

**APPROVED MINUTES OF REGULAR PLANNING COMMISSION MEETING**  
**MAY 30, 2001**

Time: The meeting was called to order at 7:10 p.m.  
Location: North Berkeley Senior Center.

Commissioners present: Hicks, Tabb, Wengraf, Wrenn, Poschman, Bronstein.

Commissioners Absent: McCamant, Morris, Howerton.

Staff present: Haney-Owens, Kahn, Ratcliffe, Phillips.

**PUBLIC COMMENT PERIOD**

None.

**ORDER OF AGENDA**

Commissioners agreed to place item 10 immediately following item 6.

**CHAIRPERSON'S REPORT**

No report.

**CITY COUNCIL ACTIONS**

Staff Kahn reported that Council has continued affordable housing priority processing and the MU-LI item until the 6/12/01 meeting, and that the ZORS Amendment status report, which was moved to the Action Calendar by Councilmember Armstrong, has also been held over until 6/12/01.

**FUTURE AGENDAS**

No change.

**ZONING ORDINANCE AMENDMENT: PROHIBITION OF OFFICE USES**

Staff Kahn presented background on the issue. The Planning Commission initiated the proposed amendment making permanent the prohibition on office development in the R-4 Dwight-Hillside area following a public hearing last June. Because the Council did not take action to adopt the amendment within 6 months, Staff must bring the issue back to the Commission to reinitiate. She noted that some adjustments would have to be made once the Southside Plan is implemented because part of the Dwight-Hillside area is proposed to be redesignated as R-3.

M/S/C to open the public hearing (Poschman/Wengraf). Ayes: Wengraf, Wrenn, Tabb, Hicks, Bronstein, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris.
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There were no speakers on this item.

M/S/C to close the public hearing (Poschman/Bronstein). Ayes: Wengraf, Wrenn, Tabb, Hicks, Bronstein, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris.
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M/S/C to approve Staff recommendation (Wengraf/Poschman). Ayes: Wengraf, Wrenn, Tabb, Hicks, Bronstein, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris.
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**ZONING ORDINANCE AMENDMENT: SMOKE SHOPS**

Staff Ratcliffe explained that the current moratorium expires in January 2002. She noted that Council is concerned with the sale of tobacco products to minors, and tobacco stores are controlled only on Telegraph Avenue. She stated that this proposal requires use permits for smoke shops and disallows them within 1400 feet of schools and parks, which is consistent with the existing regulation on tobacco advertising. She noted that there has been no significant increase in applications recently.

Staff Kahn noted that because use permits are now required only in the Telegraph area, smoke shops have opened and been proposed at locations close to this area where use permits are not required. The intent is to have the same regulations apply citywide regarding use permits and proximity to schools.

Commissioner Wengraf noted that most children purchase their cigarettes at markets and convenience stores, not at smoke shops. She asked if this proposal applied all schools including public, private, religious, nursery schools, etc.

Staff Kahn replied that it applied to any K-12 school, but nursery schools are not included.

Commissioner Wengraf asked Staff to give an example of a distance of 1400 feet.

Staff Kahn stated that the length of three city blocks is roughly 1400 feet.

Commissioner Wengraf stated that mapping would show that smoke shops could exist in very few places in the City.

Staff Kahn stated that 1400 feet was chosen to parallel regulation on advertising and signage of tobacco products.

Commissioner Tabb asked if this applied to existing facilities.

Staff Ratcliffe stated that it does not, and noted that these facilities become legal 'non-conforming' uses.

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Commissioner Bronstein asked for the impetus for this proposal.

Staff Kahn stated that a shop opened on University Avenue and it was rumored that the owner had plans to open two additional shops. The Council received calls on the matter and subsequently adopted a moratorium.

Commissioner Poschman asked how Staff decided upon 'schools and parks', and 1400 feet for advertising regulation.

Staff Kahn stated that it seemed appropriate to tie the regulation to schools and other locations where youth are likely to congregate.

