

PLANNING COMMISSION MEETING AGENDA

Wednesday, January 24, 2024

7:00 p.m.

City Council Chambers – 200 Old Bernal Ave.

The meeting will be held at the City Council Chambers – 200 Old Bernal Ave. – and will be broadcast live at <https://www.youtube.com/user/TheCityofPleasanton>.

Public participation: It is requested that members of the public wishing to address the Planning Commission submit a speaker card. When public comment is opened on an agenda item, individuals may speak once per agenda item.

In Person at the City Council Chambers:

- Submit a physical speaker card to the Recording Secretary at the meeting. When your name is called, please provide comment at the podium.

PUBLIC HEARING PROCEDURE

Each of the items listed will be heard as shown on the agenda unless the Planning Commission chooses to change the order. As each item is called, the hearing will proceed as follows:

- A Planning Division staff member will make a presentation on each case and answer Planning Commission questions, as needed.
- The applicant will be asked to present, if desired, or answer questions. Applicant presentations should be no longer than ten minutes.
- The Chair then calls on anyone desiring to speak on the item. Speakers are requested to state their names for the public record and to keep their testimony to no more than three minutes each, with minimum repetition of points made by previous speakers and by being as brief as possible in making their testimony.
- Following public testimony, the applicant will be given the opportunity to respond to issues raised by the public. The response should be limited to five minutes.

The public hearing will then be closed. The Planning Commissioners then discuss among themselves the application under consideration and act on the item. Planning Commission actions may be appealed to the City Council. Appeals must be filed with the City Clerk's Office within 15 days of the Planning Commission's action.

The Planning Commission Chair may enforce other rules as may further the fair and efficient running of the meeting, such as reducing the amount of testimony time allotted to the applicant and all those who wish to speak when the meeting agenda is lengthy or when there are numerous speakers for any specific item. The audience is requested to respect and extend courtesy to all those wishing to testify on all cases by being quiet while others are speaking.

CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

AGENDA AMENDMENTS

CONSENT CALENDAR - *Consent Calendar items are considered routine and will be enacted by one motion unless a request for removal for discussion or explanation is received from the Planning Commission or a member of the public by submitting a speaker card for that item.*

1. Actions of the Zoning Administrator
2. **P23-0840, Kidsrobotic, Inc., 6654 Owens Drive** – Request for Conditional Use Permit approval to establish a tutoring facility that serves up to 24 students August through May, and no more than 40 students during summer and winter school breaks at the existing facility located at 6654 Owens Drive
3. Approve the minutes of December 13, 2023

MEETING OPEN TO THE PUBLIC

4. Public Comment from the audience regarding items not listed on the agenda – *Speakers are encouraged to limit comments to 3 minutes.*

PUBLIC HEARINGS AND OTHER MATTERS

5. **P24-0023, Stacy Call, Bottoms Up Espresso, 4299 Valley Avenue** – Appeal of the Zoning Administrator's decision denying an application for Zoning Approval for Bottoms Up Espresso at an existing drive-up kiosk located at 4299 Valley Avenue

MATTERS FOR COMMISSION'S REVIEW/ACTION/INFORMATION

6. Reports from Meetings Attended (e.g., Committee, Task Force, etc.)
7. Actions of the City Council
8. Future Planning Calendar

MATTERS INITIATED BY COMMISSION MEMBERS

ADJOURNMENT

Notice

Under Government Code §54957.5, any writings/documents regarding an item on this agenda provided to a majority of the Planning Commission after distribution of the agenda packet will be available for public inspection at City Hall in the Planning Division, 200 Old Bernal Avenue, Pleasanton.

Accessible Public Meetings

The City of Pleasanton can provide special assistance for persons with disabilities to participate in public meetings. To make a request for a disability-related modification or accommodation (e.g., an assistive listening device), please contact Melinda Denis, Planning and Permit Center Manager, by phone at 925-931-5631 or by email at mdenis@cityofpleasantonca.gov at the earliest possible time. If you need sign language assistance, please provide at least two working days' notice prior to the meeting date.

