

# AGENDA FOR THE



## CITY OF PINOLE PLANNING COMMISSION REGULAR MEETING

**Monday, November 21, 2016**

**7:00 P.M.**

City Council Chambers, 2131 Pear Street, Pinole, CA 94564

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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) 724-9014. 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.

Assistant listening devices are available at this meeting. Ask staff if you desire to use this device.

### **CONSENT CALENDAR:**

All matters listed under the Consent Calendar are considered to be routine and non-controversial. These items will be enacted by one motion and without discussion. If, however, any interested party or Commissioner(s) wishes to discuss a consent item, it will be removed from the Consent Calendar and taken up in order after the last item under New Business.

### **PROCEDURE FOR CONSIDERING AN AGENDA ITEM:**

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.**

### **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.

Prior to speaking on an item, you must fill out one of the speaker cards (available at the back of the Council Chambers) and hand it to the Secretary. If a number of persons wish to speak on an item, the Chair may limit each speaker to a set time period in which to address the Commission.

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 or Planning Manager. The cost to appeal a decision is \$803.

**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**

**B. PLEDGE OF ALLEGIANCE AND 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. CONSENT CALENDAR:**

1. Planning Commission Meeting Minutes from October 24, 2016

**E. PUBLIC HEARINGS:**

1. ZCA 16-03: Zoning Code Text Amendment Concerning City Councilmember Appeals of Planning Commission Actions

**Request:** Consideration of a Zoning Code Text Amendment to Chapter 17.10 of the Municipal Code modifying the Zoning Code appeal process for City Council members

**Applicant:** City of Pinole

**Location:** Citywide

**Project Staff:** Eric Casher and Winston Rhodes

**F. OLD BUSINESS: None**

**G. NEW BUSINESS: None**

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

**I. COMMUNICATIONS:**

**J. NEXT MEETING:**

Planning Commission Regular Meeting, December 12, 2016 at 7:00PM

**K. ADJOURNMENT**

**POSTED: NOVEMBER 17, 2016**



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**Winston Rhodes, AICP**  
**Planning Manager**

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**DRAFT**

**MINUTES OF THE REGULAR  
PINOLE PLANNING COMMISSION**

**October 24, 2016**

**A. CALL TO ORDER: 7:06 P.M.**

**B. PLEDGE OF ALLEGIANCE AND ROLL CALL:**

Commissioners Present: Brooks, Martinez-Rubin, Tave, Thompson, Wong,  
Chair Kurrent

Commissioners Absent: Hartley

Staff Present: Winston Rhodes, Planning Manager

**C. CITIZENS TO BE HEARD:**

There were no citizens to be heard.

**D. CONSENT CALENDAR:**

1. Planning Commission Meeting Minutes from September 12, 2016

2. Planning Commission Meeting Minutes from September 26, 2016

**MOTION** to approve the minutes from the Planning Commission meeting of  
September 12, 2016, as submitted.

**MOTION: Martinez-Rubin SECONDED: Thompson APPROVED: 6-0-1**  
**ABSENT: Hartley**

**MOTION** to approve the minutes of the Planning Commission meeting of  
September 26, 2016, as submitted.

**MOTION: Thompson SECONDED: Wong APPROVED: 4-0-2-1**  
**ABSTAIN: Martinez-Rubin, Tave**  
**ABSENT: Hartley**

**E. PUBLIC HEARINGS:**

1           **1.     DR 16-20: Sitaula Single Family Residence**

2  
3           **Request:**               Consideration of a design review request to develop an  
4                                       approximately 2,948 square foot residence.

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6           **Applicant:**           John W. Smith  
7                                       1801 Blossomwood Lane  
8                                       Tracy, CA 95376

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10          **Location:**           1431 Nob Hill Avenue, APN 402-090-010

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12          **Project Staff:**       Winston Rhodes, Planning Manager

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14          Planning Manager Winston Rhodes presented the staff report dated October 24,  
15          2016, and recommended the Planning Commission adopt a Resolution, approving  
16          DR 16-20, subject to conditions.