Commissioner Poschman asked if other Cities have implemented similar regulations. He also noted that few, if any, of these cases have come before the Zoning Adjustments Board (ZAB).

Staff Kahn stated that Oakland limits smoke shops within 1000 feet of youth-oriented activities and residential areas. She noted that these cases may not come before the ZAB because the shops can simply locate outside the CT district.

Commissioner Poschman stated that 1400 feet seemed arbitrary.

Staff Ratcliffe stated that 1400 feet was chosen for consistency with the sign ordinance and for ease of code enforcement.

Commissioner Tabb stated his concern that this ordinance is symbolic and will not affect availability of tobacco products to children.

Commissioner Hicks noted that children can purchase these products elsewhere, and stated her concern that this ordinance will concentrate smoke shops in certain areas.

Commissioner Wrenn supported the use permit requirement and stated there are ways to limit concentration.

M/S/C to open the public hearing (Poschman/Bronstein). Ayes: Wengraf, Wrenn, Tabb, Hicks, Bronstein, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris.
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Bob Kroenbeck of the Berkeley and Alameda Tobacco Coalitions stated that data shows that many stores sell to minors and that tobacco companies target advertising to minors. He listed the health risks of smoking. He stated that the prohibited locations should be expanded and the definition of tobacco retail should be broadened in order to strengthen the ordinance.

Commissioner Wrenn asked if the data showed that all tobacco retail are selling to minors in equal proportions.

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Mr. Cronbach replied that he did not know.

Commissioner Poschman noted that according to the letter submitted from the Public Health Institute, Andronico's would fall under the definition of tobacco retailer. He also stated that Staff has not included definitions of tobacco products and paraphernalia.

Commissioner Wengraf asked if there is a similar ordinance applied to alcohol sales.

Staff Kahn replied that use permits are required for alcohol sales and transfer of license is not allowed in impacted areas. She noted that in contrast to tobacco sales there are a series of State laws that deal with alcohol and it is very difficult to get a new license.

Commissioner Poschman stated that there are tight restrictions on alcohol sales in any establishment and that ZAB has denied many the ability to sell liquor.

M/S/C to close the public hearing (Poschman/Hicks). Ayes: Wengraf, Wrenn, Tabb, Hicks, Bronstein, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris.
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Commissioner Poschman moved to approve Staff recommendation substituting 1000 feet instead of 1400 feet, but received no second.

Commissioner Wengraf stated that this probably won't have any effect on youth and smoking.

M/S/F to approve Staff recommendation (Poschman/Hicks). Ayes: Wrenn, Tabb, Hicks, Poschman. Noes: None. Abstentions: Bronstein, Wengraf. Absent: McCamant, Howerton, Morris.
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M/S/C to approve the use permit requirement portion of the Staff recommendation only (Poschman/Wengraf). Ayes: Wengraf, Wrenn, Tabb, Hicks, Bronstein, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris.
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Commissioners requested that Staff write a letter to Council that stating that it is the will of the Planning Commission that Council draft an amendment that will actually address issues relating to youth and tobacco.

**ZONING ORDINANCE AMENDMENT: CARRY OUT FOOD SERVICE**

Staff Ratcliffe presented the staff report.

Staff Kahn explained that Council requested a moratorium on carry out food stores and quick service on San Pablo Avenue and Staff suggested new regulations in lieu of a moratorium.

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Commissioner Wengraf asked for a definition of carry out food stores and quick service.

Staff Ratcliffe read the definitions to the Commission.

Staff Kahn stated that the original intent was to prevent a particular store from opening on San Pablo, and Council wanted greater security that permits would not be approved.

Commissioner Wengraf stated that this may prohibit many healthy food stores on San Pablo Avenue and that 1000 feet is too large a distance. She suggested that these issues be left to the discretion of the ZAB.

Staff Kahn noted that additional regulations can be implemented such as floor area ratios and signage that may discourage chain stores if this is the objective.

