#### **Minutes**

City of Orange Monday 7:00 p.m.

PRESENT: Commissioners Buttress, Cunningham, Merino and Steiner

ABSENT: None

**STAFF** 

PRESENT: Ed Knight, Assistant Community Development Director

Anna Pehoushek, Principal Planner

Jennifer Le, Senior Planner Chad Ortlieb, Senior Planner Robert Garcia, Associate Planner Gary Sheatz, Assistant City Attorney Sandi Dimick, Recording Secretary

### **ADMINISTRATIVE SESSION**

Chair Steiner opened the Administrative Session at 6:48 p.m. with a review of the agenda. He asked if there would be any questions on the agenda items.

Assistant Community Development Director Ed Knight stated there had been an additional handout in the Commissioner's files and Principal Planner Anna Pehoushek could go through that with them.

Ms. Pehoushek stated the additional handout was in reference to the Mixed Use Ordinance that was on the agenda. After reviewing the packet, it had been realized that there was a typo in the amendment description. It had been typed as a General Plan Amendment and had been corrected to read Ordinance Amendment. There had also been a few pages left out and those had been added to the packet.

Commissioner Merino stated he had reviewed the DVD from the previous meeting and he would state that during the public session.

Chair Steiner asked if the motion would be based on the Resolution as listed on the agenda. Ms. Pehoushek stated yes.

Commissioner Merino asked if the concerns raised during the previous meeting on January 17, 2011 had been addressed and were those changes included in the Resolution. Ms. Pehoushek stated all of the concerns had been addressed in the Staff Report and also included in the Ordinance page and recitals; the remainder of the document was fine.

Chair Steiner stated for agenda Item No. 2, he understood that it was a procedural matter and the Commissioners would vote to recommend the item to the City Council.

Mr. Knight stated it was a report to the State and it included all the information contained

in the General Plan Update. Mr. Sheatz stated, as a matter of record, the item would be received and filed.

Commissioner Merino stated from the previous presentation of Item No. 3, the Mixed Use Zone Amendment, he asked if they would be focusing their discussion on the concerns that had been brought up and would those be addressed?

Chair Steiner stated there were 5 areas that concerns had been brought forth on and those had been resolved through the Resolution that they would be hearing. The Public Hearing had been closed at the January 17, 2011 presentation.

Mr. Knight stated he was not certain if there would be anyone present that would want to speak and the hearing could be re-opened.

Commissioner Buttress stated she would have a few questions on the item.

Senior Planner Chad Ortlieb stated on Item No. 5, Shakey's, there was additional information contained in the Commissioner's hotfile from the applicant and he would clarify those during his presentation.

Chair Steiner asked if that would clarify the hours of operation.

Mr. Ortlieb stated yes and information related to the game room.

There was no further discussion.

Administrative Session adjourned @ 6:56 p.m.

## **PUBLIC PARTICIPATION: None**

## **REGULAR SESSION**:

## **Consent Calendar:**

## (1) APPROVAL OF MINUTES FROM THE REGULAR MEETING OF FEBRUARY 7, 2011.

Commissioner Merino made a motion to approve the minutes from the regular meeting of the Planning Commission on February 7, 2011, as written.

SECOND: Commissioner Buttress

AYES: Commissioners Buttress, Cunningham, Merino and Steiner

NOES: None ABSTAIN: None

ABSENT: None MOTION CARRIED

### **Commission Business:**

# (2) GENERAL PLAN ANNUAL PROGRESS REPORT TO THE STATE OF CALIFORNIA

California Government Code Section 65400 requires that cities submit an annual report on the status of their General Plan and progress in its implementation to the Governor's Office of Planning and Research and Department of Housing and Community Development by April 1<sup>st</sup> of each year.

### RECOMMENDED ACTION:

Receive and file 2010 General Plan Annual Progress Report for final acceptance by the City Council.

Principal Planner Anna Pehoushek presented a project overview consistent with the Staff Report.

Chair Steiner opened the item to any questions for Staff. There were none.

Chair Steiner stated it was a very timely report regarding the 16 crossings in the City and the information he had heard on the radio announcing that Orange County Transportation Authority along with the City of Orange would have quiet zones in the City and he knew the residents would appreciate that very much.

Commissioner Merino made a motion to receive and accept, General Plan Annual Progress Report to the State of California, recommending approval to the City Council.

SECOND: Commissioner Buttress

AYES: Commissioners Buttress, Cunningham, Merino and Steiner

NOES: None ABSTAIN: None ABSENT: None

**MOTION CARRIED** 

# (3) ZONE CHANGE NO. 1258-10 – MIXED USE ZONE STANDARDS ORDINANCE AMENDMENT

Continued from Planning Commission meetings of January 17, 2011, October 4, 2010 and September 20, 2010. The Land Use Element establishes new mixed use land use designations in four areas of the City. The supporting General Plan Implementation Plan identifies the need for the City to establish zoning and development standards to be consistent with, and implement, the mixed use land use designations. Therefore, the City has developed new Mixed Use Zoning Standards for these areas. The subject General Plan amendment represents implementation of the General Plan and associated Implementation Program I-1. The subject Ordinance Amendment adds a new Chapter 17.19 to Title 17 of the Orange Municipal Code, as well as new definitions to Chapter 17.04 of the OMC.

