The committee specifically recommended protecting the City's industrial sanctuary from encroachment by potentially incompatible uses.

From a planning perspective, she continued, other communities have taken different approaches to job retention and creation for various reasons. Fremont, for example, encompasses some 91 square miles and has 4,136 acres designated for industrial uses, while San Leandro's 15 square miles contain only 1,800 acres for industrial uses. In recommending the removal of Commercial Recreation and Entertainment Activities from the list of conditionally permitted uses in San Leandro's Industrial Districts, she said, staff is attempting to retain the industrial and employment base that those districts represent. At this time, she said, there's no record of either Commercial Recreation or Entertainment Activities operating in the Industrial Districts.

**Senior Planner Livermore** pointed out, too, that a number of Commercial Districts either allow or conditionally permit both Commercial Recreation and Entertainment Activities: CC, CC(AU), CR, NA-1, NA-2, SA-1, SA-3 and DA-1. In addition, Commercial Recreation is either allowed or conditionally permitted in the CRM District, while Entertainment Activities are also permitted or conditionally permitted in CN, CN(AU), SA-2, DA-2 and DA-5.

**Senior Planner Livermore** also reported that no comments were submitted on the Initial Study and Negative Declaration during the 20-day comment period, but Bal Theatre owner Dan Dillman had submitted a letter (dated December 15, 2011) about the proposed changes to the Planning Commission (see attached). She summarized his concerns addressed in the letter to the Planning Commission. **Commissioner Crow** distributed a packet of supplemental information (see attached), including “before” and “after” zoning maps, to the other Planning Commissioners and staff that he prepared for the meeting. He noted that staff’s proposal would eliminate about 80% of the space now available for Commercial Recreation and Entertainment Activities. He said he cannot see eliminating all of this space in the City as a plausible action. Commissioner Crow noted that Article 7 of the Zoning Code has strip clubs and artists' studios as permitted uses and daycare facilities and hazardous waste repositories as conditionally permitted uses.

**Commissioner Crow** added that he can imagine a nuclear storage facility next door to a daycare center, with a strip club or sex shop 1,000 feet away. At the same time, he said, the proposals would prohibit putting a family recreation center into a warehouse. In an infill city such as San Leandro, he said, the only places to house activities such as indoor soccer fields and rock-climbing facilities, bowling alleys, go-kart race tracks, etc., would be in light industrial buildings.

Referring to Senior Planner Livermore's point about Fremont being a much larger city, he asked about Santa Clara. He noted that the San Leandro Chamber of Commerce and City staff have put a great deal of effort into emulating some neighboring cities when it comes to tech-sector recruitment. He noted that commercial recreation and entertainment are conditionally permitted in industrial areas by Santa Clara's zoning code. He also pointed out that healthcare professionals San Leandro wants to potentially attract with the new Kaiser medical center in the City would want access to quality recreation, as would the highly educated professionals and "tekkies." Commissioner Crow noted the irony of having tech-sector recruitment among the reasons behind the proposal to eliminate Commercial Recreation and Entertainment Activities from the City's industrial districts.

**Commissioner Crow** questioned whether the review of Commercial Recreation, Entertainment Activities and Assembly Uses in the Zoning Code is in fact part of a periodic process, because Entertainment Activities and Assembly Uses are particularly sensitive at this time. He cited General Plan Policy 10.05, Retail Encroachment, which seeks to protect the industrial base by limiting expansion of big box retail and other larger retail uses in industrial areas. This called for a specific action, he said, and he doesn't understand why a periodic review would not address removing big-box retail stores from among the permitted uses in the industrial areas.

**Commissioner Crow** also cited General Plan Policy 8.07, Cultural Arts and Entertainment, which fosters opportunities for cultural, recreational and entertainment uses in the City like theatres, cinemas, art galleries and live entertainment venues. The City does have the Bal Theatre and a new art gallery, he acknowledged, but the proposed changes seem counterproductive to this General Plan policy.

