



**MINUTES
FREMONT PLANNING COMMISSION
REGULAR MEETING OF JUNE 9, 2016**

- CALL TO ORDER:** Chairperson Salwan called the meeting to order at 7:00 p.m.
- PRESENT:** Chairperson Salwan, Commissioners Bonaccorsi, Karipineni, Leung, Reed, Salwan
- ABSENT:** Commissioners Dorsey and Pentaleri
- STAFF PRESENT:** Wayne Morris, Assistant Planning Manager
Prasanna Rasiah, Senior Deputy City Attorney
Ingrid Rademaker, Principal Planner
Wayland Li, Senior Planner
Chavez Company, Remote Stenocaptioning
Napoleon Batalao, Video Technician
- APPROVAL OF MINUTES:** Regular meeting minutes of April 14, 2016 were unanimously approved as submitted by all those present.
- DISCLOSURES:** Commissioner Bonaccorsi was contacted by John Weed regarding item one.
- CONSENT CALENDAR** None

PUBLIC/ORAL COMMUNICATIONS

Chris Cavette, resident, read a letter from his wife Alice Cavette. She commended the minutes from the Kimber Park, April 14, 2016, Planning Commission meeting and praised the Commissioners for asking so many questions and discussing the item thoroughly. She felt their efforts had made the City Council meeting, on June 7, 2016, go so much more quickly. Mr. Cavette echoed his wife's sentiment.

PUBLIC HEARING ITEMS

- Item 1. **INDUSTRIAL ZONING TEXT AND MAP AMENDMENTS - Citywide - PLN2016-00213** - To consider a Zoning Text Amendment to Title 18 (Planning and Zoning) of the Fremont Municipal Code to amend standards, terminology, allowable uses and special provisions for conformity with General Plan policies and implementation measures pertaining to industrial land uses, and provide enhancement

and clarification of existing regulations related to both development and use of property within the City, a Zoning Map Amendment to rezone parcels throughout the City to provide conformity with the General Plan Land Use Map, and a finding that no further environmental review is required as a Final Environmental Impact Report (EIR) (SCH#2010082060) was previously certified for the comprehensive General Plan Update and the proposed project would implement the General Plan.

Staff requests that the following corrections be included in the Staff Report:

Yoga and pilates studios can currently be classified under “fitness and recreational sports centers” or “other schools and instruction” in the Warm Springs Innovation District, City Center, Downtown, Commercial and Mixed Use, and Industrial zoning districts. Staff is recommending that the Fremont Municipal Code (FMC) be modified to clarify that yoga and pilates studios are classified under “fitness and recreational sports centers” in these zoning districts. Accordingly, staff requests that the following corrections be made to the draft ordinance:

Draft Ordinance:

- *FMC Table 18.45.060-1 (packet pages 26-27, exhibit pages 10-11) amended to read as follows:*

Table 18.45.060-1: Commercial and Mixed Uses

Use	2012 NAICS ₂	Zones							Specific Use Requirements/ Notes
		C-O	C-N	C-G	C-R	MX	TC-P	TC-T	
Fitness and recreational sports centers	713940	--	Z	Z	Z	Z	P ³	P	Includes yoga and pilates studios. See educational services section for sports and recreation instruction (e.g., yoga ; dance, martial arts, etc.)
Indoor commercial recreation ¹ including, billiard hall, bowling alley, gymnasium, indoor tennis, swimming, etc.		--	--	C	C	--	C	Z	Section 18.190.420 Chapter 5.90 applies to swimming facilities See educational services section for sports and recreation instruction (e.g., yoga ; dance, martial arts, etc.)
Other schools and instruction including: dance, exam preparation, gymnastics, judo, language, martial arts, music, photography, and tutoring, and yoga	6116								See assembly, entertainment, recreation section for yoga and pilates studios
Less than 3,000		Z	P	P	--	Z	--	P	

Use	2012 NAICS 2	Zones							Specific Use Requirements/ Notes
		C-O	C-N	C-G	C-R	MX	TC-P	TC-T	
square feet									
More than 3,000 square feet		--	--	P	C	Z	--	Z	

[The remainder of the table is unchanged]

- *FMC Table 18.50.030 (packet pages 40-42, exhibit pages 24-26) amended to read as follows:*