LOCATION: City Wide

NOTE: Final Program Environmental Impact Report (EIR) No. 1815-09

for the Comprehensive General Plan Update was certified on March 9, 2010 and prepared in accordance with the California Environmental Quality Act. The proposed activity is within the scope of the previously approved General Plan and is adequately described in the previously certified General Plan Program EIR for

purposes of CEQA.

### **RECOMMENDED ACTION:**

Adopt Planning Commission Resolution No. 33-10 recommending City Council approval of an Ordinance Amendment adding new Mixed Use Zoning Standards and definitions to Title 17 of the Orange Municipal Code to implement the new Mixed Use Land Use designations of the 2010 General Plan.

Adopt Planning Commission Resolution 34-10 recommending City Council approval of Zone Change 1258-10 establishing consistency between General Plan Land Use designations and Zoning classifications in accordance with State law.

Chair Steiner stated a Public Hearing was held for the item on January 17, 2011 and there were a number of issues that had been shared with the Commissioners and City Staff from residents. Staff had been working on resolving a number of the concerns addressed and those issues would be addressed during Staff's presentation.

Commissioner Merino stated he had reviewed the DVD from the January 17, 2011 presentation, as he had been absent. He was aware of the concerns brought forth.

Principal Planner Anna Pehoushek presented a project overview consistent with the Staff Report.

Chair Steiner opened the item to any questions for Staff.

Commissioner Merino stated he had a question regarding the density bonus and he understood why the recommendation from Staff was at 35%. He asked Ms. Pehoushek if she could elaborate why 50% was not acceptable.

Ms. Pehoushek stated with the proposed 35% density bonus, they would be starting with a base density of 15 units per acre in that particular zoning district. The 35% bonus brought the density level up to 20 units per acre. If the 50% was applied, that would bring the density over 23 units per acre and 1 unit less than the 24 units per acre Old Towne Mixed Use designation that the City Council and the community had not desired during the General Plan Update process. With a 50% increase, that would have required an update to the General Plan and that would have created a much more extensive process. In an effort to respect the wishes of the City Council and the community in terms of what everyone was comfortable with for Old Towne density, Staff had not felt 50% was appropriate.

Commissioner Merino asked if an individual wished to challenge the Planning Commission's decision; would their decision be moving up to the City Council and could further discussion take place at that time?

Ms. Pehoushek stated the City Council was the final authority for action on the Ordinance Amendment.

Commissioner Merino stated the general public would have another opportunity to revisit that issue if they so chose to.

Ms. Pehoushek stated that was correct.

Commissioner Merino stated on the street frontage, again it was interesting as that was also 50% and he asked why 50% was the right number.

Ms. Pehoushek stated she would attempt to answer that to some extent. The City's consultant, Ron Pflugrath, was also available to answer questions. They were attempting to strike a better balance along the street frontage in different areas of the City in the perception of parking lot and buildings and to develop a better sense of pedestrian oriented developments. There were areas in the City that people currently walked around a lot and those areas were South Main, around The Block and West Katella that had further changes to be made. Those areas had concentrations of employment and goods & services that people tended to walk to. The objective with 50% was to create a better balance. The idea was to not have pedestrians walking across parking lots to arrive at the uses they wanted to use as pedestrians. As far as the 50% standard, it was the standard that had been proven to be the effective threshold for transitioning an area into a more

pedestrian friendly atmosphere.

Planning Consultant, Ron Pflugrath, address on file, stated he had not believed there was a magic number, it could be 49% or 55%, but they were seeking a transition and ultimately they would like a higher number in some areas and in many downtown areas they would get 100% and it was written into their ordinances. Through his experience, in areas of transition, 50% was a number that many communities felt comfortable with.

Commissioner Merino stated the 50% number was a number that worked in other jurisdictions.

Mr. Pflugrath stated yes, and to provide an example, on Washington Blvd. in Culver City, which was similar to Katella; the area was transitioning from an almost industrial area to a more pedestrian oriented area and 50% was the number they used. They had seen that in a number of corridor type situations in transition areas. In some cases 100% had been required in certain nodes of street intersections to get to the Urban Design concept of getting street closure and street walls to give a more comfortable atmosphere, instead of spreading parking in front of buildings. According to the General Plan, the Mixed Use areas were becoming more pedestrian oriented environments.

Commissioner Merino stated being in the architecture business and reviewing projects on Katella, it would be difficult as the area was a vehicular oriented street and on that street to achieve a transition would be difficult. California was a vehicle oriented society and he felt it might prove to be a difficult percentage to reach.

Mr. Pflugrath stated Katella was a challenge as opposed to some of the others. The direction was taken from the General Plan and what was envisioned in that area was to create a Mixed Use pedestrian oriented area.

Commissioner Merino asked if that was based on the input from the advisory committee that was received through that process.

Mr. Pflugrath stated he believed that to be the case.

Ms. Pehoushek stated in terms of the General Plan designation along Katella; during the Public Hearing process there was a lot of discussion regarding the Mixed Use district and where those were and there were certain areas that had been eliminated. During the evolution of the General Plan through the advisory committee and through public input, it was adopted less than a year ago for that use.

