

**CITY OF UNION CITY  
MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING  
OF DECEMBER 3, 2009, 7:00 P.M.  
IN THE COUNCIL CHAMBERS OF CITY HALL  
34009 ALVARADO-NILES ROAD, UNION CITY, CALIFORNIA**

**I. ROLL CALL: Commissioners Raymond Gonzales Jr., Jo Ann Lew, Froilan (Roy) Panlilio, Gurnam (Gary) Singh, and Chairperson Tikisa Anderson**

**STAFF:** Joan Malloy (Economic and Community Development Director); Carmela Campbell (Planning Manager); Avalon Schultz (Associate Planner); Henry Louie (City Engineer); Kit Faubion (Assistant City Attorney); Kris Fitzgerald (Administrative Assistant).

**II. APPROVAL OF MINUTES: The regular Planning Commission Minutes of November 19, 2009 were approved as submitted.**

**III. ORAL COMMUNICATIONS: None.**

**IV. WRITTEN COMMUNICATIONS: None.**

**V. PUBLIC HEARINGS:**

**A. CONTINUED HEARINGS: None.**

**B. NEW HEARINGS:**

- 1. MID-PENINSULA HOUSING COALITION, 1100 DECOTO ROAD, Tentative Tract Map TTM-01-09; the applicant is requesting approval of a Tentative Tract Map and related Condominium Plan (TTM-01-09) to create eight (8) condominiums on property associated with a previously approved affordable housing development (Resolution No. 3797-09). The property is referred to as Block 4 within the City's Intermodal Station District (APN: 087-0019-004-02). No new development or construction activities are proposed with this application nor is the applicant requesting a modification to the previous approved project. On January 27, 2009, the City Council adopted a supplemental Mitigated Negative Declaration which determined that, with the incorporation of mitigation measures, the previously approved affordable housing project would not have a significant effect on the environment. The proposed condominium plan does not propose any changes to the project that would result in any additional impacts or need for additional mitigation. No further environmental review is required.**

Carmela Campbell, Planning Manager, presented the staff report.

Commissioner Panlilio asked what would be the uses for the public spaces in the garages.

Ms. Campbell replied that they will accommodate the retail development within the entire Intermodal Station. Ms. Campbell replied that is how the Redevelopment Agency is proposing to provide parking for the Intermodal Station for the commercial uses.

Commissioner Panlilio asked if it would be paid parking.

Joan Malloy, Economic and Community Director, replied that the City is moving forward with a parking plan for the Station District that does include paid parking to be implemented in 2010. Ms. Malloy stated that that plan does include the garage when it is completed.

Commissioner Panlilio asked if the tract map is being done to make the financing easier.

Ms. Campbell replied that is correct.

Commissioner Singh asked how many total condominiums will there be.

Ms. Campbell replied that there will be eight condominiums. Ms. Campbell noted that the Tentative Tract Map stated incorrectly that there would be 20 condominiums and the corrected Tentative Tract Map shows that there will be eight condominiums.

Commissioner Gonzales asked if the common areas will not be public areas and therefore not the responsibility of the City for upkeep of the landscaping.

Ms. Campbell replied that is correct.

Commissioner Gonzales asked if there would be language in the CC&R's that would define the "satisfaction" of the City in regards to maintenance of the landscaping.

Ms. Campbell replied that is correct.

Commissioner Gonzales asked if the developer wishes to phase this project.

Ms. Campbell replied that the phasing was part of the original approval and Mr. Juan De Leon, representative for Mid-Peninsula Housing, is here tonight and can explain it more fully.

Chairperson Anderson noted that the original application was for 158 units and this application shows 160 units and asked why the difference.

Ms. Malloy replied that from the original time that the commission saw the project the unit count actually dropped slightly in order to accommodate some additional storage. Ms. Malloy stated that the actual count is 157 units; 100 units in phase one and 57 units in phase two.

Chairperson Anderson asked if the two manager's units will remain.

Ms. Malloy replied that they are included in the count, so there will be 155 affordable units.

Chairperson Anderson asked what does the person get that purchases one of these condo units.

Ms. Campbell replied that this development is all affordable rental housing. Ms. Campbell stated that there will be no individual sale of units.

Chairperson Anderson asked why are they called condominiums.

Ms. Campbell replied that this is the subdivision of airspace. Ms. Campbell stated that in this case the developer is creating condominiums of entire buildings.

