

CITY OF CAMPBELL PLANNING COMMISSION  
MINUTES

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7:30 P.M.

TUESDAY

APRIL 10, 2018  
CITY HALL COUNCIL CHAMBERS

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The Planning Commission meeting of April 10, 2018, was called to order at 7:30 p.m., in the Council Chambers, 70 North First Street, Campbell, California by Chair Rich and the following proceedings were had, to wit:

**ROLL CALL**

Commissioners Present:	Chair:	Michael L. Rich
	Vice Chair:	JoElle Hernandez
	Commissioner:	Stuart Ching
	Commissioner:	Mike Krey
	Commissioner:	Maggie Ostrowski
	Commissioner:	Andrew Rivlin

Commissioners Absent: Commissioner: Cynthia L. Dodd

Staff Present:	Community Development
	Director: Paul Kermoyan
	Senior Planner: Daniel Fama
	Senior Planner; Cindy McCormick
	Assistant Planner: Victoria Hernandez
	Sergeant: Dan Livingston
	Captain: Gary Burg
	City Attorney: William Seligmann
	Recording Secretary: Corinne Shinn

**APPROVAL OF MINUTES**

**Motion: Upon motion by Commissioner Hernandez, seconded by Commissioner Krey, the Planning Commission minutes of the meeting of March 27, 2018, were approved with one correction to page 12 to reflect the accurate vote of Chair Rich. (6-0)**

## **COMMUNICATIONS**

Director Paul Kermoyan listed the following items:

- Supportive material for Item 1.
- Revised draft resolution for Item 2.

## **AGENDA MODIFICATIONS OR POSTPONEMENTS**

None

## **ORAL REQUESTS**

None

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## **PUBLIC HEARINGS**

Chair Rich read Agenda Item No. 1 into the record as follows:

1. **PLN2017-390** Public Hearing to consider the application of David Tamira for a Modification (PLN2017-390) to a previously approved Planned Development Permit (PLN2012-135) to allow the expansion of an existing second home and the construction of a new detached carport on property located at **115 S. Third Street**. Staff is recommending that this item be deemed Categorically Exempt under CEQA. Project Planner: *Victoria Hernandez, Assistant Planner*

Ms. Victoria Hernandez, Assistant Planner, presented the staff report.

Director Paul Kermoyan:

- Advised that after deliberation by the Commission, the Commission will tweak the draft resolution as desired and forward it onward to the City Council for final action.

Commissioner Hernandez provided the Site and Architectural Review Committee report as follows:

- Advised that SARC didn't have the opportunity to see the revised plan being circulated this evening.
- Added that SARC had issues with the initial design with regard to parking on site and backup distance.
- Stated that SARC suggested the applicant get an Arborist Report for the proposed tree removal.

Chair Rich asked if there were questions for staff. There were none.

Chair Rich opened the Public Hearing for Agenda Item No. 1.

Benham Behzadi, Applicant and Property Owner, 115 S. Third Street:

- Explained that the reason the new plan was done was upon the recommendations of the Site and Architectural Review Committee.
- Added that his preference is the alternate plan because it is the one that makes his neighbors happy.
- Said that the one bad side of that change in design was the need to remove a tree.

Sandi Kane, Resident on E. Rincon Avenue:

- Identified herself as a 20 year resident.
- Advised that she hadn't seen the alternate plan but is pleased that they have one.
- Said she was very concerned with the proposed 14-foot high structure right behind their mutual fence. It would block natural light for their back windows.
- Cautioned that she doesn't want to be left with less than what they already have.
- Stated that their HOA vigorously is opposed to the original carport placement and request that the plan is denied for a more suitable solution.

Commissioner Hernandez asked Ms. Kane if she has seen the new plan.

Sandi Kane said just briefly this evening.

Greg Baker, Resident on E. Rincon Avenue:

- Stated that the original plan for the carport would have adversely impacted his complex but the new plan is better.

John Murayama, Resident on E. Rincon Avenue:

- Stated that his main concern is an increased risk of fire spreading from this property onto their townhome development that is next door.
- Added that there would be four cars parked there.

Chair Rich closed the Public Hearing for Agenda Item No. 1.

Commissioner Rivlin:

- Said that he too was at SARC and the concerns were addressed by Commissioner Hernandez.
- Added that the alternative plan answers everything and he is now pleased with what he sees here.

Commissioner Hernandez:

- Agreed with Commissioner Rivlin. She too much prefers the second alternative.
- Opined that the original plan's parking was asking for trouble.
- Reminded that Fire had accepted the original and alternate designs. This second alternative is a much better option.
- Cautioned that if the parking on site is too difficult they would end up on the street.
- Added that she is glad that they obtained an Arborist Report.
- Concluded that she supports Alternative 2.

Commissioner Ching:

- Stated that this revised design is a great compromise that works for this applicant and his neighbors.
- Concluded that he is supportive.

**Motion:** Upon motion of Commissioner Hernandez, seconded by Commissioner Ostrowski, the Planning Commission adopted Resolution No. 4436 approving Modification (PLN2017-390) to a previously approved Planned Development Permit (PLN2012-135) to allow the expansion of an existing second home and the construction of a new detached carport using the second alternative plan with the Tree Removal Permit subject to the Arborist Report, on property located at 115 S. Third Street, by the following roll call vote:

**AYES:** Ching, Hernandez, Krey, Ostrowski, Rich and Rivlin  
**NOES:** None  
**ABSENT:** Dodd  
**ABSTAIN:** None

Chair Rich advised that this action is final unless appealed in writing to the City Clerk within 10 calendar days.

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Chair Rich read Agenda Item No. 2 into the record as follows:

2. **PLN2017-292** Public Hearing to consider a Modification (PLN2017-292) to Conditional Use Permits UP 98-01, PLN2002-90, and PLN2012-172 to modify restrictions on live entertainment in association with an existing restaurant/brewery with general alcohol service ("liquor establishment"), late-night activities, and live entertainment, as filed by Brian Skarbek, Esq., on behalf of Campbell Brewing Company, LLC and a City-initiated request to revoke (PLN2018-87) Conditional Use Permits UP 98-01, PLN2002-90, and PLN2012-172 to terminate or modify the land use approval for the same operation on property located at **200 E. Campbell Avenue**. Staff is recommending that this item be deemed Categorical Exempt under CEQA. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days. Project Planner: *Daniel Fama*

Mr. Daniel Fama, Senior Planner, presented the staff report.