M/S/C to open the public hearing (Poschman/Wengraf). Ayes: Wengraf, Wrenn, Tabb, Hicks, Bronstein, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris.
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There were no speakers.

M/S/C to close the public hearing (Poschman/Bronstein). Ayes: Wengraf, Wrenn, Tabb, Hicks, Bronstein, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris.
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Commissioner Hicks stated that neighbors are concerned with a concentration of these types of stores which would lead to increased congestion.

Commissioner Bronstein asked if this targets a certain type of business.

Staff Kahn replied that the original concern was chain stores and formula businesses.

Staff listed other regulations that apply to stores over 800 feet.

Commissioner Tabb stated that use permits and ZAB discretion seems like a better method of dealing with this issue.

Staff Kahn stated that other methods of regulation can be explored such as prohibiting drive-thrus.

Commissioner Wrenn asked for more information on the extent of the current problem, trends and other possible regulations.

Commissioner Poschman agreed that more information is needed, and mentioned that other areas of the City use a quota system to limit these types of establishments.

Commissioner Wengraf asked if the definition could be altered.

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Staff Kahn stated that during the most recent Zoning Ordinance revision the term “fast food” was replaced by “carry out” and “quick service” for the purpose of standardization.

M/S/C to request more information and continue the item (Hicks/Poschman). Ayes: Wengraf, Wrenn, Tabb, Hicks, Bronstein, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris.
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**ZONING ORDINANCE AMENDMENT: AUTO USES ON UNIVERSITY AVENUE**

Staff Ratcliffe presented the staff report. She stated that Staff recommends removal of the phrase “vehicle related uses” from all use tables because there is no clear definition of it, and also noted that motorcycles are excepted from the definition of auto uses. She explained that the sale of auto parts is not included in this definition but facilities that service autos are included.

M/S/C to open the public hearing (Poschman/Bronstein). Ayes: Wengraf, Wrenn, Tabb, Hicks, Bronstein, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris.
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Merri Mitchell stated that she does not favor getting rid of auto-related uses on University Avenue, and suggested that other less desirable uses be targeted first. She stated that this is not a primary goal of the University Avenue Strategic Plan.

M/S/C to close the public hearing (Poschman/Bronstein). Ayes: Wengraf, Wrenn, Tabb, Hicks, Bronstein, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris.
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Commissioner Poschman stated that this is a part of the University Avenue Plan implementation process, and that this seems like a reasonable method to help University Avenue upgrade its image. He also stated that motorcycles should be included in the definition and noted that if a use is allowed there is a chance that a permit will be granted anyway.

Staff Kahn also noted that this is one of several changes that are necessary to implement the University Avenue Plan.

Commissioner Wengraf noted that both ‘prohibit’ and ‘discourage’ appear in the Plan. She noted that the City should have a plan for the location of auto uses because they are needed, especially on transit corridors.

Commissioner Poschman noted that this amendment will prohibit new auto uses and that very few ever go out of business. He also stated that a non-conversion policy can be ineffective since ZAB may allow a conversion if the use is already allowed.

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M/S/F to approve Staff recommendation and include motorcycles in the definition of auto uses (Bronstein/Poschman). Ayes: Wrenn, Bronstein, Poschman. Noes: Tabb, Hicks. Abstentions: Wengraf. Absent: McCamant, Howerton, Morris.
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Commissioner Tabb asked if there have been many applications for these uses recently.

Staff Kahn replied that there has not, but Council wanted to push this issue forward.

Commissioner Bronstein stated that this might seem like a symbolic gesture, but is important to establish what uses are permitted or not.

Commissioner Poschman noted that the Planning Commission approved the University Avenue Plan with this in it, then Council approved it.

**ZONING ORDINANCE AMENDMENT: TELECOMMUNICATIONS**

Commissioner Bronstein recused herself from the proceedings.