Commissioner Merino stated the 50% was what it could come down to and he wanted to ensure that they were meeting the public's desire.

Chair Steiner stated in re-visiting the density bonus in the packing house; he asked for further clarification as to why Staff was asking that the 35% be within the envelope of the historic building?

Ms. Pehoushek stated due to the sensitivity of Old Towne and the public's desire of what was viewed in Old Towne were for things to remain the same and also to recognize that there were buildings that no longer housed specific uses. Staff wanted to provide an opportunity for new life to be brought to those structures, but without a physical perception to the community that some intensification of activity had occurred on those properties. In the case of the packing house structures, as they were so large, by including the provision that the density bonus needed to be contained within the envelope of the historic structure. For example under the base zoning, 15 units could be developed at that site and with the density bonus, 18-20 units could be developed in that building, but to the outside world whether it was 15 units or 20 units, it would not be perceptible.

Commissioner Cunningham stated on the adaptive reuse; at the January 17, 2011 Planning Commission meeting Mr. Shelton and Mr. Ham had raised the issue of the desired 50% density bonus, he asked if there had been subsequent conversations with those individuals and if so what were their feelings on the 35% density bonus?

Ms. Pehoushek stated the information had been relayed to those individuals and she had contact with both of them that they were in receipt of the information, however, had not had direction discussions with them.

Chair Steiner re-opened the hearing for Public Comment; which had been closed on Janary 17, 2011, to allow further testimony.

Lyle Shelton, address on file, stated he appreciated the opportunity to speak and he thanked the Commission's commitment to the project and thanked Staff for their time and effort regarding their issue. The site was unique to Orange and he had closed escrow on it in 1960 and had run several successful businesses there and he believed that the property had benefited the people of the City for a long time. He was looking for a quality product to end up on the site. He wanted to ensure that whoever ended up with the property would do a job they could all be proud of and in preservation of what it was. It had to be economically feasible for someone to step up and put up the time, effort, energy and finances into a project. The proposed 35% density bonus was not exactly what he had asked for, but they very seldom got exactly what they asked for. The situation that he was discussing only involved one property in Orange, there were 3 packing houses, and one was around the corner owned by the Babcocks' and their building encompassed the largest portion of their property. His property had a 70,000 square foot building and there was over an acre of property left over and he wondered if there was language that could be adopted that would allow the proposed density bonus of 35% to not be restricted just to the interior of the packing house, but to be used for the remainder of the property.

Jim Potter, address on file, stated it seemed as if they were rushing to encompass a lot of different areas and he wanted to speak on the Mixed Use area of Katella. Between the 50% average for store frontage and the minimum FAR, properties would be forced to be multi-story along with multi-story parking structures and he was not certain the area

would be feasible for consumers and the people that wanted to rent there. From an economical basis for redevelopment to build parking structures along with three-story buildings, he felt it was not a viable development. With Katella being a super street many years ago they were pushing super streets and now they were planning a walking street. He was not certain that bouncing back and forth was the right thing to do. There had been a lot of effort put into the General Plan, but that the Katella area was driven more by State Code than just purely development and what Katella should be. With a minimum FAR of 1.5, a three–story limitation would make it an unbuildable site, with an 80,000 square foot site and to put a 120,000 square foot building on it with three-stories, it would not fit. There had been a lot of work done, but to have that set of guidelines on properties would make them almost an unbuildable site and certainly economically unbuildable. Sites, such as Katella Grill, if it was changed and modernized, could not be built back as a restaurant and the area demanded more of that type of use than multi-story residential uses. He was not sure those types of uses had been successful in neighboring cities.

Steve Prothero, address on file, stated he had a few additional comments reflected by Mr. Potter. He felt they were stuck with the General Plan's Urban Mixed Use designation for a pedestrian environment. He was not certain if they would ever reach that, or if they reached it in 20 years his concern was the interim use. The whole block between Main and Katella and the north side were in a position where there were industrial buildings that needed to be updated. With the restrictions on the current code, and although there were provisions for existing uses to continue; it would still be tough for in-fill projects to meet the 50% requirement for street frontage and it was the 20-30 years out that he was concerned about. They had been pushing and shoving with the Planning Department; as they had given up some, he felt they would not have the flexibility they desired.

Athina Singer, address on file, stated they appreciated the changes that had been made and the clarification on the 40,000 square foot minimum lot was extremely helpful to them as retail developers. From an economic and site layout as a retail and medical developer, the 50% requirement on the street would make building on those sites very difficult. From a tenant attraction standpoint, from a lender standpoint and all the things that needed to come together to build, those things constrained them to future developments in the City.

Robert Atkinson, address on file, representing the Stadium Promenade development, stated he had the opportunity to work with the Planning Department for over a year now on the Mixed Use Zoning Standards and there was flexibility. He had spent the last 5 years redeveloping the center and they were now at 10 restaurants and a theatre, the 10th restaurant would actually go before the Commission. They recognized that long term there would be an opportunity for a Mixed Use component on their site and he could not predict it would be during his career. He was in support of the zoning element with the changes that had been made to provide for flexibility, in terms of existing uses. Due to their proximity to some of the sport complexes, he viewed the Mixed Use Zoning as an opportunity for future developments.