Chairperson Anderson asked if they will be selling individual airspace units.

Ms. Campbell replied no.

Ms. Malloy stated that this is a mechanism for the financing of different components of the development.

Commissioner Panlilio referred to page 3 of the staff report and noted that it states that there are 100 units in phase one and 60 units in phase two and asked what is the correct count.

Ms. Campbell replied that it should read 57 units.

Chairperson Anderson opened the public hearing.

Juan DeLeon, Mid-Peninsula Housing, Foster City, CA, stated that Mid-Peninsula Housing is not able to finance a project of 157 units but they can finance one project of one hundred units and one project of 57 units. Mr. DeLeon stated that when the banks give them a loan they do not want to have them take the entire site as security just the site that they are financing. Mr. DeLeon stated that no individual units will be for sale.

Barry Ferrier, 32212 Allison Way, Union City, CA asked if there will be a Mello-Roos district for this project to pay for City services.

Ms. Malloy replied that this property has already been annexed into the Mello-Roos district.

Chairperson Anderson closed the public hearing.

Commissioner Lew moved to recommend approval to the City Council of Tentative Tract Map TTM-01-09, making findings 1 – 2 and adopt a resolution confirming this action.

Commissioner Singh seconded.

AYES	5 (Anderson, Gonzales, Lew, Panlilio, Singh)
NOES	0
ABSTAIN	0
ABSENT	0

- MASONIC HOMES, 34400 MISSION BOULEVARD, Modified Site Development Review (MOD-SD-09-06b)**; the applicant is requesting approval of Modified Site Development Review (MOD-SD-09-06b) for the Acacia Creek project to make modifications to the approved exterior materials and remove the temporary carports identified on the approved site plane. The Masonic Homes campus is located at 34400 Mission Boulevard (APN: 087-0031-003-03). On June 10, 2007, the City Council adopted a supplemental Mitigated Negative Declaration (Resolution No. 3401-07) which determined that, with the incorporation of mitigation measures, the project would not have a significant effect on the environment. The proposed modifications will not result in impacts beyond those analyzed in the adopted MND. Pursuant to Section 15070 of the California Environmental Quality Act Guidelines no further environmental review is required.

Avalon Schultz, Associate Planner, presented the staff report.

Commissioner Gonzales asked if the elevator tower will be painted all one solid color.

Ms. Schultz replied that the proposal is to paint it one color and the idea is to not draw peoples' eyes to the elevator tower, so by painting it a mid-tone color it will recede more and the brick will highlight the more attractive parts of the building.

Commissioner Gonzales asked if the existing residences on the hill are able to view that side of the building.

Ms. Schultz replied that most of the residences don't have windows facing the site.

Commissioner Lew asked how much brick veneer will be used on the building.

Ms. Schultz pointed out on the screen where brick will be used.

Commissioner Lew asked if the elevator tower will have a smooth or stucco like finish.

Ms. Schultz replied that it is plaster but she is not sure of the finish.

Commissioner Singh asked if there were going to be any changes to the riparian area.

Ms. Schultz replied that there are no changes being made to the riparian area.

Commissioner Panlilio asked if there is a fire hazard because of the location.

Ms. Schultz replied that there is a commercial, state-of-the-art fire suppression system and the construction does not include a lot of wood. Ms. Schultz stated that they are also installing a brand new water tank that can be used for fire suppression.

Commissioner Panlilio asked if any of the foliage will be removed.

Ms. Schultz replied that they will not be removing any of the foliage in that area.

Chairperson Anderson opened the public hearing.

Joel Roos, representing Masonic Homes, stated that they are very close to finishing the building. Mr. Roos stated that they plan on opening their doors on January 29, 2010. Mr. Roos stated that the process has gone very smoothly and thanked all the staff for their hard work. Mr. Roos stated that the elevator tower will have a smooth plaster finish with integral color. Mr. Roos stated that the pool building will have a brick wainscoting about three feet high. Mr. Roos stated that in regards to the riparian corridor, they are not allowed to remove any of the foliage by law. Mr. Roos stated that they are restoring some of the foliage.

Chairperson Anderson closed the public hearing.

Commissioner Singh moved to recommend to the City Council approval of Modified Site Development Review, MOD-SD-09-06b, making findings 1 – 4, with no changes to the conditions of approval and adopting a resolution confirming this action.

