



AGENDA REPORT

PLANNING AND BUILDING SERVICES DEPARTMENT

DATE: May 1, 2018

TO: Mayor Butt and Members of the City Council

FROM: Richard Mitchell, Director of Planning and Building Services
Lina Velasco, Planning Manager

SUBJECT: Appeal of the Planning Commission's approval of the Anaviv Conditional Use Permit Amendment

STATEMENT OF THE ISSUE:

On January 18, 2018, the Planning Commission adopted Resolution 18-05, approving the Anaviv Conditional Use Permit (CUP) Amendment to establish a restaurant with a Type-47 Alcoholic Beverage Control license at an existing building with a commercial kitchen, subject to conditions. Sims Metal Management (SMM) is appealing the Planning Commission's approval stating improper use of a CEQA exemption due to unusual circumstances, cumulative impacts and General Plan and Specific Plan inconsistency.

RECOMMENDED ACTION:

HOLD a public hearing on the appeal of the Planning Commission's conditional approval of the Anaviv CUP Amendment (PLN17-572); and ADOPT a resolution affirming the Planning Commission's conditional approval.

FINANCIAL IMPACTS:

There is no cost to the general fund associated with approving or denying the subject appeal.

DISCUSSION:

Arnon Oren, the applicant and property owner, requested a Conditional Use Permit Amendment (PLN17-572) to establish a restaurant with a Type 47 Alcoholic Beverage Control (ABC) license for on-sale general at an existing commercial kitchen located at 600 Hoffman Boulevard, APN: 550-271-002 (subject site). The CUP Amendment request replaces the Planning Commission's November 17, 2016 approved CUP

(PLN16-451) for a Type 41 ABC license for on-sale beer and wine for private dinners within the existing commercial kitchen.

Due to ABC licensing requirements for a Type 47 license, Mr. Oren requests a CUP amendment to modify his existing commercial kitchen that provides private dinners to a full service restaurant with 10 seats.

Below are the specified reasons SMM appealed the Planning Commission's approval of the CUP Amendment followed by the staff responses in *italic*:

1. Improper reliance on "existing facilities" CEQA exemption

*Staff Response: The Planning Commission determined that the project is categorically exempt from the California Environmental Quality Act (CEQA) per CEQA Guidelines Section 15301(a) for project consisting of interior or exterior alterations, tenant improvements involving such things as interior partitions, plumbing, and electrical conveyances. The CEQA Categorical Exemption Section 15301, Existing Facilities, Class 1, consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving **negligible or no expansion** of use beyond that existing at the time of the lead agency's determination.*

The CEQA exemption applies since the project involves a negligible use beyond the previously approved Oren's Kitchen CUP (PLN16-451). The restaurant is within an existing facility (commercial kitchen) involving no physical expansion and no interior changes. The original CUP approval included 6 guests and the CUP amendment remains small in size serving no more than 10 guests for dinner within the limited hours of operation noted as Wednesday to Sunday from 6:00 PM to 10:00 PM.

2-3. The "unusual circumstances" exemption and "cumulative impact" exception apply

Staff Response: A Full Service Restaurant may be conditionally allowed in the IL Industrial, Light zoning district. In considering a Conditional Use Permit Amendment, the Planning Commission considers the use's potential impact on surrounding uses. A conditionally allowed restaurant serving no more than 10 guests at a time within the existing building with a commercial kitchen is consistent with the Zoning Ordinance and is not an unusual circumstance nor does it necessarily lead to a potential cumulative impact.

SMM's arguments regarding unusual circumstances and cumulative impacts are primarily based upon the existing industrial businesses' impact on the restaurant. However, CEQA analysis reviews the potential impact of a proposed project on the environment. Its purpose is not to evaluate the existing environment's

possible impact on a proposed project (See California Building Industry Association and Bay Area Air Quality Management District).

4. Failure to analyze and support consistency with General Plan and Specific Plan

Staff Response: The CUP for a restaurant within an existing building with a commercial kitchen is consistent with several General Plan policies as listed below. There is no applicable Specific Plan for the subject site.

General Plan Policy LU5.1, A Balanced Mix of Land Uses, promotes a balanced mix of uses in major activity centers, community nodes and gateways, in neighborhood nodes (corner commercial clusters), and along key corridors as well as in industrial areas. A mix of uses such as business, residential, light industrial, waterfront commercial, and open space will enhance economic vitality and provide the flexibility needed to adapt to changing economic conditions.

The proposed project helps to promote a balanced mix of uses in a light industrial area. It enhances economic vitality and provides the flexibility necessary to adapt to changing economic conditions.

General Plan Policy LU3.1, Environmentally Progressive Businesses and Industries, encourages existing businesses and industries to become increasingly environmentally progressive and continue making positive contributions to the community. It supports efforts to require existing industries to decrease harmful emissions and impacts; and promote a mix of uses and a range of activities on industrial land to create jobs and revenue while avoiding conflict between industrial and nonindustrial uses.