Chair Steiner closed the Public Hearing and brought the item back to the Commission for further discussion and asked Staff for their response to the comments heard.

Ms. Pehoushek stated the concerns Mr. Potter had discussed were correct. Depending on the size and context of a parcel, certain properties might be in a situation where the redevelopment option was in a multi-story format with a parking structure. That was correct and a concept that was in the realm of what City Staff had envisioned happening as part of the mixed us transition. In terms of the frontage requirement, she would defer to Mr. Pflugrath. In response to the comment that multi-story residential might or might not be feasible in that particular area, in the process of the General Plan development and reviewing the fiscal and marketing studies that had been completed as part of the background for the different land use alternatives; there was consideration given in looking at long term demands for different types of land use throughout the City and the county. It was common knowledge that there was a saturation of retail space in the county and long term given what was known and the proximity to athletic facilities in Anaheim and the potential for the train station relocation closer to Katella, given the aging nature of properties on Katella and looking to the future, it seemed that residential development was in the realm of possibilities and a demand in the future for that type of At the time that the General Plan was being developed, the economy had been much stronger and the City had received regular inquiries about properties on the Katella corridor and the potential for residential developments. During the current economic time, it was not so successful for real estate or housing; but again the General Plan took them out to 2030 and it was a long term plan.

Ms. Pehoushek stated in terms of what could be done with an existing industrial property. At the time of the General Plan adoption there was an ordinance amendment adopted that involved legal non-conforming provisions and it was carefully crafted to address properties that would be made legal non-conforming by the changes brought about by the General Plan. The provisions of the ordinance amendment provided for quite a lot of flexibility for continuation of non-conforming sites, expansion of uses and in the case of the Katella corridor, there had been provisions provided in the code for a commercial recreation zone. The Mixed Use Zoning would replace the commercial recreation and allowed for projects in that area to fall under the Industrial Development Standards. For that particular area of the Katella corridor, there would be a greater amount of flexibility in terms of what could be done with existing non-conforming uses and properties in general. The City's intent was to attempt to accommodate and maintain the livelihood of the various properties on Katella and at a time when a property owner decided that they were ready to do something different, that framework was in place to provide for other options.

Commissioner Merino stated what he was hearing was that there was some trepidation between now and the time that a new property owner would make a significant change and he asked what alternatives a property owner had if they had not had the means to complete the changes that Staff was envisioning, and what happened in that interim period? He asked if there were opportunities or language within the ordinance that she could direct them to for the property owners that fell into that gray zone.

Ms. Pehoushek stated there were a menu of uses listed in the permitted use table and that was something that was available to property owners. What had not been included in the packet were the legal non-conforming provisions of the code that allowed a greater amount of flexibility. For example, with an industrial property on Katella, a property whose owner wanted to continue to operate as an industrial property or to expand space for an industrial use, a property owner had that option through the legal non-conforming provisions of the code.

Commissioner Merino stated the 50% frontage provision would kick in and would an applicant need to apply for a variance or what could a property owner do if they were not ready to go to a 50% frontage because they felt trapped by the provision and what was the alternative?

Ms. Pehoushek stated the 50% frontage requirement fit in with redevelopment of a site or new development on a site. For a property owner that was currently under the 50% frontage, there was no compliance issue, they could continue to operate as they were.

Commissioner Merino stated had she envisioned problems with a property owner that wanted to add space having an issue with the 50% frontage requirement?

Ms. Pehoushek stated in the case of an existing property where there was an in-fill for the site, Staff would be looking at how the in-fill could bring the overall site into closer conformance with the code.

Mr. Pflugrath stated he wanted to offer up a suggestion in terms of reviewing different size sites; one of the speakers had mentioned that on an 80,000 square foot lot something might not be feasible, but on a larger lot it could be feasible; maybe the City needed to work in language that would offer up some additional flexibility where 50% was not a hard number to allow property owners to go as low as 30% or the reviewing body could offer up to 70% for those larger properties.

Commissioner Cunningham asked if he was suggesting a sliding scale.

Mr. Pflugrath stated having said that, he was not certain how review bodies would handle that and it could be a variance type situation. They all liked flexibility, but there needed to also be the requirement piece.

Chair Steiner stated with too much flexibility they could lose the concept for that area.

Ms. Pehoushek stated there was one issue she had failed to address and that was the FAR issue and what to do with an existing site. Similar to the property frontage issue, Staff would review the in-fill on the site to bring a site into closer conformance with the established FAR range. An in-fill project would not require that the entire site be brought into conformance.

Chair Steiner stated although they could not take any action on the letter submitted by Leason Pomeroy, it would appear to him that conceptually those areas identified in the letter were in the spirit of Mixed Use.

Ms. Pehoushek stated she agreed that the areas addressed in the letter were consistent with what was identified in the proposed standards, the exception would be to look at the interpretation of a storage component and it was an option to look to the legal non-conforming standards. Until they had an application before them, they could not get into too much discussion.