Sergeant Dan Livingston, Campbell Police Department:

- Recounted how in January 2017 the Night Shift Watch Commander saw an upsurge in calls for service for 200 E. Campbell.
- Added that in March 2017, CPD met with the business operator.

- Explained that when he did the comparisons between calls received in 2016 versus 2017 he was careful to research each call report to make certain each call was actually associated with this business location. That research and comparison demonstrated that the calls were significantly higher in 2017 with issues such as DUI, batteries. Additionally, actions by security staff were at times the reason for calls for police services. One employee was recently charged with felony battery. On a couple of occasions, CBC patrons claimed that security had broken their cell phones as they tried to film improper actions taken by CBC security. There was one assault with a deadly weapon among other calls.
- Added that he additionally compared the calls for service that occurred prior to midnight versus after midnight.
- Stated that the trend is that there is more drinking occurring the later the business is open and serving alcohol.

Planner Daniel Fama continued his report.

Chair Rich asked if there are any questions for staff.

Commissioner Hernandez asked if there was a time when this business was in operation with no food service being available at all.

Planner Daniel Fama said he understands that food service stopped at 10 p.m. while the alcohol service continued to closing.

Commissioner Hernandez asked if PD can speak to no negative issues occurring more recently.

Sergeant Livingston:

- Said that it has been better.
- Added that they had a couple of plain clothes officers going through the Downtown establishments recently and overheard one bouncer joking about kicking a patron.

Commissioner Hernandez asked if PD could revoke the Live Entertainment Permit since there have been three confirmed complaints.

City Attorney William Seligmann advised that PD could suspend the Live Entertainment Permit until Council has the opportunity to review and/or revoke the Live Entertainment Permit.

Commissioner Hernandez asked if PD reads YELP reviews.

Sergeant Livingston replied yes. There are lots of references to “nightclub” and drinking but little comment as to food.

Commissioner Hernandez added that there are also a lot of references to the fact that CBC is not a safe place for female patrons.

Sergeant Livingston agreed and advised that they read the reviews in preparation for this meeting.

Commissioner Ching asked Sergeant Livingston to compare this business to other bars in DT Campbell.

Sergeant Livingston said there are significantly more calls for service for CBC than for other DT Campbell establishments.

Chair Rich asked how many establishments in DT Campbell have alcohol service up to 2 a.m.

Planner Daniel Fama replied four or five and listed Khartoum, Cardiff and Katie Blooms among them.

Chair Rich asked whether any of those other also have Live Entertainment Permit.

Planner Daniel Fama replied that both Khartoum and Cardiff do but the others do not.

Chair Rich advised that he had frequented the site last night and met with the applicant's attorney.

Commissioner Ostrowski advised that she too met with the applicant.

Chair Rich opened the Public Hearing for Agenda Item No. 2.

Brian Skarbek, Attorney for Campbell Brewing Company:

- Thanked Planner Daniel Fama and Sergeant Dan Livingston.
- Admitted that he is not trying to convince anyone that there haven't been too many calls for police services.
- Said that he wants instead to focus on what they're doing going forward.
- Assured that there has always been food service available whenever alcohol was being served on site.
- Advised that there has been a lot of turnover with the security staff. The former lead security guard has been terminated.
- Stated that he is here to talk about the new restaurant, il Sogno, which will be a "food first" restaurant location. Umberto Pala will be the manager of the LLC for this business and has bought into the LLC.
- Said that there is a long history with this location. They have worked with the City to bring what they are asking for.
- Reported that his first involvement was via a letter received in May 2017 from Planner Daniel Fama indicating that food service must be available at all times that this business is in operation. They agreed in writing to comply with that provision.
- Stated that in August 2017, they received another letter from the City warning against allowing dancing to occur and prohibiting musical genres except for a few including jazz and pop and disallowing other styles of music.
- Claimed that they had never set up a dance floor.

- Explained that they filed a lawsuit against the City and per court order were instructed to file for a Modification to their Conditional Use Permits to allow a wider variety of musical genres at this business than currently allowed. He added that the stage would remain where it is. This court order is still in effect.
- Stated his belief that this is an unlawful revocation proceeding as he feels noticing requirements were not met.
- Listed the City's basis for seeking revocation of the use as being 1) the creation of a dance floor; 2) calls for police services (for which he claimed no warning notice was provided); and 3) Live Entertainment hours (again he claims no prior written warning was provided).
- Said that Umberto Pala has brought in a new restaurant, il Sogno, to this location. He also owns Vin Santo in Willow Glen, which is very successful.
- Opined that a fresh concept deserves a fresh start.
- Pointed out that many of the proposed conditions are directed at the old business and old operations. These are items that could be worked out with Planning that were against the old operator.
- Explained that the private party area would be curtained off.
- Said that this location is an expansive space that would equate to a great nighttime venue. They will offer lunch, dinner, late night dinner and bites.
- Stated his appreciation for those few Commissioners who came to check the space out and showed some site photo slides for the remaining Commissioners to see.
- Assured that this is a different place with a different feel. They will offer small plate Italian-style with a focus on table sharing. A separate bar will offer pub food.
- Reiterated that the focus will be on the provision of a late night dining experience that is not easily found in this area. This building comes with a big rent. It's a big space in a prime location. The Live Entertainment is anticipated to be guitar and/or piano and targeted at a food-first crowd.
- Stated his belief that this business is actually exempted/excluded from the provisions of the Downtown Campbell Alcohol Beverage Policy.
- Suggested that the reason Campbell is thriving is due to its thriving night life and venues. Il Signo will be a destination venue. To limit this restaurant to a midnight close would be a forced closure.
- Asked that this business be given the opportunity for a fresh start for a fresh business.
- Proposed continuing action on this item for a couple of months and let them work out conditions with staff to apply to this new operator.
- Reminded that they want the whole place to be a sit-down restaurant. The suggested pony wall with a brass rail would not be a good thing. The requirement to bolt down the tables is related to the old business. This full service restaurant will be accommodating parties of various sizes.
- Said that they are asking to keep the hours to 2 a.m. (business) and 3 a.m. (operational). They'd like to have the Live Entertainment allowed up to midnight.
- Reported that the platform is no longer there.
- Stated that the requirement to turn over security camera footage upon demand by the Police Department is something they are against due to privacy concerns.
- Once again stated that he is asking the Planning Commission to give a new business a fresh start.

