

## EXCERPT OF THE DRAFT MINUTES FOR PLANNING COMMISSION SPECIAL MEETING, JANUARY 26, 2012

### Item 8A: Miscellaneous

Modification of staff recommendation regarding amendments to the City's Zoning Code related to miscellaneous changes to the IL, IG and IP Zoning Districts related to Commercial Recreation and Entertainment Activities. (Livermore)

**Senior Planner Livermore** stated that at its meeting of December 15, 2011, the Planning Commission objected to portions of the staff proposal that would have:

- 1) Excluded Commercial Recreation and Entertainment Activities as Conditionally Permitted Uses in Industrial Districts IG, IL and IP, and
- 2) Added Assembly Use as a Conditionally Permitted Use in Commercial District DA-5.

Therefore, she noted, staff has revised the earlier proposal to leave the DA-5 District out of the group of Commercial Districts for which staff had proposed adding Assembly Use as a Conditionally Permitted Use while adding, Assembly Uses as Conditionally Permitted Uses in NA-2 and SA-2 Districts and Cultural Institutions to DA-3 as a Conditionally Permitted Use for City Council consideration.

As for revisions to the proposals regarding the Industrial Districts, Senior Planner Livermore, referring to a PowerPoint slide, noted that the proposal she presented at the December 15, 2011 meeting would have removed Commercial Recreation and Entertainment Activities as Conditionally Permitted Uses in Industrial Districts IG, IL and IP.

In pursuing the Planning Commission's request for a more nuanced approach to this issue, she noted that staff examined zoning designations already on the map [i.e., IL (AU), IG (AU) and IP (AU)], and added proposed language to those designations that explicitly spells out which uses would be 1) permitted, 2) conditionally permitted, 3) subject to administrative review, and 4) temporary uses subject to administrative review.

As a result of this change, she concluded that Commercial Recreation, Entertainment Activities and Assembly Uses are among the Conditionally Permitted Uses listed in the revised language for the IL(AU), IG(AU) and IP(AU). These uses would not be allowed in the Industrial Districts without the AU designation she noted.

**Senior Planner Livermore** explained that the revised proposal would continue to preserve the integrity of the City's industrial areas for industrial uses, while conditionally permitting those Commercial Recreation and Entertainment Activities – and Assembly Uses – in the AU Zoning District that are both appropriate and compatible. Referring to a map showing San Leandro's Industrial Districts, Senior Planner Livermore indicated that the AU Zoning Districts contain a total of 115 properties representing 129.31 acres. In response to a question from Commissioner Rennie, Senior Planner Livermore said that many of these properties are along the Washington Avenue and San Leandro Boulevard corridors.

**Senior Planner Livermore** also explained that because the revised proposal is less restrictive than what staff proposed at the December 15, 2011 Planning Commission meeting, this item was not noticed as a public hearing, but rather put on the agenda for this special meeting. Furthermore, no additional environmental review is required because the changes represent less impact than the original proposal she noted.

The City Council will consider this item at its meeting on February 21, 2012. Staff is asking the Planning Commission to review the proposed changes and recommend to the City Council adoption of the negative declaration and the proposed, revised text changes to the Zoning Code.

**Commissioner Rennie** asked for confirmation that the revised proposal, as it relates to the Industrial Districts, would add properties along the Washington Avenue and San Leandro Boulevard corridors to districts that would allow Assembly Uses, Commercial Recreation and Entertainment Activities as Conditionally Permitted Uses. Senior Planner Livermore said that his understanding is correct.

In comparison with the proposal made on December 15, 2011, **Commissioner Rennie** asked how much greater an area the revised proposal would authorize for Assembly Uses, Commercial Recreation and Entertainment Activities as Conditionally Permitted Uses. Senior Planner Livermore said that the revised proposal does not change anything in terms of Assembly Uses. As for the Commercial Recreation and Entertainment Activities, she explained that the current Zoning Code allows both as Conditionally Permitted Uses throughout the Industrial Districts. In contrast to staff's previous recommendation, the revised proposal would retain these as Conditionally Permitted Uses in a portion of the Industrial Districts [i.e., IL(AU), IG(AU and IP(AU))], but remove them from the IL, IG and IP Districts.

**Commissioner Rennie** said that he's concerned about the lack of noticing regarding this proposal. Secretary Liao said that under the City's Administrative Code, the noticing requirement for a special meeting is at least 24 hours prior to the meeting. He said Planning Commissioners were notified earlier this week. Commissioner Rennie asked whether anything more robust was undertaken besides posting notice of the meeting at City Hall 24 hours in advance. Secretary Liao said no. As a result, Commissioner Rennie indicated that owners affected by the proposed nuanced approach should have been notified that their properties are being considered in this fashion.

