

ATTACHMENT 7

CITY OF UNION CITY

DRAFT

***MINUTES FOR THE REGULAR PLANNING COMMISSION MEETING
ON THURSDAY, OCTOBER 20, 2022, 7:00 P.M.
IN THE COUNCIL CHAMBERS OF CITY HALL
34009 ALVARADO-NILES ROAD
UNION CITY, CA 94587
AND VIA TELECONFERENCE***

1. **ROLL CALL:** Chairperson Harpal Mann; Commissioner JoAnn Lew; Commissioner Scott Sakakihara; Commissioner Ed Mack Agbuya
2. **STAFF:** Carmela Campbell (Economic & Community Development Director); Alex Mog (Deputy City Attorney); Derek Farmer (Planning Manager); Coleman Frick (Senior Planner); Denisse Anzoategui (Administrative Assistant III)

3. **APPROVAL OF MINUTES:**

The regular Planning Commission minutes of September 15, 2022 were approved as submitted.

4. **ORAL COMMUNICATIONS:** None.

5. **WRITTEN COMMUNICATIONS:** None.

6. **PUBLIC HEARINGS:**

a. **CONTINUED HEARINGS:** None.

b. **NEW HEARINGS:**

1. **THE STATION EAST OWNER, LLC, PLANNING AREA 3 (PA 3) AT APN 087-0021-005-02 (PORTION), SITE DEVELOPMENT REVIEW, SD-22-003; The applicant, The Station East Owner, LLC,** is seeking Site Development Review (SD-22-003) to construct 50 townhouse style condominiums on 1.71 acres in six 4-story buildings located in the Station East Mixed Use Residential Development between the extensions of 8th Street and 9th Street, south of Decoto Road and east of the PG&E Substation (APN 087-0021-005-02 portion), including a portion of the former Air Liquide site within the SEMU-R Zoning District. This project is within the scope of the Environmental Impact Report entitled "Station East Residential/Mixed Use Project" (SCH# 2020039032), dated April 2021, prepared pursuant to the California Environmental Quality Act (CEQA) and certified by the City Council on June 8, 2021 *(Note: Item to be re-noticed and considered at a future date.)*

Carmela Campbell, Economic & Community Development Director notified the Planning Commission that the item would not be heard that evening and heard at a later date. Ms. Campbell provided feedback that staff would need some additional time to work through some issues.

Chairperson Mann restated for the record that the item would be postponed to a future meeting.

2. **CITY OF UNION CITY, GENERAL PLAN AMENDMENT (AG-22-003) MUNICIPAL CODE AMENDMENT (AT-22-006), ZONING MAP AMENDMENT (A-22-003), AND AN ADDENDUM TO THE 2040 GENERAL PLAN EIR:** The City is proposing to amend the 2040 General Plan; the Zoning Map; and Title 18 of the Union City Municipal Code, for consistency with the Draft 2023-2031 Union City Housing Element and 2040 General Plan. In accordance with California Environmental Quality Act (CEQA) Guidelines Section 15164, an Addendum to the 2040 General Plan Environmental Impact Report has been prepared for the proposed Draft Housing Element amendments.

Coleman Frick, Senior Planner presented the staff report and the Desk Item that was prepared in response to questions and comments submitted by Commissioner Lew prior to the meeting.

Commissioner Lew noted that the term mixed use is being used a lot in the amendment. Commissioner Lew asked if staff could explain what it is about mixed use zoning that it seems like the City has fallen in love with.

Ms. Campbell confirmed that the City had been seeing more creation of mixed use zoning districts which reflects that the City's zoning districts are doing more than just one thing. Ms. Campbell added that in the past you would have a commercial zoning district that was limited to commercial but what the trend is now is mixed use zones allowing commercial, residential and office. Ms. Campbell explained that the idea behind mixed use is to allow various uses in different configurations including vertical mixed use which is when you have commercial on the bottom with either units or office above and horizontal mixed use where you have freestanding uses, but either way is considered mixed use.

Derek Farmer, Planning Manager explained that the notion of mixed use is more area wide and not unique to Union City. Mr. Farmer added that a lot of it has to do with the scarcity of land and that's something going on all over the Bay Area and California, and probably the United States. Mr. Farmer added that in the past you had single story commercial uses, and now with the scarcity of land, the cost of land, and more uses vying for smaller parcels, mixed use is more of a vertical use. Mr. Farmer added that you may see commercial or office on the ground floor with residential above or you have areas where you have residential with different areas of subcomponents for office as well.

Commissioner Lew asked where they are seeing this as being successful. Commissioner Lew asked if it is successful in Fremont and San Jose. Commissioner Lew added it is difficult to compare Union City to San Francisco, San Jose, and Oakland, which are larger cities. Commissioner Lew asked in what similar sized City do they see this being successful.