- Said that he'd like the Planning Commission to deny the revocation outright and to allow them to clean up the past use for a new owner/operator.
- Assured that this would be a classier and different venue.

Chair Rich asked the Commission if there were questions for Mr. Skarbek.

Commissioner Krey asked if the removal of the platform/stage was a goodwill gesture.

Brian Skarbek replied no. It was Umberto's wish as it didn't fit with his plan. There are no plans for a stage.

Commissioner Krey asked if any fixed (bolted) tables were acceptable.

Brian Skarbek replied no. There is one now.

Commissioner Krey asked if Mr. Pala has signed anything to formalize this use.

Brian Skarbek replied yes. There is need for some wind-down time to allow the changeover of the location to Mr. Pala. Once Mr. Pala's Live Entertainment Permit is approved the other owner will go.

Commissioner Hernandez asked if Stan Doherty is still involved.

Brian Skarbek replied yes, he's the one who is leaving the LLC.

Commissioner Hernandez asked how much Mr. Doherty will be involved.

Brian Skarbek replied that Mr. Pala will be fully in charge once the Live Entertainment Permit is issued to him.

Commissioner Hernandez asked when discussions started to get a new business operator.

Brian Skarbek replied November 2017. It has not been easy to find someone.

Commissioner Hernandez asked Brian Skarbek what makes him think this type of restaurant will fit into the Campbell Downtown.

Brian Skarbek suggested letting Umberto Palo elaborate. This restaurant will be a destination. His food is great. This is a great location and building. One thing they will need to do is to deaden some of the noise in the building. This space will accommodate large private parties.

Commissioner Hernandez asked what il Sorno's targeted crowd is.

Brian Skarbek replied older than the previous CBC crowd. This will be a fine-dining restaurant with moderate pricing.

Commissioner Hernandez said that she was glad to see the stage had been removed. She asked Brian Skarbek how late night hours equate to success.

Brian Skarbek:

- Reiterated that this is a big place with a high rent. They need enough revenue to support that space.
- Recounted that Umberto Palo is an Italian who finds there is no place currently available to get late night dinner anywhere. You will be able to do so here.

Commissioner Hernandez asked about the Brewing portion of the business.

Brian Skarbek said it would still be there. Campbell Brewing will continue to brew the beer on site.

Commissioner Hernandez asked whether patrons continued to move tables around after the site complied with the court order and relocated the dance space.

Brian Skarbek replied no. Not after they replaced small tables with larger tables that were much heavier and difficult to move around.

Commissioner Hernandez pointed out that she has seen lots of nice restaurants that have a barrier separating a bar area from a restaurant area. What is the issue?

Brian Skarbek:

- Said that it was a stylistic issue to him.
- Admitted that he doesn't think there is a need for such a separation. The space is naturally delineated already.
- Added that another reason it is being sought by staff is for ease of enforcement.

Commissioner Hernandez:

- Said that the only "exclusion" that CBC has in regard to the Downtown Campbell Alcohol Beverage Policy is the fact they had pre-existing Conditional Use Permits in place that established specifics such as business/operational hours.
- Said that the new operator will need to take the responsibility to comply with the provisions of the approved CUP's.

Commissioner Ching suggested that food-first music be provided while removing the restrictions on the genre of music allowed.

Brian Skarbek said that the operator should pick the type of atmosphere and music they will offer. It is not "appropriate" for the City to make those decisions.

Commissioner Ching chided Mr. Skarbek and said that this use has had a difficult history.

Brian Skarbek agreed.

Commissioner Ching asked if Mr. Skarbek supports more restrictive music choices.

Brian Skarbek said it would be more appropriate for a Live Entertainment Permit but not a Conditional Use Permit.

Commissioner Ching asked Mr. Skarbek if he opposes restrictions on the types/genres of music allowed.

Brian Skarbek said he was not prepared to answer that question right now.

Commissioner Ching said that most restaurants stop service after 9 or 10 p.m. How is it possible that late night service is anticipated to equate to 30 percent of sales.

Brian Skarbek said it was a projection.

Commissioner Rivlin asked how that is possible to project given that they just began operation yesterday (April 9<sup>th</sup>).

Brian Skarbek said it was actual today.

Commissioner Rivlin said that he would pass by the location later. He asked how they intend to execute the switchover.

Brian Skarbek:

- Admitted that it will take some time.
- Advised that Umberto has been in charge over the last two weekends.
- Stated that Umberto has been meeting with and training the bartenders about how best to avoid over serving. He's also said that the bouncers have been receiving training about how to avoid allowing already intoxicated patrons to come in.
- Said that they would be using "tame" entertainment to help turn the crowd over so there can be multiple seatings per evening per table.

Commissioner Rivlin:

- Stated that he wishes this new operator success with this proposed model.
- Added that what he doesn't want to see happen is that a few month's down the road they have gone back into operation as mostly a bar.

Brian Skarbek:

- Said that is a fair point.
- Assured the Umberto Pala would not allow that to happen.
- Stated that it is appropriate to have appropriate conditions in place. Something that allows him (Umberto Pala) to operate and for the City to have enforcement ability.
- Reiterated his suggested continuance so that appropriate conditions could be crafted.

Commissioner Rivlin referenced the two menus. One is for Lunch and Bar Food and the other is for Dinner.

Chair Rich asked Brian Skarbek to elaborate his opposition to the requirement for a railing to separate the bar from the restaurant.

Brian Skarbek:

- Said that the concern is stylistic. It would hurt.
- Opined that there is an existing flow with this space. It appears as a full-service restaurant.
- Added that he doesn't want to see a separate bar.
- Reported that everyone enters through the middle door and the hostess will seat the guests as they request be it bar seating or dining.

