



*C. Blake Huntsman, Chair
Doug Boxer, Vice Chair
Michael Colbruno
Sandra E. Gálvez
Vince Gibbs
Vien Truong
Madeleine Zayas-Mart*

December 2, 2009
Regular Meeting

MEAL GATHERING 5:30P.M.

Hearing Room 3, City Hall, 1 Frank Ogawa Plaza, Oakland
Open to the public (Members of the public may bring their own meals if desired.
Consumption of food is not required to attend.)

BUSINESS MEETING 6:00 P.M.

Hearing Room 1, City Hall, One Frank H. Ogawa Plaza

Persons wishing to address the Commission on any item on the agenda, including Open Forum and Director's Report, should fill out a speaker card and give it to the Secretary "*Agenda items will be called at the discretion of the Chair not necessarily in the order they are listed on the Agenda*". Speakers are generally limited to two minutes at the discretion of the Chair. Applicants and appellants are generally limited to five minutes.

The order of items will be determined under "Agenda Discussion" at the beginning of the meeting. With the exception of Open Forum, a new item will not be called after **10:15 p.m.**, and the meeting will adjourn no later than **10:30 p.m.** unless the meeting is extended by the Chair with the consent of a majority of Commissioners present.

Please check with the Planning Department prior to the meeting regarding items that may be continued. Any agenda item may be continued, without the hearing on the matter being opened or public testimony taken, at the discretion of the Chair. Persons wishing to address the continued item may do so under Open Forum.

For further information on any case listed on this agenda, please contact the case planner indicated for that item. For further information on Historic Status, please contact the Oakland Cultural Heritage Survey at 510-238-6879. For other questions or general information on the Oakland City Planning Commission, please contact the Community and Economic Development Agency, Planning and Zoning Division, at 510-238-3941.

♿ This meeting is wheelchair accessible. To request materials in alternative formats, or to request an ASL interpreter, or assistive listening device, please call the ***Planning Department at 510-238-3941*** or ***TDD 510-238-3254*** at least three working days before the meeting. Please refrain from wearing scented products to this meeting so attendees who may experience chemical sensitivities may attend. Thank you.



**New web-site staff report
download instructions**

Staff reports for items listed on this agenda will be available by 3:00 p.m. the Friday before the meeting, to any interested party, at the Community and Economic Development Agency, Planning and Zoning Division, 250 Frank

H. Ogawa Plaza, Oakland, California 94612. Reports are available at the Strategic Planning Division on the 3rd floor (Suite 3315), which closes at 5:00 p.m.

Staff reports are also available on-line, by 3:00 p.m. the Friday before the meeting, at www.oaklandnet.com by searching “Frequently Visited Pages” located on the City of Oakland Homepage. Clicking on “Planning Commission Meetings” will open a menu of Planning Commission and Committee Agendas. Staff reports are available on the selected agenda by clicking on the highlighted case file number. You will need to ensure that your computer will accept pop-ups from the host site (oaklandnet.com) and that your computer has a later version of Adobe Acrobat Reader installed. For further information, please call **510-238-3941**.

If you challenge a Commission decision in court, you will be limited to issues raised at the hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, the hearing. Any party seeking to challenge in court those decisions that are final and not administratively appealable to the City Council must do so within ninety (90) days of the date of the announcement of the final decision, pursuant to Code of Civil Procedure Section 1094.6, unless a shorter period applies.

Please note that the descriptions of the applications found below are preliminary in nature and that the projects and/or descriptions may change prior to a decision being made.

While attending Planning Commission Meetings, parking in the Clay Street Garage is free. Attendees should see staff at the meeting for validation of parking tickets.

Applicants or members of the public that plan power point presentations: Please contact Daria Edgerly at dedgerly2@oaklandnet.com or 510-238-2912 or Gwen Brown at gbrown@oaklandnet.com or 510-238-6194 at least 48 hours prior to the meeting.