17  
18          Responding to the Commission, Mr. Rhodes clarified a shadow study had not  
19          been prepared but could be added as a condition of approval to ensure the solar  
20          panels for property located to the east at 1457 Nob Hill Avenue were not blocked;  
21          State law restricted the City's ability to regulate the installation of solar panels but  
22          encouraged the installation of solar panels, which were included in the City's  
23          Design Guidelines; the application had been publicly noticed as required and no  
24          one from 1457 Nob Hill Avenue had come forward; and a previous application for  
25          the subject lot had been conditionally approved by the Planning Commission in  
26          2010, but had not been pursued and had ultimately expired.

27  
28          The proposed home would be 28 feet in height at the highest point; homes on  
29          Marlesta Road were on higher elevations and higher than the Nob Hill Avenue lot;  
30          the proposed home would be two stories in height, below the City's height  
31          requirement; in order to minimize the amount of grading on the steep property, the  
32          applicant had proposed a design to accommodate the desired living space; and  
33          the applicant had limited the massing with varied rooflines from the first to second  
34          floors.

35  
36          Mr. Rhodes affirmed that in 2010 the prior application had elicited concerns from  
37          neighbors as to building height and blocking views. He also spoke to the size of  
38          the deck that would protrude out just above the garage. Materials just presented  
39          to the Planning Commission included aerial information offering an idea of the  
40          deck size, although views from the deck had not been identified.

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42          Mr. Rhodes acknowledged Planning Commission concerns with the accuracy of  
43          the site plan; clarified that street elevations from the Nob Hill Avenue elevation had  
44          not been submitted by the applicant; and noted that if a shadow study was  
45          prepared and verified that the neighbor's solar panels would be affected, the

1 application would have to return to the Planning Commission. Detailed precise  
2 colors and materials had also not been reflected on the plans.  
3

4 Mr. Rhodes also responded to concerns with the proximity of existing PG&E  
5 transmission lines near the subject property, and explained that the City could not  
6 regulate nor had the authority to require PG&E to underground or move the  
7 existing transmission lines. The issue of radio frequency (RF) emissions was  
8 mentioned but staff mentioned it should be addressed with the Public Utilities  
9 Commission (PUC), although it may be possible for the City could consider  
10 sending a letter to the PUC to outline the concerns with the transmission lines, or  
11 request that PG&E study the issue.  
12

### 13 PUBLIC HEARING OPENED 14

15 JOHN W. SMITH, 1801 Blossomwood Lane, Tracy, the applicant, stated he had  
16 hoped to place the second story sections of the two homes (1431 and 1409 Nob  
17 Hill Avenue) together, although the addresses had changed and the homes were  
18 opposite from one another making the home under discussion appear to be out of  
19 perspective. He described the design and explained that the garage and deck  
20 were in the front portion of the lot and the second floor would become the first floor  
21 as it moved back on the lot, stepping up the grade. He identified the highest point  
22 of the home at 27 feet.  
23

24 Mr. Rhodes clarified that the maximum height standard pursuant to the Zoning  
25 Code applied to the finished grade.  
26

27 Mr. Smith clarified that the decks for 1431 and 1409 Nob Hill Avenue were on the  
28 same side of the property, with the two garages together.  
29

30 The Planning Commission and staff pointed out the intent as described by the  
31 applicant had not been reflected on the plans, and that the plans showed that the  
32 two decks would view into neighbors' yards.  
33

34 Mr. Smith acknowledged the higher elevation of the two homes would be adjacent  
35 to property at 1457 Nob Hill Avenue. He did not oppose reversing the plan for the  
36 home to help mitigate privacy issues, and expressed the willingness to prepare a  
37 drawing to reflect that change and to identify the relationship of the two homes to  
38 each other and existing homes. As to whether there had been any consideration  
39 to stagger the two homes and conduct some grading, there was a natural  
40 staggering occurring and the driveways were opposite one another, which would  
41 push one of the homes back further than the other. One of the homes would have  
42 a front porch at a 20-foot setback while the other would be approximately 10 feet  
43 further back due to the angle of the property.  
44

45 Mr. Smith also provided a color sample for the home at 1431 Nob Hill Avenue, with

1 Mr. Rhodes clarifying the proposed use of a gray tile roof, with a bright sky blue  
2 color for the home, with a navy darker blue trim and a Royal blue door.  
3

4 GERALD GRZECHOWIAK, 1450 Marlesta Road, Pinole, understood the building  
5 height had been measured from the existing grade and that the home was higher  
6 than it appeared from the street level. He had been a concerned neighbor in 2010  
7 when a prior proposal had been approved by the Planning Commission, at which  
8 time he had concerns with the building height and compatibility with the  
9 neighborhood. He requested clarification whether the high and low points of the  
10 two homes would come together.  
11