**Table 18.50.090
Uses in Industrial Districts**

	NAICS (2012)	I-S	I-T	I-G	Specific Use Regulations/Notes
Fitness and recreational sports centers ² , and indoor commercial recreation ¹ , including billiard hall, bowling alley, gymnasium, indoor tennis, swimming, etc.	713940	Z	C	--	18.190.025; 18.190.420 and Chapter 5.90 applies to swimming facilities <u>Includes yoga and pilates studios.</u> See educational services section for sports and recreation instruction (e.g., yoga , dance, martial arts, etc.)
Other schools & instruction ² (Examples include instruction for: dance, exam preparation, language, music, photography, sports and recreation, <u>and</u> tutoring, and yoga)	6116				18.190.025 <u>See assembly, entertainment, recreation section for yoga and pilates studios</u>
Serving sensitive populations ¹		Z	--	--	18.190.025
For adults only		Z	Z	--	18.190.025

[The remainder of the table is unchanged]

- *Draft Ordinance Section 9 added, and subsequent sections renumbered:*

SECTION 9. FMC SECTION 18.43.120 AMENDED

Fremont Municipal Code Section 18.43.120 is amended to read as follows:

Sec. 18.43.120 Allowed land uses and permit requirements within city center zoning districts.

P Permitted Use Z Zoning Administrator Permit C Conditional Use Permit A Accessory Use -- Use not allowed
--

Use	2012 NAICS ²	Zones			Specific Use Requirements/ Notes
		CC-TN	CC-UO	CC-UN	
Fitness and recreational sports centers	713940	--	P	P	Includes yoga and pilates studios. See educational services section for sports and recreation instruction (e.g., dance, martial arts, etc.)
Indoor commercial recreation ¹ including: billiard hall, bowling alley, gymnasium, indoor tennis, swimming, etc.		--	C	C	Section 18.190.420; Chapter 5.90 applies to swimming facilities; See educational services section for sports and recreation instruction (e.g., dance, martial arts, etc.)
Educational services	61	--	Z	Z	See assembly, entertainment, recreation section for yoga and pilates studios

[The remainder of the table is unchanged]

- *Draft Ordinance Section 16 added, and subsequent sections renumbered:*

SECTION 16. FMC TABLE 18.47.050 AMENDED

Fremont Municipal Code Table 18.47.050 is amended to read as follows:

**Table 18.47.050
Permitted, Conditionally Permitted, and Prohibited Uses in Place-Type Zones**

Use	2012 NAICS ²	Zones				Specific Use Requirements/ Notes
		D-CA	D-MD	D-E	D-CC	
Fitness and recreational sports centers	713940	P-UFO Z-1st floor	P	P	--	Includes yoga and pilates studios. See educational services section for

P Permitted Use Z Zoning Administrator Permit C Conditional Use Permit A Accessory Use -- Use not allowed						
Use	2012 NAICS ²	Zones				Specific Use Requirements/ Notes
		D-CA	D-MD	D-E	D-CC	
						sports and recreation instruction (e.g., dance, martial arts, etc.)
Indoor commercial recreation ¹ including: billiard hall, bowling alley, gymnasias, indoor tennis, swimming, etc.		--	Z	Z	--	Section 18.190.420; Chapter 5.90 applies to swimming facilities See educational services section for sports and recreation instruction (e.g., dance, martial arts, etc.)
Other schools and instruction including: dance, exam preparation, gymnastics, judo, language, martial arts, music, photography, and tutoring- and yoga	6116					See assembly, entertainment, and recreation section for yoga and pilates studios
Less than 3,000 square feet		P-UFO	Z	Z	--	
More than 3,000 square feet		--	Z	Z	--	

[The remainder of the table is unchanged]

- *Draft Ordinance Section 17 added, and subsequent sections renumbered:*

SECTION 17. FMC TABLE 18.49.040(a) AMENDED

Fremont Municipal Code Table 18.49.040(a) is amended to read as follows:

Table 18.49.040(a)
Permitted, Conditionally Permitted, and Prohibited Uses in WSI District Planning Areas

In Table 18.49.040(a), the letters, symbols and footnotes are defined as follows:	
“P” – Permitted Use	¹ Term is defined in Chapter 18.25.

