

## AGENDA FOR THE



### CITY OF PINOLE PLANNING COMMISSION REGULAR MEETING

**Monday, February 27, 2023**

**7:00 P.M.**

Via Zoom Videoconference and In Person

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#### **WAYS TO WATCH THE MEETING**

- IN PERSON. Attendance at the Pinole City Council Chambers (2131 Pear St).
- LIVE ON CHANNEL 26. The Community TV Channel 26 schedule is published on the City's website at [www.ci.pinole.ca.us](http://www.ci.pinole.ca.us). The meeting can be viewed again as a retelecast on Channel 26.
- VIDEO-STREAMED LIVE ON THE CITY'S WEBSITE, [www.ci.pinole.ca.us](http://www.ci.pinole.ca.us). and remain archived on the site for five (5) years.
- ZOOM VIDEOCONFERENCE. Zoom details are included below.
- If none of these options are available to you, or you need assistance with public comment, please contact Planning Manager David Hanham at (510) 724-8912 or [ghanham@ci.pinole.ca.us](mailto:ghanham@ci.pinole.ca.us).

#### **HOW TO SUBMIT PUBLIC COMMENTS**

##### **In Person:**

Attend meeting at the Pinole City Council Chambers, fill out a yellow public comment card and submit it to the Planning Manager.

##### **Via Zoom:**

Members of the public may submit a live remote public comment via Zoom video conferencing. Download the Zoom mobile app from the Apple Appstore or Google Play. If you are using a desktop computer, you can test your connection to Zoom by clicking [here](#). Zoom also allows you to join the meeting by phone.

**From a PC, Mac, iPad, iPhone or Android:**

<https://us02web.zoom.us/j/86505375301>

**OR**

<https://zoom.us/join>

**Webinar ID: 865 0537 5301**

**By phone:** +1 (669) 900-6833 or +1 (253) 215-8782 or +1 (346) 248-7799

- Speakers will be asked to provide their name and city of residence, although providing this is not required for participation.
- Each speaker will be afforded up to 3 minutes to speak.
- Speakers will be muted until their opportunity to provide public comment.

When the Chair opens the comment period for the item you wish to speak on, please use the “raise hand” feature (or press \*9 if connecting via telephone) which will alert staff that you have a comment to provide. Once you have been identified to speak, please check to make sure you have unmuted yourself in the videoconference application (or press \*6 if connecting via telephone).

### **WRITTEN COMMENTS**

Please submit public comments to Planning Staff before the meeting via email to [ghanham@ci.pinoe.ca.us](mailto:ghanham@ci.pinoe.ca.us). Please include your full name, city of residence and agenda item you are commenting on.

### **AMERICANS WITH DISABILITIES ACT**

In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in a City meeting or you need a copy of the agenda, or the agenda packet in an appropriate alternative format, please contact the Development Services Department at (510) 724-8912. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

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### **CITIZEN PARTICIPATION:**

Persons wishing to speak on an item listed on the Agenda may do so when the Chair asks for comments in favor of or in opposition to the item under consideration. After all of those persons wishing to speak have done so, the hearing will be closed and the matter will be discussed amongst the Commission prior to rendering a decision.

Any person may appeal an action of the Planning Commission or of the Planning Manager by filing an appeal with the City Clerk, in writing, within ten (10) days of such action. Following a Public Hearing, the City Council may act to confirm, modify or reverse the action of the Planning Commission and the Planning Commission may act to confirm, modify, or reverse the action of the Planning Manager. The cost to appeal a decision is \$500 and a minimum \$2,500 deposit fee.

Note: If you challenge a decision of the Commission regarding a project in court, you may be limited to raising only those issues you or someone else raised at the public hearing or in writing delivered to the City of Pinole at, or prior to, the public hearing.

## **A. CALL TO ORDER**

### **B1. PLEDGE OF ALLEGIANCE**

**B2. LAND ACKNOWLEDGMENT:** Before we begin, we would like to acknowledge the Ohlone people, who are the traditional custodians of this land. We pay our respects to the Ohlone elders, past, present, and future, who call this place, Ohlone Land, the land that Pinole sits upon, their home. We are proud to continue their tradition of coming together and growing as a community. We thank the Ohlone community for their stewardship and support, and we look forward to strengthening our ties as we continue our relationship of mutual respect and understanding.

### **B3. ROLL CALL**

**C. CITIZENS TO BE HEARD:**

The public may address the Planning Commission on items that are within its jurisdiction and not otherwise listed on the agenda. Planning Commissioners may discuss the matter brought to their attention, but by State law (Ralph M. Brown Act), action must be deferred to a future meeting. Time allowed: five (5) minutes each.

**D. MEETING MINUTES:**

**1. Planning Commission Meeting Minutes from February 13, 2023**

**E. PUBLIC HEARINGS:**

At the beginning of an item, the Chair will read the description of that item as stated on the Agenda. The City Staff will then give a brief presentation of the proposed project. The Commission may then ask Staff questions about the item.

For those items listed as Public Hearings, the Chair will open the public hearing and ask the applicant if they wish to make a presentation. Those persons in favor of the project will then be given an opportunity to speak followed by those who are opposed to the project. The applicant will then be given an opportunity for rebuttal.

The Public Hearing will then be closed and the Commission may discuss the item amongst themselves and ask questions of Staff. The Commission will then vote to approve, deny, approve in a modified form, or continue the matter to a later date for a decision. The Chair will announce the Commission's decision and advise the audience of the appeal procedure.

**Note: No Public Hearings will begin after 11:00 p.m. Items still remaining on the agenda after 11:00 p.m. will be held over to the next meeting.**

**1. Conditional Use Permit CUP23-01 Body Rhythm Massage Therapy**

Consideration of a Conditional Use Permit request to open a massage therapy business.

**F. OLD BUSINESS:**

None

**G. NEW BUSINESS:**

None

**H. CITY PLANNER'S/COMMISSIONER'S REPORT:**

**I. COMMUNICATIONS:**

**J.     NEXT MEETING(S):**

Planning Commission Regular Meeting, March 13, 2023 at 7:00PM

**K.     ADJOURNMENT**

**POSTED: February 24, 2023**

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**David Hanham  
Planning Manager**

DRAFT

MINUTES OF THE REGULAR MEETING  
PINOLE PLANNING COMMISSION

February 13, 2023

THIS MEETING WAS HELD IN A HYBRID FORMAT  
BOTH IN-PERSON AND ZOOM TELECONFERENCE

A. **CALL TO ORDER:** 7:04 p.m.

B1. **PLEDGE OF ALLEGIANCE**

B2. **LAND ACKNOWLEDGEMENT:** *Before we begin, we would like to acknowledge the Ohlone people, who are the traditional custodians of this land. We pay our respects to the Ohlone elders, past, present and future, who call this place, Ohlone Land, the land that Pinole sits upon, their home. We are proud to continue their tradition of coming together and growing as a community. We thank the Ohlone community for their stewardship and support, and we look forward to strengthening our ties as we continue our relationship of mutual respect and understanding.*

B3. **ROLL CALL**

Commissioners Present: Benzuly, Kurrent, Menis, Vice Chairperson Martinez, Chairperson Moriarty

Commissioners Absent: Banuelos

Staff Present: David Hanham, Planning Manager  
Alex Mog, Assistant City Attorney

C. **CITIZENS TO BE HEARD**

Planning Manager David Hanham reported there were no comments from the public.

D. **MEETING MINUTES**

1. Planning Commission Meeting Minutes from January 23, 2023.

**MOTION** with a Roll Call vote to approve the Planning Commission Meeting Minutes from January 23, 2023, as shown.

**MOTION:** Benzuly

**SECONDED:** Menis

**APPROVED:** 5-0-1

**ABSENT:** Banuelos

E. **PUBLIC HEARINGS:** None

F. **OLD BUSINESS:** None

1 **G. NEW BUSINESS**

2  
3 **1. New Outdoor Dining Regulation Framework**

4 Staff is seeking Planning Commission feedback regarding a framework for new  
5 outdoor dining regulations on sidewalks, in street parking areas and on public and  
6 private property for City Council consideration.  
7

8 Planning Manager Hanham provided a PowerPoint presentation of the New Outdoor  
9 Dining Regulation Framework, as outlined in the February 13, 2023 staff report.  
10

11 Mr. Hanham recommended the Planning Commission consider the following discussion  
12 topics that would establish the framework for coordinated standards and guidelines for  
13 parklets/outdoor dining use:  
14

- 15 • Define categories of outdoor dining (on sidewalks: “sidewalk dining in areas,”  
16 parking spaces in the right-of-way or on public property: “parklets,” and on private  
17 property: “outdoor dining areas”).  
18
- 19 • Establish the permitting process for outdoor dining, including opportunities for  
20 public input, annual renewal or inspections, one-time and annual fees,  
21 maintenance, and liability.  
22
- 23 • Describe the locations and/or zoning districts where different categories of outdoor  
24 dining are allowed through a permitting process.  
25
- 26 • Establish standards for design and materials, size, landscaping, accessibility,  
27 circulation, lighting, safety features (such as guardrails, wheel stops, visible vertical  
28 elements) signage, heating, air circulation and outdoor furniture.  
29
- 30 • Consider encouraging other elements such as public art and bicycle parking.  
31
- 32 • Establish standards that address use of the area (i.e., hours, public access, and  
33 equity).  
34
- 35 • Address parking requirements.  
36
- 37 • Address the transition from temporary outdoor dining areas to permanent dining  
38 areas (i.e., establish a transition period for existing temporary permit holders to  
39 apply for a permanent outdoor dining area).  
40

41 Mr. Hanham explained that the framework would be used to establish an ordinance and  
42 guidelines to enhance the City’s current outdoor dining regulations and activities on the  
43 street with the intent to create a welcoming environment for residents and visitors when  
44 dining outdoors in the City of Pinole. The Planning Commission was asked to provide  
45 feedback regarding the framework for New Outdoor Dining Regulations on sidewalks, in  
46 street parking areas and on public and private property for City Council consideration.  
47  
48

1 Responding to the Commission, Mr. Hanham stated public comment could be solicited  
2 after each topic for discussion.

3  
4 Assistant City Attorney Alex Mog suggested instead that public comment be solicited after  
5 Planning Commissioners provide feedback on the different topics.

