



## PLANNING COMMISSION MEETING MINUTES

---

City Council Chamber  
200 Old Bernal Avenue, Pleasanton, CA 94566

**DRAFT**  
**Wednesday, January 15, 2020**

### **CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL**

The Planning Commission Meeting of January 15, 2020 was called to order at 7:02 p.m. by Chair Ritter.

The Pledge of Allegiance was led by Commissioner Balch.

Staff Members Present: Ellen Clark, Director of Community Development; Melinda Denis, Planning and Permit Center Manager; Eric Luchini, Associate Planner; Larissa Seto, Assistant City Attorney; Stefanie Ananthan, Recording Secretary

Commissioners Present: Commissioners Nancy Allen, Jack Balch, Justin Brown, Greg O'Connor, Brandon Pace and Chair Herb Ritter

Commissioners Absent: None

### **AGENDA AMENDMENTS**

There were no agenda amendments.

**CONSENT CALENDAR** - *Consent Calendar items are considered routine and will be enacted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker card for that item.*

- 1. Approve the meeting minutes of December 11, 2019**
- 2. P19-0390, Terry Townsend** – Application for Design Review approval to construct an approximately 5,006-square-foot, two-story residence with an approximately 1,262-square-foot attached garage at 4 Winding Oaks Drive. Zoning is Planned Unit Development – Hillside Residential/Open Space (PUD-HR/OS) District.

**Commissioner O'Connor abstained from voting on the meeting minutes of December 11, 2019**

**Commissioner Brown moved to approve the Consent Calendar.  
Commissioner Allen seconded the motion.**

**ROLL CALL VOTE:**

**AYES:** Commissioners Allen, Balch, Brown, O'Connor and Ritter  
**NOES:** None  
**ABSENT:** None  
**ABSTAIN:** Commissioner O'Connor (Item 1; December 11, 2019 Minutes)

The Meeting Minutes of December 11, 2019 were approved, as submitted.

Resolution PC-2020-01 approving Case P19-0390 was adopted, as motioned.

**MEETING OPEN TO THE PUBLIC**

**3. Public Comment from the audience regarding items not listed on the agenda –**  
*Speakers are encouraged to limit comments to 3 minutes.*

There were no members of the audience wishing to address the Commission.

**PUBLIC HEARINGS AND OTHER MATTERS**

**4. P19-0389, Restrictions on the sale of tobacco products and smoking devices within 1,000 feet of public schools, public parks and public recreation facilities –** Consider Youth Commission referral to add a new Chapter 18.109 Retailers of Tobacco Products and Paraphernalia, and to amend Sections 9.24.020, 18.40.030, 18.44.080, 18.48.130 and 18.48.140 of the Municipal Code, to restrict tobacco sales within 1,000 feet of public schools, public parks and public recreation facilities to reduce underage exposure to tobacco products; and make findings of General Plan consistency.

Assistant City Attorney Larissa Seto presented the specifics of the item in the Agenda Report.

Representative for the Youth Commission Tejas Prakash gave a brief presentation regarding underage youth and smoking.

Representative for the Youth Commission Christina Costanzo continued the presentation regarding underage smoking, impressionable advertising, research on the matter and Youth Commission meetings.

Ms. Seto continued the staff presentation.

Chair Ritter inquired about the Commission's decision and confirmed that the Commission was focused on the buffer, but other comments could be heard.

Commissioner Pace inquired about the 500- and 1,000-foot radius.

Ms. Seto responded that she had not found justification for other cities establishing a 500- or 1000-foot buffer. She discussed the 600-foot buffer for alcohol licensing.



Commissioner Brown referenced the percentages in the survey and inquired how youth were obtaining tobacco related products.

Ms. Seto referenced page 2 of the agenda report and the percentages of how youth obtained tobacco products.

Commissioner Brown asked and confirmed the dilemma was that the products were coming from a physical retailer. He asked if neighboring cities were not exempting retailers.

Ms. Seto responded that the Cities of both Livermore and Dublin were exempting existing retailers and she was still researching other cities.

Commissioner Brown inquired about the vote at the City of Dublin City Council meeting pertaining to exemptions and referenced the impact of neighboring cities.

Ms. Seto stated the City of Dublin City Council had voted affirmatively on the citywide ban on flavored tobacco and citywide ban on electronic smoking paraphernalia and that the buffer was a preexisting restriction. She also referenced Alameda County restrictions.

Commissioner Brown referenced "going dark" and inquired if that was discussed at the Youth Commission meeting. Ms. Seto stated "going dark" was first raised by retailers at the Economic Vitality Committee meeting. Commissioner Brown inquired about the meeting with existing retailers. Ms. Seto explained that the retailers had provided suggestions including "going dark."