“Z” – Zoning Administrator Permit		2 When this column includes a number, the use is elaborated on in the North American Industry Classification System (NAICS) Manual. When a NAICS number is shown within parentheses, the use is excluded.											
“C” – Conditional Use Permit		3 When located outside the general plan transit-oriented development (TOD) overlay designation.											
“A” – Accessory Use		4 Subject to performance standards in Section 18.50.040.											
“- -” – Use Not Allowed		5 Subject to the requirements of Section 18.190.220 (High intensity hazardous materials uses). See Table 18.49.040(b) for review levels in WSI districts.											
“UFO” – Upper Floors Only													
“SID” – Southerly of Industrial Drive and easterly of Fremont Blvd.													
WSI District Planning Area >	2012 NAICS ²	WSI-1	WSI-2	WSI-3	WSI-4	WSI-4A	WSI-5	WSI-6	WSI-7	WSI-8	WSI-9	WSI-10	Specific Use Regulations/Notes
Use v													
Fitness and recreational sports centers	713940	Z	Z	P	Z	P	Z	--	--	P	P	Z	Section 18.190.025 Includes yoga and pilates studios. See educational services section for sports and recreation instruction (e.g., dance, martial arts, etc.)
Indoor commercial recreation ¹ including: billiard hall, bowling alley, gymnasias, indoor tennis, swimming, etc.		Z	Z	Z	Z	--	--	--	--	P	--	Z	Section 18.190.420; Chapter 5.90 applies to swimming facilities See educational services section for sports and recreation instruction (e.g., dance, martial arts, etc.)
Other schools and instruction including: dance, exam preparation, gymnastics, judo, language, martial arts, music, photography, and tutoring, and yoga	6116	--	--	Z	Z- UFO	Z- UFO	Z- UFO	--	--	Z	Z	--	See assembly, entertainment, and recreation section for yoga and pilates studios

[The remainder of the table is unchanged]

Senior Planner Li gave a brief presentation on the item.

Commissioner Reed asked how staff was addressing ground floor office space in the Town Center-Pedestrian (TC-P) district.

Senior Planner Li stated that in the TC-P district, staff is proposing to allow offices on the ground floor with a requirement for storefront review.

Commissioner Reed said that he supported ground floor office space to facilitate access for disabled persons and senior citizens.

Chairperson Salwan asked about the proposed deletion of the reference to the Centerville Specific Plan Overlay District and if that was separate from the Centerville Specific Plan or if the plan itself was being eliminated.

Senior Planner Li stated that the Centerville Specific Plan was previously repealed and there was a lingering reference in the Zoning Map which was being eliminated.

Senior Deputy City Attorney Rasiah stated that the Centerville Specific Plan standards were incorporated into the General Plan update in 2011 so the Centerville Specific Plan is now obsolete and the deletion of the reference is just part of the Zoning Text clean up.

Assistant Planning Manager Morris stated that they previously had 10-15 standalone documents which were incorporated into the General Plan.

Chairperson Salwan opened the Public Hearing.

Chris Cavette, resident, stated that he was happy to see the cleanup which would help alleviate some of the concerns about live-work units along a main street, and would include references to the community character element. He asked that the Commissioners ask two questions which he had for staff. He referred to item 45, which proposed a modification of the distance requirement between a gas station and a sensitive land use. He stated that the current zoning code required a minimum distance of 200 feet, and that the proposed changes only required that gasoline service stations not be located directly adjacent to a sensitive use. This did not make sense to him. He also asked about the zoning map changes on Auto Mall Boulevard at the western border which referenced a large plot of land designated public facility and at the end of Stevenson Boulevard at the west side which indicated it was a fire station.

Chairperson Salwan asked that **Senior Planner Li** address Mr. Cavette's questions. **Senior Planner Li** stated that Mr. Cavette was correct in his reading of the code changes with regards to gasoline service stations. He indicated that there had been instances where the 200 foot requirement did not make sense. He stated that their rationale behind loosening the restrictions was that all service stations required a Conditional Use Permit (CUP) and by loosening the restrictions it would allow the Planning Commission discretion to review locations that could make sense that would have otherwise been precluded.

Assistant Planning Manager Morris addressed Mr. Cavette's second question regarding the public facility on Auto Mall Boulevard. He stated that the parcel was acquired several years ago and he was unaware if it had been updated in this round of amendments.

Commissioner Bonaccorsi stated that he felt that this item should have been a part of a study session because it did have a lot of information and tables. He asked for examples of other planned districts which had been proposed to be eliminated.

Commissioner Salwan closed the Public Hearing.

Senior Planner Li stated that there had been nine to ten Industrial Planned Districts (PD) within the City. A few PDs were proposed to be preserved, including,

Ardenwood and Pacific Commons, and the remainder were proposed to be eliminated. He gave examples of PDs proposed to be eliminated, including a PD on Osgood Road which referenced back to the Light-Industrial Zoning District.

Assistant Planning Manager Morris stated that a lot of the PDs were old and antiquated and fairly limiting to a developer. Eliminating those PDs would give property owners more flexibility to acquire more tenants.

Commissioner Bonaccorsi stated that he understood that the City was trying to get away from PDs and stated that he had never seen a situation where a PD in a residential neighborhood was eliminated and asked if there were different limitations or constraints as opposed to with industrial districts.