SUBJECT: Actions of the Zoning Administrator

P23-0899, David Mena/Mena Architects

Application for Design Review approval to add a new rollup door to the northside of the building, a new exterior door on the south side of the building, and minor changes to existing landscape to accommodate the project at the existing commercial building located at 3938 Valley Avenue.

Approved. Appeal period expires February 7, 2024. (*Riley Eidson, 931-5610*)

P23-0995, Sundarsan Krishnan & Savitha Sridharan

Application for Administrative Design Review approval to construct an approximately 488-square-foot, single-story addition in the front of the existing house and for an approximately 41-square-foot new front entry porch located at 2122 Corte Ricardo Court.

Approved. Appeal period expires February 7, 2024. (*Jenny Soo, 931-5615*)

P23-1009, Tony Meo/Custom Residential Design

Application for Administrative Design Review approval to construct an approximately 500-square-foot single-story addition, an approximately 78-square-foot, second-story addition and a second-story balcony to the right (east) of the existing residence located at 4256 Brindisi Place.

Approved. Appeal period expires February 7, 2024. (*Riley Eidson, 931-5610*)

P23-1002, Pat Ruvalcaba/PJR Design Associates

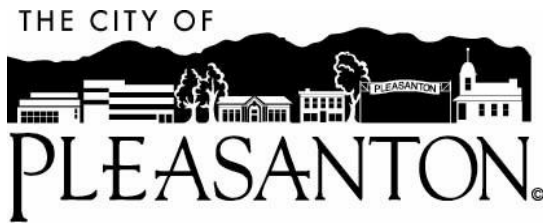
Application for Administrative Design Review approval to construct an approximately 11 feet 4 inch-tall open pergola in the rear yard of the residence located at 5846 Corte Margarita.

Approved. Appeal period expires February 7, 2024. (*Riley Eidson, 931-5610*)

P23-0994, Terry Townsend

Application for Administrative Design Review approval to demolish approximately 395 square feet at the rear of an existing historic residence and construct an approximately 823-square-foot first-story addition to the rear of the existing historic residence located at 1162 Division Street.

Approved. Appeal period expires February 7, 2024. (*Diego Mora, 931-5618*)



Planning Commission Agenda Report

January 24, 2024
Item 2

SUBJECT: P23-05840

APPLICANT: Tao Wang, KidsRobotics Inc.

PURPOSE: Request for Conditional Use Permit approval to establish a tutoring facility that serves up to 24 students August through May, and no more than 40 students during summer and winter school breaks at 6654 Owens Drive.

LOCATION: 6654 Owens Drive

GENERAL PLAN: Business Park

ZONING: PUD-I/C-O (Planned Unit Development – Industrial/Commercial, Office) District

EXHIBITS:

- A. Draft Resolution and Conditions of Approval
- B. Narrative/Project Plans dated “Received December 4, 2023”
- C. Location and Notification Map

STAFF RECOMMENDATION

Staff recommends the Planning Commission approve Conditional Use Permit (CUP) Case No. P23-0840 based on the findings and subject to the draft conditions of approval in Exhibit A.

EXECUTIVE SUMMARY

The applicant requests CUP approval to establish a tutoring facility that serves up to 24 students August through May, and no more than 40 students during summer and winter school breaks at 6654 Owens Drive. Tutoring facilities with more than 20 students at a time require Planning Commission approval of a CUP at this location. As proposed, staff recommends the Planning Commission find this use is consistent with the objectives of the zoning district and will be compatible with the surrounding uses. Conditions of approval have been included which will ensure the safety and general welfare of the surrounding area, and the City in general, are maintained.