In researching whether residents of San Leandro have an appetite for more entertainment, Commissioner Crow identified a City survey in which respondents chose live shows, concerts and skating as their top three preferences and noted the proposal would eliminate all of them from the industrial districts. Another survey asked residents how important they considered certain types of developments in the City; entertainment places received the highest responses, at 80%, with other options being restaurants, small businesses and stores and large retail stores.

**Commissioner Crow** said that he suspects a conclusion to make the proposed changes was drawn at some point, and then staff came up with justification for that conclusion, and he wants to know the real reasoning behind the proposal. Considering that transparency is among Mayor

Stephen Cassidy's top priorities, Commissioner Crow said that he'd appreciate more transparency in this instance.

In response to Commissioner Crow's inquiry into her role and experience, **Senior Planner Livermore** summarized her professional qualifications, including mention of her involvement in the 1991 Zoning Code update and the General Plan update. She explained that the slowdown in projects creates opportunities to address such work as Zoning Code updates, and that frequent discussions between the Community Development Director and City Manager lead to shifts in workload and reassessment of priorities. For efficiency's sake, she continued, staff tries to package amendments for Planning Commission and City Council consideration.

**Senior Planner Livermore** added that Zoning Code changes including tonight's proposal and past efforts to address big box retail provisions turn out to be less straightforward than staff expects sometimes. She noted that BZA members raised a lot of questions previously so the staff report prepared for the Planning Commission meeting tonight contains the detail it does. She suggested that the Planning Commission discuss Commissioner Crow's points before reaching a recommendation to forward to the City Council, which is the ultimate arbiter of Zoning Code amendments.

In response to further questions about viable uses that existed in the industrial area from Commissioner Crow, **Senior Planner Livermore** said that she is not aware of any previously existing Commercial Recreation facilities there. Nor, she said, is she aware of any currently operating artists' studios or daycare. She said that she doesn't know about any strip clubs and/or sex shops there, but believes there may be a health and fitness center. She said that the health and fitness clubs attracted to an industrial area tend to be smaller and more compact than Commercial Recreation uses such as the Bladium and City Beach facilities. **Commissioner Crow**, noting that health and fitness clubs are permitted uses under the current Zoning Code, said that he doesn't understand why the City would want to eliminate recreation but leave health and fitness centers. Senior Planner Livermore said that one thing that hasn't entered the discussion is parking. Industrial properties in San Leandro have parking requirements on the basis of building square footage, from 750 to 1,500 square feet, whereas large Commercial Recreation facilities would have significantly greater parking requirements.

**Commissioner Fitzsimons** asked what staff considers incompatible about Commercial Recreation and Entertainment Activities that are located in industrial areas. He understands that residential uses would not be compatible, but suggested that uses involving night and weekend activity would be, because they probably would have different hours of operation. Industrial uses, he observed, tend to be Monday through Friday, early morning to early afternoon. Senior Planner Livermore said that it seemed to improve overall land-use compatibility in San Leandro to separate the Commercial Recreation and Entertainment Activities from industrial uses. She referred to City Beach in Fremont, which attracts large numbers of people. While such a facility might seem compatible at this point, she said that she can imagine conflicts arising if, for instance, a 24/7 heavy trucking business were to move into a vacant property next door. Those are the types of situation that she said the proposals would help San Leandro avoid. Bit by bit, she said, such conflicts would erode the viability of the industrial base and inhibit the City's ability to keep the area's industrial focus.

**Commissioner Crow** asked whether any San Leandro buildings outside the industrial area could accommodate an indoor soccer field if someone wanted to invest a lot of money retrofitting a warehouse for that purpose in San Leandro. Senior Planner Livermore said that in the scenario he described, the Office of Business Development would look for appropriately zoned locations to facilitate the development.

Based on the staff report, **Commissioner Rennie** said he can't picture particular properties that would be affected and thus has trouble understanding how the changes would affect zoning in the City and evaluating before-and-after conditions. He pointed out that the lack of definitions of Commercial Recreation, Entertainment Activities and Assembly Uses also makes it difficult to assess. He suggested that perhaps staff is so immersed in the process that it's difficult for them to step back and consider the issue from the perspectives of Commissioners and others who aren't so deeply involved.

