

**APPROVED MINUTES OF PLANNING COMMISSION MEETING**  
**MAY 24, 2000**

1 Location: North Berkeley Senior Center

2  
3 The meeting was called to order at 7:11 p.m.

4  
5  
6 **ROLL CALL**

7  
8 Commissioners present: Boverhuis (7:23 p.m.), Capitelli, Howerton, Morris, Poschman,  
9 Wengraf, Wrenn.

10  
11 Commissioners absent: Bronstein, McCamant.

12  
13 Staff present: Haney-Owens, Kahn, Pavlinec, Wendover.

14  
15  
16 **PUBLIC COMMENT PERIOD**

17  
18 There was no public comment.

19  
20  
21 **ORDER OF AGENDA**

22  
23 No changes were made to the order of agenda.

24  
25  
26 **CHAIRPERSON'S REPORT**

27  
28 There was no Chairperson's Report.

29  
30  
31 **COUNCIL ACTIONS**

32  
33 Commissioner Wengraf stated that on May 23, 2000, the Council voted against extra  
34 funding for the Environmental Impact Report (EIR) for the East Campus Playing Fields  
35 project. She asked if the Planning Commission's previous comments on this subject had  
36 been forwarded to Council.

37 Staff Haney-Owens stated that the Commission's comments had been forwarded.

38  
39 **FUTURE AGENDAS**

40  
41 Staff Haney-Owens stated that at the June 28, 2000 Planning Commission meeting, Zach  
42 Cowan of the City Attorney's Office will return to present the Abatement of Public  
43 Nuisances Ordinance to the Commission.

44 Commissioner Poschman stated that this item should also be referred to the Zoning  
45 Adjustments Board.

46

**APPROVED MINUTES OF PLANNING COMMISSION MEETING**  
**MAY 24, 2000**

1 Commissioner Wrenn stated staff had requested that the Commission consider holding a  
2 meeting during the month of August. He stated that topics that could be discussed at an  
3 August meeting include the North Shattuck Urban Design Study and the Sidewalk  
4 Benches and Planters Design Guidelines and Ordinance.

5 Staff Haney-Owens stated that she will prepare a list of items that would be ready for  
6 discussion in August so that the Commission could review the list and decide whether to  
7 hold a meeting in August.

8  
9 Commissioner Morris stated her support for holding a workshop on the relationship  
10 between the Southside Plan and the Underhill Area Projects.

11 Commissioner Wrenn stated that the workshop should occur before the Underhill Area  
12 Projects Environmental Impact Report is delivered to the UC Regents. He stated that staff  
13 should determine the date on which the U.C. Regents will consider the project.

14  
15 **APPROVAL OF THE MINUTES FROM MAY 10, 2000 MEETING**

16  
17 Staff Haney-Owens stated that the minutes from the April 26, 2000 Planning  
18 Commission meeting were not approved.

19  
20 (M/S/C) to approve the minutes from the May 10, 2000 Planning Commission meeting,  
21 with amendments (Capitelli/Poschman). The motion carried. Ayes: Boverhuis, Capitelli,  
22 Howerton, Poschman, Wengraf, Wrenn. Noes: none. Abstentions: Morris. Absent:  
23 Bronstein, McCamant.

24  
25 **AMENDMENTS TO THE SUBDIVISION ORDINANCE**

26  
27 Vivian Kahn delivered the staff report, explaining that the proposed amendment would  
28 require the Planning Commission to approve tentative maps for condominiums in newly  
29 constructed buildings approved Zoning Adjustments Board.

30  
31 Commissioner Poschman asked why the Planning Commission is still required to review  
32 a proposal after the Zoning Adjustments Board has approved it.

33 Staff Kahn stated that the Planning Commission review is still needed under the  
34 Subdivision Ordinance. The Commission could still impose technical and other  
35 requirements not related to the establishment of condominiums. She stated that if there  
36 have not been any changes to the proposal since the ZAB review, then, under the  
37 proposed Ordinance, the Planning Commission shall not disapprove of the project if the  
38 Zoning Adjustments Board approved it.

39  
40 Commissioner Wengraf asked if it would be possible to reverse the order of approvals  
41 and have the Planning Commission approve the project before the Zoning Adjustments  
42 Board.

43 Staff Kahn stated that it would be expensive for developers to produce a tentative map of  
44 the development for Planning Commission approval lacking the certainty of prior  
45 approval of their use permit by the ZAB.

46

**APPROVED MINUTES OF PLANNING COMMISSION MEETING**  
**MAY 24, 2000**

1 Commissioner Capitelli asked why the developer has to receive a tentative map before he  
2 can get a building permit and expressed concerns about requiring map approval before  
3 issuance of the building permit (Section 2, Paragraph D).

4 Staff Kahn stated that this amendment, in its current form, is intended to narrow the  
5 circumstances in which the limitations on Planning Commission discretion regarding  
6 tentative map approval would apply. She suggested that Commissioner Capitelli should  
7 recommend changing the procedure.

8  
9 Commissioner Poschman stated that Section 2, Paragraph E seems to conflict with  
10 Section 2, Paragraph A.

11  
12 (M/S/C) to approve the general concept of the amendments to the Subdivision Ordinance,  
13 but with the following changes: 1) unless there is a compelling reason to require tentative  
14 map approval prior to building permit approval, amend Section 2, Paragraph D to so that  
15 a developer can obtain a tentative map approval after getting a building permit, and 2) to  
16 strike Section 2, Paragraph E (Capitelli/Poschman). The motion carried. Ayes: Boverhuis,  
17 Capitelli, Howerton, Morris, Poschman, Wengraf, Wrenn. Noes: none. Abstentions:  
18 none. Absent: Bronstein, McCamant.

