

MINUTES OF THE REGULAR MEETING OF THE FULLERTON PLANNING COMMISSION

COUNCIL CHAMBERS – CITY HALL

WEDNESDAY

JANUARY 9, 2008

7:00 P.M.

CALL TO ORDER: The meeting was called to order by Chairman Francis at 7:05 p.m.

PRESENT: Chairman Francis, Commissioners Bailey, Chaffee, Musante, Richmond, Savage, and Whitaker

ABSENT: None

STAFF PRESENT: Community Development Director Godlewski, Acting Chief Planner Eastman, Senior Planner Allen, Acting Associate Planner Kusch, Director of Engineering Hoppe, Captain Greg Mayes, Assistant City Attorney Barlow, and Clerical Assistant Flores

FLAG SALUTE: Commissioner Bailey

MINUTES: MOTION made by Vice Chairman Musante, SECONDED by Commissioner Savage, and CARRIED 5-0, with Commissioners Whitaker and Richmond abstaining, that the Minutes of the Regular Meeting of November 14, 2007 be APPROVED AS WRITTEN.

MOTION made by Vice Chairman Musante, SECONDED by Commissioner Savage, and CARRIED unanimously, that approval of the Minutes of the Regular Meeting of December 12, 2007, be CONTINUED until the next meeting.

ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

MOTION by Committee Member Savage NOMINATING Commissioner Bailey for the position of CHAIRMAN. Motion passed unanimously.

MOTION by Committee Member Chaffee NOMINATING Commissioner Musante for the position of VICE-CHAIRMAN. Motion passed unanimously.

PUBLIC HEARINGS

PRJ07-00240 – PM2007-236. APPLICANT AND PROPERTY OWNER: JEFF WEINER.

A request to subdivide an existing 1.23-acre site into two parcels on property located at 1423 Richman Knoll (approximately 395 to 435 feet northeast of the terminus of Richman Knoll) (R-1-20 zone) (Categorically exempt under Section 15315 of CEQA Guidelines) (JEA).

Acting Chief Planner Eastman stated that the applicant requested continuance of this matter. Staff is requesting that the item be continued to the February 27, 2008 meeting.

MOTION made by Commissioner Savage, SECONDED by Commissioner Whitaker and CARRIED 7-0, that said item be CONTINUED to the February 27, 2008 meeting.

PRJ04-00606A – CONDITIONAL USE PERMIT CUP-776D. APPLICANT AND PROPERTY OWNER: YOUNG SHIN.

A request to modify a previously-approved Conditional use Permit and Site Plan for a fellowship hall building addition at Fullerton Presbyterian Church on property located at 511 S. Brookhurst Road and 1818 West Avenue (west side of Brookhurst Road, approximately 120 feet and 240 feet south of West Avenue; and the south and north sides of West Avenue, approximately 170 feet west of Brookhurst Road) (O-P and C-2 zones) (Previously certified Mitigated Negative Declaration) (AKU).

Acting Associate Planner Kusch gave a brief overview of the project. An aerial view of the project site was shown, and the request explained. The request was to modify a Conditional Use Permit and Site Plan for a new fellowship hall building at the site. Acting Associate Planner Kusch explained that the request included removing 9 off-site parking spaces and reducing the fellowship hall assembly area by 352 sq. ft. to meet the required parking. In addition the Fullerton Presbyterian Church has a mutual shared parking agreement with the medical office located at 501 S. Brookhurst Road, on the southwest corner of West Avenue and Brookhurst Road. The medical office building property contains 25 parking spaces. Including these off-site parking spaces, a total of 136 parking spaces would be available for the church's use. Staff recommended approval based on the findings and subject to conditions contained in the staff report.

Public hearing opened.

Rosilee Gamboa, property owner of 501 S. Brookhurst Road and Executive Director of Sierra Health Center gave a brief overview of the medical clinic. Ms. Gamboa explained that Sierra Health Center and the Fullerton Presbyterian Church had a shared parking agreement. Ms. Gamboa believed that the medical clinic parking was limited and there would be less parking with a building addition at the church. Ms. Gamboa believed that a fellowship hall was not as important as healthcare. She also believed there would be a parking hardship during construction for the medical clinic patients.