BACKGROUND

The Pleasanton Business Park Center Planned Unit Development (PUD) was approved on February 10, 1981, by the City Council under Ordinance No. 962. The PUD was modified in 2010 (PUD-80-14-12M) to conditionally permit tutoring facilities with more than 20 students at a given time. The applicant is requesting approval of a CUP for a tutoring facility that serves up to 24 students August through May, and no more than 40 students during summer and winter

school breaks within an existing building at 6654 Owens Drive. The subject site is zoned PUD-I/C-O District. As stated above, tutoring facilities with more than 20 students are conditionally permitted within the PUD-I District with the Planning Commission’s approval of a CUP.

SITE AND AREA DESCRIPTION

The subject parcel is a flat and fully developed approximately 6.3-acre parcel at the southwest corner of the Owens Drive loop. There are four single-story, multi-tenant buildings constructed on the subject site, consisting of 12 tenant spaces. The applicant would occupy one suite within the building at 6654 Owens, which is approximately 2,699 square feet in area. The subject site and building are accessible from three driveways off Owens Drive. Figure 1 below shows an aerial photograph of the subject site and building. Pleasanton Business Park Center includes a mix of uses such as: professional offices, light manufacturing and industrial uses, and language schools. The site is surrounded by similar business park uses. There are 204 shared parking spaces on the subject site.

Figure 1: Aerial photograph of subject site



PROPOSED PROJECT

The applicant proposes to provide Science, Technology, Engineering, and Math (STEM) educational and recreational services to children in grades K-12, providing courses in engineering, artificial intelligence (AI) programming, humanoid robots, drones, web design, and game development. The tenant space KidsRobotics occupies includes six classrooms, which

will be occupied with a schedule staggered by 15-minute intervals. The proposed days and hours of operation, activities, and anticipated number of students are summarized in Figure 2 below. The applicant is proposing a maximum of 40 students at one time during the winter and summer school breaks, with a maximum of 24 students at one time during the regular school schedule, May to August.

Figure 2: Days and Hours of Operation

August through May, Monday through Friday	3:00 - 4:00	3:15 - 4:15	4:30- 5:30	4:45- 5:45	6:00- 7:00	6:15- 7:15
Class Room 1	4		4		4	
Class Room 2		4		4		4
Class Room 3	4					
Class Room 4		4	4	4	4	4
Class Room 5	4					
Class Room 6		4	4	4	4	4
Student per class time	12	12	12	12	12	12
Maximum students	24		24		24	
Instructors and Staff	8		8		8	
Maximum number of people in the facility	32		32		32	

Winter/Summer school breaks & June/July, Monday through Friday	8:15 - 3:15	8:45 - 3:45
Class Room 1	5	
Class Room 2		5
Class Room 3	5	
Class Room 4		5
Class Room 5	5	
Class Room 6		5
Conference room	5	
Lab		5
Students per class time	20	20
Maximum students	40	
Instructors and staff	8	
Maximum number of people in the facility	48	

The applicant is not proposing any exterior changes to the building. Please see the attached narrative and project plans (Exhibit B) for additional information on the proposed use.

STAFF REVIEW/ANALYSIS

Conditional uses are those uses which, by their nature, require special consideration so they may be located properly with respect to the objectives of the Municipal Code and with respect to their effects on surrounding properties. In order to achieve these purposes, the Planning Commission is empowered to approve, conditionally approve, or deny applications for CUPs.

Land Use

The subject parcel has a General Plan land use designation of Business Park and is zoned PUD-I/C-O (Planned Unit Development – Industrial/Commercial, Office) District. Tutoring facilities with more than 20 students at any given time are conditionally permitted in Pleasanton Business Park Center. If the CUP were granted, the proposed tutoring facility would have to be operated consistent with the applicable land use regulations.