Commissioner Panlilio seconded.

AYES	5 (Anderson, Gonzales, Lew, Panlilio, Singh)
NOES	0
ABSTAIN	0
ABSENT	0

3. **PAPPAS UNION CITY, LP, 31300 COURTHOUSE DRIVE, Site Development Review SD-02-09**; the applicant is requesting Site Development Review (SD-02-09) approval to construct an approximately 17,279 square foot building on a vacant pad located at 31300 Courthouse Drive (APN: 463-0060-048) between Best Buy and Babies R Us in Union Landing. On March 14, 1995, the City Council certified the Environmental Impact Report (EIR) for the Dyer Street Triangle (Union Landing) with Statements of Overriding Considerations, Resolution No. 8536-95. A Negative Declaration was also prepared for the Site Development Review SD-02-00 to address specific issues of the original 316,307 square foot Pappas project pursuant to Section 15162 and 15168 of the California Environmental Quality Act (CEQA) Guidelines. No further environmental review is required.

Avalon Schultz, Associate Planner, presented the staff report.

Commissioner Panlilio stated that he approves of the project as is.

Commissioner Singh asked how many times the applicant can renew this permit.

Ms. Schultz replied as many times as they pay the planning review fees.

Commissioner Singh asked if they have any plans for the future.

Ms. Schultz referred the question to the applicant.

Commissioner Lew asked if they will be using the Best Buy driveway to access the back of the building for trash and deliveries.

Ms. Schultz replied that it is the driveway that runs behind Best Buy and then wraps around Babies R Us.

Commissioner Lew asked if that means they would not come in behind Sports Authority and Babies R Us.

Joan Malloy, Economic and Community Development Director, stated that it is a one-way loop, which starts at Best Buy and circulates through and exits out at Holly Way near Courthouse Drive.

Commissioner Lew noted that there are no arrows or signage to indicate that it is a one-way loop.

Ms. Malloy replied that it would only take one visit to determine that the only way to back into the loading dock area is to enter at Best Buy. Ms. Malloy noted that all of the delivery docks are set up for one way of delivery.

Commissioner Lew stated that the back of Best Buy has a lot of trash and their metal trash box was filled to overflowing and sitting out in the drive aisle. Commissioner Lew stated that she thought they had designated trash areas.

Commissioner Lew referred to condition #52 and stated that she was glad that the applicant was being required to install speed bumps and felt that more speed bumps need to be added in the Union Landing shopping center. Commissioner Lew noted that there are stop signs for cars but there is no protection for pedestrians in the crosswalks and sometimes it is hard to identify where pedestrian crossings are located.

Commissioner Gonzales asked for clarification of how delivery trucks would access the loading dock area.

Ms. Schultz replied that the trucks would enter behind Best Buy and continue around the buildings until they could back into the loading dock. Ms. Schultz stated that there is curved area that would be modified so that there is adequate room for trucks to come around and back into the loading dock of the wedge building. Ms. Schultz stated that then they would pull forward and exit from behind Babies R Us.

Commissioner Gonzales asked if that would conflict with the parking.

Ms. Schultz replied that all of the parking is located in front of the buildings.

Commissioner Gonzales referred to the parking by Borders.

Ms. Schultz replied that there is a trellis wall and curb that keeps the truck traffic separated from the parking lot.

Commissioner Gonzales asked if the applicant was also asking for the one year extension for the application.

Ms. Schultz replied that the permit that expires on January 22, 2010 will go away completely. Ms. Schultz stated that the current application will begin and they will have one full year to begin construction and one possible one year extension.

Commissioner Gonzales asked if there had been any retail applicants.

Ms. Schultz referred the question to the applicant and stated that the applicant has pulled their building permits and paid all of the building and the public art-in-lieu fees so they could start construction when they are ready.

Chairperson Anderson referred to the truck driveway plan and asked about the curb modification and what delivery trucks might be running over.

Ms. Schultz replied that the line Commissioner Anderson was referring to is an easement line.

Chairperson Anderson asked what the space is made of.

Ms. Schultz replied that it is asphalt.

Chairperson Anderson opened the public hearing.

Commissioner Gonzales asked if they had any potential retailers for the property.

Brad Grondon, Pappas Investments, replied that there are some retailers that are interested.