12 Mr. Grzechowiak also requested more information regarding potential impacts  
13 regarding the existing PG&E transmission lines. He affirmed, when asked, that he  
14 currently enjoyed a view of the Bay although it had been obscured a bit by  
15 overgrown vegetation. He expressed the willingness to allow staff to take  
16 photographs from his property, as had been allowed in 2010, and provided his  
17 contact information on the speaker card.  
18

19 PUBLIC HEARING CLOSED  
20

21 Mr. Rhodes expressed the willingness to discuss the proposed colors with the  
22 applicant in that the City typically desired more contrast.  
23

24 The Planning Commission discussed the application and offered  
25 recommendations and/or direction to staff and the applicant, which Mr. Rhodes  
26 summarized, as follows:  
27

- 28 • Provide a shadow study to address the potential impacts to the existing  
29 solar panels at 1457 Nob Hill Avenue;  
30
- 31 • Provide a streetscape view to show how the two proposed homes would  
32 relate to the closest existing homes on Nob Hill Avenue;  
33
- 34 • Provide a cross section view that includes the homes on Marlesta Road to  
35 determine the elevations and the potential impacts on views from the  
36 homes on Marlesta Road; and  
37
- 38 • Provide a footprint of the existing home adjacent to the site plan for 1431  
39 Nob Hill Avenue to view the location of the balcony in relation to the existing  
40 home base from both a bird's eye view and a streetscape view perspective.  
41

42 **MOTION** to continue to DR 16-20, Sitaula Single Family Residence, 1431 Nob Hill  
43 Avenue, to a future date to be determined, with the applicant to provide more  
44 information as discussed.

45 **MOTION: Thompson      SECONDED: Martinez-Rubin      APPROVED: 6-0-1**

2. **Design Review 16-19: Bashyal Single Family Residence**

**Request:** Consideration of a design review request to develop an approximately 2,977 square foot residence.

**Applicant:** John W. Smith  
1801 Blossomwood Lane  
Tracy, CA 95376

**Location:** 1409 Nob Hill Avenue, APN 402-090-011

**Project Staff:** Winston Rhodes, Planning Manager

Planning Manager Rhodes presented the staff report dated October 24, 2016, advised that the architecture and building size was similar to the home at 1431 Nob Hill Avenue, with identical conditions with the exception of Condition 18, which required the applicant to add lap siding around the side elevations to reach the side yard wooden fence; a condition to install all wood trim rather than a combination of stucco and wood trim wrapping the windows to differentiate the home from the home at 1431 Nob Hill Avenue; and as part of Condition 18(d) the applicant to modify the floor plans to reflect the window openings as shown on the second story elevations.

Responding to the Commission, Mr. Rhodes clarified that the two applications were two separate applications, with slightly varied designs, although the property owner was the same. A preliminary landscape plan had been provided, and there would be some lighting details that staff would see at the staff level; however, more detail on the lighting fixtures would be appropriate. He reiterated that staff would discuss the building colors with the applicant to ensure the colors that had been proposed would relate to the different design elements on the building elevation.

Mr. Rhodes also confirmed that the Planning Commission had requested a streetscape view and bird's eye view to show how the two proposed homes related to the closest existing homes on Nob Hill Avenue, including the property at 1457 Nob Hill Avenue; clarified a Commission request for more information included a site plan for the proposed dwelling units relative to the properties at 1457 Nob Hill Avenue, 1414 and 1450 Marlesta Road; the intent was for two streetscape views, one from Nob Hill Avenue towards Marlesta Road and the other from Marlesta Road towards Nob Hill Avenue; with the site plan view to include the proposed dwelling units relative to the properties at 1457 Nob Hill Avenue, and 1414 and 1450 Marlesta Road.

PUBLIC HEARING OPENED

There were no comments from the public.