6  
7 Mr. Hanham explained that staff would like the Planning Commission to reach a  
8 consensus on the topics of discussion.

9  
10 Reporting on ex-parte communications, Commissioner Menis stated he had sent out  
11 information about the Planning Commission meeting to his email list and had ex-parte  
12 communications with Tina Holtzclaw, the owner of Tina's Place about this agenda item  
13 topic a few months ago.

14  
15 Mr. Hanham also clarified in response to the Commission with respect to the three existing  
16 businesses in Pinole that had temporary use permits for outdoor eating areas, his  
17 understanding the parking as part of Tina's Place located at 2300 San Pablo Avenue was  
18 part of the business, but he would have to conduct some research to verify that  
19 information. As to Sue's Café, the parklet was out in the street using public right-of-way  
20 (ROW). The walkway at Pear Street Bistro was part of the bistro and part of the City of  
21 Pinole, with the majority of the walkway the City's at one time, although when sold to the  
22 private owner, Pear Street Bistro, the bistro had a lease agreement to use the ROW.

23  
24 At this time, the Planning Commission discussed the topics identified by staff one-by-one  
25 and offered feedback.

26  
27 ***Define categories of outdoor dining (on sidewalks: "sidewalk dining in***  
28 ***areas," parking spaces in the right-of-way or on public property: "parklets,"***  
29 ***and on private property: "outdoor dining areas").***

30  
31 Commissioner Kurrent opposed parklets utilizing the City's ROW since there were some  
32 safety issues when extending a dining area out into the street or if located adjacent to  
33 parking spaces with potential conflicts with vehicular traffic. He pointed out Sue's Café  
34 was the only establishment in Pinole that had taken advantage of the opportunity to have  
35 a parklet during the pandemic. He suggested there was no place in the City where parking  
36 spaces should be lost to parklets. He also had concern with the maintenance and  
37 ownership of parklets and suggested this was a path the City should not go down. He  
38 recommended that parklets not be considered at all and the Planning Commission only  
39 consider eating areas that were part of a strip mall parking lot or part of an establishment.  
40 While parklets had been nice during the pandemic and had served a purpose, he  
41 suggested they were no longer viable in the City of Pinole. He had no issues with sidewalk  
42 dining areas or any other outdoor dining that did not encroach out into the street.

43  
44 Commissioner Benzuly supported the flexibility parklets provided for eating  
45 establishments. He understood the safety concerns and suggested the location of a  
46 parklet should include recommendations from the Police Department on possible barriers,  
47 as an example, and with the City to sort out the maintenance and liability issues as part of  
48 the permitting process. He had no concerns with sidewalk dining or private outdoor dining  
49 areas.

1 Commissioner Menis had a slight issue with some of the examples of sidewalk dining  
2 areas that appeared to encroach into the ROW and which may block access to  
3 wheelchairs. He wanted to ensure that was avoided if sidewalk dining areas were allowed.  
4 As to parklets, while they did encroach somewhat into the public ROW, that could be an  
5 advantage for the business. He understood a number of cities had ordinances for parklets  
6 that worked out well and it would have been helpful to have some of that information for  
7 this presentation. If designed properly parklets would be beneficial. He suggested any  
8 design standards should be explicitly part of an ordinance for parklets. He also suggested  
9 parklets could act as a traffic calming and safety measure since they extended out into  
10 the ROW drawing a driver's attention and making people be more cautious and aware of  
11 one's environment.  
12

13 Commissioner Menis was unaware of any issues with the parklet at Sue's Café. He  
14 suggested any parklet should be built to withstand at the least a glancing impact, but the  
15 fact was they were in the public ROW and could have beneficial traffic calming impacts,  
16 such as in the Old Town area of San Pablo Avenue.  
17

18 Vice Chairperson Martinez supported all three ideas staff had outlined but emphasized  
19 that ensuring safety was key. The City currently had one parklet at Sue's Café and having  
20 recently patronized the establishment, he reported on a close call he had experienced with  
21 a passing vehicle. If parklets were permitted, there needed to be thoughtful and clearly  
22 defined safety guidelines in place with a requirement for possible barriers to eliminate any  
23 safety risks.  
24

25 Commissioner Kurrent suggested if parklets were allowed cement barriers, as an  
26 example, needed to be considered to protect diners; however, he reiterated his concerns  
27 with allowing parklets at all in the City of Pinole.  
28

29 Chairperson Moriarty suggested the discussion on parklets needed to continue. She did  
30 not see that parklets made sense in Pinole but for an establishment like Sue's Café, it had  
31 worked well. She summarized the comments from the Commission that there was  
32 consensus for sidewalk dining areas as long as there was room. There was also  
33 Commission consensus for outdoor dining areas but the question was with parklets. The  
34 main concerns with parklets was owner maintenance, liability and design standards to  
35 ensure the parklet appeared to be more permanent than temporary. Safety was the  
36 highest consideration which would determine the dimensions and materials to be used for  
37 the parklet and there should be traffic calming provided to slow things down as much as  
38 possible.  
39

40 ***Establish the permitting process for outdoor dining, including opportunities***  
41 ***for public input, annual renewal or inspections, one-time and annual fees,***  
42 ***maintenance, and liability.***  
43

44 Mr. Hanham highlighted the options to establish a permitting process for outdoor dining  
45 (parklets, outdoor dining or on private property: outdoor dining areas) which included:  
46 Administrative Permit Process: (a new Outdoor Dining Permit) approved by the Planning  
47 Manager/Community Development Director. A hearing process (Administrative Use  
48 Permit (AUP), Conditional Use Permit (CUP), and Zoning Administrator Permit, a New  
49 Outdoor Dining Permit) through the Zoning Administrator with appeal rights to the Planning  
50 Commission.



1 A hearing process (AUP, CUP, ZA permit, with a New Outdoor Dining Permit) through the  
2 Planning Commission with an appeal to the City Council or a hearing process (AUP, CUP,  
3 ZA permit, a new Outdoor Dining Permit) through the Planning Commission with a  
4 recommendation to the City Council.  
5

6 Commissioner Benzuly suggested different permit processes for the different types of  
7 outdoor dining. He clarified with the Assistant City Attorney that an Ad-Hoc Committee  
8 would have no authority to make decisions. For parklets, he suggested those permits  
9 should go before the Planning Commission given the concerns raised. For the other two  
10 outdoor dining categories, he suggested it would be heavy handed to require Planning  
11 Commission approval, and rather he recommended once a minimum standard had been  
12 established administrative approval by the Planning Manager or Zoning Administrator  
13 made more sense.  
14

15 Commissioner Menis suggested there was no need to consider the fourth permit option  
16 outlined by staff since the Planning Commission had the power to make decisions on  
17 CUPs without requiring City Council approval. For outdoor dining areas, it would be  
18 reasonable to have that require an administrative hearing process but for sidewalk areas  
19 and for parklets, he recommended the Planning Commission process given the ROW  
20 concerns and which would provide for community input. He did not see there was a need  
21 for an annual review of the permit, although annual inspections would be a good idea  
22 particularly for parklets, and to a lesser extent outdoor and dining areas. Fees should be  
23 based on the nexus of staff costs and there should be a requirement for maintenance and  
24 liability incumbent on the property owner, although he could see a split between the City  
25 and the property owner in terms of liability for parklets. Maintenance for parklets should  
26 be borne by the private property owner making the improvements and that should also be  
27 a condition of approval.  
28

29 Vice Chairperson Martinez suggested as part of any CUP any outdoor activities should be  
30 insured properly and the insurance of the property should be well over \$1 million removing  
31 liability from the City, and that any organization/establishment that had any outdoor  
32 activities should be responsible for regular/daily maintenance and removal of litter. He  
33 appreciated the fact that the owners of Trader Joe's Shopping Center conducted annual  
34 maintenance and removal of litter and he wanted it made clear that if outdoor activities  
35 were allowed, that space should appear new all of the time and there would be an annual  
36 renewal of the use each year.  
37

38 Vice Chairperson Martinez cited East Bay Coffee as an example of a business with an  
39 approved outdoor venue, which required Planning Commission review and approval given  
40 concerns with the use and which involved public input. He liked the idea of the permit  
41 requiring Planning Commission review and approval and possibly the Planning  
42 Commission Development Review Ad-Hoc Subcommittee could provide feedback prior to  
43 approval by the Planning Commission.  
44

45 Assistant City Attorney Mog clarified that anything that operated in the public ROW,  
46 whether a sidewalk or a street, must obtain an encroachment permit from the City of Pinole  
47 Public Works Department even if the use went through a CUP process. As part of the  
48 encroachment permit process and as outlined in the Pinole Municipal Code (PMC), \$2  
49 million minimum in insurance was required with the City indemnified from any liability.  
50