Chair Rich asked if the two outer doors would be kept locked.

Brian Skarbek said that is right.

Commissioner Ostrowski sought clarification that the bar is also full service when it comes to food.

Brian Skarbek replied right.

Director Paul Kermoyan:

- Pointed out that the Commission has heard a 45 minute presentation made by the applicant.
- Said that given there are other speakers who want to address this, the Commission may want to limit time per speaker.

Deni Urosevic, Resident on Hurst:

- Said that he is a 40 year resident of Campbell and remembers Campbell in the 1980's. There was lots of dancing and bars. The City cracked down and Campbell became a dead town much like Saratoga has done.
- Stated he likes what he is seeing with this new operator (Umberto Pala) although the menu may be a bit pricy. This will bring in better quality people to the Downtown.
- Opined that nailing down tables equates to a safety issue. That idea should be taken off the table.
- Added that music should be allowed up to midnight. Dancing should also be allowed.
- Pointed out that he is 58 years old and he likes to go dancing.
- Reported that after taking out the stairs from this restaurant site, the acoustics changed. It is loud in there.

Arielle Krimotat, Resident on Second Street:

- Said her comments would be brief.
- Advised that her condo directly faces the Campbell Brewing Company location. She moved in there almost two years ago. She loves where she lives and a

primary reason for her purchase was the late-night night-life. Her home value has increased.

- Stated that late night hours are good for Campbell.

Umberto Pala, Owner/Chef, il Signo:

- Said that he is the owner of il Signo.
- Stated that he is asking for a fresh start with this new location for him. Allow him to do what he does.
- Advised that he had attended a meeting the other day with members of the City staff.
- Said that his clientele tends to be 25 years of age onward.
- Pointed out that there is no piano bar in the Bay Area.
- Assured that they will be successful and bring people to Campbell.

Ben Skinner, Resident on E. Campbell Avenue:

- Said that he works with a number of restaurants in Campbell.
- Said that allowing late night hours allows a restaurant to achieve sufficient volume in sales. The national average net profit for a restaurant is just 3 to 4 percent.
- Recommended that this business be allowed to stay open those extra hours.

Kim Moynier, Resident on Midway Street:

- Said that she is fine with it being open as long as they pay for a police officer to be there at the restaurant's expense.
- Reported that her purse was stolen and no one was able to do anything about it.

Chair Rich closed the Public Hearing for Agenda Item No. 2.

Director Paul Kermoyan:

- Admitted that he is surprised by the presentation made by Brian Skarbek and he needs to offer some clarification to what was said.
- Questioned when and/or why a "restaurant" would need a bouncer. It must be looked at globally.
- Advised that when a city issues a CUP, it monitors the activities. If they stray from the activities allowed under the CUP, there is a process to review.
- Reminded that the CUP was original issued for Stoddards, which later became the Sonoma Chicken Coop and later the Campbell Brewing Company.
- Suggested that a "new start" could actually be a new CUP specifically tailored for this new operator (Mr. Pala). However, at this time, they are coming in asking for Modifications to three pre-existing CUPs granted for this location.
- Assured that he too wants this business to be successful.
- Stated that Mr. Pala can come back later to change his conditions if necessary.
- Questioned the assertion of Attorney Brian Skarbek that a dance floor was never created at this location. However, a former Code Enforcement Officer for the City tripped over a dance floor's uneven surface and missed work as a result of injury. A dance floor was there. Staff worked with them to get it removed.
- Said that a notice of revocation was provided as well as a letter from Campbell Police.

- Stated that the City tries to work with business owners in a cooperative manner. Again, letters were provided.
- Pointed out that he just met this new Chef (Umberto Pala) a couple of weeks ago.
- Clarified that in regards to exclusion from the Downtown Campbell Alcohol Policy, the Policy simply recognizes that they are fine but to change any part of the existing CUP's allows the City and Commission to look at everything about that CUP. The whole thing is in play. It is subject to the DTCAP.
- Said that no tables are proposed by the new operator to be bolted as they want to accommodate larger dining parties. The reason staff wants some of the tables to be bolted is to prevent activities that are not allowed under the CUPs such as dancing.
- Reminded that this LLC has had problems controlling how they operate.
- Said that one must ask what kind of private party area and what kind of party is proposed.
- Clarified that Mr. Deni Urosevic's claim that bolted tables are a "fire safety issue" is not correct. The majority of restaurants have fixed seating. Floor plans are reviewed to ensure safe paths of travel to get into and out of a location.

Chair Rich asked staff if there are any concerns with the locking of the outside doors.

Director Paul Kermoyan said that people have to be able to use those doors to exit the building in an emergency. There's no problem not using those doors to enter but they must be available for exiting.

Commissioner Ostrowski asked what is required to facilitate dancing.

Planner Daniel Fama said that dancing under the City's Zoning Code is classified as a "nightclub". It would require a CUP for a nightclub in association with a restaurant.

Director Paul Kermoyan added that it would need to be determined whether this building is suited to allow a nightclub use.

Commissioner Ostrowski said that a "nightclub" has a different image as compared to a place that plays jazz where people might feel compelled to dance along.

Director Paul Kermoyan:

- Said that he cannot control the types of music they are playing. A nightclub use could result in both loud music and lines going down the block.
- Reminded that this new operator (Umberto Pala) doesn't want it to be a nightclub. They want to be a restaurant. A restaurant with incidental music.
- Concluded that to mitigate an operational "issue" the staff reaction is due to past practices.

Commissioner Krey:

- Said that he appreciates hearing all of the comments. There are so many issues.
- Stated that the worlds – health, safety and welfare – are highly charged words.

- Admitted that he can appreciate this new operator trying to get a new start for this location. However, Mr. Pala was also no doubt aware of the past problems with this existing use.
- Pointed out that he is looking at the crime statistics and they are not good.
- Suggested perhaps having this new operator come back after being in charge for a few months to demonstrate what is possible with the right operator.
- Assured that he wants this new business to succeed.
- Reiterated that the facts available are the crime stats. Those are hard to overlook.