**Vice Chair Abero** invited comments from the public.

**Dave Johnson**, San Leandro Chamber of Commerce President and CEO, said that as he now understands it, the proposal would reduce the number of places in the Industrial Districts where Commercial Recreation and Entertainment Activities would be Conditionally Permitted Uses. If that's true, he said, the Chamber would still stand in opposition. As he recalled the Planning Commission's discussion at the December 15, 2011 meeting, it made sense to take a sophisticated look at what it would mean to eliminate these Conditionally Permitted Uses throughout the Industrial Districts. If the AU Districts are buffer zones, the revised proposal might work, but he said that he doesn't quite understand what's being proposed and therefore remains opposed to moving away from allowing for such uses throughout the Industrial Districts. He said that he fully supports the idea of Commercial Recreation and Entertainment Activities continuing to be only Conditionally Permitted Uses, so that the City would retain oversight and significant control over those uses and they wouldn't interfere with the fundamental industrial, light industrial and research uses.

With no other speakers coming forward, **Vice Chair Abero** brought the discussion back to the Commission.

**Commissioner Dlugosh** said that his understanding of the proposal is that Commercial Recreation would not be among the Conditionally Permitted Uses in the IG District, and that such uses would be Conditionally Permitted Uses only in the districts with the AU sub-designation. Senior Planner Livermore confirmed his understanding. Thus, Commissioner Dlugosh said, that would prohibit these Conditionally Permitted Uses on industrial properties in the areas west of I-880 and east of I-880, roughly between Marina and Floresta Boulevards.

When **Senior Planner Livermore** confirmed this as correct unless there were to be a zone change, Commissioner Dlugosh asked why the restriction would apply to those areas. Senior Planner Livermore replied that the Planning Commission disagreed with the staff recommendation, which was to remove Commercial Recreation and Entertainment Activities from among those uses that could be Conditionally Permitted Uses in the IL, IG and IP Districts.

That recommendation, Senior Planner Livermore explained, had been based upon the General Plan Advisory Committee's thinking that the City's industrial base was very important, and introducing such uses would threaten the industrial integrity of those areas. She said that staff reviewed General Plan goals and policies that also spoke to the desire to protect and preserve the City's industrial base.

According to **Commissioner Dlugosh**, it sounds similar to the discussion that took place when retail uses were allowed to go into the industrial areas, which some argued was inconsistent with the industrial designation. As it turned out, he said, retail has worked out fine in industrial zones. He said, too, that it seems that all of the uses included as Conditionally Permitted Uses in the AU designation would be applicable as well in the IL, IG and IP Districts.

**Senior Planner Livermore** said that IL(AU), for example, is the same as IL, except that in IL(AU), Assembly Uses, Commercial Recreation and Entertainment Activities are added on as Conditionally Permitted Uses. Commissioner Dlugosh said that he had misunderstood that those uses would be Conditionally Permitted Uses throughout the Industrial Districts. Senior Planner Livermore acknowledged that this issue is complicated to either explain or understand.

**Commissioner Dlugosh** went back to his comments at the December 15, 2011 meeting regarding the difficult time he had finding a buyer or tenant for his building in the IG District. Had the staff recommendation prohibiting Commercial Recreation and Entertainment Activities been in effect, he said he would have been unable to bring in someone who wanted to use it for an indoor go-kart racing operation. He characterized the idea of pursuing a zone change to accomplish something like that "beyond ridiculous" and totally out of character with San Leandro's longstanding efforts to eliminate spot zoning.

**Senior Planner Livermore** agreed with Commissioner Dlugosh's summary of the current recommendation as restricting property use throughout IL, IG and IP Districts that don't have an AU designation. He said that he has a hard time with that recommendation. When he first reviewed it, he'd hoped it would solve the problem; now, he said, he's pretty sure it won't. Commissioner Dlugosh said that staff is well-qualified to handle Conditionally Permitted Uses in those districts, particularly when the uses are spelled out as explicitly as they are in the revised proposal.

**Senior Planner Livermore** suggested that one possibility is for the Planning Commission to tell the City Council that the staff's nuanced approach is not what it hoped for and recommend pursuit of further nuanced approaches.

**Commissioner Reed** said that his review of the materials, staff's presentation and the subsequent discussion have brought him back to where the December 15, 2011 ended. He said that he agrees with Commissioner Dlugosh that staff has always been very competent, not overly restrictive, and careful not to send the business community a wrong message that this is not a business-friendly community. He said, too, that San Leandro has had and used a flexible approach to Commercial Recreation in industrial areas that has worked well so "if it's not broke, don't fix it."

**Commissioner Rennie** reiterated his concern with the noticing procedure regarding this meeting. He said that he believes it appropriate for the Planning Commission to act in a way whereby proper notice is given to property owners who would be affected by a proposed change, and then

given sufficient opportunity to review such change before the Planning Commission is asked to reach a decision.

Beyond that, **Commissioner Rennie** said that he has the same concern he expressed at the December 15, 2011 meeting. Although some Commissioners may have personal experience to draw upon to help guide a decision, he said, the Planning Commission simply doesn't have the information it needs, formatted in such a way that they can understand it, to know whether a recommendation makes sense.