**PUBLIC HEARING CLOSED**

The Planning Commission discussed the application and offered the following recommendations and/or direction to staff and the applicant:

- Found the design for the property at 1409 Nob Hill Avenue had better accommodated the applicant's and neighbors' views, but found the building colors had little contrast in comparison to neighbors' homes which were lighter and more pastel in color. (Wong)
- Suggested the comments for 1431 Nob Hill Avenue applied to 1409 Nob Hill Avenue; acknowledged Mr. Grzechowiak's concerns with respect to view impacts; found there were more issues with the property at 1431 Nob Hill Avenue than 1409 Nob Hill Avenue in terms of privacy and impacts to the solar panels of the property at 1457 Nob Hill Avenue; and there was a need to better understand the building orientation. Recommended the item also be continued with more information provided for both properties, as discussed. (Kurrent)

**MOTION** to continue Design Review 16-19, Bashyal Single Family Residence at 1409 Nob Hill Avenue, to a future date to be determined, with the applicant to provide more information as discussed.

**MOTION:** Thompson      **SECONDED:** Brooks

**APPROVED:** 6-0-1  
**ABSENT:** Hartley

**F. OLD BUSINESS:** None

**G. NEW BUSINESS:** None

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

Mr. Rhodes reported on a request to remove three redwood trees from property at Shamus Court that were pushing up concrete and damaging a garage, and which had been approved administratively. He reminded Planning Commissioners of the Planning Commission training at Sonoma State University scheduled for December 3, 2016, and asked Commissioners to contact him via e-mail to allow staff to make the necessary arrangements. He confirmed that another training opportunity would be possible in the spring in Southern California.

Mr. Rhodes also reported an application had been received for the Gateway

1 Shopping Center to modify a previously approved medical office building now  
2 proposed for a dialysis clinic, to be brought to the Planning Commission in the  
3 future for a recommendation to the City Council. As part of the approval of the  
4 Gateway Shopping Center, a final landscape plan was to be submitted for the  
5 area owned by the Contra Costa County Flood Control between private property  
6 and the Pinole Creek trail. The City was in discussions with the applicant, and  
7 the County Flood Control District prior to submitting the plan to the Planning  
8 Commission and the City Council. Also, a ribbon cutting ceremony for the fish  
9 passage project at Pinole Creek had been held the morning of October 24, 2016,  
10 with many dignitaries and local officials present. He also updated the  
11 Commission on the status of tenants in the Gateway Shopping Center;  
12 Starbucks was waiting on PG&E to turn on the power; work was progressing on  
13 Sprouts; several of the retail tenants were close to opening; and the sidewalk  
14 width in the project would be measured to ensure Americans with Disabilities Act  
15 (ADA) compliance.  
16

17 **I. COMMUNICATIONS:** None  
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19 **J. NEXT MEETING:**  
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21 The next meeting of the Planning Commission will be a Regular Meeting to be  
22 held on Monday, November 21, 2016 at 7:00 P.M.  
23

24 **K. ADJOURNMENT:** 9:30 P.M  
25

26 Transcribed by:  
27

28  
29 Anita L. Tucci-Smith  
30 Transcriber  
31



# Memorandum

**TO:** PLANNING COMMISSION MEMBERS

**FROM:** ERIC CASHER, LEGAL COUNSEL  
WINSTON RHODES, AICP, PLANNING MANAGER

**SUBJECT:** Consideration of Zoning Code Text Amendment To Amend the Zoning Code Appeals Process for City Council Members in the City of Pinole

**DATE:** NOVEMBER 21, 2016

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**File: Zoning Code Amendment 16-03**

**Applicant:**  
City of Pinole  
2131 Pear St.  
Pinole, CA 94564

## REQUEST

Consideration of a Zoning Code Amendment (ZCA 16-03) to modify text in Chapter 17.10, amending the Zoning Code Appeals process in the City of Pinole.

## BACKGROUND

At the July 19, 2016 City Council meeting the City Attorney received direction from the City Council to move forward with Phase I of the Municipal Code update project. The City Council identified those proposed updates to the Municipal Code the Council deemed to be priorities. One of the priority Municipal Code update items was Section 17.10.070 of the Zoning Code concerning City Council appeals of Planning Commission actions, in particular, to clarify the process for Councilmember appeals.