Commissioner Lew stated that she is glad to see the property being developed and noted that there is a lot of vehicle and foot traffic in front of the property

Mr. Grondon replied that they are trying to market it that way.

Chairperson Anderson closed the public hearing.

Commissioner Panlilio moved to recommend to the City Council approval of Site Development Review SD-02-09, making findings 1 – 4, with stated conditions of approval and adopting a resolution confirming this action.

Commissioner Lew seconded.

AYES	5 (Anderson, Gonzales, Lew, Panlilio, Singh)
NOES	0
ABSTAIN	0
ABSENT	0

- 4. CITYWIDE, Zoning Text Amendment AT-07-09; the City is proposing to amend Title 18, *Zoning*, of the Union City Municipal , generally to regulate the distribution of tobacco products and the establishment of Cigarette Stores/Tobacco Retail Stores and Drug Paraphernalia Establishments/Head Shops.**

Avalon Schultz, Associate Planner, presented the staff report.

Commissioner Gonzales asked what is the intent for the Planning Commission.

Ms. Schultz replied that this issue was first brought up in the Good of the Order at a City Council meeting, then staff added it to the next City Council agenda and the Council voted that they wanted to discuss this issue at a future meeting.

Joan Malloy, Economic and Community Development Director, stated that the Council specifically wanted to discuss this issue at the same meeting that they would be discussing the drug paraphernalia ordinance. Ms. Malloy stated that it was targeted to coincide with this text amendment. Ms. Malloy stated that by bringing it forward to the Planning Commission then staff is able to carry that discussion forward to the City Council as part of the public hearing process. Ms. Malloy stated then the Council can decide whether to keep it in the ordinance, carry it over for further consideration or whatever they decide.

Ms. Schultz clarified that in the Planning Commission staff report she wrote that the City Council directed staff to do amend the Zoning Ordinance, but the Council has not fully discussed the issue.

Commissioner Gonzales referred to page 3 of 6 and asked for clarification of how the location of shops would be determined.

Ms. Schultz replied that the Use Permit would only be allowed if the shop is located more than 1,000 feet away from the specified locations. Ms. Schultz stated that the Use Permit does not allow a shop to locate within 1,000 feet.

Ms. Malloy stated that if you sell more than 15% tobacco products and you are 1,000 feet away from the list of sensitive uses then the shop would need a Use Permit. Ms. Malloy stated that if it is a general grocery store, it doesn't need a special Use Permit because it is selling less than 15% of tobacco products but it would still have to be 1,000 feet away from the designated locations. Ms. Malloy stated that the tobacco retailer would be required to get a special Use Permit because they focus on the selling of tobacco products.

Commissioner Gonzales noted that it is not just tobacco but also the head shop paraphernalia.

Commissioner Gonzales asked if the shop limited its tobacco products to less than 15% could it then be located within 1,000 feet of the designated locations.

Ms. Schultz replied that if there was no sale of tobacco products but just accessories, which made up less than 15% of the total floor area, and then the shop would not need the Use Permit and could locate within 1,000 feet of the designated locations.

Commissioner Gonzales stated his concerns that the whole idea of labeling this paraphernalia and tobacco as a risk to children is the main reason for this discussion. Commissioner Gonzales stated that if someone was just under the threshold and opened a shop near a sensitive use area, then those children could be exposed to this paraphernalia and advertisement of these products. Commissioner Gonzales stated that we are trying not to have the children around this stuff.

Ms. Schultz stated that the goal of the 15% threshold was so that a grocery store that has a display selling cigarettes or a convenience store that has a cigarette display behind the cash register wouldn't necessarily need Use Permits. Ms. Schultz stated that the 1,000 foot rule could potentially apply to all tobacco sales if the Planning Commission recommends to the Council and the Council decides that it is a good idea. Ms. Schultz stated that the idea was not to trigger a Use Permit review for a general retail store that also sold tobacco products.

Commissioner Gonzales stated that he has seen a lot of these stores pop-up in Fremont and there are quite a few now. Commissioner Gonzales stated that he has been in one of these shops and it is something that he would never want his child to be exposed to. Commissioner Gonzales stated that this is not the type of product that any community should ever have to be exposed to if we can help it. Commissioner Gonzales stated that he wants to restrict it to the fullest extent.

Ms. Malloy asked for clarification if Commissioner Gonzales supports not only restricting tobacco retail stores but also restricting the general distribution within 1,000 feet of schools.