Mr. Farmer replied that areas in Fremont and Union City around major transit stops and transit corridors are taking advantage of the increase in transit ridership, and things like that. Mr. Farmer added Warm Springs and the planned Irvington station have zoning for mixed use to account for the fact that they're trying to get people moving toward transit, and it also allows for a mix of people living and working there too.

Ms. Campbell added that the Village Mixed Use replaces the Specialty Commercial designation which already allows for mixed use development and they're really trying to reflect what is already allowed. Ms. Campbell added that successful examples of mixed use are the Sugar Mill development, as well as the Pinn Brother's Alvarado Square project along Union City Boulevard, which is where the VMU would be applied. Ms. Campbell added that there is another approval for a Horner Street mixed use project that's currently going through remediation. Ms. Campbell suggested that there have been other successful examples in other districts. Ms. Campbell referenced the Corridor Mixed Use zoning and added that the City allows, in lieu of commercial on the ground floor, activated ground floor uses. Ms. Campbell explained that it might be leasing offices, or an amenity as part of the residential development. Ms. Campbell stated that the idea is that it engages with the street interface as they don't want them to be walled off from the public realm.

Commissioner Lew stated that Pinn Brothers took a long time to lease the commercial space, while they filled up the residential very quickly, it wasn't the same for the commercial space. Commissioner Lew remarked that they are not businesses that pay their employees well.

Ms. Campbell replied that she couldn't comment on that. Ms. Campbell noted that there were some behind the scenes issues, such as a restriction on any restaurant uses. Ms. Campbell explained that in Union City, there is a lot of success with restaurant uses. Ms. Campbell added that the restriction really hurt the leasing up of spaces. Ms. Campbell further added that there were also some changes in ownership that caused issues with the leasing efforts.

Commissioner Lew asked if Sugar Mill is the development across from Alvarado Square.

Ms. Campbell replied yes.

Commissioner Lew asked if they have leased any of their commercial spaces.

Ms. Campbell replied yes, and that they leased it to a sandwich shop who will take the entire space as they are also using it for their back of house and their offices.

Commissioner Lew replied that it would be more minimum wage jobs.

Ms. Campbell replied that the types of jobs aren't really in the purview of the Commission but that she was happy to see the space filling up.

Commissioner Lew replied that she hoped the sandwiches were good. Ms. Campbell added that when she sees mixed use it is just more low paying jobs. Commissioner Lew stated that it was fine for housing, especially the affordable aspect of it, but keeps thinking about the people that aren't being paid enough to pay the rent if they lived in the same building. Commissioner Lew stated that she wished there was a better way to get more employers to pay their employees a living wage, not just minimum wage jobs.

Commissioner Sakakihara noted that on page three of the staff report and also in the presentation there was a suggestion that adopting these amendments before January 31st would alleviate any penalties associated with not having adequate sites by the Housing Element adoption deadline. Commissioner Sakakihara asked if Council makes these changes before the 31st, would they expect any penalties.

Mr. Frick replied that they don't expect any penalties. Mr. Frick explained that it's about having that RHNA capacity in place. Mr. Frick further explained that it is a raw number of units which also have a buffer provided for feasibility issues related to the development of a site and added

that maybe the density would be lower than what is listed. Mr. Frick added that staff would love to bring these amendments as part of the certification to the Planning Commission at the same time but because of the sequencing of the HCD review process, staff is bringing these amendments in advance, that relate specifically to the RHNA and having the sites and capacity in place. Mr. Frick also added that the goal for the Housing Element certification was spring 2023 based on HCD review timelines. Mr. Frick stated that after staff receives the comments later this month, they will be able to turn them around and not have any additional comments. Mr. Frick explained that staff is working towards having the Planning Commission see the final Housing Element before it goes to the Council for certification.

Commissioner Sakakihara replied that it all makes sense and recalled the discussion, but he was making sure that the wording didn't mean that they were just going to be reducing the penalties but avoiding them all together. Commissioner Sakakihara noted discussion in the slides and in the staff report of the decision to not do the area plan for Union City Boulevard because some of the sites will be used in the Housing Element. Commissioner Sakakihara also noted that in the staff report there is a 400,000 square foot life science research and development campus on one of the larger vacant development sites and asked if Mr. Frick could provide a little more detail on that.

Mr. Frick replied that the site is located just to north of the site that is proposed to be changed from Employment Mixed Use to VMU and deferred to Ms. Campell to provide a little more detail on the specific development.

Ms. Campbell noted that when they came up with the area plan policy for Union City Boulevard, the area was identified for employment uses, and the site was seen as an opportunity for potential additional residential if jobs could be accommodated because that is the priority. Ms. Campbell added that there is an environmental document being prepared for that property and it will be brought to the Commission later. Ms. Campbell explained that the project consists of 400,000 square feet over four buildings, developed by Woodstock Development, who are the folks that developed Crossroads, now referred to as Union City Labs.

Commissioner Sakakihara asked what the difference is between an area plan and specific plan.

Ms. Campbell replied that they are similar, while there are certain provisions that specific plans are required to adhere into state law, she didn't think those applied to area plans.