ROLL CALL

WELCOME BY THE CHAIR

COMMISSION BUSINESS

Agenda Discussion

Director’s Report

Committee Reports



Commission Matters

City Attorney's Report

OPEN FORUM

At this time members of the public may speak on any item of interest within the Commission's jurisdiction. Speakers are generally limited to two minutes or less if there are six or less speakers on an item, and one minute or less if there are more than six speakers.

CONSENT CALENDAR

The Commission will take a single roll call vote on all of the items listed below in this section. The vote will be on approval of the staff report in each case. Members of the Commission may request that any item on the Consent Calendar be singled out for separate discussion and vote.

PUBLIC HEARINGS

The hearing provides opportunity for all concerned persons to speak; the hearing will normally be closed after all testimony has been heard. If you challenge a Commission decision in court, you will be limited to issues raised at the public hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, the public hearing.

The Commission will then vote on the matter based on the staff report and recommendation. If the Commission does not follow the staff recommendation and no alternate findings have been prepared, then the vote on the matter will be considered a "straw" vote, which essentially is a non-binding vote directing staff to return to the Commission at a later date with appropriate findings and, as applicable, conditions of approval that the Commission will consider in making a final decision.

If you wish to be notified on the decision of an agenda item, please indicate the case number and submit a self-addressed stamped envelope, for each case.

Planning Commission decisions that involve "major" cases (i.e., major variances, major conditional use permits) are usually appealable to the City Council. Such appeals must be filed within ten (10) calendar days of the date of the announcement of the Planning Commission decision and by 4:00 p.m. An appeal shall be on a form provided by the Planning and Zoning Division of the Community and Economic Development Agency, and submitted to the same at 250 Frank H. Ogawa Plaza, Suite 2114, to the attention of the Case Planner. The appeal shall state specifically wherein it is claimed there was error or abuse of discretion by the Planning Commission or wherein their decision is

not supported by substantial evidence and must include payment in accordance with the City of Oakland Master Fee Schedule. Failure to timely appeal will preclude you from challenging the City's decision in court. The appeal itself must raise each and every issue that is contested, along with all the arguments and evidence in the record which supports the basis of the appeal; failure to do so will preclude you from raising such issues during your appeal and/or in court.

Any party seeking to challenge a final decision in court must do so within ninety (90) days of the date of the announcement of a final decision, pursuant to Code of Civil Procedure section 1094.6, unless a shorter period applies.

Interested parties are encouraged to submit written material on agenda items in advance of the meeting and prior to the close of the public hearing on the item. To allow for distribution to the Commission, staff, and the public, 25 copies of all material should be submitted. Material submitted at least ten days prior to the meeting may be included as part of



the agenda packet; material submitted later will be distributed at or prior to the meeting. To ensure that material is distributed to Commissioners, it should be received by the Commission.

1.	Location:	464 Third Street (APN 001-0137-006-00)
	Proposal:	Alcoholic Beverage Service (Not in a Full Service Restaurant) in a 2,000 square foot space in Jack London Square
	Contact Person/Phone Number:	Rebecca Boyles, Mark Martone, (510) 355-5858
	Owner:	Prata Da Cruz
	Case File Number:	CMVM09-209
	Planning Permits Required:	Major Conditional Use Permit and Major Variance for Alcoholic Beverage Sales (beer retailer and tasting room)
	General Plan:	E-7 Estuary Plan (Retail 1 Dining Entertainment 2 District)
	Zoning:	C-45 Community Shopping Commercial Zoning District, S-4 Design Review Combining Zoning District
	Environmental Determination:	Exempt, Section 15301 of the State CEQA Guidelines: Modification of small structures Additional citation: Section 15183 of the State CEQA Guidelines: Projects consistent with a community plan, general plan or zoning
	Historic Status:	Not Designated Historic Property/City Landmark (No substantial exterior alterations proposed).
	Service Delivery District:	Metro
	City Council District:	3
	Staff Recommendation:	Decision based on staff report
	Finality of Decision:	Appealable to the City Council within 10 days
	For Further Information:	Contact David Valeska at (510) 238-2075 or dvalueska@oaklandnet.com

APPEALS

The Commission will take testimony on each appeal. If you challenge a Commission decision in court, you will be limited to issues raised at the public hearing or in correspondence delivered to the Zoning Division, Community and Economic Development Agency, at, or prior to, to the public hearing; provided, however, such issues were previously raised in the appeal itself.