On September 19, 2016, staff convened a meeting of the City Council Municipal Code Update Subcommittee (the "Subcommittee") to discuss, among other things, the Zoning Code Appeals Process. Councilmembers Toms and Banuelos attended the Subcommittee meeting, along with City Staff. Following a substantive discussion of the issues above, the Subcommittee recommended to the City Council that the Zoning Code appeals process be amended

On October 4, 2016, the City Council considered the Subcommittee's recommendations regarding amendment to the Zoning Code and the Zoning Code Appeals process. Upon

receipt of feedback from the City Council, staff prepared a text amendment to the Chapter 17.10 Zoning Code appeal process of Planning Commission actions by individual City Councilmembers to generally provide that Councilmember appeals shall follow the same process as appeals from the general public. The Municipal Code (Chapter 2.40) authorizes the Planning Commission to review and recommend action to the City Council concerning Zoning Code amendments.

## **ANALYSIS**

### **General Plan Consistency and Zoning Code Amendments**

In response to the City Council's direction, the City Attorney's office and staff have proposed an amendment to the Zoning Ordinance Chapter 17.10, Appeals (see below). The proposed amendment will revise the Zoning Code appeals process and in particular, clarify the process for Councilmember appeals.

The proposed text amendment does not impact the land use or density designations set forth in the Pinole General Plan, and does not impact development potential within the City of Pinole. The text amendment is a procedural amendment that enables City Council members to appeal Planning Commission land use and zoning decisions that implement the General Plan and is therefore consistent with the General Plan.

Amendments to the Zoning Code (Title 17) are required to be reviewed by the Planning Commission and a recommendation forwarded to the City Council for consideration. Therefore, the Zoning Code amendment is described in more detail below. The proposed Zoning Code Amendment 16-03 includes modifications to the appeal process, as shown in underline or strike through text below:

#### **17.10.070 APPEAL.**

A. Purpose and Applicability. The purpose of these provisions is to prescribe the procedure through which an appeal may be made in case an interested person is dissatisfied with any order, requirement, permit, decision, determination, approval or disapproval, made in the administration, interpretation or enforcement of this title.

B. Appeal Authority. Any person dissatisfied with a determination or action of the Community Development Director, Zoning Administrator, or Planning Commission made pursuant to this Article may appeal such action to the designated Appeal Authority listed in [Table 17.10.070-1](#) (Appeal Authority) below, within ten (10) days from the date of the action. Actions by the City Council are final and no further administrative appeals are available.

**TABLE 17.10.070-1:  
APPEAL AUTHORITY**

<b>Approving Authority for Action Being Appealed</b>	<b>Appeal Authority</b>	
	<b>Planning Commission</b>	<b>City Council</b>
Community Development Director	X	
Zoning Administrator	X	
Planning Commission		X

C. Filing an Appeal. All appeals shall be submitted in writing, identifying the determination or action being appealed and specifically stating the legal basis or grounds of the appeal. Appeals shall be filed within ten (10) days following the date of determination or action for which an appeal is made, accompanied by a filing fee established by City Council resolution, and submitted to the City Clerk. Any staff, City Attorney, or other appeals process costs beyond the filing fee shall be paid by the project applicant or developer as specified in the City's Master Fee Schedule.

D. City Councilmember Appeal. A City Councilmember may appeal an action of the Planning Commission as specified in Section 17.10.070 C. This appeal shall be processed in the same manner as an individual appeal from a member of the public. If an appeal is made by a Councilmember, there shall be a presumption applied that the reason for the appeal is that the appealed action has significant and material effects on the quality of life within the city. Notwithstanding Section 17.10.070.C, no other reason need be or shall be stated by the councilmember in his or her written appeal and no appeal fee shall be required. No inference of bias shall be made because of such an appeal.

E. Notice and Schedule of Appeal Hearings. Unless otherwise agreed upon by the person filing the appeal and the applicant, appeal hearings should be conducted within forty-five (45) days from the date of appeal submittal. Notice of hearing for the appeal shall be provided pursuant to noticing requirements of Section [17.10.050](#) (Public Hearing and Public Notice).

F. Appeal Hearing and Action. Each appeal shall be considered a *de novo* (new) hearing. In taking its action on an appeal, the Appeal Authority shall state the basis for its action. The appeal authority may act to confirm, modify, reverse the action of the approving authority, in whole or in part, or add or amend such conditions as it deems necessary. The action of the appeal authority is final on the date of decision and, unless expressly provided by this chapter, may not be further appealed. (Ord. 2010-02 § 1 (part), 2010)

**California Environmental Quality Act (CEQA) compliance.** The ordinance amendment is not subject to CEQA under the general rule in CEQA Guidelines Section 15061(b)(3) that

CEQA applies only to projects which have the potential for causing a significant effect on the environment. The text amendment only modifies the Zoning Code appeal process; thus, it can be said with certainty that there is no possibility that the amendment will have a significant effect on the environment and is an activity not subject to CEQA.