The proposed project makes positive contributions to the community, supporting a mix of uses and a range of activities on a light industrial site.

General Plan Policy ED1.6 Leveraging Richmond's Diversity, leverages Richmond's diversity into local economic development by promoting cultural tourism and establishing a unique, marketable identity for Richmond. It supports the expansion of arts, food, festivals, museums and music. Events associated with arts and culture can serve as major attractions for new businesses and residents that support the Bay Area's knowledge-based economy. The City can also attract culturally-based retail establishments and eateries that reflect Richmond's diversity.

The proposed project leverages Richmond's diversity into economic development, through the expansion of arts, food, festivals, museums and music, by adding a restaurant that reflects Richmond's diversity.

5. Violation of Knox SP

Staff Response: The Knox Cutting Specific Plan was repealed on December 20, 2016 during the adoption of the Richmond Bay Specific Plan. Therefore, the appellant's claim that the City violated the Knox Cutting Specific Plan is incorrect (See Ordinance No. 21-16 N.S.).

SMM's appeal requests that the City include the following two conditions in the CUP amendment approval:

1. Acknowledgement and Waiver of Rights
2. SMM asks that a condition of approval be added to the project requiring the applicant to sign an acknowledgement stating the following (This is the revised version provided to the applicant and planning staff on April 9, 2018.):

The eating establishment is located in an industrially zoned section of the City of Richmond, and immediately adjacent to and near industrially zoned and operated properties. The applicant acknowledges that industrial uses at the surrounding industrial properties may result in inconveniences or discomfort to applicant or customers from noise, dust, vibrations, odors, air emissions, industrial and other heavy vehicle traffic, and visual impacts such as from industrial materials and equipment. In particular, the applicant, its employees and customers may be subject to: (1) loud noises from outdoor industrial, manufacturing or fabrication processes or movements of outdoor industrial materials (including loading and unloading into or out of ship holds or other bulk cargo storage areas) or from movement or horns of trains, trucks, ships or other motor vehicles; (2) dust and odors generated from the metal, glass, ceramic and other industrial, manufacturing or fabricating processes or movements of outdoor industrial materials (including loading and unloading into or out of ship holds or other bulk cargo storage areas) or exhaust fumes from trains, trucks, ships or other motor vehicles; (3) vibrations generated from trains or trucks or during the outdoor industrial, manufacturing or fabrication processes or movements of related materials (including loading and unloading into or out of ship holds or other bulk cargo storage areas); (4) industrial lights from buildings, outdoor operations, parking areas and driveways or trucks and locomotives at all hours of the day or night, and (5) views of outdoor industrial activities and materials. The applicant acknowledges that these impacts are the expected result of operating a commercial eating establishment in an industrial area.

3. Disclosure to Patrons

SMM asks that a condition of approval be added requiring the applicant to post the following on-site:

This restaurant is located in an industrially zoned section of the City immediately adjacent to an active railroad and scrap metal recycling facility entitled to operate seven days per week, 24 hours per day. Diners may experience noise, nighttime

industrial lights, dust, vibrations, odors, air emissions, industrial and other heavy vehicle traffic, and visual impacts such as from industrial materials and equipment.

On April 9, 2018, planning staff met with SMM, representatives of Anaviv Restaurant and staff from the Mayor's Office. SMM provided an amended Acknowledgement Statement (see above) and requested that this it be added as a condition of approval to the project. SMM further modified their request to exclude the Disclosure to Patrons.

Planning Commission Decision

The Planning Commission approved the Anaviv CUP Amendment (PLN17-572) on January 18, 2018, with additional conditions that the applicant include landscaping improvements along Hoffman Boulevard and on-site bicycle parking. The original CUP (PLN16-451) was approved by the Planning Commission on November 17, 2016. The key changes included in the CUP Amendment are defining the use as a full service restaurant instead of a private dining room, the modification of the ABC license type to allow serving distilled spirits in addition to beer and wine, and an increase in number of seats from 6 to 10.

ENVIRONMENTAL REVIEW:

The proposed project is categorically exempt from the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15301, Existing Facilities, Class 1, as it consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

The full service restaurant will be located within an existing commercial kitchen facility and involves no physical expansion or interior changes. The increase of 4 seats from 6 to 10 along with the addition of service of distilled spirits with beer and wine has been determined to be negligible. Therefore, the proposed project satisfies the requirements under the CEQA Guidelines Section 15301, Existing Facilities, Class 1 categorical exemption.

CONCLUSION:

Staff recommends that the City Council AFFIRM the Planning Commission's conditional approval of the Anaviv CUP Amendment (PLN17-572) without the appellant's requested additional condition.

DOCUMENTS ATTACHED:

1. Sims Metal Management (SMM) Appeal
2. Revised Acknowledgement from SMM
3. Draft City Council Resolution _____
4. Planning Commission Resolution 18-05