One of the primary concerns in reviewing a CUP application is the effect of a proposed use on surrounding uses. The other uses on the subject site that surround the subject tenant space are varied, including offices, research and development uses, and a Japanese school. The office uses generally operate Monday through Friday during normal business hours (anywhere from 8 a.m. to 6 p.m.). The proposed tutoring use would be compatible with these existing businesses in that a maximum of 32 people would be on-site at any given time during normal business hours for the majority of the year from May to August, including 24 students and 8 teachers and staff. There would be a greater number of students at any one time on the site during winter and summer school breaks, however, the programs offered are full-day sessions (either 8:15 a.m. - 3:15 p.m., or 8:45 a.m. - 3:45 p.m.). These sessions are longer in duration and would generate fewer overall pick-ups/drop-offs than the shorter after-school sessions. In Pleasanton, tutoring or educational enrichment uses have become a common use in and around business parks and they are typically regarded as compatible uses. Therefore, if the CUP were granted, staff believes the use would be compatible with the surrounding uses.

Should future problems arise with the proposed use, the City would have the ability to bring the application back to the Planning Commission for mitigation, or possible permit revocation, if necessary. Based on the discussion above, staff believes such an action would be unlikely. In addition, staff has included conditions of approval to ensure the proposed use would not generate noise, traffic, or parking shortages such that surrounding uses would be adversely affected. Therefore, from a land use perspective, staff finds the proposed use to be acceptable on the site, as conditioned.

Traffic and Circulation

The Traffic Engineering Division has reviewed the project narrative and plan prepared for the proposed tutoring facility and determined the proposed hours of operation, planned activities, and the associated number of students and staff would not have a significant impact on existing traffic levels. Additionally, the applicant proposes to have a maximum of 24 students at any given time during the majority of the year, with a greater number of students during the summer and winter school break times, which would have a lesser effect on the AM/PM peak hour traffic levels for the other uses at the subject site and the surrounding area. However, should the applicant wish to increase the proposed student numbers for the planned activities and/or alter the hours stated in its narrative, review by the City's Traffic Engineer would be required to assess whether a traffic study would be required and whether payment of traffic fees and implementation of other mitigation measures would be warranted.

Parking

There are 204 shared parking spaces on the subject site. With a combined floor area of approximately 50,775 square feet among the four buildings on-site, the approximate parking ratio at the subject site is one space for every 250 square feet of floor area. With the proposed tutoring facility occupying approximately 2,669 square feet of total floor area, 10 parking spaces would, theoretically, be allocated to the proposed tutoring facility. However, there are

no records of any City-approved parking allocation agreements; therefore, all on-site parking would be shared among all building tenants on the subject site.

Pursuant to Section 18.88.030 (E)(2) of the Pleasanton Municipal Code (PMC), *Schedule of off-street parking space requirements*, uses such as tutoring, music or dance school require one space for each employee, including teachers and administrators, and one additional space for each two students 16 years or older. In total, KidsRobotics requires approximately 20 parking spaces (assuming about half of their students are over 16 years old). Although no spaces are formally allocated to the use, staff finds there would be adequate parking available on-site for all existing uses and the proposed tutoring use because there will be a maximum of eight staff and instructors and 75 percent of the classes will occur outside of normal business hours August through May.

Based on the above parking analysis and recommended conditions of approval, staff believes the proposed tutoring use would not adversely affect parking supply at the subject site or surrounding properties and adequate parking exists on-site to accommodate all existing and proposed uses. However, should parking problems occur, staff has included a condition of approval which allows the Director of Community Development to refer the use permit back to the Planning Commission for possible additional mitigation measures to be applied (Exhibit A). Possible mitigating conditions could include reducing the number of students and/or modifying the class schedule to reduce conflicts with other on-site uses and parking demand.

Noise

The PMC states a proposed conditional use must be in accordance with the objectives of the Zoning Ordinance. One of those objectives is to “promote the stability of existing land uses that conform with the General Plan and to protect them from inharmonious influences and harmful intrusions.” Staff anticipates the proposed tutoring facility would generate interior noise levels comparable to and no different from those of an office or light industrial use. All planned activities would be held indoors, with the exterior doors closed during operating hours. To further minimize any potential noise impacts, staff is recommending the following conditions of approval:

- All exterior doors must remain closed at all times during operating hours;
- Students shall not loiter outside of the building and shall be courteous and quiet when entering or leaving the parking area; and
- The City shall have the right to review the project again to add mitigating conditions should any future complaints regarding noise levels occur. Such conditions could include modifying the hours of operation, reducing the number of persons allowed in the tenant space, and/or requiring sound/noise attenuation to be installed within the subject tenant space.