1 Commissioner Kurrent agreed there should be a more straightforward permit process for  
2 outdoor dining areas than for parklets. He suggested that outdoor dining areas should go  
3 through a Zoning Administrator public hearing process given there could be neighborhood  
4 impacts and people who lived within 300 square feet of a use should be allowed the ability  
5 to comment on any changes in their neighborhood. For parklets, he recommended a  
6 public hearing process with a recommendation from the Planning Commission to the City  
7 Council. In that case, the City would be giving away City property and there should be  
8 some compensation to the City in the payment of annual fees to compensate the City for  
9 the loss of any parking spaces along with annual inspections. Issues related to ownership  
10 also needed to be addressed as it related to parklets, and he was unsure citizens could  
11 be restricted from using City property to the benefit of someone else.  
12

13 Chairperson Moriarty summarized the Commission consensus for outdoor dining or on  
14 private property: outdoor dining areas; there be a public hearing process through the  
15 Zoning Administrator with appeal rights to the Planning Commission. For sidewalk dining  
16 areas, there was consensus for the same public hearing process.  
17

18 Commissioner Menis pointed out that sidewalk use may impact a broader group of people  
19 that may not be normally notified of a public hearing process. He asked of the cost  
20 differences for an applicant for a public hearing before the Zoning Administrator as  
21 opposed to the Planning Commission.  
22

23 Mr. Hanham stated that administrative use permits go through staff or the Zoning  
24 Administrator. A CUP process cost was about \$7,300 whereas the Zoning Administrator  
25 process was about \$1,500, with the costs mostly related to staff time and public noticing  
26 requirements.  
27

28 Assistant City Attorney Mog clarified the costs for a CUP and for Zoning Administrator  
29 permits pursuant to the PMC excluding staff costs or noticing requirements.  
30

31 Commissioner Menis recognized if public input was desired it would impose costs on an  
32 applicant regardless of whether a public hearing before the Zoning Administrator or the  
33 Planning Commission. Even with the associated costs and whether an administrative or  
34 Planning Commission public hearing, he suggested for sidewalk level activities that should  
35 require Planning Commission review and approval since it would impact a broader swath  
36 of the community.  
37

38 Chairperson Moriarty suggested the specifications for sidewalk activities needed to be  
39 clear since the sidewalk user would likely be a pass-through person and there was a need  
40 to ensure space for people to walk and wheelchairs and the like that could be determined  
41 administratively as well as by the Planning Commission and those who would likely want  
42 to provide public comment, which were those who lived in the area of the use and who  
43 would be affected or had an adjacent business. She suggested the actual wording could  
44 be designed to ensure that pass-through people who were not impacted to the same  
45 degree would be addressed.  
46

47 Assistant City Attorney Mog commented the City had standards that must be met and  
48 which would be evaluated by the Public Works Director as part of the encroachment permit  
49 process to ensure Americans with Disabilities Act (ADA) accessibility in the ROW.  
50

1 Chairperson Moriarty stated she would be in favor of keeping the private outdoor dining  
2 and the sidewalk at the same level with administrative approval by the Zoning  
3 Administrator and with appeal rights to the Planning Commission. In terms of parklets,  
4 she agreed they should require Planning Commission review with a recommendation to  
5 the City Council.  
6

7 There was Planning Commission consensus that parklets be reviewed by the Planning  
8 Commission with a recommendation to the City Council.  
9

10 Chairperson Moriarty recognized that issues related to maintenance and liability would be  
11 part of the encroachment permit process. She suggested consideration of annual  
12 inspections and one time annual fees should be discussed further.  
13

14 In terms of parklets and in response to Commissioner Benzuly, Mr. Hanham clarified that  
15 any structure that was more than 120 square feet in size or had electrical work would  
16 require approval of a Building Permit. The subject discussion for this topic was how to  
17 process permits with the current consensus for outdoor dining permits for sidewalks and  
18 privately obtain permits as part of the Zoning Administrator permit process, with parklets  
19 to be reviewed by the Planning Commission with a recommendation to the City Council.  
20

21 ***Describe the locations and/or zoning districts where different categories of***  
22 ***outdoor dining are allowed through a permitting process.***  
23

24 While there was Planning Commission consensus for the different categories of outdoor  
25 dining for "Commercial Establishments" or "Eating Establishments" to be allowed Citywide,  
26 with the exception of Residential Districts, staff sought identification of the different Zoning  
27 Districts where different categories of outdoor dining would be allowed through a  
28 permitting process.  
29

30 Chairperson Moriarty asked staff to make the recommendation fit into the specific Zoning  
31 Districts.  
32

33 Assistant City Attorney Mog explained that restaurants were defined uses in the PMC and  
34 staff could tie the use to an operating restaurant, which use was not allowed in Residential  
35 Zoning Districts.  
36

37 The Planning Commission discussed the possibility of non-food based uses for parklets,  
38 which should be discussed and there was a recommendation by Commissioner Menis to  
39 confine parklets to the Old Town Subarea rather than citywide to address risks with  
40 encroachment; although Commissioner Kurrent disagreed and suggested that taking  
41 away a parking space was an inexpensive way to expand a business. He could foresee  
42 a business owner install a parklet, with the City having limited parking spaces, and he  
43 sought a restriction on parklets.  
44

45 Mr. Hanham added that there were restrictions on outdoor storage for outdoor dining,  
46 which was why this was primarily for eating establishments and restaurants.  
47

48 Chairperson Moriarty summarized the Planning Commission consensus to link the  
49 locations and/or zoning districts where different categories of outdoor dining were allowed

1 through a permitting process, to current eating/restaurant establishments citywide, with  
2 the exception of where there was actual Commercial restaurant establishments.

3 ***Establish standards for design and materials, size, landscaping,***  
4 ***accessibility, circulation, lighting, safety features (such as guardrails, wheel***  
5 ***stops, visible vertical elements) signage, heating, air circulation and outdoor***  
6 ***furniture.***  
7

8 Mr. Hanham provided visual examples of heavy and lightweight barriers that could be  
9 considered including conceptual drawings and photographs of existing parklet designs.  
10 He also suggested a cover design that entirely covered the parklet could be considered  
11 or a covering which included openings at the top, and he asked the Planning Commission  
12 to provide feedback.  
13

14 Chairperson Moriarty disliked the idea of something that was temporary, such as the  
15 barriers used at Sue's Café as compared to the more permanent barrier examples. She  
16 also preferred well thought out options keeping in mind safety, visibility and a more  
17 permanent solution.  
18

19 Commissioner Kurrent emphasized that visibility and safety was important whether a  
20 concrete barrier/bollards or some other barrier mechanism but something that protected  
21 diners from an errant vehicle and allowed appropriate sight distance/visibility between  
22 patrons and vehicular traffic. He suggested that a covering which consisted of Plexiglas  
23 or which had an opening should be considered.  
24

25 Commissioner Menis understood that the details around design and materials would  
26 naturally come before a design subcommittee with the details brought back to the Planning  
27 Commission for a formal vote. He suggested that being able to have the parklets covered  
28 was a good idea during inclement weather. As to heating, he asked whether or not the  
29 City could mandate the use of electric heating and bar the use of natural gas or propane  
30 given studies around the negative health impacts of using those materials.  
31

32 Assistant City Attorney Mog suggested any mandate should come from the City Council  
33 and not be determined project-by-project.  
34

35 Commissioner Menis suggested to make parklets more consistent with the Sustainability  
36 and Safety Elements of the General Plan, the Planning Commission should encourage  
37 the City Council to bar the use of fossil fuel burning elements and require the use of  
38 electrical heating elements. He otherwise agreed with the need for more sturdy barriers  
39 taking into account safety and visibility.  
40

41 Vice Chairperson Martinez commented that other cities allowed the lower portion of the  
42 parklets to be as tall as but no taller than 36 inches with a requirement to use Plexiglas or  
43 acrylic material on the sides, with that area to be as clear as possible. Some cities had  
44 also required a distance of six to eight feet from the floor of the parklet to the ceiling for  
45 some type of roof or plastic covering during the winter months. Fire retardant materials  
46 would have to be used and some umbrellas were required to be properly treated with fire  
47 retardant materials. Other cities had also mandated that each component of the exterior  
48 walls of the parklets be at a minimum weight of at least 250 pounds so they were not easily  
49 knocked over, which was a nice standard that should be added.  
50

1 Vice Chairperson Martinez also wanted to see the edges where the end points were  
2 located come together on the street and the use of appropriate reflective taping, which  
3 would be reflective during the evenings.  
4

5 Commissioner Benzuly agreed with limiting the use of tents or guardrails which resulted  
6 in a temporary look and rather preferred a more permanent solution as discussed. In  
7 terms of heating and roofing, he was not opposed to the parklets having roofs and heating,  
8 which could be an impetus for the applicant but which would meet code for a permanent  
9 or semi-permanent structure.  
10

11 Mr. Hanham suggested the Planning Commission identify a desired standard and allow  
12 the applicant to provide options and depending on those options standards could be  
13 established.  
14

15 Commissioner Benzuly agreed that minimum standards must be considered to allow some  
16 flexibility.  
17

18 Chairperson Moriarty referenced design standards provided from the City of San Mateo,  
19 which jurisdiction had criteria that addressed drainage with the platforms for the parklets  
20 required to allow for curbside drainage flow; criteria for bolting which was not allowed;  
21 maintenance access; platforms required to be constructed from durable materials that  
22 could withstand the wear and tear of elements and pouring concrete was not allowed, as  
23 examples. She suggested looking to the standards used by other jurisdictions for  
24 permanent and semi-permanent parklets consistent with what the Planning Commission  
25 was seeking.  
26