He described the information presented as fractionalized, resulting in being able to see something substantially less than the whole picture in terms of current zoning, the properties affected and what's allowed. He said that part of the Planning Commission's job is to consider this recommendation in the context of the General Plan, but it doesn't help to know that a General Plan Advisory Committee may have considered it a good idea and expect the Planning Commission to rubber-stamp that opinion. He also said that, lacking personal experience in the matter, he doesn't even feel he has sufficient information to make a reasonable decision. He said that he's frustrated both in being asked to consider this proposal in light of the incomplete information and also in the way it came back to the Planning Commission. He said that he doesn't know whether he'd support the proposal or not; he simply doesn't have enough information.

**Vice Chair Abero** said that her primary concern is removing Commercial Recreation and Entertainment Activities as Conditionally Permitted Uses in a very large area. Despite the AU overlay, the uses would be gone from a substantial number of properties where they were previously Conditionally Permitted Uses. With the economy in the shape it's in and because we don't know what the future will bring, she questioned the idea of limiting the City's growth in that way. She said the next great thing may be recreation. For those reasons, she's concerned about excluding a number of properties from being able to have Commercial Recreation and Entertainment Activities as Conditionally Permitted Uses.

**Assistant City Attorney Pio Roda** said that the Planning Commission's previous recommendations will be forwarded to the City Council and consolidated with tonight's comments. At its December 15, 2011 meeting, he summarized, the Planning Commission voted (5-2) to recommend that the City Council have staff look at a nuanced approach that would not entirely eliminate Commercial Recreation and Entertainment Activities as Conditionally Permitted Uses in Industrial Zones IG, IL and IP. Staff went with that suggestion, and came back with the revised recommendation presented tonight, on the basis of the parameters provided and staff analysis. **Assistant City Attorney Pio Roda** also said that although the revised proposal is less restrictive than the one presented at the December 15, 2011 Planning Commission meeting, the properties affected are the same. **Commissioner Rennie** said that he was leaning in the same direction as Commissioner Dlugosh, who proposed sending a "no" recommendation to the City Council. He also said that while he understands the General Plan concerns, without General Plan analysis included in the information provided, he doesn't know how to make the assessments or whether what's being proposed makes good planning sense. In terms of the "nuanced" approach, the revised proposal doesn't reflect some of the considerations he had in mind, such as appropriate corridors and where it makes sense. Although an area of properties with an AU designation has been provided, there's no information about why the Conditionally Permitted Uses being discussed make sense in those areas but not in other IL, IP and IG Districts.

Other approaches to a solution that warrant consideration, as Commissioner Rennie said he had mentioned during the December 15, 2011 discussion, might be to limit the number of Commercial Recreation and Entertainment Activities awarded Conditional Use Permits in IL, IP and IG Districts, or establishing caps on total square footage devoted to either such use in each district. If all those avenues were explored, Commissioner Rennie said, we might come to the

same conclusion that staff recommends, but that information isn't available to the Planning Commission for analysis. Commissioner Rennie said that he wants to support what needs to be done, but he cannot approve something unless he can at least explain why he approves.

***Motion to Forward to the City Council a "No" Recommendation  
on the Staff Proposal Regarding Assembly Uses, Commercial Recreation and  
Entertainment Activities as Conditionally Permitted Uses in Industrial Zones IG(AU),  
IL(AU) and IP(AU)***

***Dlugosh/Reed: 4 Aye, 0 No, 2 Absent (Collier, Fitzsimons) ~ Motion Passes***

**Commissioner Dlugosh** said that if staff wants the Planning Commission to be able to make an informed decision, he believes staff needs to rethink the proposal in light of the broader picture of San Leandro's industrial area. While some Commissioners have more background in terms of the General Plan and are more familiar with the industrial area than others, he said that staff should err on the side of being more informative rather than less. Commissioner Dlugosh also said he's not sure whether there's an answer to the "why are we doing this?" question, but to arrive at an outcome that reflects what the Planning Commission believes its role to be, Commissioners need further explanation and a better understanding.

Affirming **Commissioner Reed's** understanding that the Planning Commission voted to reject staff's recommendation at the December 15, 2011 meeting, and that tonight's vote also rejects staff's recommendation, Vice Chair Abero said that he's correct.

**Commissioner Rennie** clarified that he would support some changes, that he has no ideological reason to be against some of the limits staff is recommending, and that he might even concur with staff, but he just needs to be better informed.

**Commissioner Reed** complimented Senior Planner Livermore for doing a good job, and expressed his appreciation for all the work she's done. What troubles him, Commissioner Reed said, is looking at the whole picture and trying to decipher what we want to accomplish. From that perspective, he said, the proposal needs some work and the Planning Commission needs more information and clarity concerning what we're trying to accomplish. **Vice Chair Abero** also thanked staff for all the work they do. She said this is a difficult task to undertake, and she wants staff to know that the Planning Commission and the community appreciate their efforts.