**Commissioner Rennie** said he supports preservation of the industrial area, but is struggling to see why we'd want to eliminate Commercial Recreation but leave Daycare intact. If the proposals are economically driven, he added, he would like to know the basis, but none of that analysis is included for evaluation either. He said that his viewpoint differs from Commissioner Crow's, but he shares the frustration in not understanding what these proposals would accomplish.

From a procedural point of view, **Commissioner Fitzsimons** asked whether this is a time for questions, followed by statements from the public and then further comments from Commissioners, or whether Commissioners should combine questions and comments. **Chair Collier** said that it's a time for questions and comments for staff, depending on what the Commissioners feel they need to know before they make a decision.

**Commissioner Reed** said that he, too, has been trying to digest the staff report, determine the reasoning and see the pros and cons. He said that he knows the staff well, and respects their dedication and experience, but it's still bothersome to try to digest so much from one big staff report. He thought, too, that the proposals may signal an overreaction to the tattoo party tragedy, because as he put it, not all the zoning in the world would have prevented that and it could have happened anywhere.

**Commissioner Reed** also suggested that the proposals represent "too much too soon," and indicated that the City is short on recreational facilities. Although he said he'd do everything he can to protect the industrial base that's made San Leandro viable, he also considers the broad program recommended contrary to providing maximum flexibility while maintaining good zoning controls. He does not see a problem in having batting cages, rock climbing facilities and other such activities within the industrial area.

**Commissioner Crow** asked whether the dispute between the City and Faith Fellowship Foursquare Gospel Church is behind the proposed code changes. Assistant City Attorney Pio Roda said that he is not at liberty to comment on litigation in progress, but he said that his office reviewed the proposed changes and found them reasonable. He said that, speaking in the abstract, he supposed it's possible for any church to argue that Assembly Use should be allowed in a zone that allows Commercial Recreation and Entertainment Activities.

**Commissioner Rennie** said that he shares Commissioner Reed's concerns about where Commercial Recreation and Entertainment Activities have a practical chance of finding space in San Leandro, and that the proposals may go too far. While he said that he isn't necessarily opposed to reducing the availability of those uses in the industrial areas, he said he's not persuaded there's sufficient opportunity for them elsewhere in the City.

**Chair Collier** added that restricting viable uses is problematic, particularly in current economic conditions. She pointed out that with regulations as they now stand, any Commercial Recreation or Entertainment Activities would have to meet parking, access and other requirements in order to be even conditionally permitted. Further, she said, the City has the right to require other conditions, including options for periodic reviews when it issues conditional use permits (CUPs). For that reason, she said that she had no problem leaving the affected uses as conditionally permitted in the IG, IL and IP Districts.

**Chair Collier** said that she at first gave some thought to recommending leaving Commercial Recreation and Entertainment Activities as conditionally permitted in only the IL and IP Districts, but decided against it because those two districts occupy such limited slices of land in San Leandro. She said with so many vacancies in the industrial areas, she would welcome the first person to come along to rent an idle 30,000-square-foot building for practically any purpose. Chair Collier said she agrees with the proposed changes regarding Assembly Uses, but the other proposals can come back later if necessary.

In response to Commissioner Crow, **Chair Collier** said that if the Commission so chooses, separate motions can be made on the different parts of staff's recommendation.

**Chair Collier** opened the public hearing.

San Leandro Chamber of Commerce President and CEO **Dave Johnson** agreed with Chair Collier that eliminating opportunities makes no sense, in any community, in any economy. He stated that taking away choices in San Leandro particularly makes no sense at a time when the broadband service to which Patrick Kennedy and OSIsoft have committed will enable the City to be one of three Bay Area communities (in addition to Santa Clara and Palo Alto) in the forefront of attracting high-tech businesses.