Following testimony, the Commission will vote on the report prepared by staff. If the Commission reverses/overturns the staff decision and no alternate findings have been prepared, then the vote on the matter will be considered a "straw" vote, which essentially is a non-binding vote directing staff to return to the Commission at a later date with appropriate findings and, as applicable, conditions of approval that the Commission will consider in making a final decision.

Unless otherwise noted, the decisions in the following matters are final and not administratively appealable. Any party seeking to challenge these decisions in court must do so within ninety (90) days of the date of the announcement of the final decision, pursuant to Code of Civil Procedure section 1094.6, unless a shorter period applies.

2.	Location:	5007 ("5001") Bancroft Avenue (APN: 035 -2362-001-00) <i>Former "La Raza Liquors & Market"</i>
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Proposal:	<u>2 Appeals on Case no. DAA08002</u> Appeals from the Administrative Hearing Officer's Revised Order dated August 14, 2009 that (1) revoked the business operator's Deemed Approved Status for a Legal Nonconforming Alcoholic Beverage Sales Commercial Activity due to violations of stipulated conditions & (2) required the operator to vacate the location and transfer their ABC license to a new operator who would establish a new business at this location.
	<u>Appeal no. 1:</u> OPD appealed the decision because (a) the revocation of the Deemed Approved Status should apply to the property and not the business operator, and alcohol would thus no longer be permitted to be sold at this location; and (b) the language referencing the transfer of an ABC license is in violation of State law and should be stricken from the order.
	<u>Appeal no. 2:</u> The operator appealed the revocation of its status on the basis they had complied with stipulated conditions; the operator would thus be permitted to continue sale of alcohol at the location
Appellants/ Phone Numbers:	<u>Appeal no. 1:</u> Oakland Police Department - Alcoholic Beverage Action Team (OPD - ABAT) / (510) 777-8674 <u>Appeal no. 2:</u> Clinton Killian, Attorney for Mohsen Mohammed Ali Albasiri & Ali Ahmad Obad / (510) 625-8823
Owner:	Lue R. Bells
Case File Numbers:	<u>Appeal no. 1:</u> A09188 <u>Appeal no. 2:</u> A09190
General Plan:	Urban Residential / <i>Mixed Housing Type Residential (rear)</i>
Zoning:	C-30 District Thoroughfare Commercial Zone / S-4 Design Review Combining Zone / <i>R-70 High Density Residential Zone (rear)</i>
Environmental Determinations:	CEQA Guidelines Section 15321 (Enforcement Actions by Regulatory Agencies)
Historic Status:	Potential Designated Historic Property (PDHP); Survey Rating: Dc3 (potentially secondary importance or superior example)
Service Delivery District:	IV- San Antonio / Fruitvale
City Council District:	5 – Vice Mayor De La Fuente
Dates Filed:	<u>Appeal no. 1:</u> August 19, 2009 <u>Appeal no. 2:</u> August 27, 2009
Staff Recommendation:	<i>Decision based on staff report</i> <i>Revocation of Deemed Approved status is appealable to City Council (OMC Sec. 17.156.170); modified conditions are a final decision and not administratively appealable</i>
Finality of Decision:	
For further information:	Contact case planner Aubrey Rose, Planner II at (510) 238-2071 or arose@oaklandnet.com

Admin Record VOL. 1
Admin Record VOL. 2
Exhibit E



Approval of Minutes: November 18, 2009

Correspondence

City Council Actions

OPEN FORUM

At this time members of the public may speak on any item of interest within the Commission's jurisdiction. Speakers are generally limited to two minutes or less if there are six or less speakers on an item, and one minute or less if there are more than six speakers.

ADJOURNMENT By **10:30 P.M.** unless a later time is agreed upon by a majority of Commissioners present.

SCOTT MILLER
Zoning Manager
Planning and Zoning Division

NEXT REGULAR MEETING: December 16, 2009