Commissioner Balch inquired about recreation facilities versus parks; he referenced Gingerbread Preschool and clarified it was within Amador Park.

Ms. Seto clarified that the Senior Center was a recreation facility.

Commissioner Balch referenced the three high schools indicating there were no retailers within 1,000-feet of the schools. He stated students traveled further to obtain tobacco products.

Ms. Seto clarified that Amador High School was not within 1,000 feet of the Safeway on Santa Rita Road, however, Alisal Elementary School was within 1,000 feet of the Safeway.

Commissioner Balch referenced Commissioner Brown's comment about "going dark" and whether the retailers were agreeable to that suggestion. Ms. Seto explained that the group discussion raised various retailers' suggestions.

Commissioner Balch discussed his opinion that the Youth Commission would like change within the 1,000-foot buffer and he mentioned grandfathering existing tobacco retailers, which had been brought up by the Economic Vitality Committee and whether that was the change the Youth Commission had been seeking.

Commissioner O'Connor inquired about grandfathering regarding the buffer options and asked what other cities were doing. He also inquired about the expected change and the impact for the future.

Ms. Seto stated she spoke to staff from the City of Livermore, but their changes had only been in effect for a short period, specifically since January 2020; she referenced the process of legal non-conforming uses.

Commissioner Balch questioned the restrictions on a legal, non-conforming gas station.

Ms. Seto explained that tobacco products could not be sold within the 1000-foot buffer.

Commissioner Allen inquired as to what would happen if an existing business was sold to another property owner.

Ms. Seto explained that most uses ran with the land under a conditional use permit. She stated a remodel or expansion would not allow expansion of legal, non-conforming uses.

Commissioner Balch referenced the recent Shell/7-Eleven project on Hopyard Road and whether that would be an exception.

Community Development Director Ellen Clark responded that project was modifying its use to include a combined gas station and convenience store, therefore, a restriction on tobacco could be imposed.

Commissioner Allen inquired about “going dark” and the issue surrounding advertising and the presence of the product. She questioned enforcement and whether tobacco should be licensed by the City.

Ms. Seto responded that tobacco retailer licensing (TRL) was an option in many of the cities within Alameda County. She summarized the internal discussions and determined there was not capacity to license and monitor those uses. She discussed stings by the Police Department and the Code Enforcement process for “going dark.”

Commissioner Allen inquired about the level of change that could be expected if the City grandfathered existing retailers. She asked how long the existing, affected businesses had been in business as a tobacco retailer. She requested historical data surrounding current tobacco retailers.

Ms. Seto responded that gathering historical data would be a timely project for staff but that could be undertaken.

Ms. Clark referenced the types of businesses currently selling tobacco-related products and indicated that change could be slow.

Chair Ritter inquired about enforcement, fines issued and whether there was a three-strikes law.

Ms. Seto stated offenders were reported to the State, which might jeopardize their license.

Commissioner Balch inquired about the City of Pleasanton Police Department’s enforcement when conducting a sting operation and the rate of passage.



Ms. Seto referenced a recent sting in August 2019 and indicated that four of the 20+ businesses were not compliant.

Chair Ritter inquired about theft and use of fake identification. He thanked the Youth Commission for its involvement.

## **THE PUBLIC HEARING WAS OPENED**

Resident of Livermore Kyoko Takayama addressed the Commission regarding the epidemic of vaping and the impact on her six grandchildren. She referenced the moral issue behind the sale of tobacco, regardless of whether it was legal.

Tobacco Control Program Director of Alameda County Public Health Official Paul Cummings explained that clerks would be fined if there was no retail licensing. He stated an ordinance would provide the City with the ability to set appropriate penalties. He discussed the exemption in the City of Oakland for adult only retailers. He thanked the Planning Commission for its consideration and the Youth Commission for its input.

Representative from Breathe California Audrey Abadilla shared studies and evidence pertaining to buffers and health risks with tobacco sales and use.

Amy Shannon spoke as a parent and public health professional regarding tobacco use and the ease of access to tobacco products for underage youth. She encouraged the use of a buffer and to honor the recommendations of the Youth Commission. She suggested consideration of enforcement mechanisms and reminded the Commission of the City's goal to promote healthy community.

Rosalyn Moya referenced the 1,000-foot buffer and density pertaining to deciding the bigger distance. She referenced the tobacco use licenses and demonstrated various product packaging and marketing geared towards youth.

Pleasanton Resident Helena Jin spoke regarding the Youth Commission's study that 74 percent of youth obtained tobacco products through a retail store. She referenced the numbers of youth playing in the parks or at recreation facilities each day. She suggested the City of Pleasanton act, like the neighboring cities adopting ordinances.