Chair Steiner brought the item back to the Commission for discussion or action.

Commissioner Cunningham stated with regard to concerns brought up during Public Comment and a suggestion presented by the City's consultant; he had not heard an alternate number that would be more acceptable than the 50% proposed?

Commissioner Merino stated he concurred with Commissioner Cunningham and he liked the idea of more flexibility of a sliding scale and what that could provide. It would not exclude anyone coming in with a variance if a sliding scale would not provide what they needed. The more flexibility the City could provide to property owners the better it would be and why hem in a property owner when they had the opportunity to provide for some flexibility. An applicant could come forward with their design options and how to address that based on the requirements and the property size.

Chair Steiner asked, as the item would move to City Council, would there be opportunities for further changes to the ordinance?

Ms. Pehoushek stated the item was a recommendation to the City Council and with a full discussion of the issues presented as a part of the packet to the Council members, it would be left to their discretion to provide input on what they felt was appropriate.

Commissioner Merino stated he would suggest that one of their recommendations could be included in a motion that a sliding scale be provided in response to property size be included in the resolution that would be acted on by the City Council.

Chair Steiner stated a record of the discussion and the public's input could be conveyed to the City Council and they would need to review whether a sliding scale would be appropriate. He was not prepared to support an actual recommendation for a sliding scale; it was important input and he would prefer that an action be taken to move the item forward as written with the full discussion provided to the City Council to allow them to review that with Staff.

Commissioner Merino stated he was understood that Chair Steiner would prefer to allow the record of their discussion move forward with an action that was recommended by Staff and to allow the City Council to make a determination or any changes. Ms. Pehoushek stated that was a topic that between now and the time it would be presented before the City Council that Staff could work with, along with the input from their consultant and present options to the City Council on what the implications of a sliding scale could present.

Commissioner Cunningham stated he was feeling a bit torn on the issue. Staff had put a lot of work into the ordinance and they were back another time on it and a part of him wanted to send it back for more work and on the other hand he had not wanted that. City Council relied on the Planning Commission to do the heavy lifting and sorting and had not wanted them to punt to them. He recalled during the General Plan Amendment process when it came to those areas that the emphasis was on flexibility and providing maximum running room for property owners to encourage economic vitality and growth. He understood where Staff was coming from in the frontage requirement; wanting to create a certain environment in that area, but hearing from the property owner themselves, he was not getting the sense that it was the vision they had. He hesitated to go on record as supporting the 50% requirement. He felt that the growth would be driven by projects in Anaheim and if that was what the market wanted, building frontage of 50% that the market would drive that, he would want to hear how the other Commissioners felt on the issue.

Commissioner Merino stated he had been absent from the previous presentation and had reviewed the DVD, and he asked if there was a critical element that would not allow them one more meeting to address Commissioner Cunningham's concern and his own concurrence to be addressed? Could they have one more meeting to make it just right before the item moved up to the City Council? He agreed with Commission Cunningham that the City Council relied on the Planning Commission to do the heavy lifting and not necessarily push the item up to them because they could not come up with a concrete recommendation.

Ms. Pehoushek stated Staff could certainly go back and work on the issues presented and come back to a future meeting.

Chair Steiner stated on page 7 regarding the building frontage; could the language be changed from "must be occupied" to a softer language or to provide for flexibility through a language change?

Ms. Pehoushek stated if the language was softened and stated they encouraged 50% the development community would state that they understood the goal was for 50%, but what was the real requirement. Based on experience, developers wanted to know what the standard was and build to the standard; not to say that there should not be a flexibility mechanism.

Chair Steiner stated he understood that Staff was willing to go back and provide for that particular accommodation and to bring it back at a future date for final action.

Ms. Pehoushek stated yes.

Chair Steiner stated the item could come back at a future meeting in March. He was concerned with a new Commissioner being appointed and the heavy lifting that had already been completed and the history on the item. He was prepared to continue the item.

Commissioner Buttress stated after hearing Commissioner Merino and Commissioner Cunningham's concern, she supported some further work on the issues presented. The public had spoken about the need for flexibility and if Staff could go back and work on those issues and bring it back; it was their job to work those things out before moving the item on to the City Council.

Commissioner Cunningham stated he understood that there needed to be a number that met both purposes or a scale.

Commissioner Buttress stated the idea brought forth by the City's consultant to add a sliding scale was an idea that Staff could incorporate and allow for greater flexibility. It might not be a 30% to 70%, but something that could be looked at and incorporated into the ordinance.

Chair Steiner stated, in terms of the other areas that had been addressed by Staff and the community and the accommodations for density bonuses, they had come a long way in being able to recommend to the City Council.

Commissioner Merino made a motion to continue Zone Change No. 1258-10-Mixed Use Zone Standards Ordinance Amendment, to a date certain of March 21, 2011 to allow Staff to address issues presented during the discussion of February 23, 2011.

Chair Steiner stated they were just focusing on the one issue regarding the 50% frontage requirement.

Commissioner Buttress stated she agreed with that.

Commissioner Merino stated he would not want Staff to be limited in the event there were other issues that they came upon during their review.

Ms. Pehoushek stated she would focus on the frontage issue.