Commissioner Hernandez:

- Agreed with Commissioner Krey.
- Said that the Commission is charged with looking at CUPs. A CUP is an agreement entered into between business owners and the City. The Commission approves CUPs with required findings. When those findings are no longer “true” there is no longer support to let the use continue as it has been. There is support to require revocation.
- Stated that she too would like to give a new business the opportunity to try.
- Pointed out that being “exempt” to the Downtown Campbell Alcohol Beverage Policy has been detrimental to the Downtown as demonstrated here.
- Said that reducing the hours by a couple of hours per day would not be the demise of the Downtown.
- Reminded that lots of families come to the Downtown including on Sundays for the weekly Farmers Market.
- Referenced an article from the Campbell Report about Downtown Campbell dated April 4, 2018, which reads, “Problems of Popularity? Vomit.”
- Reiterated that there is a whole lot more to Campbell than late night hours.
- Pointed out that one reason that some people come to Campbell for late night activity is because Santana Row closes at midnight and the patrons who want to continue partying come over to Campbell to do so.
- Stated her support for the staff recommendation with a modified resolution.

Commissioner Rivlin:

- Said that two important considerations are security and enforcement.
- Agreed that having a City with a vibrant nightlife is important.
- Added that he appreciates that the new owner is trying to offer late night dinner opportunities. There are currently few such places available.
- Said that over the last two years, adequate security was just not provided for this location.
- Stated that he appreciates that this new restaurant needs the opportunity to be successful. He is still trying to figure hours that would be appropriate. He recognizes that they are trying to change from past business practices.
- Said he is willing to entertain a later hour.

Commissioner Ostrowski:

- Agreed that problems have been ongoing at this location for a couple of years now.
- Reported that there was a totally different feel when she went on site today.
- Said that the security staff has totally changed recently.

- Stated that having late night dinner and food equates to a huge improvement. It is a European dining style to eat dinner later and take longer to do so. This is a unique and diverse concept for us.
- Admitted that she is glad to see to that the dance floor has been removed.
- Said that it sounds like Mr. Pala has a good history and the background and training to succeed here.
- Stated that she would support extending hours as she has a lot of confidence in Mr. Pala. If issues arise, there could be a quick look into that.

Commissioner Ching:

- Said that Campbell Brewing Company's history doesn't create much confidence. They really haven't added to the City.
- Stated that staff has attempted to be helpful.
- Pointed out that Mr. Pala is putting his reputation on the block.
- Suggested further discussing late hours and placement of tables.
- Admitted that it is difficult to tell people how to run a restaurant that meets the governance of the City and makes the restaurant money.
- Recommended a trial period of three months to let them prove that action is better than words.

Chair Rich:

- Stated that public safety is first and foremost.
- Admitted that he is very concerned with the 2016/2017 police calls for service statistics.
- Stressed the importance of having an environment where a business can thrive and people are safe.
- Said he wonders how to create an environment where there's no need for a bouncer.
- Reported that he occasionally will go Downtown at night just to observe what's going on.
- Questioned how the Commission can help them with enforcement. He said he thinks that the railing does that as it helps delineate areas to better assist with enforcement.
- Said he is okay with late night activities.
- Added that the Commission needs to help this establishment be able to be open late at night while dealing with safety issues as well.
- Expressed support for keeping the 2 a.m. closing time and to consider further what the Live Entertainment hours should be.

Commissioner Rivlin:

- Said he was not opposed to a barrier. It could even be safety glass that is clear but still separates the bar from the restaurant.
- Admitted that he is not sure about the requirement to bolt the tables. It may be better to leave them the flexibility to accommodate larger dining groups in order to have them seated together at one large table.

Director Paul Kermoyan asked what use the Commission is trying to approve. Is it a restaurant use? Is it something different?

City Attorney William Seligmann said if it's a nightclub, we have not noticed this meeting for such an action.

Commissioner Rivlin said that he is not advocating for a nightclub based on past problems.

Director Paul Kermoyan said that staff wouldn't recommend unbolted tables unless the Live Entertainment Permit is eliminated. If so, bolted tables would no longer be necessary.

Sergeant Livingston advised that one bouncer is required per 50 patrons as a condition of the Live Entertainment Permit. That's a lot of people to control in a large area when there is live entertainment provided.

Commissioner Ching said that the unfortunate history of CBC there is not a great legacy of being good custodians.

Chair Rich:

- Said that it seems the Commission has four main considerations:
  - A- Revocation
  - B- Remove Live Entertainment
  - C- Reduce the late night operational hours
  - D- Reduce the late night operational hours and the live entertainment hours

Commissioner Rivlin said another consideration could be to continue this item. That continuance period would become a "trial" period for this new operator.

City Attorney William Seligmann advised that the Commission cannot "condition" a continuance. They could consider some sort of temporary approval.

Chair Rich said that the Commission could come up with something appropriate.

Commissioner Krey:

- Said that no one wants to revoke or take away the Live Entertainment Permit.
- Stated that staff and the applicant should work together to craft a plan.
- Admitted that he sees pluses in not having the barrier between the bar and restaurant. There would be more of a restaurant feel without a barrier.
- Suggested shorter hours at first and have the operator reapply three to four months later for more hours.

Commissioner Ostrowski:

- Said that as a Commission, we support business in Campbell.
- Stated that there is already a natural divide between the bar and the restaurant as she saw in person today when she visited the site.

- Suggested that Mr. Pala should be allowed to create a restaurant and needs some flexibility with his layout.
- Added that she supports a trial period with extended hours.

Chair Rich said it sounds like the consensus is as follows:

- Option A – Revocation – is not supported and is off the table.
- Option B – Remove Live Entertainment is also not supported.
- Option C – Current operational hours to 2 a.m. will be allowed to continue through the trial period. He asked the Commissioners, “for how long?”

Commissioner Rivlin suggested 60 to 90 days.

Chair Rich how the use would be evaluated.

Commissioner Hernandez suggested per the number of police calls for service.

City Attorney William Seligmann said that there are different types of calls for service and those would need to be taken into consideration.

Sergeant Dan Livingston advised that the 2016 statistics were more stable when compared to the 2017 numbers. He added that they have to resubmit for a Live Entertainment Permit for this new operator (Humberto Pala).