19  
20  
21 **AMENDMENTS TO THE BERKELEY MUNICIPAL CODE (BMC)**  
22 **REGARDING APPEALS FROM ZONING ADJUSTMENTS BOARD (ZAB) AND**  
23 **LANDMARKS PRESERVATION COMMISSION DECISIONS**  
24

25 Vivian Kahn delivered the staff report, explaining that the proposed amendments are  
26 based on recent case law regarding takings. The proposed amendment would require an  
27 applicant to state that an appeal is based on a takings claim so that the Council could hold  
28 a hearing to meet the requirements stated by the court. This would reduce the likelihood  
29 that courts will overturn the City's decision.

30  
31 Commissioner Wrenn stated that this proposal should be reviewed by the Zoning  
32 Adjustments Board and the Landmarks Preservation Commission.

33  
34 (M/S/C) to set a public hearing on the Amendments to the Berkeley Municipal Code  
35 (BMC) Regarding Appeals from Zoning Adjustments Board and Landmarks Preservation  
36 Commission Decisions for June 28, 2000 (Wengraf/Poschman). The motion carried.  
37 Ayes: Boverhuis, Capitelli, Howerton, Morris, Poschman, Wengraf, Wrenn. Noes: none.  
38 Abstentions: none. absent: Bronstein, McCamant.

39  
40  
41 **DRAFT SIDEWALK BENCHES AND PLANTERS DESIGN GUIDELINES AND**  
42 **ORDINANCE**  
43

44 Joann Pavlinec delivered the staff report, explaining that this document has been  
45 submitted to merchant associations, the Commission on Disabilities, the Public Works  
46 Department, and the Traffic Engineering Division for comment.

**APPROVED MINUTES OF PLANNING COMMISSION MEETING**  
**MAY 24, 2000**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

Commissioner Wengraf asked why the Ordinance and Guidelines do not cover newspaper racks. She stated that newspaper racks are often placed so close to the street that drivers cannot open car doors when they park in on-street spaces.

Staff Haney-Owens stated that the Ordinance and Guidelines do not have jurisdiction over newspaper racks.

Commissioner Capitelli asked about how this program would be enforced.

Staff Pavlinec stated that the Ordinance does not provide for any new enforcement measures, so the Ordinance would be enforced on the current, complaint-driven basis.

Commissioner Capitelli asked if the Ordinance had jurisdiction over a property owner who places planters or benches on the private side of the property line.

Staff Pavlinec stated that the Ordinance does not and that the property owner can place benches and planters on his property as long as it does not qualify as a façade improvement, which would require review by the Design Review Commission.

Commissioner Capitelli asked if there are any sidewalks in Berkeley that are only the minimum six feet wide.

Staff Pavlinec stated that there are and that the Guidelines recommend window boxes or hanging planters for those situations.

Commissioner Poschman stated his desire to see the Design Review Committee's comments on the proposed Guidelines and Ordinance.

Commissioner Poschman stated that there should be a clear process that an owner of an existing planter or bench could follow to apply for an approval for these elements.

Commissioner Capitelli asked if Commissioner Poschman intended to grandfather in all existing planters and benches in the City.

Commissioner Poschman stated that he does not support grandfathering in all existing planters and benches, but that he hopes there will be a clear process for owners to follow to seek a permit.

Commissioner Poschman stated that he would like a more complete discussion of why the decision of the Design Review Committee is final.

Commissioner Morris stated that she would like more discussion of the relationship between the Guidelines and the Ordinance. She stated her concern that the Guidelines discourage wood, when a new material that has recycled plastic embedded in wood has been shown to be a viable material. She stated her support for encouraging recycled materials in the Guidelines.

Commissioner Boverhuis asked if tree wells are covered by the proposed Ordinance and Guidelines.

**APPROVED MINUTES OF PLANNING COMMISSION MEETING**  
**MAY 24, 2000**

1 Staff Haney-Owens stated that trees and tree wells are under the jurisdiction of the City  
2 Arborist in the Parks and Waterfront Department, and are not covered by the proposed  
3 Ordinance.

4  
5 Commissioner Wrenn stated that staff should notify merchants of the proposed  
6 Ordinance, especially along those corridors that have been found to contain a significant  
7 number of benches and planters that are not in compliance with the proposed Ordinance.

8  
9 Commissioner Morris asked for clarification regarding on what basis planters or benches  
10 would be considered detrimental to economic vitality.

11 Staff Pavlinec stated that, under the proposed Ordinance, they would be found to be  
12 detrimental to economic vitality if they are not pedestrian friendly or if they block display  
13 windows.

14  
15 Commissioner Wengraf stated that the language in the Guidelines is too authoritarian.  
16 She stated her support for softening it by providing suggestions and alternative designs or  
17 by writing "avoid" instead of "do not."

18  
19 Commissioner Capitelli asked about the status of Center Street if these proposals are  
20 adopted.

21 Staff Pavlinec explained that street improvements on Center Street were implemented  
22 through a Downtown Streetscape Plan. She stated that these and any other proposed  
23 improvements would be subject to the proposed Ordinance.

24  
25 (M/S/C) to set a public hearing on the Draft Sidewalk Benches and Planters Design  
26 Guidelines and Ordinance, the date to be agreed upon by the Chair and staff  
27 (Wengraf/Poschman). The motion carried. Ayes: Boverhuis, Capitelli, Howerton,  
28 Morris, Poschman, Wengraf, Wrenn. Noes: none. Abstentions: none. Absent:  
29 Bronstein, McCamant.

30  
31  
32 **COMMITTEE REPORTS**

33  
34 There were no committee reports.

35  
36  
37 **ADJOURNMENT**

38  
39 The meeting was adjourned at 8:25 p.m.