With the inclusion of the recommended conditions above, staff believes it is unlikely the noise produced by the proposed tutoring facility would adversely affect existing or future adjacent/nearby uses or exceed the noise threshold.

ALTERNATIVES

As articulated above, staff believes the tutoring facility, as proposed and conditioned, is consistent with the objectives of the zoning district. However, alternatives to the proposal that could be considered by the Planning Commission include:

1. Denial of the application. Such an action would limit the applicant's operations to a maximum of 20 students at a time, which is permitted in the zoning district; or
2. Approval of the CUP with modifications. The Planning Commission could approve the CUP, but with fewer students, with modified hours of operation, or other changes to the proposal.

Since staff is able to support the findings to approve the project, as proposed, and believes the project will not adversely impact any existing on-site uses or the surrounding area, staff suggests that neither of the two project alternatives above should be pursued.

PUBLIC NOTICE AND COMMENTS

Notices of this application were sent to surrounding property owners and tenants within a 1,000-foot radius of the site and a notification was posted on-site per the on-site project notification policy. Staff has provided the location and noticing map as Exhibit C for reference. At the time this report was published, staff had not received any public comments about the project.

PLEASANTON BUSINESS PARK CENTER ASSOCIATION

While the City does not require the approval of the Pleasanton Business Park Center Association (Association) prior to Planning Commission consideration, the Association has reviewed the application for the proposed use and found it is in substantial compliance with the Pleasanton Business Park Center guidelines set forth in its Covenants, Codes & Restrictions (CC&Rs).

ENVIRONMENTAL ASSESSMENT

This project is categorically exempt (Section 15301, Class 1, Existing Facilities) from the requirements of the California Environmental Quality Act (CEQA). Therefore, no environmental document accompanies this report.

SUMMARY/CONCLUSION

As proposed and conditioned, staff believes the proposed tutoring facility will be compatible with, and will not detrimentally affect, the existing or future on-site and adjacent/nearby uses or residences. Conditions of approval have been included which will ensure that the safety and general welfare of the surrounding area, and the City in general, is maintained. Staff believes the proposed use will fulfill a community need and the proposed location is appropriate.

Primary Author:

Emily Carroll, Associate Planner, 925-931-5608 or ecarroll@cityofpleasantonca.gov

Reviewed/Approved By:

Melinda Denis, Planning and Permit Center Manager/Deputy Director of Community Development
Ellen Clark, Director of Community Development

RESOLUTION NO. PC-2024-01

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PLEASANTON
APPROVING A CONDITIONAL USE PERMIT APPLICATION AT 6654 OWENS DRIVE FOR
TAO WANG FOR KIDSROBOTICS INC [P23-0840]

- WHEREAS**, on October 11, 2023, Tao Wang for KidsRobotics Inc, applied for Conditional Use Permit approval to operate a tutoring facility that serves up to 24 students at one time August through May, and no more than 40 students at one time during summer and winter school breaks within an existing building at 6654 Owens Drive within the Pleasanton Business Park Center; and
- WHEREAS**, zoning for the property is PUD-I/C-O (Planned Unit Development – Industrial/Commercial-Office) District; and
- WHEREAS**, tutoring facilities with more than 20 students at a time are a conditionally permitted use in the subject District, and require Planning Commission approval of a Conditional Use Permit (CUP); and
- WHEREAS**, the project is categorically exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301, Class 1, Existing Facilities; and
- WHEREAS**, on January 24, 2024, the Planning Commission held a duly-noticed public hearing and considered relevant exhibits, recommendations of the City staff concerning this application, and received testimony from the applicant and interested parties; and