Chair Rich asked Sergeant Dan Livingston if there had been significant changes Downtown that might have contributed to the uptick in calls for service between 2016 and 2017.

Sergeant Dan Livingston reported that another business, The Spot, closed and their patrons transitioned to the Campbell Brewing Company.

Chair Rich once again asked the Commission what the length of the trial period should be.

Commissioner Hernandez suggested four months.

Sergeant Dan Livingston said whatever timeframe the Commission is comfortable with. Some time is needed as they change their operation and it is anticipated that the type of patrons will change as well.

Director Paul Kermoyan:

- Said that right now evaluating calls for service is based at records from some of Campbell’s “problem” establishments.
- Added that it might behoove us to compare calls for service coming from more “high-class” establishments such as Naschmarkt or Willard Hicks.
- Stated that the Commission can elect to preserve staff’s draft resolution or to tweak it as it sees fit.

Chair Rich asked for confirmation that this would come back to the Commission at a later date.

City Attorney William Seligmann said that the Commission can craft conditions that allow some discretion as to when it might be called back for review.

Commissioner Rivlin reminded that the applicant voiced compliance. Food will be available whenever this business is open.

City Attorney William Seligmann said he was not sure where this discussion is going. He suggested the Commissioners start with staff's suggestions or go back to the existing CUPs (of which there are multiples) and change them.

Director Paul Kermoyan said it seems the conditions at issue are as follows:

- Condition 8-E – floor plan requiring fixed tables.
- Condition 8-F – Hours of operation.
- Condition 8-J-iii – Hours of live entertainment
- Condition 8-V – Requiring that security camera footage be provided to PD upon demand (which is a standard condition).
- Condition 9 – Requirement for a final floor plan

Commissioners discussed the security footage requirement and ask how long the footage would be expected to be retained and made available.

Sergeant Dan Livingston said 10 days to two weeks would suffice.

Commissioner Ostrowski said that she finds Condition 9 to be unnecessary and should be stricken.

Director Paul Kermoyan suggested Condition 9 could be modified to require that the area enclosed behind curtains is clearly identified as “dining” space. The condition could read, “Applicant will submit a final floor plan with the large curtained area labeled as a “private dining area.”

Planner Daniel Fama referenced the March 9<sup>th</sup> floor plan as a starting point and flush it out.

Commissioner Rivlin suggested the applicant work with staff on what should be included on the final floor plan per applicable Building and Fire Code standards. He suggested an added condition that there should be no stage.

Director Paul Kermoyan suggested that the applicant be required to file an application within the next two months for a return to the Planning Commission. Scheduling and noticing takes two months so that will allow this item to be brought back within the four month time frame desired by the Planning Commission.

City Attorney William Seligmann said the language should added, “This Use Permit shall come back to the Planning Commission for review by August 2018.

Director Paul Kermoyan expressed concern that the fee that can be charged is just \$750, which is half of the original Use Permit fee that was processed in the 1990's.

City Attorney William Seligmann said that it might be possible to develop an ad hoc fee. Findings are required to be met and it could not be done this evening. It would require a continuance. He questioned what if they don't file within two months? What happens then?

**Motion:** Upon motion of Commissioner Ostrowski, seconded by Commissioner Rivlin the Planning Commission adopted Resolution No. 4437 approving a Modification (PLN2017-292) to Conditional Use Permits UP 98-01, PLN2002-90, and PLN2012-172 to modify restrictions on live entertainment in association with an existing restaurant/brewery with general alcohol service ("liquor establishment"), late-night activities, and live entertainment, as filed by Brian Skarbek, Esq., on behalf of Campbell Brewing Company, LLC, subject to the findings and conditions, with the following modifications:

- Condition 8-E – no modifications to floor plan except to retitle "large patio" to "private dining area." No requirement for fixed tables and railings.
- Condition 8-F – Business hours from 8 a.m. to 2 a.m. and Operational hours from 7 a.m. to 3 a.m.
- Condition 8-J- iii – Hours for Live Entertainment to midnight Monday through Saturday and to 8 p.m. on Sunday.
- Condition 8-V – Security footage shall be kept for a minimum of 14 days and provided to Campbell PD upon demand.
- Condition 9 – Applicant shall have a final floor plan prepared by an architect and conforming with the approved use (based on the March 9, 2018 plan set). Final floor plan shall not include a stage and the curtained area shall be identified as a "private dining area."
- Add a condition of approval requiring that this Use Permit be brought back to the Planning Commission for further review by August 14, 2018,

on property located at 200 E. Campbell Avenue, by the following roll call vote:

**AYES:** Ching, Ostrowski, Rich and Rivlin  
**NOES:** Hernandez and Krey  
**ABSENT:** Dodd  
**ABSTAIN:** None

Chair Rich advised that this action is final unless appealed in writing to the City Clerk within 10 calendar days.

Chair Rich called for a short break at 10:55 p.m.

Chair Rich reconvened the meeting at 11:03 p.m.

### **NEW BUSINESS**

Chair Rich read Agenda Item No. 3 into the record as follows:

3. **PRE2018-04** Study Session to consider a Pre-Application (PRE2018-04) to locate a Chick-fil-a restaurant on property located at **2060 S. Bascom Avenue**. Project Planner: *Cindy McCormick, Senior Planner*.

Ms. Cindy McCormick, Senior Planner, presented the staff report.

Chair Rich asked if there were questions for staff.

Chair Rich asked for clarification. Does the drive-thru configuration differ from what is called for in the General Plan?

Planner Cindy McCormick said that there is only one entrance proposed off Bascom. The drive-thru queue goes around the building along the Arroyo Seco side of the property.

Director Paul Kermoyan said it is smart to have all traffic coming off Bascom Avenue.

Planner Cindy McCormick advised that a traffic study will be done.

Commissioner Hernandez asked staff what the hours are for the Denny's currently on this property.

Planner Cindy McCormick said she didn't know.

A voice from the audience reported that the Denny's is open 24/7.

Chair Rich opened the Public Hearing for Agenda Item No. 3.

Leah Lombardi, Applicant/Representative, Chick-fil-a:

- Introduced herself as a representative for Chick-fil-a.
- Said that she will defer questions to others in attendance with her. The project architect is here tonight as well.