SECOND: Commissioner Buttress

AYES: Commissioners Buttress, Cunningham, Merino and Steiner

NOES: None ABSTAIN: None ABSENT: None

## (4) CONDITIONAL USE PERMIT NO. 2807-10 – WALGREENS

A proposal for an Alcoholic Beverage Control Type 20 (Off-Sale Beer and Wine) License and a Finding of Public Convenience and Necessity for an existing 15,000 square foot 24-hour retail store.

LOCATION: 1538 W. Chapman

NOTE: The proposed project is categorically exempt from the provisions

of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Existing Facilities) because the project consists of the licensing of an existing retail store.

### RECOMMENDED ACTION:

Adopt Planning Commission Resolution No. 04-11 approving an Alcoholic Beverage Control Type 20 (Off-Sale Beer and Wine) License and make a Finding of Public Convenience or Necessity.

Associate Planner Robert Garcia presented a project overview consistent with the Staff Report.

Chair Steiner opened the item for any questions to Staff; there were none.

Chair Steiner invited the applicant to address the Commission.

Jennifer Chavez, address on file, stated she was a legal consultant for the applicant. She stated the local store manager and the community leader from Walgreens were also present for any questions they might have. She thanked Staff for their professionalism. Walgreens was asking for approval to sell beer and wine. It was a corporate level decision. In the past Walgreens had not sold alcohol at its stores in California, however, there was now a strong customer demand for one stop shopping. Walgreens had made the decision to seek approval to sell beer and wine at all their California stores. Customers wanted the convenience to pick up a prescription, bag of chips, a gallon of milk and a bottle of wine on their way home or on their way to a barbeque. Selling beer and wine also helped Walgreens remain competitive in the community with other retailers, with Rite Aid and CVS that already sold alcohol. There was a Rite Aid directly across the street from Walgreens that sold a large volume of alcohol. Walgreens was a national retailer and had a national reputation to uphold and they worked hard to protect their reputation and they had a lot of experience with regulated products such as tobacco and pharmaceuticals and they would bring that experience to their alcohol sales program. Walgreens had a number of policies and procedures in place and would ensure that the addition of alcohol sales to their store would not have an adverse affect on the community. Walgreens had a comprehensive training program in place that all employees would go through. She was available for questions.

Chair Steiner asked if there were any questions for the applicant. There were none.

Chair Steiner brought the item back to the Commission for discussion or action.

Commissioner Cunningham stated on Condition No. 11, there shall be no exterior advertising of any kind or type; he asked if there was already a condition regarding exterior advertising?

Mr. Garcia stated he believed a condition existed.

Commissioner Cunningham asked if Condition No. 11 referred to alcohol advertisement only.

Mr. Garcia stated yes.

Commissioner Cunningham stated the language might need clarification as not to ban all exterior advertising.

Mr. Garcia stated a modification to that language could be made.

Commissioner Merino stated when Walgreens initially came before the Planning Commission they were extremely cooperative and a great corporate citizen when they moved into the City and he was assured they would be just as responsible with the addition of alcohol sales.

Commissioner Merino made a motion to adopt PC No. 04-11, approving CUP No. 2807-10-Walgreens, subject to the conditions contained in the Staff Report, with the change in language to Condition No. 11 to modify the exterior signage requirement to specifically alcohol sales, noting the item was categorically exempt from CEQA.

SECOND: Commissioner Cunningham

AYES: Commissioners Buttress, Cunningham, Merino and Steiner

NOES: None ABSTAIN: None ABSENT: None

**MOTION CARRIED** 

## (5) CONDITIONAL USE PERMIT NO. 2812-10 – SHAKEY'S PIZZA

A proposal to establish a restaurant (Shakey's) in an existing 6,892 square foot building with a 774 square foot patio and to provide an amusement arcade room for accessory amusement devices. This CUP is required to replace and void existing CUP 2585-06 due to outdated conditions pertaining to the service of beer, wine, and distilled spirits under an alcoholic beverage type 47 license (On-Sale General for Bona Fide Public Eating Place). The City is authorized to void prior CUP 2585-06 due to the applicant's request to establish a game arcade in association with alcoholic beverage sales. The game arcade component of the request requires approval of CUP 2821-11.

LOCATION: 1625 W. Katella

NOTE: The proposed project is categorically exempt from the provisions

of the California Environmental Quality Act (CEQA) per State CEQA Guidelines 15301 (Class 1 – Existing Facilities) because the project consists of the operation and licensing of an existing

private structure.

#### RECOMMENDED ACTION:

Adopt Planning Commission Resolution No. 03-11 voiding CUP 2585-06 for the purpose of approving CUP 2812-10 and 2821-11 to allow a 6,892 square foot restaurant with a 774 square foot patio to continue to serve beer, wine, and distilled spirits under an Alcoholic Beverage Type 47 License (On-Sale General for Bona Fide Public Eating Place) and to provide an amusement arcade in the subject building.

Senior Planner Chad Ortlieb presented a project overview consistent with the Staff Report.

Chair Steiner opened the item for any questions to Staff.