27 Mr. Hanham suggested recommendations could be made to the City Council for a safety  
28 and visibility standard, with a review of any lighting, as an example, the structure to be  
29 more permanent in nature, with the micro details yet to be resolved. He again displayed  
30 example criteria for heavy and lightweight barriers, acknowledged a recommendation for  
31 the City Council to consider more heavyweight barriers, include additional design features  
32 for visual vertical elements, and consider reflective corner elements, wheel stops,  
33 wheelchair accommodations, Americans with Disability Act (ADA) accessibility and the  
34 like, as discussed.  
35

36 Commissioner Menis reiterated his recommendation that any heating element in the  
37 parklets be electrical and not use natural gas, and that the outdoor eating areas be  
38 electrical as well in order to comply with the Sustainability and Safety Elements of the  
39 General Plan.  
40

41 Chairperson Moriarty suggested staff could make it clear to the City Council that was  
42 something the Planning Commission would like the City Council to consider.  
43

44 Vice Chairperson Martinez urged caution since the State had an electricity provider that  
45 had consistently proven itself unreliable and if mandating that one electricity supplier which  
46 had a monopoly, it could prevent a business from heating food for guests and was an area  
47 that the market should determine. As an example, he had reviewed different environments  
48 that used outdoor electric heaters and commented on the significant cost for such  
49 equipment, which was why many restaurateurs used natural gas heaters. Mandating the  
50 use of electricity could be a significant impact to small businesses.

1  
2 Chairperson Moriarty suggested that this issue was a much deeper discussion as it related  
3 to the City's Climate Action Plan (CAP), and was a discussion she did not recommend the  
4 Planning Commission have at this time. She asked staff to make it clear the Planning  
5 Commission was asking the City Council to "consider" a prohibition on the use of natural  
6 gas and that the City Council consider potential impacts to the small business owner.  
7

8 Mr. Hanham agreed with the Chair's comments and clarified that a deeper discussion of  
9 electric versus natural gas would be discussed in the future.  
10

11 Commissioner Menis commented the City Council had decided not to mandate citywide  
12 electrification in new buildings in 2021 or in 2022, as part of Reach Codes. As a result,  
13 when projects came before the Planning Commission, there had been a request for the  
14 City Council to voluntarily consider Reach Codes, which had not been supported. He  
15 suggested that addressing this issue on a case-by-case basis was unreasonable.  
16

17 Chairperson Moriarty again suggested the City Council could "consider" the  
18 recommendation, as discussed and consider it fairly. She recognized this was a bigger  
19 issue but she wanted to move that discussion to the City Council level.  
20

21 ***Consider encouraging other elements such as public art and bicycle parking***  
22

23 There was consensus from the Planning Commission to encourage other elements such  
24 as public art and bicycle parking.  
25

26 Commissioner Menis clarified with Mr. Hanham that the City did not have a current policy  
27 for public art and a program could be established for parklets and outdoor dining areas.  
28

29 Mr. Hanham stated he would not recommend public art as a requirement but that it be  
30 "encouraged," and acknowledged that could be a Planning Commission decision. While  
31 the Planning Commission could set standards for what it wanted to see for public art in  
32 parklets and outdoor dining areas, he recommended considering whether or not public art  
33 should be allowed without getting into the details at this time.  
34

35 Vice Chairperson Martinez commented on the bicyclists who traveled through Old Town  
36 Pinole on weekends with parking on the sidewalks, which had been a challenge for  
37 pedestrians to navigate and which issue needed to be addressed by creating safe bicycle  
38 parking spaces achieved by working with the business owners.  
39

40 ***Establish standards that address use of the area (i.e., hours, public access,***  
41 ***and equity)***  
42

43 Commissioner Benzuly suggested the hours of operation should be considered on a case-  
44 by-case basis. In terms of limiting access to the outdoor dining areas, he had not seen an  
45 establishment regulate access other than pulling the furniture inside.  
46

47 Mr. Hanham commented that sometimes ropes were used when the area was not in use  
48 and it was more of a passive area.  
49  
50

1 Chairperson Moriarty referenced Contra Costa County's regulations related to the use of  
2 parklets, which required the parklet to be free and open to all members of the public  
3 regardless of whether or not they patronized any particular business.  
4

5 Commissioner Menis commented that this tied into the City imposing regulations on who  
6 owned the parklet and who controlled access. If they were saying the public had universal  
7 right of access to the parklet at certain hours at all times, they were also saying the City  
8 controlled who could enter or leave it. He cited Supreme Court decisions in other contexts  
9 where the right of ejection was one of the fundamental property rights, which could change  
10 some of the arguments over fee structure, permitting process and the like if they were  
11 saying the City had the right to control access. He understood that this would apply to  
12 parklets and sidewalk dining and not as much to the private dining spaces that would be  
13 in parking lots or within the physically controlled property. As to whether the public should  
14 have full access to property within the public ROW regardless of improvements made,  
15 limited access or no access in specific periods of time was something the City Council  
16 needed to resolve as to who the spaces were for, when, how and for what purpose. As  
17 an example, if a homeless person wanted to sleep in the area after the business was  
18 closed for the day, was it the responsibility of the business to monitor that or make it  
19 physically impossible for that access to occur, which tied into issues of equity and public  
20 access.  
21

22 Mr. Hanham cited the Bear Claw as an example, which establishment left its tables and  
23 chairs outside 24/7 and while secured anyone could sit down at any time. As to Sue's  
24 Café, that establishment closed off its outdoor dining area after the close of business.  
25

26 Assistant City Attorney Mog clarified that access could be addressed in the agreement for  
27 parklets or the City Council may establish a policy for how it wanted to address any  
28 condition about the use of the public ROW in exchange for the use of the property.  
29

30 Commissioner Menis suggested depending on how permanent the sidewalk  
31 improvements access restrictions may apply to that area as well.  
32

33 Commissioner Kurrent suggested if the City were to give ownership or lease the public  
34 ROW to restaurant owners the City should control who used the space. If the business  
35 was leasing space from the City vis-à-vis the public ROW, he suggested there should be  
36 fees commensurate with the square footage of rental, not just a freebee.  
37

38 Vice Chairperson Martinez agreed and suggested if the business owner was paying for  
39 the improvements the business owner should have the ability to restrict access.  
40

41 Commissioner Benzuly suggested a business owner should have a say as to who sat in  
42 the outdoor dining area during business hours. After business hours, one should be  
43 allowed to sit in that space if not impeding operations.  
44

45 The Commission discussed the topic at length and Assistant City Attorney Mog explained  
46 that the City could decide whatever it wanted; the area could be restricted and secured at  
47 night or not with the area open to any member of the public, and all of those options were  
48 open since it involved City property someone was requesting to be used.  
49  
50

1 Mr. Hanham commented that as the Planning Commission further discussed design  
2 guidelines it would have the opportunity to take a look at this topic during a subcommittee  
3 process and it may look different after feedback from the Planning Commission, City  
4 Council and the public.

5  
6 At this time, Mr. Hanham recommended that given this was a major issue and the Planning  
7 Commission wanted to consider a lot of different ideas, the Commission could provide  
8 additional feedback for a more comprehensive discussion at a later date.

9  
10 Chairperson Moriarty stated the rights of the public versus the rights of the business owner  
11 was a question the City Council needed to consider along with the Planning Commission.

12  
13 Commissioner Menis added it should be noted for the City Council that the Planning  
14 Commission had been unable to reach a consensus on this topic.

15  
16 Mr. Hanham advised that staff would forward the comments from the Planning  
17 Commission to the City Council so that the City Council was aware of the concerns raised.

18  
19 ***Address parking requirements***

20  
21 Mr. Hanham explained that the City had conducted a parking study for the downtown  
22 Commercial District on the parking being used. As an example, if Tina's Place took up  
23 four parking stalls, should a parking study be prepared to identify the viability of parking.

24  
25 Commissioner Kurrent suggested there should be a re-analysis of the parking  
26 requirements to ensure the use still met the PMC for required parking.

27  
28 Commissioner Benzuly suggested a maximum percentage should be identified before the  
29 next step of requiring a potential costly parking study.

30  
31 Chairperson Moriarty understood they were speaking mostly of reducing the parking in a  
32 parking lot for a private use. As an example, the Bear Claw had two parking spaces in  
33 front of the business and if they were to build a parklet in the front of that business and  
34 use those two parking spaces there would be a different standard.

35  
36 Mr. Hanham explained that the City's parking requirements were based off of off-street  
37 parking. A business of 5,000 square feet required one parking space per every 50 square  
38 feet of gross floor area off-street. In the downtown area, all parking spaces had been  
39 incorporated within the square footage, which was why the City had ample parking spaces  
40 in the downtown core since both off and on-street parking was used.

41  
42 Commissioner Kurrent reiterated that parklets should not be a giveaway. There should  
43 be a cost per square footage and if the cost was market rate as opposed to nominal the  
44 City would find that establishments would not want to construct parklets. He suggested  
45 parklets were not a good business model for Tina's Place and Mel's.