Commissioner Hernandez asked which nearby Chick-fil-a location could be compared as far as customer traffic volume with what is being estimated for this proposed Campbell location.

Steve Schwartz, Representative with Chick-fil-a:

- Said that their location on Monterey Road at Tully is one nearby location.

- Added that the traffic volume is 100 cars per hour during peak.
- Offered a quick history of Chick-fil-a.
- Said that it has been in operation in Georgia since 1946. The first location using the name of Chick-fil-a was established in 1967. The first locations were in malls. The first freestanding location was established in 1986. There are currently 2,200 locations and continuing to grow.
- Stated that their focus is on the quality of their food and providing good customer service.
- Said that the Campbell location would be owned by a local operator (who is not yet selected). A Chick-fil-a operator usually has just one store. There is one operator per store.
- Reported that Chick-fil-a has given \$9 million in scholarships to 3,400 Chick-fil-a employees.
- Stated that they are very excited to be here in Campbell.

Commissioner Krey asked if the design is set up to allow 22 cars in the queue.

Steve Schwartz said that the queue should actually be more than they need.

Commissioner Krey asked if the site as proposed has enough parking to serve a Chick-fil-a restaurant.

Steve Schwartz replied that they need between high 40's to low 50's in number of parking spaces.

Commissioner Ching asked the reason for the design chosen for Campbell from among the several Chick-fil-a designs available.

Steve Schwartz explained it was chosen to maximize the kitchen and the interior capacity. He added that the project architect is here and could elaborate.

Russell Highfield, Project Architect, Tustin, CA:

- Said that they had shown some sample designs. The brand continues to evolve.
- Stated that the elevations provided for their proposed Campbell building do not do the design justice.
- Added that they look for traditional materials in use in the surrounding area.
- Assured that the architectural style is more modern (Mid-Century).
- Advised that once they develop the elevations it will look much better than these flat elevation renderings.

Commissioner Rivlin asked if it is common to have overhead canopy over the drive thru.

Russell Highfield said that it helps screen the drive-thru and offers a covered area for staff runner delivery to cars to help speed up the queue and protect them from rain or heat.

Jean Lund-Drew, Resident on N. Central Drive:

- Stated that she has nothing against Chick-fil-a but she feels strongly that we don't need another fast-food restaurant.
- Reported that there are 139 restaurants in Campbell as of January 2018. Of those, 37 percent are fast-food restaurants and 7 percent of those have drive-thru service.

Soussan Behbahani, Resident on Walters Avenue:

- Said she is a 20-year resident of Campbell.
- Reported that she owns a duplex on El Solyo Avenue that is adjacent to this property under discussion.
- Expressed concern that having this fast-food restaurant with a drive-thru located right next door will make it difficult for her to rent her units.
- Stated her concerns, in addition to potential loss of rental, includes potential loss of property value.
- Explained that she and her husband bought this property and her husband renovated it himself to make it livable. It was with the plan to rent it out and live on the rental income.
- Added that she doesn't know what will happen to them with the loss of rental income.
- Reported that there is a big problem with cockroaches and mice. The trash from a fast-food restaurant will increase that problem. All that trash will be placed into a dumpster that will likely be situated right near her property line as is already the case with other existing nearby restaurants.

Keith Applegate, Resident on El Solyo Avenue:

- Advised that he is a 30-year resident in Campbell.
- Added that the City Council is good about listening to residents.
- Questioned whether this establishment is the right one for this neighborhood.
- Pointed out that the Pruneyard is just down the road. It is the highlight of Campbell with lots of nice places to eat. Another fast-food restaurant doesn't fit the neighborhood.
- Stated that residents from this neighborhood walk to the Pruneyard as well as to the Downtown from their neighborhood.
- Expressed concern about a drive-thru that serves 100 cars per hour during their peak times.

Greg Steyer, Resident on El Solyo Avenue:

- Said he has been in the neighborhood for 20 years.
- Said that traffic in their neighborhood as well as on Hamilton is increasing. There is more and more traffic.
- Advised that he understands that Chick-fil-a has a fantastic business model. They are the most profitable fast-food restaurant per store.

Christie Steyer, Resident on El Solyo Avenue:

- Stated her concerns for added traffic as well as an increase in food waste and garbage and those impacts on her adjacent neighborhood.
- Suggested that a Chick-fil-a would be better located in a different neighborhood.

Greg Hoque, Resident on Arroyo Seco Drive:

- Advised that he has been a resident here since 1958.
- Reported that one of his neighbors could not make it and he is bringing a letter from that neighbor to give to the Commission.
- Stated that he has the same concerns as his neighbor's.
- Opined that this use would create terrible traffic jams on Bascom. Additionally some of the traffic exiting this location will no doubt often make another immediate right turn onto Arroyo Seco Avenue in order to avoid the busier Bascom Avenue.
- Stated that this is not a good idea at all.
- Advised that restaurants don't always have scrubbers on their exhaust. They already smell the Habit Burgers in the air. With this addition, they risk adding the aroma of Chick-fil-a chicken to their air.

Ken Schmidt, Resident on Arroyo Seco Drive:

- Reported that he has been in Campbell since 1983.
- Stated that over the last 10 years the changes have been wonderful.
- Said that Campbell is a beautiful place to live.
- Advised that Chick-fil-a restaurants generate \$4.4 million per location. Having one in Campbell will be great for the City in terms of tax revenue.
- Stated that he looks forward to this addition of a Chick-fil-a.

Kim Moynier, Resident on N. Midway Street:

- Said that she has lived in her neighborhood for 15 years and loves it. She also loves being near the Pruneyard.
- Admitted to being conflicted as to why this restaurant won't match that (Chick-fil-a).
- Explained that a drive-thru creates a car culture. That goes against a walkable area where people walk around.
- Stated that she is surprised by the number of fast-food restaurants around here.
- Predicted that traffic will be a problem.
- Pointed out that she has never seen a Chick-fil-a located within a neighborhood. This location is so close to a neighborhood.
- Expressed concerns about pedestrian safety as well as pollution. There is also the issue of food smells and pass through traffic that would likely be drawn into their neighborhood. Additionally, there will likely be noise impacts from car radios playing. The use will draw crowds and a lot of traffic.
- Reminded that this is a very popular restaurant. It's a madhouse.
- Added that she loves their food but doesn't want this drive-thru restaurant in her neighborhood.
- Concluded that it would impact their quality of life.
- Said it is similar to In-N-Out.
- Pointed out that it is expensive to live here and we have the right to say what goes into our neighborhood.
- Stated that she wants the neighborhood that she bought into in 2000.
- Suggested the development of new Ordinance rules on how many fast-food restaurants should be allowed.