Commissioner Gonzales replied yes; more restrictive in that direction because these products have no place in this community.

Commissioner Gonzales asked for clarification or a definition of "sensitive use".

Ms. Schultz replied that the purpose of using the phrase "sensitive use" is only meant to apply to the following list of uses that are listed in the staff report. Ms. Schultz stated by using the phrase the uses can be referred to collectively when measuring the distance.

Commissioner Gonzales referred to section 18.08.655 in Exhibit A and suggested that there be a link to the definition to make it clearer.

Ms. Schultz referred to the section on commercial uses and on the first page noted that the sensitive uses are listed there.

Commissioner Gonzales stated that “youth orientated uses” is a good catch all.

Commissioner Gonzales asked if it would be important to add “private” or “public” to the uses.

Ms. Schultz stated that could be added to “youth orientated establishment” definition, to clarify that it means a public or private establishment.

Commissioner Gonzales gave the example of the tutoring store on Alvarado-Niles Road and noted that it is a private establishment, but it is orientated to youth.

Ms. Malloy replied that is exactly what staff is trying to target.

Commissioner Gonzales asked about grandfathering the regular stores and noted that Senator Padilla proposed a three-strike rule and would the City would be interested in adding this.

Ms. Schultz replied that the issue can be brought to the City Council and the Police Department can be brought in to discuss it as well.

Commissioner Lew stated that it is difficult to review code changes in light of the fact that later on the changes will have to be implemented. Commissioner Lew stated that she looks at who is going to do the implementation and asked where does the Police fit into this process. Commissioner Lew asked who will do the enforcement; the building inspector or the police.

Ms. Schultz replied that the idea is that by placing this in the Zoning Code it will be triggered when new businesses come into the City. Ms. Schultz stated that Planning does review new business license applications so if an application comes in that could potentially sell tobacco products; it can be addressed right away. Ms. Schultz stated that the Police Department also signs off on business applications. Ms. Schultz stated that by making it a conditionally permitted use staff can evaluate the use prior to the applicant signing a lease. Ms. Schultz stated that it will be difficult to enforce if an existing retailer within 1,000 feet sells tobacco and they expand the amount of tobacco that they sell.

Ms. Malloy stated that it would become a code enforcement case and they would have to reduce the amount of tobacco they are selling to conform with the zoning.

Commissioner Lew clarified that code enforcement and not the police would do the enforcement.

Ms. Malloy stated that it is because it is a land use issue and that the sale of tobacco to minors is against state law, which would be a police issue. Ms. Malloy stated that the location is a land use issue.

Commissioner Lew asked if there is a fee schedule for fines for this code enforcement issue.

Ms. Schultz replied affirmative.

Commissioner Lew asked if the City receives tax dollars from the sale of cigarettes.

Ms. Schultz replied that she is not sure.

Ms. Malloy replied that the City would receive their fair share of retail sales tax but is not sure how the special cigarette tax is distributed.

Kit Faubion, City Attorney, stated that she believes that the proceeds of those taxes go to tobacco education programs and reduction programs.

Commissioner Lew noted that an economic impact study was not done on the impact of essentially banning tobacco sales within a certain area, so we don't know if the City will lose money from this. Commissioner Lew stated that this is just a quality of life issue, hoping to improve the air we breathe.

Ms. Malloy stated that the existing retailers that sell tobacco products would be grandfathered in and those uses could continue at those locations. Ms. Malloy stated that this targets new uses. Ms. Malloy stated that there are probably only two businesses that would qualify as tobacco retailers and so she thinks the impact would be minimal.

Commissioner Lew stated that she has heard that there will be a hookah lounge going in Hayward and asked if they smoke steam or water.

Ms. Schultz replied that it is a flavored tobacco product and this application would not regulate smoking lounges but the City does have regulations in place for smoking lounges.

Commissioner Lew asked why hookah lounges are not included in this application.

Ms. Schultz replied the tobacco products definition would include hookah lounges so it would be captured by that language. Ms. Schultz stated that an amendment could be added under the smoking lounge section. Ms. Schultz stated that it could be added to section 18.36.040, Tobacco Products and all of that section would be added to the Conditional Use table on page 2 of Exhibit A.

Commissioner Lew agreed with that.

Ms. Schultz stated that it would clarify for applicants that want to open a smoking lounge that just because it is a conditional use it still cannot be within 1,000 feet of sensitive uses.