Mr. Mog added that there is not a huge difference between them. Mr. Mog added that when you think of a specific plan, it's a little more robust and larger, versus when you think of the Station District Plan, it's a big chunk of the city. Mr. Mog added that it's not a general plan, but they have many of the same elements in it.

Commissioner Sakakihara recalled that when they went through the general plan process the area was identified as something they were going to prepare an area plan for. Commissioner Sakakihara added that when you take out the chunks that are being recommended to rezone and a large R&D campus, then you will not have a ton of additional space left that merits having an area plan in the future.

Mr. Frick replied yes and added that removing a large area that would encompass the area plan, and the potential vision when that was incorporated into the General Plan wouldn't quite work out in terms of having a network of streets within the area. Mr. Frick added that some of the goals of the employment district having a residential component is achieved through rezoning of this parcel that's part of it to mixed use as well as having this large employment use

with good paying jobs that is located to the north of that parcel. Mr. Frick added that what they did as part of the amendments was to make sure important provisions about improving that corridor were maintained, but the requirement of preparing an area plan which didn't really seem feasible based on the changing conditions was the intent behind those amendments.

Ms. Campbell added that the City will still be getting the housing in the corridor and would just be doing it in a different way than it has been done and would be consistent with the vision for this area, which really is an employment center.

Commissioner Sakakihara replied that it seems like part of the rationale is because some of the lands are already going to be developed. Commissioner Sakakihara noted the footnote in the staff report, page 11, on the requirements to conduct the Climate Change Vulnerability Assessment upon each revision of a jurisdiction's housing element. Commissioner Sakakihara confirmed that is why the City is aiming for Spring 2023 and confirmed it is so they don't have to worry about that vulnerability assessment until after the Housing Element has been certified.

Mr. Frick replied that the intent of the contract approved by the Council for this work was for the Safety Element Update to be in tandem with the Housing Element Update. Mr. Frick noted that they are still going through that process of working on the Safety Element Update, and the intent is to bring those items together. Mr. Frick added that they're going to do another CEQA addendum as part of that environmental analysis, which will cover the Safety Element update as well as the Housing Element adoption, which is why this addendum was called the Draft Housing Element Amendment to make that distinction. Mr. Frick explained that this process has become a little bit bifurcated based on the review process for HCD and their review timelines. Mr. Frick noted that it could be a bit confusing as to why they are bringing these first. Mr. Frick also noted that all of the items would be brought before the Commission eventually and were bringing the amendments in advance based on their deadline.

Commissioner Sakakihara noted that the plan is to do the Housing Element Update and the Safety Element Update at the same time and asked if that is what was required by the state or is it out of convenience. Commissioner Sakakihara noted that they must do the Safety Element update but asked if it could be sequential or if they would be required to do it at the same time.

Mr. Frick referred the questions to consultant Chelsea Payne.

Chelsea Payne, Director of Urban Design & Planning at Ascent, replied that the update to the Housing Element triggers a need to review and update the Safety Element. Ms. Payne replied she doesn't think it's clear that it must be done concurrently, but the best practice is to update the Safety Element at the same time as the Housing Element. Ms. Payne explained that the goal is to adopt the Housing Element before the January 31, 2023 deadline, along with the Safety Element, but they are being realistic understanding that the State's review process is taking a very long time and they may not hit that January deadline and added the intent is to get as close as possible. Ms. Payne also added that it is why they're saying spring or first quarter of 2023, but the Safety Element will be coming forward at the same time as the Housing Element.

Commissioner Sakakihara noted that when they reviewed the Housing Element that it did not go to the City Council because there were too many Council members who lived too close to the areas. Commissioner Sakakihara asked how that would work when it comes time to do both their review of what they recommend to them that night, but also the Housing Element Certification.

Mr. Mog replied that under the Political Reform Act, when the Council is to take a final action, there is a way to segment the decisions and once the Council, without the member with the conflict, would act on the specific items those members with conflicts could participate in the rest of the decision and final adoption. Mr. Mog noted that the issue with the draft was that there was no action, and just consideration. Mr. Mog added that it will be a little bit of a game of musical chairs with the Council, or could not be an issue by that point, as there may be some different people on the Council that would change the circumstances.

Mr. Frick mentioned that for the items discussed that evening, the amendments, don't include or impact a site that would have been a conflict that was included in the Draft Housing Element because there was no rezoning or redesignation of the land use required for that site. Mr. Frick added that for this item under consideration that evening, staff did not foresee any conflicts that would prevent the Council from acting on the item.

Commissioner Agbuya thanked Mr. Frick for his presentation and staff for identifying the parcels of land that will help meet the requirements for the City to avoid any penalties. Commissioner Agbuya added that land is scarce and with rezoning as mixed use gives the City the flexibility moving forward and at the same time complies with the state's requirements.