46  
47 Vice Chairperson Martinez wanted to be careful that the City was not seen as being non-  
48 business friendly. He cited a number of jurisdictions that did not charge market rate for  
49 parklets, and if the City of Pinole was the only jurisdiction charging those fees businesses  
50 would not come to Pinole. He recommended that the City not set such a precedent



1 Chairperson Moriarty suggested if using a private lot that would impact other business  
2 owners the question was whether the size of the parklet should be restricted to give back  
3 for that use.  
4

5 Mr. Hanham clarified that the parklet would be located in the public ROW and the only  
6 area that would be losing parking spaces would be in the area within the private outdoor  
7 dining area adjacent to the business, and which would be those types of businesses that  
8 would affect the on-street parking requirements. The question was how to address that  
9 either by a percentage or by the PMC.  
10

11 Chairperson Moriarty agreed that parklets should not necessarily be a giveaway. If  
12 parklets affected the availability of parking that would impact other businesses that needed  
13 to be addressed in some way.  
14

15 In response to Commissioner Menis, Assistant City Attorney Mog explained that if a  
16 business owner had a use permit that required a certain number of parking spaces and if  
17 the business was below that amount, it was at the discretion of the City whether or not to  
18 allow a reduction in the required parking.  
19

20 Commissioner Menis understood that much of this was policy the City Council would have  
21 to make since it was ultimately a policy level decision on how the City was structured,  
22 whether to prioritize people versus vehicles and weigh the values of those, which was  
23 beyond the Planning Commission's level.  
24

25 Assistant City Attorney Mog clarified that parking was within the purview of the Planning  
26 Commission and its role as a Planning Commission. Planning and zoning standards  
27 involved recommendations to the City Council. If the Planning Commission had a  
28 recommendation on how a parking standard should apply it was within the purview of the  
29 Commission to provide a recommendation to the City Council to adopt all policies.  
30

31 As an example, the previously discussed recommendation for a mandate on the use of  
32 natural gas heaters was not a planning issue and was outside the Planning Commission's  
33 jurisdiction, while parking standards were within the purview of the Planning Commission.  
34

35 Commissioner Kurrent reiterated that if parking spaces were removed the business should  
36 be required to prove it could still live up to the PMC parking requirements.  
37

38 Chairperson Moriarty was unsure the Planning Commission would reach a consensus on  
39 this topic.  
40

41 Mr. Hanham suggested the Planning Commission could make a recommendation to the  
42 City Council to evaluate the parking requirements as part of the overall design standards.  
43

44 Chairperson Moriarty confirmed the consensus that the Planning Commission would make  
45 a recommendation to the City Council to evaluate the parking requirements as part of the  
46 overall design standards, and that outdoor dining in private areas would be considered  
47 separately from a parklet taking up public ROW parking. She suggested discussion on  
48 this topic needed more time along with more data.  
49  
50

1 Mr. Hanham agreed that until a specific project had been proposed where the required  
2 parking would be identified and whether or not some parking could be reduced in different  
3 areas, additional studies were needed but the Planning Commission may recommend that  
4 the City Council review the parking requirements as part of this process.

5  
6 Chairperson Moriarty suggested this could be a topic for the Planning Commission Ad-  
7 Hoc Subcommittee.

8  
9 ***Address the transition from temporary outdoor dining areas to permanent***  
10 ***dining areas (i.e., establish a transition period for existing temporary permit***  
11 ***holders to apply for a permanent outdoor dining area)***  
12

13 Mr. Hanham confirmed there were currently only three establishments that had been  
14 issued temporary use permits under the Urgency Ordinance, which were still active and  
15 which had been identified in the staff report as Tina's Place, Sue's Café and the Pear  
16 Street Bistro.

17  
18 Commissioner Kurrent suggested there was a natural time consideration in that the  
19 outdoor dining areas were more popular during the summer months, and that October 1  
20 was a good time to obtain a CUP if the business desired.

21  
22 Mr. Hanham stated since the City had lifted the Urgency Ordinance, it could suspend the  
23 temporary use permits, but if the business wanted to continue to use the outdoor dining  
24 space the Planning Commission needed to consider the following: setting a timeline for  
25 converting from a temporary program to a new program; work with existing businesses to  
26 address a new design program and institute a potential fee deferral program for  
27 compliance or consider a full amnesty program for existing businesses that wanted to have  
28 an outdoor dining area.

29  
30 Assistant City Attorney Mog suggested the Planning Commission provide direction on how  
31 a transition should happen and whether the business should be allowed to maintain the  
32 outdoor dining area or meet new standards, as described.

33  
34 Commissioner Benzuly suggested the business should have nine months to a year to  
35 determine and resolve all issues before transitioning from a temporary to a permanent  
36 dining area. He was not a fan of an amnesty program but supported the three businesses  
37 that had stuck it out and made it work, and possibly a fee deferral program could be  
38 considered while those businesses worked towards transitioning to a permanent solution  
39 and meeting yet to be determined new design standards.

40  
41 Commissioner Menis asked whether staff was aware of those cities that had shifted out of  
42 the state emergency from a temporary to a more permanent model, the timeline involved  
43 and whether that timeline had been effective.

44  
45 Mr. Hanham stated he could not provide an answer since some communities had required  
46 the temporary use to be removed within 90 to 120-days from the date of the lifting of the  
47 emergency ordinance. Currently in Pinole, if a business desired to continue the outdoor  
48 dining use, the business would be required to comply with Section 17.68, Outdoor Dining,  
49 of the PMC and as new guidelines were established the business would have to comply  
50 with those new guidelines.

1 Assistant City Attorney Mog clarified in response to the Chair that if a business were to  
2 continue in its current form of providing outdoor dining in the interim of the City considering  
3 new regulations, the City Council would be required to adopt something before the new  
4 regulations were formally adopted.

5  
6 Commissioner Menis suggested it was reasonable to give the current existing businesses  
7 more time to adapt since the City needed to figure out what it wanted to do. He was  
8 uncertain of the time it would take to build out a more permanent structure and suggested  
9 it would be beneficial to allow the current temporary uses to continue for a period of time  
10 after the adoption of a new ordinance, not just after the end of the emergency that would  
11 require City Council action.

12  
13 Commissioner Menis disagreed there should be amnesty for the existing structures to  
14 continue on indefinitely. He wanted to eventually shift from the temporary to a more  
15 permanent structure, which would result in better quality construction and something that  
16 met the City's guidelines. He suggested six months to a year from the passage of the  
17 ordinance could be a possible timeline.

18  
19 Vice Chairperson Martinez was also uncertain that amnesty should be considered but he  
20 recognized the City was not done imposing new design guidelines. He asked staff once  
21 the City's work had been completed whether six months would be a reasonable timeline  
22 to require compliance with new guidelines. He asked whether that was a consistent  
23 timeline as compared to what other jurisdictions had imposed.

24  
25 Mr. Hanham suggested staff work with the existing businesses to see where they were at  
26 in terms of their design components. He confirmed the three establishments had been  
27 informed the City was in the process of adopting a new program and it was a matter of  
28 how long the temporary uses would be allowed to remain.

29  
30 Vice Chairperson Martinez asked the Assistant City Attorney to provide guidance on  
31 liability. He asked if an accident occurred at any of the three existing businesses whether  
32 the City would be liable.

33  
34 Assistant City Attorney Mog suggested there would not be issues of significant liability in  
35 such a situation for the City. He acknowledged that whenever an accident occurred the  
36 City was often named since it had deeper pockets, the City had a number of immunities  
37 and defenses available and he was not concerned about significant liability. The business  
38 would also have insurance that protected the City's ROW.

39  
40 Vice Chairperson Martinez suggested if the businesses were allowed to continue business  
41 as usual, he wanted assurance that the City was not liable if the business was sued and  
42 Assistant City Attorney Mog reiterated the City would not be on the "hook."

43  
44 Vice Chairperson Martinez was okay with allowing the businesses to continue business  
45 as usual but suggested those businesses be provided an action plan that the City was  
46 creating a new program and compliance would be required at some point.

1 Commissioner Kurrent suggested there would be a natural end point once the weather  
2 had improved and there would be a natural timeline limit of October 1 or November 1. Of  
3 the three existing businesses that had outdoor seating, and citing Tina's Place as an  
4 example, he was uncertain how that business would transition to a more permanent use  
5 since they had incorporated a walkway between Pear Street Bistro and the Bank of Pinole.  
6 He was uncertain that would be considered outdoor dining requiring a permit from the City.  
7

8 Commissioner Kurrent suggested Sue's Café was the only business that would likely want  
9 to continue with its parklet. He again suggested that a parklet was an expansion of the  
10 business, and he reiterated his recommended timeline that offered a natural break.  
11

12 Chairperson Moriarty stated in her opinion it depended on when the City had actual  
13 regulations in place and having a hard and fast date did not make sense to her. She  
14 clarified Planning Commission consensus was that no amnesty program be considered.  
15 There was also Planning Commission consensus to allow the businesses to continue  
16 business as usual until a target changeover date had been identified and new regulations  
17 had been implemented.  
18

19 Mr. Hanham explained he would have to work with the City Attorney's Office to prepare  
20 something to allow the businesses to continue and inform them of a specific time to comply  
21 with a new ordinance. As an example, from the time of the adoption of a new ordinance  
22 the business owner would likely have three to six months to comply, and if not, outdoor  
23 dining would not be allowed.  
24

25 Commissioner Menis suggested it was open to question whether the businesses were  
26 aware of what the City was doing, but Mr. Hanham reiterated the three businesses  
27 identified were aware that the City was starting the process for a more permanent solution.  
28

29 On the discussion, Chairperson Moriarty reiterated the consensus of the Planning  
30 Commission to recommend to the City Council not to allow any amnesty program. Until  
31 new regulations were in place, the businesses would be status quo with the temporary  
32 use permit and with the business to be permitted six months to a year to transition to a  
33 permanent structure after new regulations were in place.  
34

35 PUBLIC COMMENTS OPENED  
36

37 Mr. Hanham reported there were no comments from the public.  
38

39 PUBLIC COMMENTS CLOSED  
40

41 Mr. Hanham thanked the Planning Commission for the feedback.  
42

#### 43 **H. CITY PLANNER'S / COMMISSIONERS' REPORT** 44

45 Mr. Hanham reported that staff was finalizing the administrative draft for the environmental  
46 work for the Pinole Shores II project, with the project to be presented to the Planning  
47 Commission on March 13, 2023. In other matters, use permit applications were being  
48 processed for a massage therapy business and a paint booth on San Pablo Avenue, and a  
49 tentative map application, which applications had been tentatively scheduled to be presented  
50 to the Planning Commission in the next month.