Committee Member Chaffee asked Ms. Gamboa if the parking agreement was in writing, and Ms. Gamboa responded affirmatively. Acting Chief Planner Eastman clarified that the agreement was provided in the Staff Report, and the request before the Committee was a modification to the approved CUP reducing the parking, and square footage of the building.

Young Shin, project applicant, 1010 Crestview Dr., believed that the parking inconvenience for Sierra Health Center was Ms. Gamboa's dilemma. She stated that the CUP had been approved, and what was before the Committee was a reduction of nine off-site parking spaces.

James Haston, General Operations Manager of Sierra Health Center, 501 S Brookhurst, referenced the aerial map, and stated that the medical clinic could potentially block a section of the shared driveway, and the church would not be able access the parking area. He also stated that the applicant Young Shin was not the property owner (Fullerton Presbyterian Church), and asked if anyone off the street could request a CUP.

Commissioner Whitaker stated that the shared parking agreement was an issue that could be resolved by the church and the health clinic.

Mr. Haston asked if anyone was entitled to apply for a permit, and Acting Chief Planner Eastman responded that anyone could apply for a CUP provided that they have the property owners' authorization, and pay the application fees.

Public hearing closed.

MOTION by Commissioner Francis, SECONDED by Commissioner Chaffee, to re-open the public hearing.

Public hearing re-opened.

Ms. Gamboa, stated that the parking agreement was a limited agreement between Fullerton Presbyterian Church and Sierra Health Center, and could be cancelled if Sierra Health Center moved.

Public hearing closed.

Commissioner Chaffee asked staff about the recorded document provided in the staff report. Acting Chief Planner Eastman stated that one of the documents was a mutual agreement for parking purposes between the two property owners. The other document was a reciprocal access agreement that has been recorded with the County, and is related to a lot line adjustment that allows for reciprocal access between the two properties.

Commissioner Savage stated that he read the agreements and did not notice a cancellation date or method of cancellation unless both parties agree to cancel. City Attorney Barlow asked Acting Chief Planner Eastman if attachment 4 was related to the Sierra Health Center. Acting Chief Planner Eastman responded that attachment 4 was a declaration made between the Sunny Crest Village Clinic, and the Fullerton Presbyterian Church property and was a reciprocal access agreement. City Attorney Barlow stated that the exhibits that show which parcels are covered by the agreement were not attached and it was not clear that it governs the property. However, the agreement clearly covered access and maintenance of the common driveway and did not appear to cover parking on the two properties.

Acting Chief Planner Eastman stated that the other document which was the preceding attachment was an agreement between both parties for parking. City Attorney Barlow explained that the agreement had been acknowledged by Ms. Gamboa and appeared to be between the Sierra Health Clinic and the Fullerton Presbyterian Church, and it appeared that Ms. Gamboa had not signed the document on behalf of herself, as the property owner. So she may be legally correct that she could terminate the agreement if the medical clinic moved.

Commissioner Savage asked if the parking issue was a civil matter that had nothing to do with this hearing, and City Attorney Barlow responded affirmatively.

The title of RESOLUTION PC-07-29 APPROVING a Resolution of the Planning Commission of the City of Fullerton modifying an existing Conditional Use Permit and Site Plan for a fellowship hall building at Fullerton Presbyterian Church located at 511 South Brookhurst Road, 1815 West Avenue and 1818 West Avenue was read and further reading waived. Motion by Commissioner Francis seconded by Commissioner Richmond, and carried unanimously that said resolution be adopted as written.

PRJ07-00468 – LP07-00012. APPLICANT: CITY OF FULLERTON.

A Zoning Amendment to modify Title 15 of the Fullerton Municipal Code to establish regulations and permit requirements, and changes to definitions, for businesses with on-site alcohol consumption in the C-3 zone (Central Business District Commercial) (JEA).