## **CONCLUSION**

The proposed Zoning Code amendment will amend the City Council member appeal process for Zoning Code appeals consistent with direction provided by the City Council. The proposed procedural text amendment to the Zoning Code clarifies the appeals process and is consistent with the General Plan as a legally valid appeal helps to ensure project consistency with the General Plan.

## **STAFF RECOMMENDATION**

That the Planning Commission approve Resolution 16-13 recommending that the City Council amend Chapter 17.10 of Title 17 of the Municipal Code to update and revise the appeal process for Councilmembers in the City of Pinole.

## **ATTACHMENTS**

A. Resolution 16-13

2729959.1

**PLANNING COMMISSION RESOLUTION NO. 16-13  
WITH EXHIBIT A: ZONING CODE AMENDMENTS**

**A RESOLUTION OF THE CITY OF PINOLE PLANNING COMMISSION RECOMMENDING  
THAT THE CITY COUNCIL APPROVE A ZONING CODE AMENDMENT MODIFYING THE  
ZONING CODE APPEALS PROCESS (ZCA 16-03)**

**WHEREAS**, Chapter 17.10.070 of the Pinole Municipal Code currently sets forth the process for a City Councilmember appeal of determinations or actions of the Planning Commission; and

**WHEREAS**, the Zoning Code Appeals process as set forth in the Pinole Municipal Code was prioritized for review and update by the City Council as part of the City's Municipal Code Update project; and

**WHEREAS**, the City Council Municipal Code Update Subcommittee provided recommendations to the City Council for proposed amendments to the Zoning Code Appeals process as set forth in the Pinole Municipal Code; and

**WHEREAS**, the Pinole City Council desires to amend the process for Council Member appeals to allow for individual Council Member appeals based upon the following parameters: (i) a City Council Member wishing to appeal a Planning Commission action is required to provide written notice to the City Clerk within ten (10) days of a Planning Commission action, and the notice must state the legal basis for the appeal; (ii) a City Council member pursuing an appeal must prepare all of the documents in support of the appeal without assistance from staff or the City Attorney's office; (iii) once an appeal is filed, the City Council Member must proceed as a member of the general public, and recuse him or herself from participating in any discussion of the appeal from the dais; (iv) the City Council Member may not vote, or take any action, on the appeal and may not participate in any closed sessions regarding the appeal; and (v) the City Council Member filing an appeal will have to pay a Zoning Code appeals fee as determined by City Council and listed in the City's Master Fee Schedule which is refundable if the appeal is successful; and

**WHEREAS**, The Zoning Code (Title 17 of the Municipal Code) is intended to serve as the principal tool for implementing the City's General Plan in a manner that protects the public health, safety, and welfare of residents and businesses of Pinole; and the Zoning Code is intended to facilitate prompt review of development proposals and provide for public information, review, and comment on development proposals that influence the community's quality of life; and the Zoning Code is also intended to ensure compatibility between residential and non-residential development and adjacent land uses; and

**WHEREAS**, the Planning Commission is authorized through Municipal Code Chapter 2.40 to review and make recommendations to the City Council on all proposed ordinances to amend the Zoning Code;

**WHEREAS**, the Planning Commission held a duly noticed public hearing related to the proposed Zoning Code amendment on November 21, 2016; and

**WHEREAS**, after close of the public hearing, the Planning Commission considered all comments received both before and during the public hearing, the presentation by city staff including staff from the City Attorney's office, the staff report, and all other pertinent documents regarding the proposed Zoning Code Amendment 16-03 and recommended that the City Council adopt an ordinance amending Chapter 17.10 of the Pinole Municipal Code to modify the Zoning Code Appeals process.

**WHEREAS**, the proposed ordinance amendments are exempt from the California Environmental Quality Act (CEQA) based on the general rule set forth in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed text amendments are administrative and will have no physical impact on the environment; thus, it can be said with certainty that there is no possibility that the administrative Zoning Code Text amendment will have a significant effect on the environment and is not subject to CEQA.