Chairperson Mann thanked Mr. Frick for his presentation, explanation, and going through the process. Chairperson Mann stated that the City needs to do a better job in educating its constituents. Chairperson Mann noted that it should be clear that these are mandates from the state, and every year they keep changing. Chairperson Mann noted that every time the City must go back and find more spaces. Chairperson Mann recalled that 36 sites were mentioned, and that there are nine sites that need to be changed. Chairperson Mann also noted that after the 36 sites there isn't any further land in Union City. Chairperson Mann asked what the long-term strategy of the Planning Department and the City is to find additional sites for low income housing. Chairperson Mann asked if the City has changed its strategic direction as it has been meeting the requirements. Chairperson Mann noted that a number of years ago, the focus was on commercial sites, and having areas for employment generation and office buildings. Chairperson Mann added that if some of these sites go into mixed use, then they would be taking away the ability for commercial, and overall 70% of the City is housing as compared to commercial within Union City. Chairperson Mann asked how similar sites, in similar sized cities like Mountain View and others, deal with the state in that they also must provide housing when they're mostly commercial.

Mr. Frick replied that there were a lot of great thoughts and questions in Chairperson Mann's comments. Mr. Frick replied that it is a challenge. Mr. Frick noted that there are a lot of state mandates, and for the Housing Element, there are a lot of state Laws that are passed that basically connect some sort of trigger to the Housing Element because it is the element of the General Plan, which is required by all jurisdictions to have, and that's the one that's required to be updated regularly. Mr. Frick acknowledged that because of the state's housing crisis there are more units in each cycle. Mr. Frick also replied that in terms of finding additional sites within Union City, it is something that they would have to investigate as part of the next update. Mr. Frick added that generally an important consideration is that the City must demonstrate to HCD that there is feasibility within that time period for those sites to potentially be developed at those densities that are listed. Mr. Frick added that there are certain sites that weren't included in the Housing Element because it didn't seem feasible that they would develop within that eight-year time span.

Mr. Frick explained that is why staff looked at specific criteria for sites proposed for mixed use districts to make sure that the City is not losing some of those commercial uses and the loss of commercial sites that have tax revenue. Mr. Frick noted that in the Village Mixed Use district, there is a requirement that along the major corridors there is commercial fronting the street. Mr. Frick added that residential uses wouldn't be permitted unless located above the commercial in those areas, to make sure that it's a mixed use walkable community. Mr. Frick also noted that there is a commercial aspect that's unique to that district, and similar to the Station District, which the Planning Commission recently saw, there is emphasis in the Marketplace Mixed Use district to maintain commercial uses. Mr. Frick explained that the Safeway Shopping Center is also an important commercial center, that is required to maintain a good amount of commercial uses as it's redeveloped to mixed use. Mr. Frick added that staff has been looking at all the creative ways that they can make sure that they meet the needs of housing. Mr. Frick noted that there is a big issue with housing statewide, but also, the City is making sure that they have a mix of uses. Mr. Frick noted that he couldn't speak to other communities and individual circumstances in the Bay Area, but that a lot of communities are looking at mixed use districts to allow flexibility to have these sites redevelop with a range of different uses that meet the needs of its communities.

Ms. Campbell added that the City's RHNA, like other cities in the Bay Area and beyond, went up 137%. Ms. Campbell noted that the City knew going into this cycle that they were going to have to make some decisions and there were going to be some tradeoffs. Ms. Campbell noted that the previous rhetoric has always been to preserve the non-residential areas for non-residential uses, and of course they had to look at that. Ms. Campbell added that Union City is not alone and that a lot of cities are looking at their industrial and commercial areas to be able to meet the RHNA numbers. Ms. Campbell also noted that something else to think about is that the state recently passed legislation that does allow residential on commercial sites as a matter of right under certain circumstances. Ms. Campbell explained that looking at alternative sites for residential uses is something that is happening at the state level.

Chairperson Mann asked if the City has thought about height limitations as they have been in place for a long time. Chairperson Mann recalled that it is 35 feet but given the fact that at some point the City will run out of sites to increase density and the City will have to go higher and increase the height limitation.

Ms. Campbell replied that they didn't have the slide in the presentation but may have had it at the July meeting and added that 78% of the City's RHNA capacity is being met in the Station District, and they are looking at a lot more dense, taller buildings. Ms. Campbell added that some of the sites are in the Community Commercial area which already have a height limit of a hundred feet. Ms. Campbell added that through the Objective Design Standards process that the City is working through that they have a consultant who is aligning densities with heights to confirm the zoning standards are making sense.

Chairperson Mann asked about the status of the Caltrans property in the Quarry Lakes area, and if the City had yet acquired the property.