Commissioner Lew asked if it would be highlighted.

Ms. Schultz replied that it could be created on a separate line with added language.

Commissioner Lew asked if Union City ever passed a ban on smoking in certain areas.

Ms. Schultz replied that there is an ordinance against smoking near entrances of buildings.

Commissioner Lew asked what the distance is.

Ms. Malloy replied it is 20 feet from doorways, windows and air intakes.

Commissioner Lew asked if you are banning the sale of tobacco products within 1,000 feet of certain areas why not just ban smoking in those area altogether.

Ms. Malloy replied that the intention of this code amendment is to address the sale and access of smoking products to minors not to regulate personal behavior.

Commissioner Lew stated that she agrees with Commissioner Gonzales that it would be nice to have a definition of sensitive uses in the definition section because it would clarify the proposed modifications. Commissioner Lew stated that then you would not have to repeat the list of sensitive uses eight or nine times in the different sections. Commissioner Lew stated that the code could just refer back to the definition in section 18.08 of the zoning code.

Commissioner Lew noted that the new definitions are not being inserted in alphabetical order and some of the numbers appeared to be missing and noted that the super store definition was missing.

Commissioner Lew referred to page 3 of the resolution and stated that in number 2 the “s” on retail should be deleted.

Commissioner Lew referred to Exhibit A and stated “youth oriented” should have a hyphen added to it.

Commissioner Lew referred to Exhibit A and stated that on the second line “advertises” is misspelled.

Commissioner Lew asked if more examples of youth oriented establishments should be given.

Ms. Schultz replied that flexibility would be a benefit in this case.

Commissioner Lew asked if that means that movie theaters would be optional.

Ms. Schultz replied that the definition is if it is primarily or predominately for minors and movie theaters are not predominately for minors.

Commissioner Lew asked when staff states “geared for youth” does that exclude the adults or parents that accompany the minors.

Ms. Schultz replied it does not.

Commissioner Singh agreed with Commissioner Gonzales that all sales of tobacco should be stopped. Commissioner Singh stated that he opposes the sale of tobacco no matter the distance.

Commissioner Singh asked how many CC, Community Commercial, district areas are in Union City.

Ms. Schultz replied that all four corners around the intersection of Alvarado Boulevard and Dyer Street are zoned CC and at the end of Alvarado Boulevard there is a small CC zoned area. Ms. Schultz stated that the El Mercado and Marketplace shopping centers at the intersection of Alvarado-Niles Road and Decoto Road are zoned CC as well as the shopping center across the street from the Marketplace shopping center on Decoto Road. Ms. Schultz stated that the City Center is zoned CC. Ms. Schultz stated that it is a large area but it is not spread throughout the City.

Commissioner Singh stated that San Francisco stopped smoking in restaurants and in public areas and he believes that Union City should do that also. Commissioner Singh stated his concerns about minors being sold tobacco products and that Union City should not sell tobacco or any drug items related to marijuana. Commissioner Singh stated that he does not know how much revenue the City receives from these sales but he does not think it is worth it. Commissioner Singh stated that it is going to be very difficult to

enforce this and he thinks that people will find ways around it. Commissioner Singh stated that he feels very strongly that there should be no tobacco sales in the City at all.

Commissioner Panlilio noted that California has legalized medical marijuana and asked if that would be affected by this ordinance.

Ms. Schultz replied that there is a requirement in the Municipal Code that all uses be consistent with State and Federal law so the City does not allow medical marijuana dispensaries in Union City because they would not be consistent with Federal law.

Commissioner Panlilio referred to the definition of drug paraphernalia and asked why it is being removed.

Ms. Schultz replied because it is banned by the State. Ms. Schultz stated that the courts have found that State law takes precedence.

Commissioner Panlilio stated that while he is opposed to smoking, the rights of those who do smoke should be considered. Commissioner Panlilio suggested designated smoking areas. Commissioner Panlilio stated that he hates seeing all the cigarette butts lying around on the ground and perhaps that could be addressed as well. Commissioner Panlilio suggested that for restaurants and offices there should be designated smoking areas. Commissioner Panlilio stated that he didn't want to infringe on the rights of others.