**NOW THEREFORE, BE IT RESOLVED**, that the above recitals are true and correct and made a part of this resolution.

**BE IT FURTHER RESOLVED**, that the Planning Commission of the City of Pinole hereby recommends that the City Council adopt an ordinance amending Chapter 17.10 of the Pinole Municipal Code to modify the Zoning Code Appeals process as described in Exhibit A, attached to this resolution and incorporated by reference, and finds as follows:

1. The proposed amendments are exempt from the California Environmental Quality Act (CEQA) based on the general rule set forth in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The procedural text amendment will have no physical impact or effect on existing or future projects; thus, it can be said with certainty that there is no possibility that the amendment will have a significant effect on the environment and is an activity not subject to CEQA.
2. This Zoning Code Amendment is consistent with the Pinole General Plan because it provides the procedural process requirements needed for City Council members to appeal a Planning Commission action involving a land use and zoning action and thereby helps to implement the Pinole General Plan.
3. This Zoning Code Amendment is intended to clarify and improve the Zoning Code Appeals process for the City.

**PASSED AND ADOPTED** by the Planning Commission of the City of Pinole on this 21<sup>st</sup> day of November, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Dave Kurrent, Chair, 2016-2017

ATTEST:

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Winston Rhodes, AICP, Planning Manager

## ***Exhibit A***

### ***Planning Commission Resolution No.16-13***

#### ***EXCERPT***

***Added text shown in underscore and deleted text in strike through; all other text of Section 17.10.050 unchanged.***

#### **17.10.070 APPEAL.**

A. Purpose and Applicability. The purpose of these provisions is to prescribe the procedure through which an appeal may be made in case an interested person is dissatisfied with any order, requirement, permit, decision, determination, approval or disapproval, made in the administration, interpretation or enforcement of this title.

B. Appeal Authority. Any person dissatisfied with a determination or action of the Community Development Director, Zoning Administrator, or Planning Commission made pursuant to this Article may appeal such action to the designated Appeal Authority listed in [Table 17.10.070-1](#) (Appeal Authority) below, within ten (10) days from the date of the action. Actions by the City Council are final and no further administrative appeals are available.

**TABLE 17.10.070-1:  
APPEAL AUTHORITY**

<b><i>Approving Authority for Action Being Appealed</i></b>	<b><i>Appeal Authority</i></b>	
	<b><i>Planning Commission</i></b>	<b><i>City Council</i></b>
Community Development Director	X	
Zoning Administrator	X	
Planning Commission		X

C. Filing an Appeal. All appeals shall be submitted in writing, identifying the determination or action being appealed and specifically stating the legal basis or grounds of the appeal. Appeals shall be filed within ten (10) days following the date of determination or action for which an appeal is made, accompanied by a filing fee established by City Council resolution, and submitted to the City Clerk. Any staff, City Attorney, or other appeals process costs beyond the filing fee shall be paid by the project applicant or developer as specified in the City's Master Fee Schedule.

D. City Councilmember Appeal. A City Councilmember may appeal an action of the Planning Commission as specified in Section 17.10.070 C. This appeal shall be processed in the same manner as an individual appeal from a member of the public. ~~If an appeal is made by a Councilmember, there shall be a presumption applied that the reason for the appeal is that the appealed action has significant and material effects on the quality of life within the city. Notwithstanding Section 17.10.070.C, no other reason need be or shall be stated by the councilmember in his or her written appeal and no appeal fee shall be required. No inference of bias shall be made because of such an appeal.~~

E. Notice and Schedule of Appeal Hearings. Unless otherwise agreed upon by the person filing the appeal and the applicant, appeal hearings should be conducted within forty-five (45) days from the date of appeal submittal. Notice of hearing for the appeal shall be provided pursuant to noticing requirements of Section 17.10.050 (Public Hearing and Public Notice).

F. Appeal Hearing and Action. Each appeal shall be considered a *de novo* (new) hearing. In taking its action on an appeal, the Appeal Authority shall state the basis for its action. The appeal authority may act to confirm, modify, reverse the action of the approving authority, in whole or in part, or add or amend such conditions as it deems necessary. The action of the appeal authority is final on the date of decision and, unless expressly provided by this chapter, may not be further appealed. (Ord. 2010-02 § 1 (part), 2010)