Staff Kahn highlighted background information from her submitted memorandum. She stated that the guidelines adopted in 1996 encouraged the placement of telecommunications towers in industrial areas, discouraged them in residential areas, and required a public hearing to approve an antenna in a residential zone or on a residential building. These guidelines were not incorporated in the revised Zoning Ordinance and antennas are now permitted anywhere in the City with an Administrative Use Permit. She explained that the proposed amendment adds a new chapter to the Zoning Ordinance, provides new definitions, requires a use permit in order to exceed height limits, requires camouflage, and establishes a requirement for bonding to ensure removal of facilities within six months after termination of use.

Staff Kahn noted that the proposed zoning applies only to private property activity and activity in the public right-of-way is covered separately in the Telecommunications Ordinance that the Council adopted last December. She stated that Staff can not recommend that no antennas be permitted within 300 feet of any residential use, as proposed in the draft regulations prepared by a group of citizens, because this would have the effect of prohibiting antennas in all of the city except for a relatively limited part of West Berkeley.

Commissioner Wengraf asked Staff to explain setbacks in residential and mixed used areas, and to explain 'readily visible' from where.

Staff Kahn stated that antennas are allowed in all commercial districts if they are not readily visible from residential property.

Commissioner Poschman stated that the definition says readily visible from street level.

Staff Kahn noted that the City can regulate aesthetics.

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M/S/C to open the public hearing (Hicks/Wengraf). Ayes: Wengraf, Wrenn, Tabb, Hicks, Bronstein, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris.
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Allan Donnelly, Attorney for Metrocom, presented comments from his submitted letter. He noted that there is no such term as state licensed radio frequency engineer in the Business and Professions Code, that it is unreasonable to require that the towers survive natural disasters, and that the emissions calculation is also unreasonable. He stated that the proposed requirement to include other facilities within a mile radius in emission calculations is more onerous than the FCC standard and would create a barrier to entry in violation of constitutional principles and the Telecommunications Act of 1996.

Merri Mitchell stated that the 'inferior service' phrase is a loophole for residential areas, and also expressed her concerns regarding the health impacts of these antennas.

Brian Kisling, representing Sprint PCS, stated his support for an Ordinance that is balanced and drafted with the cooperation of all parties. He suggested the creation of a study group or committee to review the proposed ordinance in greater detail.

Constance Sutton stated that the Staff recommendation is flawed since it was drafted without residential participation, and that placement of these antennas in residential areas alters the character of the neighborhood. She noted that it seems like an antenna can be placed anywhere if it is 'stealth', and that a better definition is needed of "substantially inferior service".

Commissioner Tabb asked the speaker if she agreed that the citizen Ordinance would not allow wireless communications beyond what already exists in Berkeley.

Ms. Sutton disagreed with the statement.

Wendy Alfsen stated that she appreciates the fact that some of the provisions in the proposed citizen Ordinance were incorporated in the Staff recommendation and suggested other changes that should be made regarding the location of antennas.

Erica Etelson, co-author of the citizen Ordinance, stated that the Staff recommendation is vague and gives too much discretion to the ZAB. She expressed concern that the ZAB might make arbitrary decisions because of the lack of specificity, which could increase the City's legal liability. She noted that the Staff proposal did not include right-to-know provisions. She said that while the City can't make decisions based on health impacts, it should be the City's responsibility to inform citizens so they can make location choices. She suggested formation of a working group that would allow for citizen participation.

Leonard Schwartzburd supported the comments of the previous speakers and stated that the Ordinance gives City staff "untrammelled discretion" over the placement of antennas anywhere. He said that there is a "cozy relationship" between City staff and the cellular



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industry. He also said that the Solano area regulations had been changed in 1996 to allow antennas on Solano Avenue without a public hearing.

David Melly stated that the Staff recommendation is too vague, and that proprietary information should be available to the public.

Kristin Jacobsen, representing Nextel Communications, stated that some areas of the Staff recommendation need clarification. She suggested language that ensures hiring of experts is reasonable or consistent with industry standards, and also noted that co-location in all instances may be inappropriate since it may be impossible to negotiate with other carriers or property owners. She stated that technological differences do not allow for similar equipment.