Commissioner Savage left the room at 7:43 p.m.

Commissioner Francis thanked the Commission for allowing him to be Chairman and recused himself due to his two businesses that might be affected by the downtown ordinance. He left the room at 7:44 p.m.

Commissioner Savage returned to the room at 7:45 p.m.

Acting Chief Planner Eastman gave a brief overview of the project. A map of the C-3 Zoned properties and Restaurant Overlay District (ROD) was referenced, and the request explained. Due to problems downtown, the City organized the Downtown Working Group, and presented a report to the City Council identifying impacts to the City. As a result the City Council directed staff to prepare regulations for restaurant uses, and adopted a moratorium in June 2007. As directed by Council, staff has reviewed other City regulations, and created a draft ordinance. Staff distributed the draft regulations to interested parties, and held two “stakeholders” meetings in October and November. Staff revised the draft regulations to incorporate community comments. The proposal for Planning Commission consideration includes regulations for businesses in the C-3 zone, and adds revisions and definitions to the Zoning Ordinance. The code revisions proposed by staff have been divided into two separate draft ordinances. One ordinance establishes an Administrative Restaurant Use Permit (ARUP) a new procedure, contained in a new chapter of the Zoning Code (15.71). The second draft ordinance includes revisions to definitions of bars, restaurants, and reception halls, and creates new regulations for on-site alcohol serving establishments.

Acting Chief Planner Eastman discussed in detail the draft ordinance revisions to the three sections of Title 15, and stated that staff recommended that the Planning Commission recommend the City Council adopt the draft regulatory ordinance, and the draft ARUP ordinance.

Commissioner Savage asked if staff looked at other Cities ordinances when drafting the ordinance and Acting Chief Planner Eastman responded that staff had, and mainly pulled from the Newport Beach Ordinance.

Commissioner Savage asked how many meetings had taken place with the stakeholders, and Acting Chief Planner Eastman responded that there were two meetings and staff had also received constructive letters with comments from a few restaurant owners.

Commissioner Savage asked if Mr. Florentine, Mr. Irons, or Ms. Harvey had a copy of the draft ordinance at the time their letters were written, and Acting Chief Planner Eastman responded that they had a similar ordinance, which has since been modified to address their comments.

Commissioner Savage asked if the ordinance was amended to include happy hour, cover charges, and queuing. Acting Chief Planner Eastman stated that is has, but clarified that the ordinance still established a standard queuing at 25 people outside the business, as staff believes that during peak times, as people leave the business, 25 people queuing would still be adequate to provide “replacement” people to go into the business.

Commissioner Savage stated that one of the letters had a comment about cocktails being served in the queuing area, and Acting Chief Planner Eastman responded that Cameron Irons provided a concern that when someone has been waiting a long time the restaurant comps them some drinks. Acting Chief Planner Eastman explained that part of the reason that the new definition of restaurant allows an area for drinking (up to 20% GFA) is in part for people to wait, and have a drink. Staff does not believe alcohol should be served to people who haven't yet been admitted to the establishment.

Commissioner Savage asked if staff was referring to compliance with the ordinance when talking about "bona fied" and Acting Chief Planner Eastman responded that the intent was to provide emphasis for restaurant use to comply with the ordinance.

Commissioner Savage asked if staff was going to be looking at quarterly records and not monthly records, and Acting Chief Planner Eastman responded that staff required a restaurant to maintain records of their sales on a quarterly basis.

Commissioner Savage asked how many of the 45 restaurants were out of compliance with the ordinance, and if they would be grandfathered if they are out of compliance with the square footage or lighting. Acting Chief Planner Eastman stated the restaurants that were currently in compliance with the code and operating pursuant to what they are entitled could continue to operate. If the restaurant was identified as a nuisance business then they would have to go through the process of being approved. If they are currently operating with a dance floor a Conditional Use Permit (CUP) is required. The restaurants with dancing, but no CUP will not be grandfathered because they are not a legal established business.