Jannell Gladen, mother to two teen boys and Tri-Valley resident, discussed her work in schools and with youth. She stated her son began vaping between fifth and sixth grade. She suggested limiting access to youth, to help curb usage. She expressed concern with the visibility of advertisements for tobacco and vape products. She suggested the City have consistent policies with surrounding cities.

Kristie Wang, mother of two teenage children, referenced the effect of the ordinance passed by the City of Livermore, which became effective January 1, 2020. She discussed enforcement and the support and advocacy of the Livermore Police Department. She stated youth were going to other cities to get their products.

Government Relations Director for American Cancer Society – Cancer Action Network Jen Grand-Lejano encouraged a strong, 1,000-foot buffer zone near youth areas and not exempting tobacco shops. She discussed California Department of Health data on the sale of tobacco products to youth by tobacco retailers and marketing towards youth. She urged the Commission to adopt the proposed resolution.

Property owner of the Valero/7-Eleven gas station on Santa Rita Road Mike Rosebery discussed the monthly tobacco products sales at his store, the majority being cigarettes, and the impact the ordinance would have on his business. He stated he was a proponent of “going dark” and restricting tobacco-related advertisements from the youth. He indicated support of reducing the sale of vaping products.

Seventh grade student Connor Lam indicated support of the 1,000-foot buffer. He referenced his former Physical Education teacher who asked students not to smoke and discussed vaping by youth. He discussed restrictions in surrounding cities and urged the Commission to approve the ordinance prohibiting the sale of tobacco products within 1,000 feet of schools.

Brad Hirst indicated support for social responsibility but encouraged individual responsibility. He provided statistics on tobacco use and reminded the Commission that State law required individuals to be 21-years of age to purchase tobacco products. He expressed concern with government over regulation.

President of the Pleasanton Parent Teacher Association (PTA) Council Maritess Simmons provided a summary of Pleasanton youth in relation to neighboring cities in terms of e-cigarette use; she encouraged strong enforcement processes.

## **THE PUBLIC HEARING WAS CLOSED**

Chair Ritter requested clarification on the staff recommendation for the Planning Commission.

Ms. Seto explained that the Planning Commission should consider the Youth Commission’s recommendation regarding the restriction of tobacco sales within 1,000 feet of public schools, public parks and public recreation facilities conforms with the General Plan and to provide any policy recommendations to forward to the City Council. She confirmed that the City did not currently have a tobacco retail license ordinance.

Commissioner Pace asked about the possibility for licensing offsetting the cost of increased responsibility of the Police Department.

Ms. Seto explained that fees could only be set at a cost recovery level. She stated other cities licensing fee was approximately \$300-900 for initial application.

Commissioner Balch asked if the current ban on smoking in city parks included all tobacco products.

Ms. Seto confirmed that it included all tobacco products including electronic cigarettes in City parks and public trails, with an exception of golf courses.



In response to Commissioner Ritter, Ms. Seto confirmed that similar restrictions were recently adopted for schools.

Commissioner Brown asked which other cities had licensing. Ms. Seto referenced the Agenda Report listing other nearby cities with licensing.

Commissioner Allen disclosed her discussions with staff from the City of Livermore and explained grandfathered retailers would lose their license if caught selling illegally to minors. She discussed American Lung Association data listing cities in California with buffers. She continued commenting on the critical need to protect the youth and the epidemic surrounding tobacco use. She referenced other cities with ordinances in place to protect youth. She indicated support for not grandfathering retailers and providing one year for retailers to expend existing inventory and bring in alternate products to make up for revenue loss. She stated she was open to consideration of "going dark" in conjunction with a strong tobacco licensing program, with stiff fines and loss of grandfathering.

Commissioner Balch inquired about Commissioner Allen's thought on tobacco shops versus tobacco retailers. Commissioner Allen responded that she struggled with that distinction but could support grandfathering tobacco shops.

Ms. Seto confirmed that the age limit for tobacco shops was 18-years-old or the individual must be accompanied by an adult.

Commissioner Allen suggested treating tobacco shops and retailers the same.

Commissioner O'Connor opined that tobacco stores and tobacco retailers were essentially the same and should be treated as such. He stated such a small number of retailers would be affected therefore it would not make much of an impact.

Commissioner Balch clarified that 5-6 retailers were within the school buffer and 18-22 retailers were within 1,000 feet of parks and recreational facilities.

Commissioner O'Connor stated the sale of tobacco sales had to be limited to make an impact. He recommended implementing regulations on vaping similar to the surrounding cities.

Ms. Clark explained that tobacco stores would require a Conditional Use Permit (CUP), which might be a mechanism to reduce such stores.