Steve Stein, Resident on El Solyo:

- Said he is a 60-plus-year resident and is concerned about having 22 cars idling in a drive-thru queue.

Patrick Murphy, Resident on Arroyo Seco:

- Said his concern is traffic.
- Advised that his home is two houses down from the Denny's property.
- Said that they would experience a greater problem with cut-thru traffic as a result of this Chick-fil-a being in this location. It will make the existing bad traffic situation worse.
- Added that he understands that Chick-fil-a is a great organization and offers good food but he doesn't want it in his neighborhood.

Gary McCumber:

- Questioned where the estimated 80 Chick-fil-a employees are going to park.
- Responded to his own question, "They will park on our residential streets."
- Added that a fast-food restaurant won't pay their employees enough to live in our neighborhood.

Chair Rich closed the Public Hearing for Agenda Item No. 3.

Chair Rich asked each Commissioner to provide some direction to staff and the applicant moving forward.

Commissioner Krey:

- Stated that no one wants more traffic. Bascom Avenue is one of the busier streets that we have.
- Advised that he hears the neighborhood concerns and expected them.
- Said that whether this is the best location, he doesn't know. It's better than a lot of others.
- Said that this is a tough issue. He questions the queueing of up to 22 cars on site.
- Stressed the need to ensure that the queueing doesn't go out onto Bascom Avenue.
- Opined that the design was pretty nice.
- Admitted that he tried to do the math on the parking area space needed to accommodate up to 100 cars per hour using the drive thru plus 50 parked cars for indoor customers at this site.
- Concluded that we really need a traffic study to evaluate this volume.

Commissioner Ching:

- Said that as to architectural style and proposed landscaping, he likes a contemporary design.
- Stated that this initial proposed architectural design is not a standout design.
- Encouraged the applicant to develop a more notable building design.
- Stated that Chick-fil-a sounds like a good restaurant.
- Admitted that he cannot see it as enhancing this neighborhood.

- Stressed the need to think about how best to mitigate any negative impacts from this proposed use.
- Added that he doesn't have any solutions for how they can get around these concerns.

Commissioner Hernandez:

- Said she mirrors the comments of Commissioner Ching.
- Listed the easier issues first. As to the proposed building renderings, she too prefers a more contemporary architectural design. The design with stacked stone or wood had a better look to it.
- Expressed concern about any deficiency in provided parking on site. They need to address that during redesign so that no parking modification permit is required or requested.
- Discussed the impacts on the neighborhood.
- Advised that she lives in that neighborhood over on the east part of it closer to Leigh Avenue. She is very familiar with the traffic. There's a lot of traffic there already. Waze has provided people with ways around Hamilton, Bascom and Leigh via their residential neighborhoods.
- Predicted that those who exit from this proposed Chick-fil-a restaurant on Bascom will go down Arroyo Seco or Campbell Avenue. This added traffic will impact that neighborhood even more.
- Questioned why they are going into this particular neighborhood. It is one with a very walkable culture.
- Concluded that she will wait to see what the traffic study shows but she thinks it's pretty obvious what it's going to be.

Commissioner Ostrowski:

- Agreed with Commissioner Hernandez. Particularly on the issue of walking.
- Pointed out that the Bascom Corridor Project calls for wider sidewalks to accommodate pedestrian use.
- Added that here we are looking at a drive-thru that has a projected 100 cars per hour. That equals about 30 seconds per customer. It's hard to see that rate being achieved.
- Reported that YELP reviews mentioned delays in delivering food.

Commissioner Rivlin:

- Reiterated that it seems the model for Chick-fil-a is that half the cars coming onto the site are utilizing the drive-thru service.
- Said that there should be efforts to encourage more of a pedestrian experience and access.
- Added that as to the design side, he appreciates the connection to the landscape.
- Admitted that there are constraints to this site and issues of existing traffic.
- Reported that he had recently visited the Chick-fil-a on S. First Street in San Jose.

Chair Rich:

- Wished everyone in the room a "good morning" given the midnight hour had arrived.

- Stated the need to compare the traffic study done for this business to the one that was prepared for Denny’s.
- Reported that the Pruneyard accommodates bicycles including a bike concierge and suggested the inclusion of bike racks for Chick-fil-a.
- Added that perhaps charging stations would be a good idea as well.

Planner Cindy McCormick advised that the site plan includes two EV stations.

Chair Rich suggested different designs that complement the Pruneyard and other newer buildings in the immediate area such as Habit Burger.

Director Paul Kermoyan:

- Reminded that the design for the Habit Burger location originally came in as glass and steel. The Commission told them to work with staff to find a way to warm the design up a bit.

Commissioner Ostrowski suggested including an outdoor eating area and moving the indoor play area outside.

Commissioner Rivlin:

- Said he understands that play spaces associated with fast-food restaurants is something that is on the way out. Perhaps it is not warranted.
- Added that taking it out would leave additional space for exterior landscaping and open space.

Chair Rich said it would be important to mitigate the placement of trash enclosures in relation to adjacent residential properties.

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**REPORT OF THE COMMUNITY DEVELOPMENT DIRECTOR**

Director Paul Kermoyan had no additions to his written report.

**ADJOURNMENT**

The Planning Commission meeting adjourned at 12:09 a.m. to the next Regular Planning Commission Meeting of **April 24, 2018**.

SUBMITTED BY: \_\_\_\_\_  
Corinne Shinn, Recording Secretary

APPROVED BY: \_\_\_\_\_  
Michael L. Rich, Chair

ATTEST: \_\_\_\_\_  
Paul Kermoyan, Secretary