Commissioner Savage asked if the current code required a CUP for a dance floor, and Acting Chief Planner responded yes. Commissioner Savage asked if the size of the building had a relationship to the queuing of 25 people. Acting Chief Planner responded that, as written, the 25 person queuing was not based on the building, although an establishment could request a longer queue by CUP.

Vice Chairman Musante stated that staff did a good job at the regulation and permit requirements. He was concerned with an establishment that is a bona fide restaurant until about 10:00 p.m. and then becomes a raging bar because there is easy money at that hour. Acting Chief Planner Eastman stated that after 10 p.m. the restaurants gross sales are as a bar, and they would need to comply with the conditions of approval. That is one of the reasons staff identified a requirement that a restaurant can't have outside queuing, as that's an indicator of bar activity, not a restaurant. Vice Chairman Musante suggested including the words "during all hours of operation", "consumption during all hours of operation" and "gross lease" in the definition of restaurant to tie up the last few hours of operation to disallow a restaurant owner from converting from primarily a restaurant to a bar.

Commissioner Chaffee asked what was being done when restaurants add a dance floor, and do not obtain a CUP. City Attorney Barlow stated that the business could be sited for operating in violation of the Municipal Code and take action to consider them a nuisance. City Attorney Barlow stated that many of the businesses that are in violation have been told, but are not coming in for a CUP. Commissioner Chaffee asked if a CUP was not being enforced and City Attorney Barlow responded that, on a temporary basis during the moratorium, the CUP violations are not being enforced.

Commissioner Chaffee was concerned with inconsistency in some of the language used. He believed ambiguity was created when switching from restaurant to bona fied restaurant or floor area to gross leaseable area. Acting Chief Planner Eastman clarified that staff was not tied to bona fied and leaseable area was currently in the moratorium, and explained the reasoning behind using leaseable area instead of gross floor area.

Commissioner Chaffee asked what the standard was in considering the number of alcohol licenses per capita as compared to the county-wide average. Acting Chief Planner Eastman explained that the Alcohol Beverage Control department (ABC) requires that the City look at the per capita based on the establishment's census tract. Whenever an ABC license is being reviewed by the ABC Department they notify the City's Police Department as well as the Planning Division and they ask that staff identify over concentration.

Commissioner Savage left the room at 8:36 p.m.

Commissioner Chaffee asked if ABC used a census tract, and Acting Chief Planner Eastman responded that they use a census tract to identify over concentration. Commissioner Chaffee believed that the ordinance should say the census tract in which the establishment is "located" otherwise per capita could mean the entire City. Acting Chief Planner Eastman clarified that staff has not identified per capita based on census tract so that the Commission may consider over concentration based on the geographic boundaries the Commission finds appropriate for each request.

Commissioner Savage returned to the room at 8:38 p.m.

Commissioner Chaffee believed there needed to be consistency of terminology because in the section about lighting he did not know what foot-candles or lumens were, and stated that in order to enforce a code it needs to be understood by the people that have to live by it.

Commissioner Chaffee asked if the ground level was the level beneath the finished floor or just the finished floor, and Acting Chief Planner Eastman responded that it was the finished floor. City Attorney Barlow stated that the outdoor area uses ground level and the indoor area uses finished floor because the finish floor is above the ground inside. Commissioner Chaffee responded that it was used interchangeably in both instances.

Chairman Bailey asked if the wording for queuing was an attempt to maintain the public right-of-way or if it was intended for businesses to redesign and improve their property to have queuing areas. Acting Chief Planner Eastman stated that the intent of a 25 person queuing line was for public safety, and maintaining a safe clean environment. Chairman Bailey asked if there was a time limit for identifying a business a nuisance as it relates to number of violations, and Acting Chief Planner Eastman responded that the time limit would probably be six months or a year, but he would have to defer to the Police Department. City Attorney Barlow stated that six months or a year seemed reasonable and would simply be to schedule a hearing, and not to declare the business a nuisance.

Vice Chairman Musante stated that "or" should be added on page 28 so it reads the neighboring businesses and/or residences.