Commissioner Balch suggested reviewing the sting operations to determine whether conditions of CUPs had been enforced. He suggested implementing tobacco retail licenses and a citywide ban on e-cigarettes and flavored tobacco. He stated grandfathering would not make the desired change; if grandfathering were permitted, "going dark", tobacco retail license, and two strike consequence must be implemented, and tobacco shops not excluded.

Commissioner O'Connor suggested a one-year transition period if grandfathering was not permitted.



Commissioner Balch discussed the location of parks throughout the City, therefore, impacting more retailers.

Commissioner Allen asked Commissioner Balch if he would still encourage “going dark” if licensing was not implemented. Commissioner Balch stated licensing was necessary otherwise there would be no enforcement.

Commissioner Brown questioned enforcement with “going dark” without licensing. He stated a 500-foot buffer was not enough, particularly with the density in Pleasanton. He stated licensing was necessary and without licensing, the “go dark” option was not viable. He stated underage youth were somehow obtaining products but questioned whether tobacco in general should be restricted; grandfathering would prevent the issue from getting worse but would not allow it to improve.

Commissioner Pace indicated broad support of the comments but suggested reviewing existing enforcement mechanisms. He stated there were other policy decisions around flavored tobacco, although he stated he was in favor of not having those within the City. He stated grandfathering was difficult to navigate and might not be fair to existing businesses but finding a mechanism of enforcement through licensing would allow the City to take action and involve the merchant/business owner. He indicated support for 1,000-foot buffer and restrictions on marketing and advertising.

Chair Ritter agreed with fellow Commissioners and stated the issue was more than the buffer. He suggested the City Council establish a retail license ordinance and implement bans. He stated he did not feel buffering would make an impact and indicated support for forwarding the Youth Commission recommendation to the City Council.

Commissioner Brown stated a 1000-foot buffer would decrease availability and usage. He suggested a 12- to 18-month transition period or allowing grandfathering, going dark, with local licensing, with a three-strikes provision. Commissioner Allen concurred with Commissioner Brown.

Commissioner Balch questioned why citywide was not considered for a retail license, going dark and two strikes. Ms. Seto explained why citywide licensing was not recommended, and the proposed prohibition on flavored tobacco and e-cigarettes and paraphernalia.

The Commission summarized its discussion and opinions on Options A and B, “going dark,” buffer distance, licensing and grandfathering.

**Commissioner Brown moved to recommend approval of Case P19-0389 and adopt the Youth Commission recommendation to restrict tobacco sales within 1,000 feet of public schools, public parks and public recreation facilities; allow existing tobacco stores to remain in operation as legal non-conforming uses; and require existing tobacco retailers to phase out sales of tobacco products, with the following options for modifications: 1) Allow tobacco retailers within 1,000-foot buffer 12-18 months to phase-out tobacco products; 2) Require all tobacco retailers and tobacco stores city-wide to obtain a tobacco retailers license (TRL); “grandfather” existing tobacco stores and tobacco retailers within 1,000-foot buffer and allow them to continue to sell tobacco**



products; require “grandfathered” retailers to “Go Dark” (not visibly display or advertise tobacco products); adopt enforcement provisions for TRL, with failure to comply with sales or Go Dark provisions resulting in revocation of “grandfathering” rights and TRL.

Commissioner Allen seconded the motion.

**ROLL CALL VOTE:**

**AYES:** Commissioners Allen, Balch, Brown, O’Connor and Ritter  
**NOES:** None  
**ABSENT:** None

Resolution PC-2020-02 approving Case P19-0389 was adopted, with alternate recommendations, as motioned.

**MATTERS FOR COMMISSION'S REVIEW/ACTION/INFORMATION**

**5. Reports from Meetings Attended (e.g., Committee, Task Force, etc.)**

There were no reports from meetings attended.

**6. Future Planning Calendar**

Planning and Permit Center Manager Melinda Denis gave a brief overview of future items for the Commission’s review.

**7. Actions of the City Council**

No action was taken.

**8. Actions of the Zoning Administrator**

No action was taken.

**MATTERS INITIATED BY COMMISSION MEMBERS**

Chair Ritter inquired about the status of Cook’s Seafood Restaurant on Bernal Avenue. Planning and Permit Center Manager Melinda Denis responded that staff would obtain and provide an update at a future time.

Commissioner Balch requested staff evaluate CUP approved tobacco retailers or shops that were violating or those who have a high propensity of failing the City’s Police force sting operations. The Commission concurred.

## **ADJOURNMENT**

Chair Ritter adjourned the meeting at 9:19 p.m.

Respectfully submitted,

Stefanie Ananthan  
Recording Secretary