Ms. Campbell replied that the City has acquired the property from Caltrans but have not yet paid for it, and that it has six years to pay them for the cost. Ms. Campbell noted that the City has entered into an exclusive negotiating agreement with City Ventures, which basically says that they are interested in the property and the City is interested in bringing them on as a developer and can't talk to anybody else. Ms. Campbell explained that it is a period where they're working

through what the development is going to look like. Ms. Campbell added that it includes a back and forth and that they're working with them, as the City works through conveying the property. Ms. Campbell added that the City would examine what are those provisions, and they've identified the area for lower density multifamily, town homes, duplexes, and further added that it is not quite as dense as the Core and Station East nor Marketplace Mixed Use, which is higher density because of the setting of that area adjacent to some residential.

Chairperson Mann noted that some of his colleagues are running for office, and Quarry Lakes has always been an area, like the Hillside, that has been a politically challenging area. Chairperson Mann noted that it is the same people who are advocating for low-income housing, at the same time they don't want any development. Chairperson Mann noted that the fact of the matter is that the state continues to mandate more units and thinks that everything should be on the table, and they should all look at it as a collective decision. Chairperson Mann added that for people listening out there it's not what the City wants to do but it's basically forced and mandate by the state. Chairperson Mann also added that the City does not get funds from the state unless they meet the deadlines and quotas.

Ms. Campbell explained that the Gateway site has been in the last four Housing Elements and has always been identified as a housing site.

Chairperson Mann thanked Mr. Frick, as he understood the difficulties to meet the numbers. Chairperson Mann noted that given the housing shortage throughout the state, the numbers will continue to be revised despite having provided the numbers during the cycle. Chairperson Mann explained that the City needs to start looking into proactively looking at a strategy on how to start planning for more lower income housing sites.

Commissioner Lew asked if the rezoning amendment is advantageous to the property owners in terms of their resale value or appraisal of their property.

Mr. Frick replied that if the commercial site is rezoned to mixed use, then the property owner would have more available options in some ways to redevelop the site or do something else with it.

Commissioner Lew replied that she was thinking of the storage space on Horner that has gone through maybe four different housing elements, and they have always been zoned for housing. Commissioner Lew noted that it is being zoned for mixed use. Commissioner Lew suggested that they can keep the storage units and build houses on top.

Mr. Frick replied that the site is currently multi-family housing which is 10 to 17 dwelling units per acre, and it's proposed to just have an increase in density to 17 to 30 dwelling units per acre so that site isn't proposed to allow commercial as a component, just multi-family housing.

Commissioner Lew asked whether they could keep the storage business or must replace all the buildings there.

Mr. Frick replied that it's currently in the General Plan as residential, and the storage business there is considered legal non-conforming. Mr. Frick noted that it was permitted initially but there are certain limitations on modifying the use in particular ways if it's legal nonconforming but there is no requirement, for example, for them to stop operating. Mr. Frick explained that if that use is to be replaced, it's required to be a use that's a permitted or conditional use in the zoning district, which is now going to be multi-family residential.

Commissioner Lew replied that she would think it would be advantageous because a lot of people are still looking for land to build homes and that is a residential area.

Mr. Frick replied that it is a large site as well, and it is why it has been seen as an opportunity in the past by the City. Mr. Frick noted that it is a very large site that's located adjacent to existing developed residential communities.

Ms. Campbell noted that the site was redesignated during the 2019 General Plan update. Ms. Campbell clarified that it hasn't been in a Housing Element previously. Ms. Campbell explained that the residential designation was a result of charrettes done with the community and other public feedback received through the process when discussing alternatives. Ms. Campbell also noted that residential is the highest and best use and that the allowance for residential definitely increases the value of a property.

Commissioner Mann asked for clarification from the attorney on whether the Commission should be commenting on property values.

Mr. Mog replied that it was not part of the decision tonight, but just a general question.

Commissioner Mann opened the public hearing.

Thu Thai, 4364 Fellows Street, Union City, stated that she was there that evening listening to the discussion and asked whether staff and the Commission have taken into account the increase in traffic. Ms. Thai stated that there is already a lot of congestion on Alvarado Niles, Union City Boulevard, Whipple, and Dyer. Ms. Thai noted that she understands the State's mandates on a certain number of units, but asked how the City would be by adding high residential density

Mr. Frick explained that as stated, the City is mandated by the State to provide a certain amount of housing units in terms of allowing that capacity, and the City has really focused on putting most units in the Station District area. Mr. Frick also added that in addition to that, another reason why mixed use is proposed is because by having more different types of uses located in proximity, there is the ability to not take as many vehicle trips, and that is an emphasis by the state as well to make sure that cities are looking at ways to reduce vehicle trips which again reduces traffic.

Mr. Farmer added that part of the Addendum that was prepared for the project that they have also looked at the environment impacts or potential impacts of tonight's actions in terms of whether they created any additional impacts or increased the severity of previously identified impacts from the General Plan EIR.

Chairperson Mann asked if there was anything specific that staff or the consultant could share with the public regarding the nine sites and traffic.

Mr. Farmer replied that the City had already done an override for traffic in the 2040 General Plan EIR, and that was one of the areas that was determined to be significant and unavoidable. Mr. Farmer added that consultant Ascent analyzed the traffic related impacts and determined that the severity of that impact did not increase to a measure that would require preparation of another environmental document.