Chairman Bailey asked if there was any discussion about noise of neighboring businesses interfering with each other, and Acting Chief Planner Eastman stated that the City has had that

problem in the past, regarding one business between tow bars, but the D.W.G. has not discussed the problem.

Chairman Bailey asked if less than 20 percent of a restaurants leasable area is what could be used to sell alcohol, and Acting Chief Planner Eastman responded that 20% is the maximum area that can be dedicated to just alcohol sales. Chairman Bailey asked if a restaurant had to make their revenue from food sales, and Acting Chief Planner Eastman responded that a restaurant's gross sales had to be mostly from food. Chairman Bailey asked if the food to alcohol sales were off would the restaurant need a CUP for a bar, and Acting Chief Planner Eastman responded yes.

Public hearing opened.

Joe Florentine, Florentine's, Tuscany, and Palapa Grill had the following comments:

- Not a straight forward or easy document to understand
- Need more time to discuss document with staff
- Planning Commission has a lack of restaurant and tavern ownership experience
- Planning Commission has had a limited time to absorb all the information to make a solid recommendation to Council
- Encouraged a workshop for restaurant owners, Commissioners and staff
- A lot of money invested in businesses
- Police Department issued the live entertainment and dance permit
- Victims of circumstance
- City is responsible for approval of the liquor licenses downtown
- Basic restaurant and bar business is at night.
- Not an easy money business
- Not a raging bar
- Draft ordinances need to be addressed on an individual basis
- Staff has not met with restaurant owners on the draft ordinances that pertain to outdoor patios
- His restroom facilities and queuing area are in the same location
- People enjoy having open windows and it's not a problem
- Will we be audited for gross sales every quarter
- If sales of alcohol are more than sales of food will we be fined
- Will CUP be revoked because of sales balances
- Queuing areas are arbitrary
- Security, Crowd Control and Public safety are the issues
- Complex situation and a lot of issues at stake

Commissioner Chaffee asked Mr. Florentine if he had a CUP for his business. Mr. Florentine responded that he did not have a CUP, but he had a live entertainment and dance permit issued by the Police Department. Commissioner Chaffee asked Mr. Florentine what his ideas were for making downtown better. Mr. Florentine stated that he agreed with what was in the draft ordinance for security personnel. He stated that he has made numerous attempts to talk to the Police Department about having a liaison for the private security officers and Police so they can work together. Mr. Florentine stated that his business was now closing at 1 a.m. instead of 2 a.m. Commissioner Chaffee asked Mr. Florentine if he was suggesting that downtown close at 1 a.m., and Mr. Florentine stated that he was not suggesting that, but it was what he did.

Commissioner Chaffee asked if there was a downtown restaurant association, and Mr. Florentine responded that a few restaurant owners get together when there are issues to discuss.

Vice Chairman Musante asked Mr. Florentine if the downtown restaurant owners can get together and come up with a list of concerns, and recommendations to do away with the downtown problems. Mr. Florentine stated that he has suggested to the Police Department that they hire off duty police officers or cadets to stand in the parking lots with barricades when the lots are full.

Commissioner Savage asked Mr. Florentine if his business has a dance floor that has been approved by the City, and Mr. Florentine responded that he did not have a CUP for dancing but he had a permit for live entertainment and dancing that was issued by the Police Department. Acting Chief Planner Eastman clarified that the City requires a CUP for dancing, and the Police Department issues annual permits for live entertainment and dancing. However, the Police Department's permit is a background investigation, and not a land use review.

Chairman Bailey asked Mr. Florentine if he considered his establishment a restaurant or a bar, and Mr. Florentine replied both. Chairman Bailey asked Mr. Florentine if he would mind getting a CUP and if he thought his business was a good neighbor to the other businesses. Mr. Florentine responded that he wanted a CUP and made every effort to check with his neighbors in the mornings about trash and noise. Chairman Bailey asked Mr. Florentine why he had speakers with music outside the restaurant, and Mr. Florentine responded that the amplified music attracts customers, but the music is kept at a moderate level and is not a nuisance or a problem.