Commissioner Merino stated for clarification on page 9 of 12, Condition No. 14 was where there would be a limit to the hours of operation of the arcade/amusement area but not the restaurant use and he asked if that was correct?

Mr. Ortlieb stated that was correct.

Commissioner Merino stated he wanted to be clear as it read: when a restaurant was the permanent use in the building, the amusement arcade shall be the same as the restaurant. It would not work backwards, in that if the hours of operation was set for an arcade, the restaurant would be limited to those same hours.

Mr. Ortlieb stated that was not the intent and if there was clarification needed that could certainly be taken care of. He reviewed the information Commissioner Merino was

referring to. After reviewing, Mr. Ortlieb stated that he felt it worked the way it was written.

Commissioner Merino stated a comment was made that patrons could seat themselves in the outdoor area. Regarding the alcohol service, would a patron be able to go and purchase a beer and then take it out onto the patio? Typically it was required that alcohol service on a patio would require a server to deliver the alcoholic beverage; for some sense of alcohol control. If a patron was able to take a beer directly onto the patio without any seating control was that situation addressed?

Mr. Ortlieb stated the condition for that type of scenario had been taken out. Generally that was a condition that was in place.

Commissioner Merino stated he was concerned with that and he would want to hear further on how that would work from the applicant.

Chair Steiner asked Police Department Representative, Sergeant Peterson, if he had anything to share? He had no additional information.

Commissioner Cunningham stated on the Type 47 ABC License would that cover the entire restaurant and arcade?

Mr. Ortlieb stated a Type 47 ABC License would be governed by the ABC Licensing bureau, but they had conditioned the application so that alcohol could not be served or consumed in the arcade/game area room.

Commissioner Cunningham asked if at a future date the arcade area went away, would the applicant need to return to add the arcade area into the alcohol permitted area?

Mr. Ortlieb stated no the applicant would not be required to return.

Commissioner Cunningham stated regarding the comment made concerning certain conditions of the CUP based on State Law, how would that affect an existing CUP?

Mr. Ortlieb deferred that question to Assistant City Attorney, Gary Sheatz.

Mr. Sheatz stated if there were conditions that had been inadvertently included and they were pre-empted by the State; the City would not be able to enforce those conditions. There existed old CUP's in early 2000 that hours of alcohol sales had been regulated through conditions and based on ABC Licensing, it had been determined that ABC regulated the sales, service and consumption and that condition had been dropped from subsequent CUP's and was no longer enforceable by the City.

Chair Steiner invited the applicant to address the Commission.

Robert Atkinson, address on file, stated Stadium Promenade had gone through a lot of

changes over the last 5 years and he was fortunate to be involved in all of them. He was very pleased to welcome Shakey's to the center and they would add a nice family component to the center. It had been challenging at times to attempt to slice the pie in order to find a food group that would not conflict with others that existed. The building they would occupy had been labeled Italian, and Italian food was pizza and he believed it was going to be a great use. He had seen some of the drawings and it was not the Shakey's that he remembered from college, they had made great strides. He had written a letter to Mr. Ortlieb, and he had been wonderful to work with, there were a couple of comments and one was that it was not the intent for the business to operate solely as an arcade and he understood there was a quirk in the zoning code that required two CUPs. Their lease with the tenant was for a restaurant with an accessory use, interesting enough the zoning code update recognized accessory uses for the site. Although ABC allowed the off sale of alcohol, their leases would not permit that. Any tenant, with the exception of the wine bar at Prime Cuts had that restriction. They had not wanted to be a liquor store and wanted to be an asset to the community. They spoke of the seating on the patio and he had the opportunity to speak with the applicant and they had a suggestion. He also would want a condition placed on the hours of operation. The last item was that the applicant had requested a Type 47 ABC License and not a Type 41. The intent was for the applicant to sell beer and wine with the allowance to have that CUP in place if there was a change in the operator.

Robert Martinez, address on file, stated he was the architect on the project. He stated first and foremost he wanted to thank Staff for their assistance that they had provided since the DRC process and they had been an asset to the project. As Mr. Atkinson had stated, they were in agreement with the hours of operation and what he suggested was for Monday through Saturday the hours of operation to be from 10:00 a.m. to midnight and on Sunday 10:00 a.m. to 11:00 p.m. It was important to note that Shakey's was a family restaurant and the children's game area was an associative use of the restaurant and only occupied on 6.6% of the building area. It was not the intent to be an arcade by definition. In regard to the alcoholic beverages and the patio area, in concurring with the business operators, what they confirmed was that a customer would seat themselves and a server would take their order on the patio and deliver a beverage to them directly. There was not a problem with having that conditioned. The remainder of the conditions were agreeable as written. There were several other Shakey's representatives in the audience if they had further questions.

Chair Steiner asked if there were any questions for the applicant. There were none.

Gary Kanter, address on file, stated he was with Shake It Up and appreciated the City's support and Staff had been very professional and helpful during the process. Beer and wine sales historically with Shakey's had an average of 7% of sales, which was not very high, and was a way to get dad to a family restaurant. That was the history of Shakey's 7%. The one thing he wanted to mention, and there was a touch of ambiguity, it would be helpful with the buffet service to allow a patron to get his beer and take it back to his table. There was already a restriction for no alcohol in the game area and it would be helpful, especially when someone was attempting to corral 3 to 4 kids in that

environment. The patio was an area that would be a preference for him to be seated as it would be quieter and it would allow him to keep his eye on the front door and he could zone out for an hour. He was available for any further questions.