Ms. Campbell noted that Mr. Farmer was referring to the California Environmental Quality Act, and CEQA no longer looks at level of service (LOS) as a potential environmental impact. Ms. Campbell added the General Plan still requires a LOS study, but they can no longer look at

traffic as an environmental impact and added that now it's a different metric referred to as vehicle miles traveled (VMT). Ms. Campbell noted that they get credit for incorporating bicycle, pedestrian, and ride sharing into the project.

Commissioner Sakakihara moved that the Planning Commission adopt the following resolutions; Resolution Recommending the City Council Adopt an Addendum to the 2040 General Plan EIR, Resolution Recommending the City Council approve the Housing Element Related General Plan Amendments (AG-22-003), Resolution Recommending the City Council Adopt Related Zoning Text Amendments (AT-22-006) and Resolution Recommending the City Council Adopt Related Zoning Map Amendments (A-22-003) with the edits to the Addendum and the amendments that are listed in the Desk Item.

Commissioner Agbuya seconded.

The motion was carried by the following roll call vote:

AYES: (MANN, LEW, SAKAKIHARA, AGBUYA)

NOES: NONE

ABSTAIN: NONE

ABSENT: GUIO

The motion passes 4-0.

3. **CITY OF UNION CITY, ZONING TEXT AMENDMENT (AT-22-007) TO ALLOW CANNABIS DISPENSARY USES IN PROFESSIONAL AND ADMINISTRATIVE COMMERCIAL (CPA), VISITOR AND RECREATION COMMERCIAL (CVR), COMMUNITY COMMERCIAL (CC), AND NEIGHBORHOOD COMMERCIAL (CN) ZONING DISTRICTS** ; The City of Union City is proposing to modify Municipal Code Chapter 18.36, "Commercial Districts," and Chapter 18.117, "Commercial Cannabis Businesses", to allow cannabis dispensary uses in the CPA, CVR, CC and CN Zoning Districts. Any cannabis dispensary use would be subject to the City's existing regulatory and licensure requirements. Staff is recommending the project be considered exempt from environmental review per Business and Professions Code section 26055(h), the exemption for the adoption of an ordinance that requires discretionary review of permits, and California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3), the general exemption for projects with no potential for significant effect on the environment.

Alex Mog, Deputy City Attorney presented the staff report.

Commissioner Agbuya stated that he wished he would've gotten a map showing the Cannabis Permit Zoning and Sensitive Uses in his packet to better study. Commissioner Agbuya noted that he understood that cannabis is legal in California and was an advocate for the dispensary at Union Landing and noted that there is also Lemonade. Commissioner Agbuya recalled the discussion of the removal of a hundred feet within a residential area and stated that he would rather see that map and be able to study what that proposal is. Commissioner Agbuya clarified if they would be approving just a dispensary or testing and cultivating as well.

Mr. Mog replied that it would only be retail.

Commissioner Agbuya stated that he had no further questions but restated that he would have wished to see a map.

Commissioner Lew noted that there are a lot of commercial areas in Union City. Commissioner Lew asked that if in the future, based on these amendments, and if the City Council passes the amendments, would he think it would open the door to more permits than the existing three.

Mr. Mog replied that under the ordinance that exists, the Council can determine by resolution the number of permits, and if possible, increase that in the future. Mr. Mog added that he did not think the City Council had expressed any interest in that and added that it has been three since it was first established and there has not been any desire ever to increase that. Mr. Mog added that even when they knew that all three were issued at one point and one business was unable to open so that permit came back to the City. Mr. Mog noted that the City Council didn't want to take action to increase it to four or five even when all three had been issued. Mr. Mog also noted that they can't make a prediction what the City Council will choose but right now it is established to three.

Commissioner Lew asked why the third business didn't open.

Mr. Mog replied that it was a variety of reasons, and part of the reason is that they were in an industrial area, which was hard to make some of the necessary tenant improvements that would be required for retail based on how the building was located. Mr. Mog also noted that there were some easement issues and various things that were unique to the site.

Commissioner Lew asked if it was the site on Ahern.

Ms. Campbell replied that Ahern was the former location of Lemonade/ JIVA, and then there were some issues with that site. Ms. Campbell added that Garden of Eden received a permit for the site across from Lemonade in an industrial building across from Tara Court.

Commissioner Lew replied that it was not a great area. Commissioner Lew noted that she happened to walk by Flor, and it is a beautiful place. Commissioner Lew noted that they even keep their sidewalks clean, and she was quite impressed with the cleanliness of the facility and the outside area. Commissioner Lew noted a minor error in the resolution and stated that the first whereas didn't have an "and" on page two.

Mr. Mog noted the correction.

Commissioner Lew also noted that on page three where it is intended to include dispensary/ retail under permitted uses and asked if that would be listed alphabetically in those permitted uses table.