Commissioner Savage asked where the dance floor was and Mr. Florentine responded that it's where ever you are standing.

The Commission took a five minute break at 9:07 p.m.

Tony Florentine, 626 N. Mt. View Pl, complimented staff on the ordinance, and stated that it was a document that needed to have its details addressed more thoroughly. Mr. Florentine asked if the Police Department was going to continue issuing live entertainment permits in addition to the CUP's when the ordinance was finalized. He believed it was redundant to get a permit from ABC, the Health Department, Planning Department and the Police Department. He believed that everyone was in limbo because of the moratorium. Mr. Florentine encouraged restaurant owners to go through the ordinance, make cogent notes and supply them to staff and the Planning Commission.

Cameron Irons, Vanguard Commercial, had the following comments:

- President of the weekly Restaurant Association
- The old draft ordinance did not have flexibility and did not allow the Planning Commission or Director to use discretion; this recent draft is better
- Downtown has a lot of older buildings that are architecturally inflexible
- The new draft is much better and gives flexibility to adopt amendments
- Important to have a tough ordinance
- Glad we have this problem because in the 80's no one was downtown

- The answer is a combination of the ordinance and a Business Improvement District (BID) bringing property and business owners together and having an assessment where money is collected to clean up, hire security, transportation and advertisement
- Did not agree with queuing because who would be counting the 25 people
- The ordinance should say people are not allowed to block the public right-of-way instead of no queuing allowed
- What is the base cost for running downtown without restaurants or bars
- Stick with one percentage which is the percent of food to liquor like 65/35
- The census district in downtown has few residents but a lot of liquor licenses
- Restaurants downtown serve the whole City and surrounding areas
- Do not know what lumens are and did not agree with the lighting section of the ordinance
- Strongly encouraged a Business Improvement District (BID) to be part of the code.
- Any time citations are issued to a tenant, property owners should be notified
- Its great to get ideas from other cities but were also competing with the cities that have a lot more to offer

Commissioner Chaffee asked Mr. Irons if the proposed BID would pay for the extra security and Mr. Irons responded that he was suggesting a system where everyone pays and benefits.

Vice Chairman Musante stated that he liked the idea of the Business Improvement District and tough ordinance, and asked Mr. Irons what his suggestions were for a tough ordinance. Mr. Irons responded that there are a lot of unnecessary restrictions, and the ordinance can be tough but short and clear. Vice Chairman Musante asked Mr. Irons if he agreed that with a CUP the City, the Planning Commission and Council will have the authority to suspend or lift licenses, or shut them down when places get out of line. Mr. Irons responded that an ABC license can have restrictions or rules that business owners have to abide by.

Chairman Bailey stated that he did not agree with queuing, and asked Mr. Irons if he plans for queuing when planning a business. Mr. Irons responded that if he had the room he would plan for queuing, but it was not an area that made a lot of money.

Phillip Tramm, Zings Bistro and Bar, expressed the following concerns:

- He has put in millions of dollars of improvements into his business
- Restaurant serves food until 10 p.m., and then turns into a d.j. lounge
- Zings is a high end Asian Restaurant
- Zings has the highest cover charge, highest drink prices and no specials are offered
- Security is paid over one hundred thousand dollars a year to take care of the restaurant
- If you close down at 10 p.m. there is nothing to draw people to Fullerton
- Restaurants will not come to Fullerton if they don't think its profitable
- Zings has made changes so that problems inside are minimal, such as not serving glass bottles
- Police need to work closely with the doormen at the restaurants
- Put up a toll booth in the parking lots to create revenue and control the parking lot
- Do not penalize the people that are presently downtown, but be stricter on the people who want to come in
- People will end up loitering in the parking lot if they cannot wait in a controlled line

Vice Chairman Musante asked if CUP's should be issued to everyone and if the business does not stay in line should the CUP be suspended or the ABC license be lifted under a tough ordinance. Mr. Tramm responded that the City had to be tough but fair and the ordinance would have to be clear. Vice Chairman Musante asked Mr. Tramm if he believed the problems being experienced presently are when the places let out at 2 a.m. Mr. Tramm responded that the problems are mostly when they all let out because people begin to loiter. Vice Chairman Musante asked Mr. Tramm if he was willing as part of the BID to hire police to come in and take care of the parking lot situation, and Mr. Tramm responded yes.