Kristin Hulsey, also representing Nextel Communications, stated that the landscaping requirement is arbitrary. She suggested certification every three years instead of every year.

Paul Sieracki of Sprint Communications said it would be beneficial for the City to bring in the industry and neighbors to work on the ordinance.

Kate Bernier urged the Commission to defer this issue in order to slow the building of new antennas. She said that the current FCC standards are not based on true information and that other countries have stricter emission standards.

Kevin Sutton said that what is not prohibited will be allowed and that the Staff proposal would allow antennas in residential backyards and on houses. He noted that every antenna installed now is a stealth antenna.

Commissioner Wengraf stated that if the antenna can be camouflaged and is not readily visible it will be allowed. She noted that this is a loophole.

Zelda Bronstein, who recused herself from the Commission at the beginning of this item, said she was speaking as President of Thousand Oaks Neighborhood Association. She stated that notification was insufficient for such a complex issue and urged the Commission not to make a decision at this meeting. She asked the Commission to create a subcommittee including representatives from the industry, citizens, and staff to deal with this matter. She also stated that citizens have never received detailed commentary on their Ordinance, which was based on one adopted by Pleasanton.

Commissioner Tabb asked if the speaker thought that the Pleasanton model is appropriate for Berkeley.

Ms. Bronstein stated she did not know if the Pleasanton Ordinance is appropriate for Berkeley.

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M/S/C to continue the public hearing (Poschman/Wengraf). Ayes: Wengraf, Wrenn, Tabb, Hicks, Poschman. Noes: None. Abstentions: None. Absent: McCamant, Howerton, Morris, Bronstein.
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Commissioner Wengraf asked what time remains on the moratorium.

Staff Kahn replied that the current moratorium is in effect until 7/30/01, but the Council could extend it.

Commissioner Wengraf noted that based on testimony and the complexity of the matter, it seems that all parties are unhappy with the Staff recommendation. She suggested that Staff meet with industry and citizen representatives.

Commissioner Poschman asked Staff how other Cities handle the issues and to comment on a statement from the Mayor's office that the City had outside counsel to work on telecommunications.

Staff Kahn said that the comment cited was in regard to the Telecommunications Ordinance adopted by the Council in December and that this staff proposal was prepared in-house because there was no provision made for consultant assistance. She said that because of the six month deadline posed by the moratorium, Staff felt that it was better to prepare a draft for commentary than to form a task force to write one. She said that Staff incorporated as much of the citizen Ordinance as possible based on the advice of the Assistant City Attorney's recommendation and also included portions of the Pleasanton Ordinance that seemed applicable to Berkeley.

Commissioner Wengraf asked if Staff proposes a format for commentary.

Staff Kahn said that the draft prepared by Staff was available on the City website and suggested that commentary be submitted by e-mail before having a meeting. She also said that she needed to point out that the proposed ordinance would not allow facilities in residential areas unless specific criteria are met.

Commissioner Wrenn asked if any Commissioner would volunteer for a short term working group.

Commissioner Tabb volunteered to do so.

Commissioner Poschman stated that the ZAB has not looked at these cases in great detail. He asked how the 'stealth' requirement works in other jurisdictions, and if cable boxes are included.

Staff Kahn replied that these are usually located in the public right-of-way and are regulated elsewhere. In addition, the Zoning Ordinance already regulates the location of these facilities.

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Commissioner Poschman asked Staff to make other City's Ordinances available to the Planning Commission, and stated that inequality between companies in terms of service is another issue. Another issue of concern to him was the adequacy of AUP notification.

Commissioner Wrenn supported clear requirements that state where facilities could be located over case-by-case regulation. He said that health issues needed to be addressed at the Federal level. He asked Staff to report back to the Commission in July on this issue.

Commissioner Wengraf said that she is concerned that both industry representatives and citizens should be present at the working group.

Staff will correspond with all of tonight's speakers via the addresses on the public comment cards.

**ADJOURNMENT**

Meeting was adjourned at 10:25 p.m.