Assistant Planning Manager Morris stated that he did not believe so. When they had gone through the Commercial Zoning update, some had been eliminated, as well as with the Residential Zoning update. He stated that a lot of it has to do with trying to streamline the process and make it easier for the land owners.

Commissioner Bonaccorsi asked staff to clarify the item which stated that mixed-use developments must comply with the community character element of the general plan and asked staff how they envisioned it would be implemented.

Assistant Planning Manager Morris stated that it was in direct correlation to a project which he had looked at, in which the mixed-use district stated a maximum building height of 65 feet but a few days later he had looked at the general plan and it indicated one to three stories maximum height. He stated that the zoning was for the mixed-use districts citywide but the community character element had different provisions and policies depending on the area. He stated that they had put the community character language into the zoning so that staff and developers would go to the community character element and look at them in tandem.

Commissioner Bonaccorsi referred to a project which had come forward to the Planning Commission but was not recommended for approval to the City Council. He asked if the project would have passed the community character assessment and if there would have been a different thought process had the zoning text amendments been a part of the zoning code.

Assistant Planning Manager Morris stated that the only change that staff was proposing was to add the words community character element into the zoning ordinance so that staff and developers would go to that section of that general plan and stated that it would not have changed what the Planning Commission decided a few weeks ago in regards to that particular project.

Commissioner Bonaccorsi asked for more detail about the proposed deletion of procedural requirements for code enforcement action in the industrial districts. He asked if there were any due process concerns.

Senior Deputy City Attorney Rasiah stated that there was an existing reference in the industrial zoning chapter which stated that code enforcement action had to be complaint driven. He stated that removal of this reference would allow code enforcement action to be initiated from a complaint or as a staff reported item. He

said that this restriction made no sense, and its elimination would allow Code Enforcement staff to better perform its core function.

Commissioner Bonaccorsi referenced the responses to questions that were asked by Mr. Weed via email to staff which referenced physician and dental offices to be on upper floors only unless they could pass a storefront test and offices which previously existed would be grandfathered in. He asked if there was a process in place which would allow an exemption on a case by case basis for privacy concerns of the patients and asked what kind of flexibility staff would have to grant an exemption in that instance so that it would not have to a storefront.

Senior Planner Li stated that the proposal would include a discretionary review process which would allow the Zoning Administrator to approve exceptions to the storefront review requirement.

Commissioner Bonaccorsi mentioned that dental offices could have privacy concerns. He asked if they could apply for a storefront exemption.

Assistant Planning Manager Morris stated that the hope would be that the layout would change; patient treatment would not be in the front but would have the office function in the front and maybe the waiting room. He stated that it was a balance to create a pedestrian friendly environment with the existing uses and new uses which want to come in and do not want to be completely pedestrian friendly. He stated that since 2014 they had made changes to the zoning text multiple times and they continue to make changes. While they have gotten 90 percent of the changes correct, staff recognizes that adjustments need to continue to be made, and that will take time.

Commissioner Bonaccorsi stated that he knew that there had been some concern in the Mission San Jose district of educational facilities that were crowding out other uses. He referred to the email answers which staff had provided which he interpreted to say there would be some sort of follow up assessment of those types of facilities.

Senior Planner Li stated that the educational facilities he was referring to have raised some concerns in certain areas, including the Mission San Jose area. He stated that the use tables in the zoning ordinance group tutoring facilities together with “other educational services” such as; martial arts instruction, photography instruction, etc. He stated that additional research that needed to determine if they were allowing the right mix of those types of uses. He stated that staff is open to looking at the issue but was not prepared to respond at that time.

Commissioner Bonaccorsi asked if the City Council did adopt the Zoning Text Amendments, would education facilities be considered “not permitted.”

Assistant Planning Manager Morris stated that staff had taken yoga and pilates studios out of the “other, educations services” and were not separating out tutoring facilities. He stated that the TC-P went from Mission Boulevard to Anza and the thought process was that maybe they should be allowed on Anza and not the main thoroughfares.

Commissioner Bonaccorsi asked, if someone came in to file for a Conditional Use Permit for a tutoring center, would they be able to under the proposed amendments.

Assistant Planning Manager Morris stated that he thought it said on the upper floor of a building only.

Commissioner Bonaccorsi stated that he felt tutoring centers were an important issue and would like to have staff look at separating the issue out for further discussion and analysis. He stated he thought there was good arguments for stopping them but due to the high demand in certain areas of the city that it would be worth a separate discussion.

Assistant Planning Manager Morris corrected himself, and stated that they had not proposed any changes to tutoring centers in the TC-P and it was not permitted previously.