Commissioner Cunningham asked what specific change was he looking for.

Mr. Kanter stated that in the normal process with a buffet format that patrons would be allowed to purchase a beer and take it to their table.

Commissioner Merino stated he had an issue with allowing alcohol to be brought out to the patio area. The concern was that the alcohol could be given to someone outside the patio, especially in an environment that there would be teenage children hanging around. The center attracted that age group.

Mr. Kanter stated he was open to suggestions, but in looking at the Shakey's environment, it was so non-teen driven.

Commissioner Merino stated it was not the teens that would be at the restaurant, but the teens that would be at the movie theatre and some of the other places.

Sgt. Peterson stated he agreed that there should be some form of condition regarding the alcohol service on the patio.

Commissioner Cunningham asked if there was a condition such as that on the Auld Irisher restaurant as there was alcohol consumed out on the patio.

Commissioner Merino stated he was on the Commission when that CUP came through and there had been conditions on the service to the patio area.

Chair Steiner stated the applicant had agreed that alcohol would be served on the patio by a staff member. He asked if they wanted the flexibility in the restaurant and not on the patio.

Mr. Kanter stated maybe he was not clear; they would take orders for alcohol on the patio; he just wanted the option available for the buffet line or alcohol consumption in the restaurant.

Chair Steiner asked if he was referring to both alcohol in the restaurant and on the patio?

Mr. Kanter stated yes. The patio had very little separation and was very small. It was not like the patio that was at Lazy Dog.

Commissioner Merino stated if the person who purchased beer or alcohol could go out to the patio, however, any individuals that went out to the patio, sat themselves out there and they wished to have a beer they could not just go get a beer; so that a subsequent patio purchase of alcohol would need to be done through staff; or a control whereby a staff member would monitor the alcohol going out to the patio. There needed to be some methodology to supervision.

Randy Hill, address on file, stated he was a Board Member of Shakey's and he would address the beer on the patio issue. The program that existed at all Shakey's restaurants for the past few years was that when food was purchased a patron's alcoholic beverage that was ordered was also received. That was taken to a patron's table. If someone wanted a refill, in the newer stores, there would be a staff person assigned to the floor refilling soft drinks and taking alcoholic beverage orders. It would be the initial purchase that would allow a patron the freedom of moving from the dining area to the patio area. The patio area would be licensed as part of the premises and subject to the rules and regulations imposed on the rest of the restaurant. They wanted to be good citizens and obey the law. The managers were required to touch the tables and that was to ensure guest safety and satisfaction and to also monitor compliance with health, safety and ABC rules.

Sgt. Peterson stated he liked that concept.

Mr. Hill stated they were particularly aware of the alcohol consumption as they were a family oriented business.

Chair Steiner closed the public hearing and brought the item back to the Commission for discussion or action.

Commissioner Merino stated with a few modifications to the conditions presented he was very much in favor of the project and he had thought Shakey's had disappeared off of the planet and he was pleased to see that they had not. He remembered growing up as a kid and going to Shakey's and he was glad to see that they were still around and coming to Orange.

Commissioner Cunningham stated he was very supportive as well; and he was psyched to bring his kids to Shakey's and good to see Shakey's in Orange. He felt the alcohol service would be managed and was pleased with the applicant's suggestions.

Commissioner Buttress stated she was supportive of the project and it was a good thing and pleased to see Shakey's coming back.

Chair Steiner stated he had lived in Orange for 43 years and he was very pleased to see how things had developed at the Promenade; it was a great trend and there was much to be proud of. His 5 children and 14 grandchildren had made the arcade the cost center for his family and Shakey's had made most of their money from his family.

Commissioner Cunningham made a motion to adopt PC No. 03-41, approving CUP No. 2812-10 and CUP 2812-11-Shakey's Pizza, subject to the conditions contained in the Staff Report and with a modification to the hours of operation and the maximum size of the arcade area, noting the item was categorically exempt from CEQA.

SECOND: Commissioner Buttress

AYES: Commissioners Buttress, Cunningham, Merino and Steiner

NOES: None ABSTAIN: None ABSENT: None

### **MOTION CARRIED**

## (4) ADJOURNMENT:

Adjournment to the next regular Planning Commission Meeting scheduled for Monday, March 7, 2011.

Commissioner Merino made a motion to adjourn to the next regularly scheduled meeting of the Planning Commission on Monday, March 7, 2011.

Commissioner Merino stated that much to his chagrin, it was Commissioner Cunningham's last meeting and he was sorry to see him go and he looked forward to working with him in other ways in the future.

Chair Steiner stated it had been great to work with Commissioner Cunningham during the last few months.

SECOND: Commissioner Buttress

AYES: Commissioners Buttress, Cunningham, Merino and Steiner

NOES: None ABSTAIN: None ABSENT: None

**MOTION CARRIED** 

Meeting Adjourned @ 8:46 p.m.