NOW, THEREFORE BE IT RESOLVED by the Planning Commission of the City of Pleasanton, based on the entire record of proceedings, including the oral and written staff reports and all public comment and testimony:

Section 1: Findings for Conditional Use Permit Approval

With respect to the approval of the Conditional Use Permit (Case P23-0840), the Planning Commission makes the following findings as required by Section 18.124.070 of the Pleasanton Municipal Code:

- A. That the proposed location of the conditional use is in accordance with the objectives of the zoning ordinance and the purpose of the district in which the site is located.**

Some of the objectives of the zoning ordinance are to: foster a harmonious, convenient, workable relationship among land uses, protect existing land uses from inharmonious influences and harmful intrusions, and ensure that public and private lands ultimately are used for the purposes which are most appropriate and beneficial to the City as a whole. The subject building is located in the Pleasanton Business Park Center. One purpose of the PUD-I/C-O District is to provide locations for industrial and commercial

uses that can operate in close proximity with minimum mutual adverse impact. As conditioned, staff believes the proposed use is consistent with the zoning ordinance objectives and PUD-I/C-O District purpose because it would provide tutoring services to the community and would be conducted so as to not impact or interfere with the surrounding uses. The proposed use would be conducted indoors and on a property with adequate circulation and parking to support the use. The applicant would also be required to mitigate any future nuisances that may occur as a result of the proposed use.

- B. That the proposed location of the conditional use and the conditions under which it would be operated or maintained will not be detrimental to the public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity.**

Tutoring facilities are a common use within or near residential and commercial/ industrial areas in Pleasanton. The City's past experience shows that these uses rarely result in land use incompatibilities, when provided in such a way to mitigate traffic and parking, and are therefore not detrimental to public health, safety, or welfare, or materially injurious to the properties or improvements in the vicinity. Tutoring facilities generally do not subject surrounding uses to heavy truck traffic, hazardous odors, or other objectionable influences. Further, if the recommended conditions of approval are implemented, the proposed use will not detrimentally affect surrounding uses because all streets around the site are designed per City standards to provide safe ingress and egress into and out of the site. In addition, based on the business' schedule of operation and amount of available parking the proposed use will have adequate off-street parking to meet project demand. Conditions have also been included that would require the applicant to mitigate any future nuisances as a result of the proposed use.

- C. That the proposed conditional use will comply with each of the applicable provisions of the zoning ordinance.**

The site's PUD-I/C-O zoning conditionally permits the establishment of tutoring facilities with greater than 20 students at any given time within existing buildings. In addition, the proposed use complies with all relevant sections of the zoning ordinance. Granting a CUP to the proposed use would be consistent with the City's ability to regulate zoning as listed in Municipal Code Chapter 18.124.

Section 2:

The Planning Commission hereby approves Case P23-0840, Tao Wang for KidsRobotics Inc., for Conditional Use Permit approval to operate a religious facility within an existing building at 6654 Owens Drive within the Pleasanton Business Park, subject to the Conditions of Approval shown in Attachment 1, attached hereto and made part of this case by reference.

Section 3:

This resolution shall become effective 15 days after its passage and adoption unless: 1) appealed prior to that time by any member of the public; or 2) if a City Councilmember wishes to review the item, pursuant to Pleasanton Municipal Code section 18.144.010, he or she must indicate their desire to review within 15 days following the date of approval, or at the next regular meeting of the City Council, whichever is later. If the majority of the City Council agrees to review the item, a further hearing shall be set pursuant to Pleasanton Municipal Code section 18.12.040 and the Council shall consider the item at that time.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Pleasanton at a regular meeting held on January 24, 2024, by the following vote:

AYES:

NOES:

ABSTAIN:

RECUSED:

ABSENT:

ATTEST:

Melinda Denis
Secretary, Planning Commission

Matt Gaidos
Chair

APPROVED AS TO FORM:

Julie Harryman
Assistant City Attorney

**EXHIBIT A
DRAFT CONDITIONS OF APPROVAL**

**P23-0840
6654 Owens Drive
January 24, 2024**

The applicant is hereby notified, as part of this approval, that (s)he is required to satisfy and maintain compliance with the conditions of approval below. Where approval by the Director of Community Development, Planning Division, Director of Engineering/City Engineer, City Attorney, Chief Building and Safety Official, Fire Department or other City staff is required, review shall be for compliance with all applicable conditions of approval, adopted policies and guidelines, ordinances, laws and regulations, and accepted practices related to the approval. In addition to complying with the conditions below, the applicant is required to comply with all applicable federal, state, and local laws that pertain to this project whether or not specifically noted herein.