Mr. Mog replied yes.

Commissioner Lew commented that it is a fact the market isn't there for legal cannabis businesses. Commissioner Lew also added that there is too much competition from the black market, and she knows that from acquaintances that it is not doing well. Commissioner Lew added that even in Northern California where they had plenty of land to grow, and certain people work for the business that make a lot of money. Commissioner Lew stated that it was disappointing to not see the results the City was hoping for in terms of creating a tax base based on cannabis. Commissioner Lew added that they can go ahead with this but there is no guarantee that there will be a lot of money rolling into the City coffers. Commissioner Lew noted that there may be more businesses that are interested because it will be allowed in commercial

areas. Commissioner Lew also added that she did not have opposition to it if they keep facilities nice and keep it legal and away from kids. Commissioner Lew noted the responsibilities that adults must not raise their kids on cannabis and that it is more for medicinal uses.

Ms. Campbell added that another benefit of having these commercial zoning districts is that they often have their own security, which has improved the area in and around Flor. Ms. Campbell further added that both Jiva and Flor have been operating and they are finally able to see where the revenue is. Ms. Campbell added that she didn't have a report out on that, but they are looking at the numbers now and added that any revenue is good revenue.

Chairperson Mann referred to the map in the presentation and asked staff to identify the areas where retail dispensaries would be added.

Ms. Campbell identified areas of current use and those that will be added. Ms. Campbell added that areas identified in yellow are sensitive uses which include community centers, parks, schools, and youth-oriented uses. Ms. Campbell added that where they are adjacent to commercial areas or industrial areas, they've noted them and there is a setback from those uses. Ms. Campbell added that for some of the commercial areas which have a kids dance studio, martial arts, or tutoring that they're precluded from having a cannabis use for the most part. Ms. Campbell added that there are provisions where the Council can waive that requirement for example if they have an area or business that is operating out of two different sides of a site and don't have any interaction in that situation. Ms. Campbell added that the Commission was seeing a lot of districts where it's allowed but also seeing the sensitive uses that are precluded. Ms. Campbell apologized for not providing the map in the staff report but could provide it to the Commission. Ms. Campbell also noted the designation of CC, CPA and CVR on the map. Ms. Campbell also noted areas towards the freeway and along Alvarado-Niles in light blue that were also identified as allowable.

Chairperson Mann requested more information along Mission Boulevard and Decoto Road.

Ms. Campbell identified the areas identified in red where cannabis uses could be established.

Chairperson Mann asked what the amount of tax revenue that the City has collected over the last year from the cannabis businesses.

Ms. Campbell replied that it was a good question, and that they have come slightly under the City's estimates but still doing well.

Chairperson Mann asked what those estimates are compared to other businesses within the City.

Ms. Campbell asked Mr. Mog if he had those numbers.

Mr. Mog replied that he didn't but noted that there is a tax that cannabis businesses pay that other businesses don't pay. Mr. Mog added that even if they're doing the same revenue, the cannabis business is paying a tax on top of the businesses license tax or sales tax compared to a regular retailer. Mr. Mog added that he did not know the numbers off the top of his head but the revenue for a cannabis business would be significantly higher.

Chairperson Mann asked if the City of Fremont has allowed any cannabis.

Ms. Campbell replied no and added that neither does the City of Newark but the cities of Hayward and San Leandro do. Ms. Campbell suggested that the City is likely pulling from those

jurisdictions and added that it was her understanding is that it is under consideration or discussion in Fremont.

Chairperson Mann asked about Dublin, Pleasanton, or San Ramon.

Ms. Campbell replied not to her knowledge.

Chairperson Mann asked if there was data to suggest that there was a market or demand from the population in Union City. Chairperson Mann asked if there were numbers that showed that 50% of Union City residents were cannabis users and now wanted to allow those clinics close to residential areas.

Mr. Mog replied that they did not have that.

Chairperson Mann asked what happens to the mixed use areas.

Ms. Campbell replied that they do not include any mixed use zones because of the potential for residential.

Chairperson Mann noted the demographics in the City and that a lot of people are not involved in the process. Chairperson Mann added that issues will come up as it will be close to residential neighborhoods. Chairperson Mann noted that anybody that wants cannabis can go where it is zoned, but it is creeping now into neighborhoods. Chairperson Mann added that next it will be in school canteens.

Mr. Mog reminder the Commission that comments should be held until after the public hearing.

Chairperson Mann stated that it is a minority majority city.

Mr. Mog replied that it's fine, but that Chairperson Mann should wait until after the public hearing to make comments as it was just questions at the moment.

Chairperson Mann opened and closed the public hearing.