1 In addition, the New Outdoor Dining Regulations Framework would be presented to the City  
2 Council in the next few months.

3  
4 Commissioner Kurrent commented on a notification he had received that the Bank of  
5 America in the Appian/80 Shopping Center would close in July. He asked whether the  
6 closure was temporary due to the expansion of the shopping center or permanent, and Mr.  
7 Hanham advised he would have to check since the property had a new owner.

8  
9 Commissioner Kurrent also asked staff the status of a pending lawsuit against the City related  
10 to its Housing Element, and Assistant City Attorney Mog reported he could not go into detail  
11 about the lawsuit filed against the City related to its Housing Element but the lawsuit alleged  
12 the Housing Element had been adopted prematurely and was not compliant with State law.  
13 He expected a revised Housing Element may come to the Planning Commission at a future  
14 meeting after comments had been received from the State Department of Housing and  
15 Community Development (HCD). The City Attorney's Office would respond to the lawsuit  
16 and after comments had been received from HCD it was possible the lawsuit may become  
17 moot.

18  
19 Vice Chairperson Martinez asked the status of a parcel on San Pablo Avenue between the  
20 bank and the Community Corner which had some activity, and Mr. Hanham explained that  
21 the site was for a project for outdoor space for special events and food trucks, which had  
22 been approved in 2020. The project involved some undergrounding work, fencing and  
23 signage.

24  
25 Commissioner Menis reported he had been invited to a forum to be held with one of the  
26 entities suing the City of Pinole to discuss their side of things in March and stated he had  
27 been informed he could invite staff from the City to attend. He asked whether it would be an  
28 issue for him to attend personally or as a Planning Commissioner and whether staff may also  
29 attend the forum.

30  
31 Assistant City Attorney Mog clarified that Commissioner Menis was able to attend any event  
32 in his personal capacity but not representing the City or the Planning Commission in any way.  
33 He requested that Commissioner Menis provide a copy of the invitation to the City Attorney's  
34 Office for review. He added that City staff generally did not attend such events.

35  
36 Chairperson Moriarty inquired of the status of the Adobe Road Trail breaches, a concern  
37 raised by a citizen during a prior Planning Commission meeting, and Mr. Hanham reported  
38 the Public Works Department was working on repairing the breaches. As part of the Pinole  
39 Vista project, there was a condition that as the developer excavated soil, the City had first  
40 priority for the soil which could be moved towards that area.

41  
42 Chairperson Moriarty inquired of the status of the objective design standards and Parks and  
43 Tree Master Plans, and was informed by Mr. Hanham that staff was preparing a schedule for  
44 the objective design standards to be presented to the Planning Commission for review  
45 possibly for the March 27, 2023 Planning Commission meeting.

46  
47 As to the status of the Parks and Tree Master Plans, Mr. Hanham understood consultants  
48 had been hired and he would have to check with staff to get more details.

1 Chairperson Moriarty commented on a tree that had been illegally removed and not replaced  
2 at 2018 San Pablo Avenue and asked whether or not the property owner had been fined,  
3 and Mr. Hanham understood the property owner was paying for the illegal removal of the  
4 tree but the City was planting the tree.

5  
6 Chairperson Moriarty asked the status of in-person meetings and quorum requirements, and  
7 was informed by Assistant City Attorney Mog that Assembly Bill (AB) 361 would be eliminated  
8 on February 28, 2023 as part of the Governor's declaration to end the State of Emergency  
9 regarding the pandemic.

10  
11 After that time, Planning Commissioners would be required to participate in-person and  
12 traditional Brown Act requirements to participate remotely would apply. There was a  
13 possibility to participate remotely for just cause or emergency circumstances subject to  
14 limitations.

15  
16 Mr. Hanham stated he would provide the Planning Commission with a copy of the resolution  
17 adopted by the City Council on this topic.

18  
19 Chairperson Moriarty asked staff to consider increasing the font size for future PowerPoint  
20 presentations.

21  
22 **I. COMMUNICATIONS**

23  
24 Commissioner Menus reported he had received a communication from a member of the  
25 public who reported wash-out damage on the Bay Trail out of Tennent Avenue, the walking  
26 area between Tennent Avenue and Pinole Shores. That individual had asked whether there  
27 were any plans to repair the blocked walking path between those two points.

28  
29 Mr. Hanham stated he would have to review the matter with staff and would email  
30 Commissioner Menis an update, although Chairperson Moriarty stated the Bay Trail was  
31 under the jurisdiction of the East Bay Regional Park District (EBRPD).

32  
33 **J. NEXT MEETING**

34  
35 The next meeting of the Planning Commission to be a Regular Meeting scheduled for  
36 February 27, 2023 at 7:00 p.m.

37  
38 **K. ADJOURNMENT: 10:45 p.m.**

39  
40 Transcribed by:

41  
42  
43 Sherri D. Lewis  
44 Transcriber

45  
46 Revisions by: Planning Staff



## Memorandum

**TO:** PLANNING COMMISSION MEMBERS

**FROM:** David Hanham, Planning Manager

**SUBJECT:** Body Rhythm Massage Therapy

**DATE:** February 27, 2023

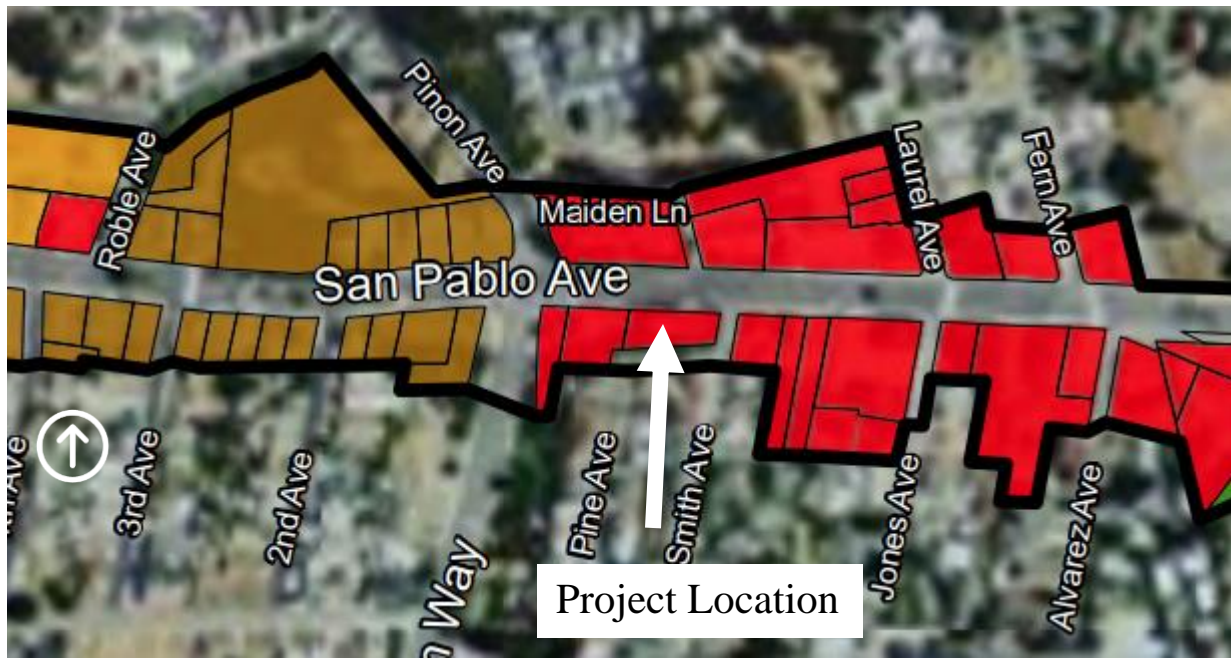
<b>Property Owner</b>	Ms. Grace Serpa 101 N. Gate Road Walnut Creek, CA 94598
<b>Applicant</b>	Ms. Xinheng Gu 1483 Del Rio Circle, #A Concord, CA 94518
<b>File</b>	Planning Application PL23-0002 Conditional Use Permit – CUP 23-01
<b>Location</b>	1685 San Pablo Avenue, Suite A
<b>Assessor Parcel Number(s)</b>	401-100-049
<b>Total Area</b>	Total Parcel: 0.246 Acres/10,715 square feet Tenant Space: 1,128 sq ft
<b>General Plan Land Use Designation</b>	MUSA, Mixed Use Sub Area
<b>Specific Plan Sub-Area</b>	MUSA San Pablo Avenue /Mixed Use Sub-Area
<b>Zoning Classification</b>	Commercial Mixed Use, CMU
<b>Review Authority</b>	Conditional Use Permit - Planning Commission – Pinole Municipal Code (PMC) Section Table 17.10.060-1  California Environmental Quality Act Determination – Planning Commission – CA Public Resources Code Section 15022

### REQUEST

Xinheng Gu (applicant) is seeking approval of a Conditional Use Permit to establish a massage therapy business within a tenant space in the existing building, 1685 San Pablo Avenue, Suite A. Pursuant to Table 17.10.060-1 of the Pinole Municipal Code, the Planning Commission has the authority to review and approve the request for a Conditional Use Permit.