This approval is granted for Conditional Use Permit approval to operate a tutoring facility that serves up to twenty-four students August through May, and no more than 40 students during summer and winter school breaks within an existing building within the Pleasanton Business Park located on Assessor Parcel No. 941-1301-039-00 at 6654 Owens Drive. Development shall be substantially as shown on the project materials listed below:

- a. Narrative and Project plans, Exhibit B, prepared by Tao Wang for KidsRobotics Inc., dated "Received" on December 4, 2023, and kept on file in the Planning Division of the Community Development Department.

The project materials listed above are collectively the "Approved Plans."

THIS APPROVAL IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **APPROVAL AND REVISIONS:** The proposed use shall be in substantial conformance with the "Approved Plans," except as modified by the following conditions. Minor changes to the plans may be allowed subject to the approval of the Director of Community Development if found to be in substantial conformance with the approved exhibits.
2. **EXPIRATION – CONDITIONAL USE PERMIT:** This Conditional Use Permit (CUP) approval will lapse and shall become void 1 year following the date on which the CUP became effective, unless prior to the expiration of 1 year a building permit is issued and construction is commenced and diligently pursued toward completion on the site which was the subject of the CUP application; or a certificate of occupancy is issued for the structure which was the subject of the CUP application; or the site is occupied if no building permit or certificate of occupancy is required; or the applicant or his/her successor has filed a request for extension with the Zoning Administrator pursuant to the provisions of the Pleasanton Municipal Code.

3. **APPEAL PERIOD:** The building permit submittal will only be accepted after completion of the appeal period provided in the Municipal Code unless the applicant submits a signed statement acknowledging the plan check fees may be forfeited in the event the approval is overturned on appeal, or the design is significantly changed as a result of the appeal. In no case will a building permit be issued prior to the expiration of the appeal period.
4. **LIABILITY AND INDEMNIFICATION:** To the extent permitted by law, the project applicant shall hold harmless, defend (with counsel acceptable to the City), and indemnify the City, its City Council, its officers, commissions, employee and agents from and against any claim, action, or proceeding brought by a third party against the indemnified parties and/or the applicant to attack, set aside, or void the approval of the project or any permit authorized hereby for the project, including without limitation, reimbursing the City its attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

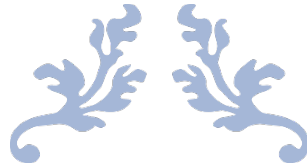
PLANNING DIVISION – 925-931-5600

5. **OUTDOOR ACTIVITIES:** The applicant shall not conduct any outdoor events or activities at any time. ***(project specific condition)***
6. **NOISE:** The applicant shall:
 - a. Keep all exterior doors of the tenant space closed when not being used for ingress/egress purposes.
 - b. Inform all students/staff to avoid loitering outside of the building and to be courteous and quiet when entering or leaving the parking area. ***(project specific condition)***
7. **MAINTENANCE:** The applicant shall maintain the subject property or if applicable, the area surrounding the tenant space, in a clean and orderly manner at all times.
8. **MODIFICATIONS:** If additional hours of operation or activities beyond what is stated in the "Approved Plans" are desired, prior City review and approval is required. The Director of Community Development may approve the modification or refer the matter to the Planning Commission if judged to be substantial.
9. **CONDITIONAL USE PERMIT REVIEW:** If the operation of this use results in conflicts pertaining to parking, noise, traffic/circulation, or other factors, at the discretion of the Director of Community Development, this conditional use permit may be submitted to the Planning Commission for their subsequent review at a public hearing. If necessary, the Planning Commission may modify or add conditions of approval to mitigate such impacts, or may revoke said conditional use permit.
10. **OUTDOOR STORAGE:** There is to be no outdoor storage without prior approval by the City.