Chairman Bailey asked Mr. Tramm if he was familiar with a CUP, and Mr. Tramm responded a little bit. Chairman Bailey asked Mr. Tramm if he believed it would help if the City had meetings with the restaurant owners and came to a consensus and Mr. Tramm responded yes and stated business owners are usually always worried about liability.

Simon Collier, 709 N Harbor Blvd, The Old Ship, stated that his restaurant was outside of the Restaurant Overlay District, but in the C-3 Zone. He did not see a need for security if mandated because the police have never pulled up to his establishment. He believed that he was on the back scenes because the first ordinance had to do with the ROD, and now it was expanded to all of the C-3 Zones. Mr. Collier stated that his employees all get ABC training on how to serve people, and he operated under a CUP and a restricted ABC License with conditions. He stated that the Business Owners needed more time to discuss the ordinance with staff before any recommendations are done.

Vice Chairman Musante asked Mr. Collier if there was a two week extension if the restaurant owners could get together for discussions, and Mr. Collier responded yes.

Judith Kaluzny, 400 N Malden, expressed the following concerns:

- All businesses have been effected by damages from these bars
- To maintain businesses downtown it's costing tax payers \$1.6 million dollars
- Why are all business owners not being invited to the ordinance meetings
- Her comments were not taken into consideration
- Music is allowed in the revised draft on patios and was not on the old draft
- Security should be until 2:30 a.m. to give people time to clear out of the parking lots
- Retail business owners are moving because of the filth
- Retail is being destroyed in order to have restaurants
- Notice should go to the entire Restaurant Overlay District and surrounding neighborhoods within 2 or 3 blocks.

Acting Chief Planner Eastman clarified that the new draft ordinance has included a requirement for a 300 foot noticing to property owners around the proposed restaurants (ARUP Process).

Public hearing closed

Chairman Bailey asked staff if there could be more time with the businesses to review the ordinance and Acting Chief Planner Eastman responded that there were two meetings and talk about additional meetings. Staff made revisions to draft ordinance based on feed back from the public. Staff was not opposed to additional meetings, but there are time schedules staff is trying to meet per Council direction.

Chairman Bailey asked why a live entertainment and dance permit was needed if the business had a CUP. Acting Chief Planner Eastman responded dance permits issued by the Police Department are applicable to the operator, whereas a CUP runs with the land. Acting Chief Planner Eastman explained that the Police Department will continue to issue the annual dance permits because it has a different purpose than a CUP. Chairman Bailey asked what the base cost was to run downtown before it became successful, and Acting Chief Planner Eastman responded for the City he would need to address that with other departments to see if he could get a budget analysis. Chairman Bailey asked if the ordinance was originally discussed to be a Restaurant Overlay District issue only and then expanded to the C-3 zone. Acting Chief Planner Eastman stated that originally the intent of the ROD was parking purposes, and the C-3 zone allows mixed use. He explained that there can be more intensive development taking place in the C-3 zone, and staff believes there is a better nexus for applying alcohol regulatory requirements based on conflicts of use, rather than available parking.

City Attorney Barlow stated that the City had to be consistent when looking at the zones for this issue.

Acting Chief Planner Eastman explained the ARUP and CUP process, and stated that the City staff is not against bars or dance floors as long as they are good operators.

City Attorney Barlow stated that staff was trying to establish something that was clear and measurable when addressing queuing, and felt that 25 was not an arbitrary number.