Commissioner Agbuya stated that Flor is a very professional storefront and is regulated very well. Commissioner Agbuya noted that he has never been in Lemonade but understood that bringing in more income to the City is always good. Commissioner Agbuya noted that Union City is likely pulling business from other cities. Commissioner Agbuya suggested that if there is a third license issued then that business should be established on the other side of Union City as it can pull residents from outside of Union City. Commissioner Agbuya stated that he would like to see a guideline that states that the cannabis storefront should be separate or a distance from Flor or Lemonade; and if not they will bump heads and it is overall better for revenue. Commissioner Agbuya added that if they can maintain a professional look and atmosphere, it wouldn't be too bad as long as they are away from neighborhoods and sensitive areas.

Commissioner Sakakihara asked if whether the Union City Police Department has been consulted.

Ms. Campbell replied that they are involved and not only in this process but in the cannabis permit selection process. Ms. Campbell followed up on Commissioner Agbuya's comment that as part of the application process there is a preference for locating on the east side of the City so that there is geographical distribution.

Ms. Campbell added that she appreciates the comments from the Commission on the sensitivity to the residential uses as it is an important consideration for staff as well. Ms. Campbell assured the Planning Commission that the cannabis permit process is a very extensive process. Ms. Campbell added that UCPD, staff from the City Manager's office, and staff from her department are looking at the applications. Ms. Campbell added that offsite impacts are taken into consideration for any use but specifically the impacts on adjacent residential areas are something that they look at.

Commissioner Sakakihara noted that it sounds like the UCPD is heavily involved. Commissioner Sakakihara stated that his instinct would be that it's safer to have in commercial districts because industrial districts are less populated and sometimes feel deserted even in the middle of the day versus commercial where you have higher traffic and the dispensary itself providing security. Commissioner Sakakihara also noted that Union Landing where Flor may be the only place in the City where there is always a dedicated police presence that is paid for by the district and operations the Union Landing area. Commissioner Sakakihara stated that he didn't know if it aligns with the police department, but it was his sense that there was some benefit not necessarily closer to residential but not as isolated as in the middle of an industrial district.

Commissioner Lew recommended to the City Council approval of amendments to Chapter 18.36, "Commercial Districts", and Chapter 18.117, "Commercial Cannabis Businesses," of Title 18, "zoning", of the Municipal Code to allow for cannabis dispensary/ retail uses in the Neighborhood Commercial (CN) District, Community Commercial (CC) District, Visitor and Recreation Commercial (CVR) District, and the Professional and Administrative Commercial (CPA) District based on the specific findings and adopt a resolution confirming this action.

Commissioner Sakakihara seconded.

The motion was carried by the following roll call vote:

AYES: (LEW, SAKAKIHARA, AGBUYA)

NOES: (MANN)

ABSTAIN: NONE

ABSENT: GUIO

The motion passes 3-1.

7. SUPPLEMENTAL STAFF REPORTS:

A. **CONTINUED HEARINGS:** None.

B. **NEW REPORTS:** None.

8. ECONOMIC DEVELOPMENT REPORTS: None.

9. COMMISSION MATTERS:

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

Ms. Campbell notified the Commission that the City Council approved the ordinance to allow the ECD Director to make public convenience or necessity determinations related to ABC licenses which was reviewed by the Commission a few weeks prior. Ms. Campbell also noted that the City Council will be reviewing the Station District Specific Plan package that was reviewed on October 6, 2022 at the following week's meeting.

B. Upcoming applications for the Regular Planning Commission meeting for November 3, 2022.

Ms. Campbell stated that at this point they didn't have any applications coming up for either meeting in November, but it could change for the second meeting. Ms. Campbell noted that there would be items for December.

10. **GOOD OF THE ORDER:**

Ms. Campbell alerted the Commission to an email sent by City Clerk Anna Brown regarding the Ethics Training that will be happening on Monday, December 5. Ms. Campbell also noted that there was a successful public outreach event at the Farmer's Market last weekend with regards to the objective standards project that is moving forward. Ms. Campbell noted that staff would be attending the Fun Run and the Halloween Carnival at the end of the month and that Mr. Frick would be attending those.

Chairperson Mann gave a shoutout to the South Asian and Indian residents of Union City as Monday, October 24 is Diwali, the festival of lights. Chairperson Mann stated that it is an event that is a celebration throughout the world, and it is something to look forward to during the difficult economic times and to know that there is light and good over evil.

Chairperson Mann reminded the residents that this year's election is on November 8th, and everyone should register to vote. Chairperson Mann stated that it is a chance to bring in change and if you don't vote, you cannot complain about decisions that do take place.

Chairperson Mann noted that another item he wanted to bring up is something that he was saddened about. Chairperson Mann stated that as a City that considers itself as a compassionate City, that sometimes the perception that comes out to communities of color are not that. Chairperson Mann stated that the language that is used by some in the City, including contractors, is not professional. Chairperson Mann stated that he could not comment further on the matter on fear of retribution or retaliation from the City. Chairperson Mann wished a Happy Diwali for all those businesses who are catering to the 20 plus percent of the population that lives here and celebrating. Chairperson Mann reminded them that they are in control, and they can register to bring changes on November 8.

11. **ADJOURNMENT:** 9:21 PM