This broadband capability also would enable the City to attract businesses such as Dave & Busters, City Beach, art galleries, daycare centers and other things that residents and potential residents want, Mr. Johnson said. And, he pointed out, the businesses all would be well-controlled under CUPs. He also noted that San Leandro's Office of Business Development has been working hard with Mr. Kennedy and OSIsoft to bring the opportunity to attract new companies to fruition and to enable existing companies to improve their operations. He mentioned, too, a City Council work session on December 12, 2011, during which Karen Engle, Executive Director of the East Bay Economic Development Alliance (EDA), spoke about older industrial communities such as San Leandro having the opportunity to make creative reuse of some of its idle space.

According to Mr. Johnson, rather than looking back at a General Plan updated 10 years ago, San Leandro must look 10 years ahead. He said that the Chamber would work hard to be part of this process, which he sees as giving San Leandro a chance to brand and market the City and to provide jobs and opportunities for residents and prospective residents.

No other speakers came forward.

***Motion to close the Public Hearing***

***Dlugosh/Reed: 7 Aye, 0 No***

**Commissioner Dlugosh**, noting that he considers it more appropriate for Commissioners to make comments after the public has spoken, discussed his recent experience in closing a business and selling a 30,000-square-foot warehouse in San Leandro. After 16 years of it being occupied, he said he had to hold the building vacant for 18 months after closing the business. He added that he would have welcomed a use that may not have been typical of the building's last 40 years including any tenant who wanted to bring in a Commercial Recreation or Entertainment Activities use.

Therefore, **Commissioner Dlugosh** believes it ill-advised to limit property owners' options in San Leandro if they want to lease or sell a building of a significant size. He said that if other industrial area property owners were aware of the proposal before the Commission, they would be unhappy about it. He said this isn't the right time to be making a choice of this nature. In terms of

Assembly Uses in Commercial Districts, Commissioner Dlugosh said that he agrees with staff's recommendations.

**Commissioner Crow** thanked Commissioner Dlugosh for pointing out that the proposal would not only restrict movement into industrial areas, but also restrict current property owners' options. He said he isn't sure that such restrictions would make sense in any economy, particularly in an infill community such as San Leandro, which doesn't have room for adding a lot of buildings. He said that he doesn't have a problem with having Assembly Uses conditionally permitted in Commercial Districts NA-2, SA-2 and DA-5, stating that it would enhance the community, provide further opportunity for crime deterrence and community involvement.

**Commissioner Crow** said he also agrees with Commissioner Dlugosh that the Industrial District proposals, which would institutionally restrict uses of their buildings, would create an uproar among warehouse property owners if they understood what was going on. Commissioner Crow also said that Chair Collier made a good point about CUPs enabling the City to retain control over what Commercial Recreation and Entertainment Activities might be approved in industrial areas.

**Commissioner Fitzsimons** said that staff's motivation in preparing the proposals is not an issue. In either case, he stated, it shouldn't affect the Commission's deliberations, which should be based only on the merits of the proposals. He said that during public hearings, he likes to wait until after the public has had an opportunity to speak to offer his own comments, and tonight, some of the things Mr. Johnson said made a lot of sense to him. In particular, Commissioner Fitzsimons said, we must look forward, so it doesn't make sense to base a decision on current economic conditions. Our scope should be five, 10, 20 or 40 years out, he said. Commissioner Fitzsimons also stated that Commissioner Dlugosh was on target when he said that recommending the proposed changes to the City Council would limit options. He also pointed out that it isn't necessary to fix something that isn't broken, particularly since the issue doesn't seem to be one of high risk that imminently presents potentially dramatic problems.

In response to a procedural question Commissioner Fitzsimons posed, **Assistant City Attorney Pio Roda** said that the Commission could forward a "no recommendation" option to the City Council as well as a positive or negative recommendation.

**Vice Chair Abero** said it's important to remember that Assembly Use isn't confined to churches, but could include, for instance, facilities such as union halls. She reminded fellow Commissioners to think about the broader application in the context of East 14th Street. As for removing the proposed conditionally permitted uses from the Industrial Districts, she said that she's spoken with many business owners who share Commissioner Dlugosh's concerns, and isn't inclined to place even more limits on their options to find buyers and/or tenants for their properties.