Acting Chief Planner Eastman stated that staff has not prohibited a cover charge for bars and night clubs; the draft ordinance will prohibit a cover charge for a restaurant. Acting Chief Planner Eastman explained that an existing business that does not meet the criteria for bar size or lighting can request a waiver by CUP. Commissioner Savage asked if the Director of Community Development has latitude to change the rules because of unique circumstances, and Acting Chief Planner responded yes, unless the rules are established by the Planning Commission.

Commissioner Savage left the room at 10:43 p.m.

Acting Chief Planner Eastman clarified the noticing sections in the first draft ordinance, and explained the noticing requirements were moved to the new ARUP chapter and expanded to be clear.

Commissioner Savage returned to the room at 10:44 p.m.

Vice Chairman Musante was in favor of continuing the item until the next meeting. He supported a tough ordinance that could include suspension of licenses and large fines. He suggested that the restaurant owners get together and come up with something concrete.

Commissioner Whitaker was in favor of continuing the item, and believed that the restaurants should police themselves. He believed that the starting point on this discussion was the cost effectiveness of the businesses operating and the revenues they generate. He believed that staff did a good job at estimating the revenue in the report. Commissioner Whitaker stated that the growth potential was in the sales tax. If the downtown Restaurant Overlay District were not located within a redeveloped agency project area he thought it would come close to supporting itself in terms of total revenue, sales tax and property tax.

Commissioner Chaffee supported the idea of a continuance. He believed that the ordinance would not solve the problems going on today, but in time may bring about more reasonable behavior in downtown. He liked the review process established in the second draft ordinance and the idea of the BID.

Commissioner Savage stated that many of the restaurants affected participate in charity events throughout the City, and believed that making a profit was not a sin. He believed that staff had done a great job at putting the ordinance together. Commissioner Savage was concerned with delaying the item because of businesses that want to come into the City being put on hold, but supported the continuance because of the Commission consensus.

Commissioner Richmond stated that the Committee made good suggestions on the wording of the ordinance and believed that staff was never going to make everyone happy with the document. He was in support of continuing the item.

Director Godlewski informed the Commission that the next Planning Commission meeting was January 23, 2008 but it would not be possible to meet with the business owners and get a staff reports together in time for that meeting. He suggested continuing the item to the February 13, 2008 meeting.

City Attorney Barlow informed that Commission that she would be out of town for the February 13th meeting, but another attorney would be available.

Chairman Bailey was concerned about adjacent businesses being impacted by noise and suggested that verbiage be included in the ordinance for noise. He believed that twelve months was a good time limit for documented instances. Chairman Bailey believed that it was important for auditing purposes that a business report the amount of liquor purchased. He also suggested that businesses have a queuing plan when applying for a CUP.

Commissioner Savage informed the Committee and staff that he would be out of town for the February 13th meeting.

Commissioner Chaffee suggested an incentive so that restaurants apply for a CUP under the new rules. He also stated that the stakeholders needed to include other businesses in town because they are also affected.

MOTION made by Vice Chairman Musante, SECONDED by Commissioner Chaffee and CARRIED unanimously that said item be CONTINUED to the February 13, 2008 meeting.

Commissioner Savage agreed with Chairman Bailey about queuing and believed that the lighting language needed to be modified.

OTHER ITEMS

None

COMMISSION STAFF COMMUNICATION

Director Godlewski noticed the Commissioners about Ordinance 1806 requiring attendance of Commissioners at the Commission meetings.

Commissioner Savage informed the Commission and staff that he will not be in attendance for the February 13, 2008 meeting.

Commissioner Chaffee asked if public comments can be moved to the beginning of the agenda, and City Attorney Barlow stated that action could not be taken on something that was not on the agenda.

REVIEW OF COUNCIL ACTIONS

Director Godlewski gave a brief overview of recent City Council actions.

PUBLIC COMMENTS

None.

AGENDA FORECAST

The next regularly scheduled Planning Commission meeting will be January 23, 2008 at 7:00 p.m.

ADJOURNMENT

There being no further business the meeting was adjourned at 11:23 p.m.

Susana Flores
Clerical Assistant