Ms. Malloy replied that his comments would be given to the City Council. Ms. Malloy stated that this ordinance does not address smoking in public places that the City might want to further restrict. Ms. Malloy noted that restaurants and outdoor eating establishments are already restricted under State law. Ms. Malloy noted that the City already has smoking restrictions near doorways, windows and air intakes.

Commissioner Panlilio stated that he is also talking about secondhand smoke and if someone is smoking near the youth then they will be affected. Commissioner Panlilio stated that he hates smoke and he feels that secondhand smoke is even more dangerous than smoking itself.

Ms. Malloy clarified that Commissioner Panlilio would support the ordinance but would suggest further restrictions on public smoking in the future.

Commissioner Panlilio stated that is correct. Commissioner Panlilio stated that even though we are protective of the rights of smokers, we should also protect the rights of people who are going to be affected by it, particularly children.

Chairperson Anderson stated initially this was to follow the State mandate to come up with a law that regulates drug paraphernalia and keep access to that stuff out of the hands of children. Chairperson Anderson stated that was the primary objective but then we added banning tobacco sales and it is like mixing two things that are not compatible with each other. Chairperson Anderson stated that if it is sold kids have access to it. Chairperson Anderson stated that you can tell these products are marketed for youth because of the way they are colored and packaged to attract young people. Chairperson Anderson stated that this whole thing with the paraphernalia and head shops makes a lot of sense but he is not sure if adding tobacco sales has any real significance because they don't really relate to each other. Chairperson Anderson stated he is not sure that regulating tobacco sales would have anything to do with keeping drug paraphernalia products away from youth. Chairperson Anderson stated that it has more to do with how drug paraphernalia is packaged and marketed. Chairperson Anderson asked how you would know if this law was working.

Ms. Schultz clarified the reason that the retail tobacco store and smoke shop use category is coming out of the drug paraphernalia discussion is that drug paraphernalia gets distributed under the guise of being a tobacco paraphernalia product. Ms. Schultz stated that those two issues are very much related. Ms. Schultz stated that Chairperson Anderson is correct that banning outright tobacco sales within 1,000 feet of schools is taking it to a different level and is a different issue raised by Senator Padilla. Ms. Schultz stated that there are health issues associated with youth being around tobacco sales. Ms. Schultz stated that there are two ideas represented in the zoning text amendment, but the City Council wants to discuss them both and would welcome the Planning Commission's comments.

Chairperson Anderson stated that by combining them you put them as if they are the same thing and they should be separate discussions. Chairperson Anderson thinks they are two separate discussions and he doesn't know why the City Council would want to combine the two.

Ms. Schultz stated that the Planning Commission's recommendation would be forwarded to the City Council and if they only want to recommend approval of part of it that can be reflected in the resolution.

Chairperson Anderson asked would the motion include banning cigarettes and all the other topics discussed tonight.

Ms. Schultz stated that Exhibit A to the resolution has everything in it; it has the drug paraphernalia deletions, the smoke shop language and the limit on tobacco sales within all the zoning districts. Ms. Schultz stated that if the Planning Commission wants to recommend only a portion of Exhibit A that can be reflected in the resolution.

Chairperson Anderson stated that he feels that this is too short a time to discuss all of these things and would have liked to have had a study session. Chairperson Anderson stated that he would be uncomfortable coming up with a motion addressing those issues. Chairperson Anderson stated that he was unaware that Exhibit A covered everything that was just talked about.

Ms. Schultz referred to page 4 through 7 of Exhibit A and stated that it covered the three topics discussed.

Chairperson Anderson stated that he has a different Exhibit A.

Ms. Schultz asked the commission to provide feedback just regarding whether or not the council should ban tobacco sales altogether within 1,000 feet of those uses listed.

Chairperson Anderson asked for an example of a motion.

Ms. Schultz suggested that the motion could be something like: "The Planning Commission of the City of Union City hereby recommends that the City Council approves Zoning Text Amendment AT-07-09, except prohibiting tobacco sales within 1,000 feet of sensitive uses."

Kit Faubion, City Attorney, stated that the motion could be along those lines or they could use the three lines of language that is at the bottom of the resolution and then add what they want to except out of that.

Ms. Malloy stated that there are three concepts that are embodied in the text amendment; the first one is drug paraphernalia and head shops and staff is recommending that it be deleted entirely from the code. Ms. Malloy stated that the second addresses retail tobacco stores and smoke shops and it says that if you want to sell more than 15% tobacco products then you have to get a special permit from the City and have to be away from schools. Ms. Malloy stated that the third addresses tobacco distribution and basically says that you cannot sell tobacco anywhere near schools no matter how little or how much.