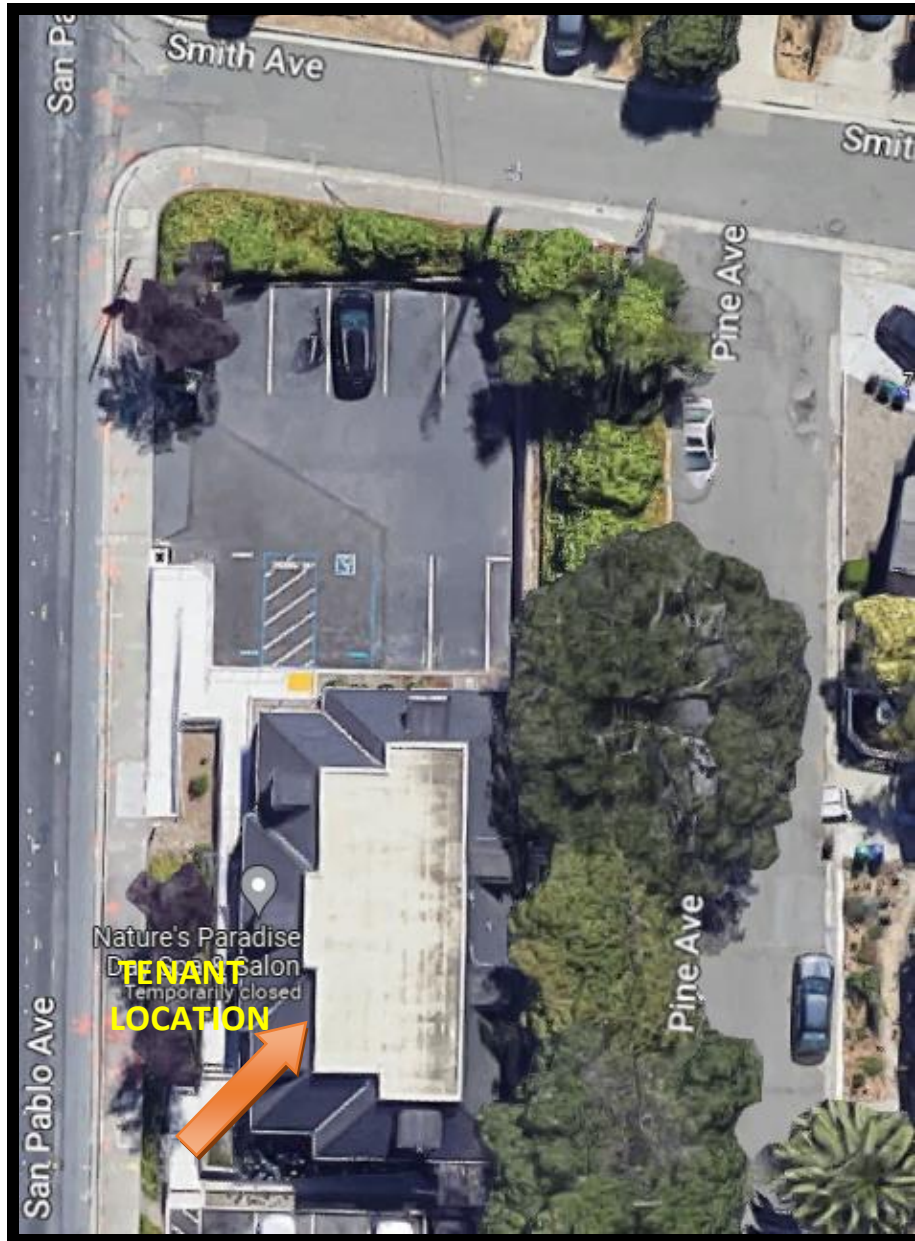
**SITE LOCATION**

**Figure 1.** Project Site Location





**Figure 2. Tenant Space Location**



**Table 1 Existing Land Uses in Vicinity**

Direction from Project Site	Land Use
North	San Pablo Avenue, and Pinole Hearing Aid Center, Mea Beauty, World Phones

West	Appian Liquor Store
South	Pine Avenue, and Single Family Residential
East	Smith Avenue, and Single Family Residential

### **PROJECT DESCRIPTION**

The Body Rhythm Massage Therapy project consists of establishing a professional massage therapy office at 1685 San Pablo Avenue, Suite A, a vacant tenant space within the existing building on the property. The Body Rhythm Massage Therapy business will include treatments on the parts of the human body by therapeutic touching, rubbing, pressing, stroking, kneading, tapping, pounding, vibrating, manipulation or stimulation with hands or feet (massage by operator's feet), instruments (ultra-violet light) and equipment (oriental foot massage bar for massager to hold onto while performing foot massage treatment).

The hours of operation for Body Rhythm are Monday through Sunday: 9am to 9pm.

The business owner may expand the business in the future by hiring additional massage therapists and/or acupuncture therapists based on customer's request. Hours of operations are anticipated to remain the same, however the business owner may submit proposed changes to the Planning Manager for consideration prior to changes, as identified in the conditions of approval (Attachment A).

### **BACKGROUND**

Over the years, the building located at 1685 San Pablo Avenue has had a number of personal services uses. Some of those businesses include, offices, wellness centers, wellness clinics, massage therapy centers, and chiropractic services.

Under current requirements within the Three Corridors Specific Plan, "Personal Services -Restricted" uses require a Conditional Use Permit. These uses are reviewed and approved by Planning Commission pursuant to Pinole Municipal Code Section 17.12.140. The proposed use requested under this Conditional Use Permit is located within an existing building and occupies approximately 1,000 square feet of vacant tenant space. Past uses of this tenant space have included Massage Therapy Businesses, Wellness Centers, Day Spas, and professional offices use.

There are a couple of massage therapy establishments in the City of Pinole. Yu's Massage Therapy Center is approximately two miles west of the site. Renui Spa and Acne Clinic is approximately 1.5 miles to the east of the site.

### **ANALYSIS**

#### ***Land Use***

The project site is designated Mixed Use Sub-Area (MUSA) in the General Plan and Mixed-Use Sub Area in the Three Corridors Specific Plan. Per the General Plan, the MUSA "allows all types of commercial and residential uses as either a single use or in combination with other allowable commercial and residential uses [...] The designation is intended to encourage ground-floor, pedestrian-friendly retail sales and service

uses with upper floors of office and residential uses. Commercial activity can include a range of retail activity from neighborhood convenience stores and community shopping centers to regionally-oriented specialty stores and office uses, including administrative, professional, medical and dental offices.” The proposed new massage therapy business would occupy a tenant space with an existing commercial building to provide new commercial services and would meet General Plan Goals and Policies, including the following:

**GOAL LU.7** Balance housing and employment opportunities to reduce trips in and out of the region and encourage commercial development which maintains and enhances the quality of the city’s commercial areas, provides services for residents, and broadens the tax base of the community to provide needed revenues for public services.

**POLICY LU.7.1** Provide sufficient land for commercial and industrial uses to allow for development that provides basic goods and services to Pinole residents.

**GOAL CC. 3** Support the development and retention of local-oriented services in Old Town Pinole and other commercial areas and encourage and support the local economy.

**POLICY CC.3.2** Support locally owned businesses with the goals of promoting a strong business base, encouraging joint marketing, and improving the City’s business climate. Encourage residents and employees to obtain their goods and services locally.

The site has a Commercial Mixed Use (CMU) designation, which is intended for vibrant commercial and mixed-use development. Massage Therapy businesses fall under the Specific Plan land use classification of “Personal Services-Restricted”. The use is allowed within CMU zone district in the San Pablo Avenue MUSA with the approval of a Conditional Use Permit.

The emphasis of the MUSA within the San Pablo Avenue Corridor, as envisioned in the Specific Plan, is to create a bridge between the Old Town Pinole and the Service Sub-Area. Per the description of the Mixed Use Sub-Area along San Pablo Avenue, “a varied mix of uses (low density residential, multi-family residential, professional office, and service commercial) will play a vital role in fulfilling this vision.

### ***Zoning***

The property is located within the Commercial Mixed-Use (CMU) zoning district. The proposed use, classified as a Massage Therapy Establishment, is permitted with additional requirements in Section 17.66 and Section 8.32 of the Pinole Municipal Code (PMC). Section 17.66 requires that massage therapy establishments meet special standards, which include the requirement for all personnel to be registered by the appropriate professional organization and for the owner to maintain a register of all persons so employed and their current certification number. The requirement for the proposed business would be consistent with the definition for Massage Therapy Establishments, under Section 17.22 of the PMC, which defines the use as “a state certified massage establishment where each owner and each employee that provides massage is a certified massage practitioner.” Section 8.32 of the Pinole Municipal Code also requires that all massage therapy establishments have an operator permit and/or a registration certificate. Regulations require an operator’s permit/registration. Body Rhythm has turned in all of there information required to obtain the operator’s registration and their operator’s permit/registration certificate.