Vice Chairperson Leung commented that when they had reviewed the issue a few years ago the demand for tutoring or educational centers may not have been in as high of a demand as now.

Vice Chairperson Leung referred to items 19 and 21, the setback requirements and noise standards, because those items were always brought up with various projects brought before the Commission. She asked for the reason behind the updates.

Senior Planner Li stated that when the City's general plan was adopted in 2011 it had updated policies and maps and the zoning that was in place at the time was not in conformance with the updated general plan, which necessitated the updates.

Vice Chairperson Leung asked if it was not updated with the adoption of the general plan in 2011.

Senior Planner Li stated that the zoning ordinance was not updated in 2011 along with the general plan.

Vice Chairperson Leung asked if the update was different from what they saw at that time.

Assistant Planning Manager Morris stated that it would be different from what they had seen; he referred to item 20 which increased the floor area ratio in the Tech-Industrial district from 0.35 to 0.45 to be consistent with the General Plan. He stated that with the proposed zoning text amendments were making the general plan and the zoning ordinance consistent per State requirements.

Commissioner Karipineni commented on **Commissioner Bonaccorsi's** point regarding the educational facilities, and stated that it was a moot point. She stated that she agreed with him that it was a separate issue and pointed out that there was a really nice art studio on Mission Boulevard that could qualify as an educational service but that it did contribute to the pedestrian environment.

Commissioner Reed moved for staff recommendation.

Commissioner Bonaccorsi seconded the motion and offered a friendly amendment to request that staff look at educational service uses in the future.

IT WAS MOVED (REED/BONACCORSI) AND CARRIED BY THE FOLLOWING VOTE (5-0-0-2-0) THE PLANNING COMMISSION – FOUND THAT THE PROPOSED ZONING TEXT AND MAP AMENDMENTS ARE IMPLEMENTATION MEASURES OF THE GENERAL PLAN FOR WHICH A FINAL ENVIRONMENTAL IMPACT REPORT (SCH#2010082060) WAS

PREVIOUSLY PREPARED AND CERTIFIED, AND FIND THAT NO FURTHER ENVIRONMENTAL REVIEW IS REQUIRED;

AND

FOUND THAT THE PROPOSED ZONING TEXT AND MAP AMENDMENTS ARE CONSISTENT WITH THE GENERAL PLAN, INCLUDING POLICIES IN THE LAND USE, COMMUNITY CHARACTER, ECONOMIC DEVELOPMENT, SAFETY AND PUBLIC FACILITIES ELEMENTS AS ENUMERATED IN THE STAFF REPORT;

AND

FOUND THAT THE PROPOSED ZONING TEXT AND MAP AMENDMENTS WOULD FURTHER THE PUBLIC INTEREST, CONVENIENCE, AND GENERAL WELFARE OF THE CITY BY ENSURING THAT THE FREMONT MUNICIPAL CODE IS CONSISTENT WITH THE GENERAL PLAN AS REQUIRED BY STATE LAW, AND PROVIDE FOR ZONING DISTRICT USES AND DEVELOPMENT STANDARDS THAT ARE RELEVANT TO CURRENT DEVELOPMENT TRENDS, EASY TO USE, FLEXIBLE, AND EQUITABLE;

AND

RECOMMENDED THAT THE CITY COUNCIL INTRODUCE AN ORDINANCE APPROVING A ZONING TEXT AMENDMENT AND A ZONING MAP AMENDMENT, AS SHOWN ON EXHIBIT "A;"

AND

RECOMMENDED THAT THE CITY COUNCIL DIRECT STAFF TO PREPARE AND THE CITY CLERK TO PUBLISH A SUMMARY OF THE ORDINANCE.

The motion carried by the following vote:

AYES: 5 – Bonaccorsi, Karipineni, Leung, Reed, Salwan
NOES: 0
ABSTAIN: 0
ABSENT: 2 – Dorsey and Pentaleri
RECUSE: 0

DISCUSSION ITEMS None

MISCELLANEOUS ITEMS

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.
 - Report on actions of City Council Regular Meeting
 - **Assistant Planning Manager Morris** stated that, at the June 7, 2016 City Council meeting, the MidPen Stevenson project and the Kimber Park Private Open Space projects were approved.
- Information from Commission: Commission members may report on matters of interest.

Meeting adjourned at 7:58 pm.

SUBMITTED and APPROVED BY:

Handwritten signature of Courtney Fox in blue ink.

Courtney Fox, Recording Clerk
Planning Commission

Handwritten signature of Wayne Morris in blue ink.

Wayne Morris, Secretary
Planning Commission