Commissioner Gonzales pointed out that tobacco distribution and use by minors is regulated by State law, but he does not think that there is any State law regarding drug paraphernalia.

Ms. Schultz replied that drug paraphernalia is banned by State law. Ms. Schultz stated that some drug paraphernalia is sold disguised as tobacco paraphernalia and then the 18 year old rule would apply.

Commissioner Gonzales stated that he would tell the City Council to be very cautious that this drug paraphernalia is a disguise and they are being tailored towards the marijuana users.

Commissioner Panlilio asked if any other cities have passed amendments similar to this.

Ms. Schultz replied that numerous cities have passed ordinances similar to this.

Commissioner Panlilio stated that he wanted to see sample ordinances to help with formulating this ordinance.

Ms. Schultz stated that staff has researched how other cities have handled these issues and created tonight's ordinance based on that research.

Commissioner Lew referred to the list of sensitive uses and asked if recreation centers include the City community centers.

Ms. Schultz replied that it does.

Commissioner Lew asked to clarify that language.

Ms. Schultz agreed to change that.

Commissioner Lew asked if that includes the sports center.

Ms. Schultz replied that it does.

Commissioner Gonzales asked if it could be private or public.

Commissioner Lew stated that tobacco and alcohol are considered drugs and if you have an addiction to them they are treated just like a drug addiction.

Chairperson Anderson opened the public hearing.

Barry Ferrier, 32212 Allison Way, Union City, stated that this only covers fixed outlets and it does not cover the lunch trucks that frequent construction sites and parking lots. Mr. Ferrier stated that he does not know if they can sell cigarettes but if they can they should be covered as well. Mr. Ferrier noted that he has seen these lunch trucks parked out by Alvarado Middle School because there is a construction project going on there.

Chairperson Anderson closed the public hearing.

Chairperson Anderson asked how "public and private" would be added.

Ms. Schultz replied that it would go in front of "youth oriented."

Commissioner Gonzales stated that he wants to stress that the council needs to be very sensitive about the paraphernalia retail stores. Commissioner Gonzales stated that they disguise themselves and sell things that are detrimental to everyone. Commissioner Gonzales stated that he doesn't want to see these stores in sensitive areas. Commissioner Gonzales stated that he doesn't want to tell the public how to live their lives but we don't want to put things in areas where children will have easy access to them.

Commissioner Panlilio stated that lunch coaches should be added to the list to look at.

Commissioner Lew moved to recommend to the City Council approval of Zoning Text Amendment AT-07-09, making findings 1 – 3, with modifications to Exhibit A and adopt a resolution confirming this action.

Commissioner Panlilio seconded.

AYES	4 (Anderson, Lew, Panlilio, Singh)
NOES	1 (Gonzales)
ABSTAIN	0
ABSENT	0

**VI. SUPPLEMENTAL STAFF REPORTS:**

**A. CONTINUED REPORTS:** None.

**B. NEW REPORTS:** None.

**VII. REDEVELOPMENT AND ECONOMIC DEVELOPMENT REPORTS:** None.

**VIII. COMMISSION MATTERS:**

**A.** Follow-up on Planning Commission referrals to the City Council.

**B.** Upcoming applications for the Planning Commission meeting for December 17, 2009.

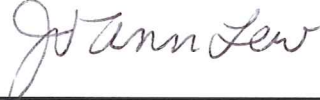
**IX. GOOD OF THE ORDER:**

Commissioner Gonzales stated that he was glad to see that the two Decoto homes were put on the market as affordable homes for a price of \$250,000.00. Commissioner Gonzales stated that it was a great opportunity for home ownership.

Commissioner Singh stated that at the Pinn Brothers building on Union City Boulevard the outside signs for Quizno's and Subway had all their signs confiscated. Commissioner Singh stated that the owner of Quizno's called him because business is very slow and without their signs they are struggling. Commissioner Singh asked if there was something that staff could do to help them even though the sign zoning doesn't allow outside signs.

X. ADJOURNMENT: 9:30 p.m.

APPROVED:



for

TIKISA ANDERSON, CHAIRPERSON

ATTEST:

  
JOAN MALLOY, SECRETARY