**Vice Chair Abero** indicated, too, that recreational facilities are the wave of the future, while heavy industry and manufacturing are no longer prominent parts of the San Leandro scene. Although this does not rule out manufacturing in the future, she added, we must be aware of the direction in which the economy is moving.

[Note: Commissioner Crow made a motion to allow Assembly Uses and Cultural Institutions as conditionally permitted uses in the Commercial Districts as recommended by staff. Commissioner Dlugosh seconded. However, Commissioner Crow withdrew and restated his motion after some further discussion.]

In response to **Commissioner Crow's** request for further clarification, Senior Planner Livermore read verbatim the definition of Assembly Uses in Article 3 of the Zoning Code. In response, **Vice Chair Abero** said she finds nothing wrong with any of the Assembly Uses described, but at a time when the City wants to develop the East 14th Street corridor to draw more people into the community and to make the downtown more pedestrian-friendly, she questions whether these

uses belong in a commercial center. She said it may be far-fetched, but she gave an example of a fraternity building on the former Lucky's grocery store site on East 14th Street and Juana Avenue.

**Vice Chair Abero** also specifically cited DA-5, the area behind the downtown BART station between Martinez and Alvarado Streets. It's pretty much vacant property now, she said, but adding Assembly Uses would open the door to something such as a mega-church. While she doesn't object to them, she said that Southern California has faced issues of mega-churches going bankrupt. If a mega-church built on that DA-5 property failed, she worries what might come next. She pointed out the limited possibilities when Target vacated its store at Hesperian and Lewelling Boulevards. Now, she said, San Leandro is one of the few U.S. cities with two Wal-Mart stores.

In response to **Commissioner Crow**, Senior Planner Livermore said that no Commercial Districts along the East 14th Street corridor currently have Assembly Uses as either permitted or conditionally permitted uses. Following studies in the North Area, she added, some segments were designated for pure commercial activity, while residential use was combined with the commercial and retail uses in other segments. For instance, she said that DA-1, which had been the Commercial Downtown (CD) District, excluded Assembly Uses. At one time, she continued, Assembly Uses were conditionally permitted in residentially zoned districts only.

In response to **Commissioner Fitzsimons**, Senior Planner Livermore said there's a difference between Assembly Uses from zoning code and building code standpoints, so in terms of zoning, City Hall (and the Council Chambers) wouldn't be considered an Assembly Use.

**Commissioner Rennie** said that it also strikes him as odd to designate DA-5 for conditionally permitted Assembly Uses. Senior Planner Livermore explained that when the downtown area zoning designations changed in connection with the adoption of the Transit Oriented Development (TOD) Strategy, some of them previously had residential zoning designations that included conditionally permitted Assembly Uses. She said that staff would be open to amending its proposal to make Assembly Uses conditionally permitted in NA-2 and SA-2, eliminating DA-5 from the recommendation.

**Commissioner Crow** agreed that DA-5 is more valuable for housing or commercial development than any Assembly Uses and asked if staff would be willing to eliminate the proposed Assembly Uses from NA-2 and SA-2 as well. He said these uses make more sense in DA-3 and DA-3(PD). Senior Planner Livermore said that the Planning Commission could make such a recommendation to the City Council. She also pointed out that at this time, DA-2, DA-3 and DA-4 already conditionally permit Assembly Uses, but DA-1, DA-5 and DA-6 do not.

**Commissioner Crow** withdrew his original motion.

***Motion to Add as Conditionally Permitted Uses:***

- ***Assembly Uses to NA-2, SA-2***
- ***Cultural Institutions to DA-3***

***Crow/Dlugosh: 7 Aye, 0 No***

[Note: Commissioner Crow moved (and seconded by Commissioner Dlugosh) to make a negative recommendation to City Council regarding staff's proposal to eliminate Commercial Recreation and Entertainment Activities as conditionally permitted uses in IG, IL and IP Districts. After further discussion, he withdrew and restated the motion.]