Under the Three Corridors Specific Plan, the CMU zoning district allows for Personal Services - Restricted uses with approval of a Conditional Use Permit. The use classification is defined as “personal service establishments (e.g., check cashing services, fortune tellers, psychics, palm readers, and similar services, tattooing, piercing, massage parlors and similar services) tending to have a blighting and/or deteriorating effect upon surrounding areas and which may need to be dispersed to minimize their adverse impacts. These uses may also include accessory retail sales of products related to the services provided.”

The proposed use would occupy an existing tenant space. The applicant proposes no changes requiring building permits at this time, but would follow standard building permit application submittal and review processes for making any needed tenant improvements within the building prior to operation.

The proposed use is consistent with the findings for Conditional Use Permit approval, under Section 17.12.140. Below are required findings in *italics*, followed by staff support comments:

- a. *The proposed use is consistent with the general plan, any applicable specific plans, and all applicable provisions of this title.*

The proposal contains service uses that would be compatible with existing uses on site and compatible with the commercial character intended for the Commercial Mixed-Use designation for the property.

- b. *The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case (location, size, design, and operating characteristics), be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the neighborhood of such use or to the general welfare of the city.*

The proposal includes a new use that contributes to a variety of businesses already established in different areas of the City and that would be compatible with its setting within a commercial area. The proposed use would operate within one of the existing tenant spaces within the existing building.

- c. *The site of the proposed use is physically suitable for the type, density and intensity of the use and related structures being proposed.*

The proposal would occupy existing structures and use existing parking areas on site.

- d. *It will not be contrary to the specific intent clauses, development regulations, or performance standards established for the zoning district in which it is located. The proposed use and related structures are compatible with other land uses, transportation, and service facilities in the vicinity.*

The proposal would be compatible with other service uses on the property and does not propose modifications to structures.

## **ENVIRONMENTAL REVIEW**

The project is exempt from the requirements of the California Environmental Quality Act (CEQA). The project is determined to be categorically exempt from the California Environmental Quality Act (CEQA) under Section 15303 of the CEQA Guidelines because it consists of locating a new commercial use within an existing commercial tenant space and involves negligible to minor modifications to the exterior of the structure, including no increase in floor area. The project is located in an urbanized area intended for commercial and service uses, is not in an environmentally sensitive area, and would not result in significant effects on the environment.

**STAFF RECOMMENDATION**

Adopt Resolution 23-01 for Conditional Use Permit (CUP) 23-01 conditionally approving Body Rhythm Massage located at 1685 San Pablo Avenue.

**ATTACHMENTS**

- A. Resolution 23-01 with Exhibit A: Conditions of Approval

**PLANNING COMMISSION RESOLUTION 23-01  
WITH EXHIBIT A: CONDITIONS OF APPROVAL**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PINOLE, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, APPROVING A CONDITIONAL USE PERMIT (CUP 23-01) FOR A MASSAGE THERAPY ESTABLISHMENT LOCATED AT 1685 SAN PABLO AVENUE, APN: 401-100-049**

**WHEREAS**, Xinheng Yu (applicant) filed an application for a Conditional Use Permit (CUP 23-01) with the City of Pinole to operate a massage therapy establishment located at 1685 San Pablo Avenue; and

**WHEREAS**, the Planning Commission of the City of Pinole is the appropriate authority to hear and act on this project; and

**WHEREAS**, said property is designated Mixed Use Sub-Area (MUSA) in the Pinole General Plan in the city; and

**WHEREAS**, the property has a Specific Plan Land Use and is zoned Commercial Mixed Use (CMU), which allows for personal services, restricted with approval of a Conditional Use Permit; and

**WHEREAS**, the project meets the criteria for a Categorical Exemption pursuant to Section 15303 of the California Environmental Quality Act (CEQA) Guidelines; and

**WHEREAS**, the Planning Commission of the City of Pinole has conducted a duly noticed public hearing to consider CUP 23-01 on February 27, 2023; and

**WHEREAS**, after the close of public hearing, the Planning Commission considered all public comments received both before and during the public hearing, the presentation by City staff, the staff report, and all other pertinent information regarding the proposed development.

**NOW, THEREFORE**, the Planning Commission hereby finds that:

1. The Planning Commission has considered the full record before it, which may include but is not limited to such information as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are true and correct and are incorporated herein by reference.
2. The proposed use is consistent with the general plan, any applicable specific plans, and all applicable provisions of this title. The proposal contains service uses that would be compatible with existing uses on site and compatible with the commercial character intended for the Commercial Mixed-Use designation for the property.
3. The establishment, maintenance, or operation of the use applied for will not, under the circumstances of the particular case (location, size, design, and operating characteristics), be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing or working in the neighborhood of such use or to the general welfare of the city. The proposal includes a new use that contributes to the variety of businesses already established along the San Pablo Avenue and that would be compatible with its setting within a commercial area well patronized by customers for a variety of different commercial and service needs. The proposed use would operate within one of the existing tenant spaces within the existing building located at 1685 San Pablo Avenue.

4. The site of the proposed use is physically suitable for the type, density and intensity of the use and related structures being proposed. The proposal would occupy existing structures and use existing parking areas on site.
5. It will not be contrary to the specific intent clauses, development regulations, or performance standards established for the zoning district in which it is located. The proposed use and related structures are compatible with other land uses, transportation, and service facilities in the vicinity. The proposal would be compatible with other service uses on the property and does not propose modifications to structures.
6. The conditional use permit request is Categorically Exempt from CEQA pursuant to Section 15303 of the CEQA Guidelines. The project is determined to be categorically exempt from the California Environmental Quality Act (CEQA) under Section 15303 of the CEQA Guidelines because it consists of locating a new commercial use within an existing commercial tenant space and involves negligible to minor modifications to the exterior of the structure, including no increase in floor area. The project is located in an urbanized area intended for commercial and service uses, is not in an environmentally sensitive area, and would not result in significant effects on the environment. .

**NOW, THEREFORE BE IT RESOLVED** by the Planning Commission of the City of Pinole:

- A. Hereby approves CUP 23-01 as provided in the staff report, and subject to the Conditions of Approval attached as Exhibit A to this Resolution.
- B. The approval of CUP 23-01 shall expire on February 27, 2024, unless exercised and actual construction or alteration as needed under valid permits has begun within said period or a written request has been submitted to the City, prior to the expiration date, for an extension of time as allowed under the Zoning Ordinance.

**PASSED AND ADOPTED** by the Planning Commission of the City of Pinole on this 27th day of February 2023, by the following vote:

**AYES:**  
**NOES:**  
**ABSTAIN:**  
**ABSENT:**

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Ann Moriarty, Chair 2022-2023

ATTEST:

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David Hanham, Planning Manager



**Exhibit A**  
**PLANNING COMMISSION RESOLUTION 23-01 CONDITIONS OF APPROVAL**

		<u>Timing/ Implementation</u>	<u>Monitoring Department / Division</u>	<u>Verification (date and Signature)</u>
1.	HOLD HARMLESS - The Applicant shall hold harmless the City, its Council Members, its Planning Commission, officers, agents, employees, and representatives from liability for any award, damages, costs and fees incurred by the City and/or awarded to any plaintiff in an action challenging the validity of this permit or any environmental or other documentation related to approval of this permit. Applicant further agrees to provide a defense for the City in any such action.	Ongoing	Community Development Department	
2.	SUBSTANTIAL CONFORMANCE - The use shall substantially conform to the approved planning application materials. Any modifications of the exterior of the building must be reviewed by the Planning Manager who shall determine whether the modification requires additional approval of the Planning Commission.	Ongoing	Community Development Department	
3.	SIGNAGE – This Conditional Use Permit does not constitute an approval for any signage associated with the use. Separate permit applications shall be submitted and approved prior to the installation of any signage.	Ongoing	Community Development Department	
4.	PEDESTRIAN CIRCULATION - The applicant and owner shall ensure operations associated with the project do not obstruct the walkways/pedestrian paths along San Pablo Avenue.	Ongoing	Community Development Department	





**Exhibit A**  
**PLANNING COMMISSION RESOLUTION 23-01 CONDITIONS OF APPROVAL**

		<u>Timing/ Implementation</u>	<u>Monitoring Department / Division</u>	<u>Verification (date and Signature)</u>
5.	SITE MAINTENANCE - The applicant and owner shall ensure orderly maintenance of waste, and other products associated with operation. Maintenance includes coordination of pick-up and clearance of items.	Ongoing	Community Development Department	
6.	SCHEDULE MODIFICATION – Any expansion of classes that extend past the operating hours, increase the number of days per week, or involve expansion into additional tenant spaces shall be reviewed by the Planning Manager who shall determine whether the modification require further review and approval by the Planning Commission.	Ongoing	Community Development Department	
7.	<p>HOURS OF OPERATION - The hours of operation shall be as shown below. Modifications to hours of operation would require review by the Planning Manager.</p> <p>Office Hours:</p> <ul style="list-style-type: none"> <li>Monday thru Sunday 9:00am – 9:00pm</li> </ul>	Ongoing	Community Development Department	
8.	BUILDING PERMIT - The applicant shall obtain a building permit for any applicable remodel and interior work proposed within the building.	Ongoing	Community Development Department	



**Exhibit A**  
**PLANNING COMMISSION RESOLUTION 23-01 CONDITIONS OF APPROVAL**

		<u>Timing/ Implementation</u>	<u>Monitoring Department / Division</u>	<u>Verification</u> (date and Signature)
9.	OTHER PERMITS AND LICENSES – The applicant shall secure any and all necessary permits and/or licenses for use of the space from the City of Pinole and/or regulating agencies.	Ongoing	Community Development Department	