**Commissioner Rennie** said that he doesn't favor completely removing or completely retaining these uses in the industrial areas. He stated that a zoning change at this time, if any, should be more targeted. It should be more nuanced. Further, Commissioner Rennie isn't convinced that the

CUP process is the best way to control uses in the future, and we should be more thoughtful about deciding where conditional uses are allowed or prohibited.

**Commissioner Fitzsimons** agreed, adding that with a conditionally permitted use, an application cannot be turned down "just because." He also agreed that a more targeted approach makes sense, and if the City Council wants to pursue the matter, staff could be directed to take that approach. Because the issue doesn't seem pressing at this time, he said that he'd want a clear demonstration as to why Commercial Recreation and Entertainment Activities would be incompatible with industrial uses before he could recommend eliminating them.

**Commissioner Rennie** suggested that the City Council could direct staff to revisit the issue and develop a more nuanced approach to proposals regarding Commercial Recreation and Entertainment Activities as conditionally permitted uses in the Industrial Districts.

Commissioners agreed to take two votes, one to deal with staff's recommendation and the other in the vein that Commissioner Rennie proposed.

***Motion to Adopt Staff's Recommendation to City Council  
to Eliminate Commercial Recreation and Entertainment Activities  
As Conditionally Permitted Uses in Industrial Zones IG, IL and IP***

***Crow/Dlugosh: 0 Aye, 7 No – Motion Failed***

**Commissioner Crow** said he doesn't want to send any recommendation to City Council that would restrict any Commercial Recreation or Entertainment Activities uses in the City.

**Chair Collier** said it would be difficult and time-consuming to separate sections from within the IG District to target for either exclusion or inclusion of uses. She also pointed out that the City Council will receive the Planning Commission's input via the minutes anyway.

**Commissioner Fitzsimons** said he agrees with Commissioner Rennie's suggestion and also agrees with staff to the extent that he does not want to see San Leandro's industrial base eroded. He also stated that rather than replace industry, Commercial Recreation or Entertainment Activities in industrial areas should enhance amenities for the businesses and employees there. He suggested that perhaps particular conditions could apply to such uses in industrial areas. It's important to be careful about protecting the industrial areas, he emphasized, while at the same time permitting compatible uses that complement the industrial sector and help it grow. He said he voted against the staff recommendation because it's so black-and-white, and it's important to give the Council another option to consider.

**Commissioner Rennie** said that specific conditions might be one approach to Commercial Recreation and Entertainment Activities. Another, he said, might be to look at interfaces, buffers or certain corridors between lighter and heavier industrial uses. He suggested that another possibility is to limit the total number or total square footage of non-industrial uses allowed in the IG District. He said that a number of different tools in the zoning palette could be employed to add flexibility while retaining the industrial base.

**Vice Chair Abero** said that another part of the solution might be to more clearly define Commercial Recreation and Entertainment Activities within the context of Industrial Districts.

Noting that adult-oriented businesses are subject to requirements and limitations prescribed in Section 4-1683 of the Zoning Code, **Commissioner Crow** asked whether the additional regulations apply in any zoning district. Assistant City Attorney Pio Roda confirmed that those regulations would apply in any location. In response to a follow-up question, he said that regulations also could be written to apply solely to uses in particular zones.



***Motion to Recommend that if the City Council Chooses  
to Pursue Limitations on Commercial Recreation and Entertainment Activities  
as Conditionally Permitted Uses in Industrial Zones IG, IL and IP,  
City Council Shall Direct Staff to Develop a Nuanced Approach to the Limitations***

***Rennie/Abero: 5 Aye, 2 No(Crow, Dlugosh)***

If the City Council concurs with this recommendation, **Commissioner Crow** asked if future changes would go from staff through the BZA and then to the Planning Commission. Secretary Liao said the Planning Commission would vote on any recommended Zoning Code changes.