11. SIGNAGE: This approval does not include approval of any signage. If signs are desired, the applicant shall submit a sign proposal to the Planning Division for review and approval prior to sign installation.
12. EXTERIOR CHANGES: Changes to the exterior of the building shall not be made without prior approval from the Planning Division.
13. RELOCATION: If the applicant wishes to relocate the use to a new address or tenant suite, the applicant shall secure a new conditional use permit prior to occupying the new building or tenant space.
14. IMPACT FEES: The applicant shall pay the required sewer fees, traffic impact fees, and all other fees the proposed use may be subject to prior to building permit issuance. The type and amount of the fees shall be those in effect at the time the building permit is issued.
15. BUILDING PERMIT: Any tenant improvement plans shall be submitted to the Building and Safety Division for review and approval prior to operation. The applicant shall obtain a building permit prior to commencement of any work. Prior to issuance of a business license the applicant shall submit plans to the Building Department that satisfy egress requirements (***project specific condition***).

TRAFFIC DIVISION – 925-931-5600

16. TRIP GENERATION: The site allows for tutoring up to 20 students. The applicant is proposing no more than 24 students at any time during the PM peak hour. Based on the proposed 24 students from May to August with an increase of up to 40 students limited to winter and summer school breaks, no traffic fees will be required at this time. Should Traffic Engineering observe a volume of trips in excess of the PM peak hour assumption, the City Traffic Engineer will require a trip generation "after study" to be completed by the City's on-call transportation consultant and/or a review of the sites enrollment. If the trip generation "after study" is reflective of the applicant's narrative, no further action will be needed. If the trip generation is greater than the narrative, the applicant shall be required to pay the City's Traffic Impact Fees associated with the additional trips and/or have their use permit brought back to Planning Commission for subsequent review. (***Project Specific Condition***)



WRITTEN NARRATIVE FOR CONDITIONAL USE PERMIT APPLICATION



OCTOBER 10, 2023
KIDSROBOTICS INC.
6654 Owens Drive, Pleasanton CA 94588

Written Narrative

The facility will be located at 6654 Owens Drive and will provide high-quality STEM educational and recreational services to children in grades K-12. As a licensed partner of internationally famed MagiKid Robotics Lab, KidsRobotics Inc, a California corporation d.b.a. Magikid Tri-Valley, will provides a one-stop STEM education center connecting our community with the cutting edge of robotics technology. We will provide courses in engineering, AI programming, humanoid robots, drones, web design and game development.

The proposed facility is in Pleasanton Business Park that currently has similar tutoring facilities throughout the park that operate successfully and harmoniously. The facility has six rooms that will be used as classrooms in addition to a large area that can accommodate a variety of classes and activities to meet the needs of children of all ages.

Planned Hours of Operation:

During the school semesters, each learning session is designed for no more than 1.5 hours per student per day. The facility will be open Monday through Friday from 3:00pm to 7:00pm and on weekends from 9:00am to 3:00pm. These hours complement neighboring Montday to Friday 9 to 5 business offices with very little overlap.

During winter and summer breaks, we plan to hold camps for extended study. Students are expected to stay either half a day (9am-12pm or 12pm -3 pm) or a full day (9am to 3pm).

Number of Employees

The facility will have a staff of one manager, up to six instructors during summer peak months and one assistant when needed, for a total of eight employees.

Number of students

With six classrooms and 4-5 students each classroom at full capacity we could accommodate 24 students at any one time. It would be most likely less than 20 students at one time on average.

During winter or summer breaks, the maximum number of students in the facility would be no more than 40 students at any one time.

Impacts to Parking

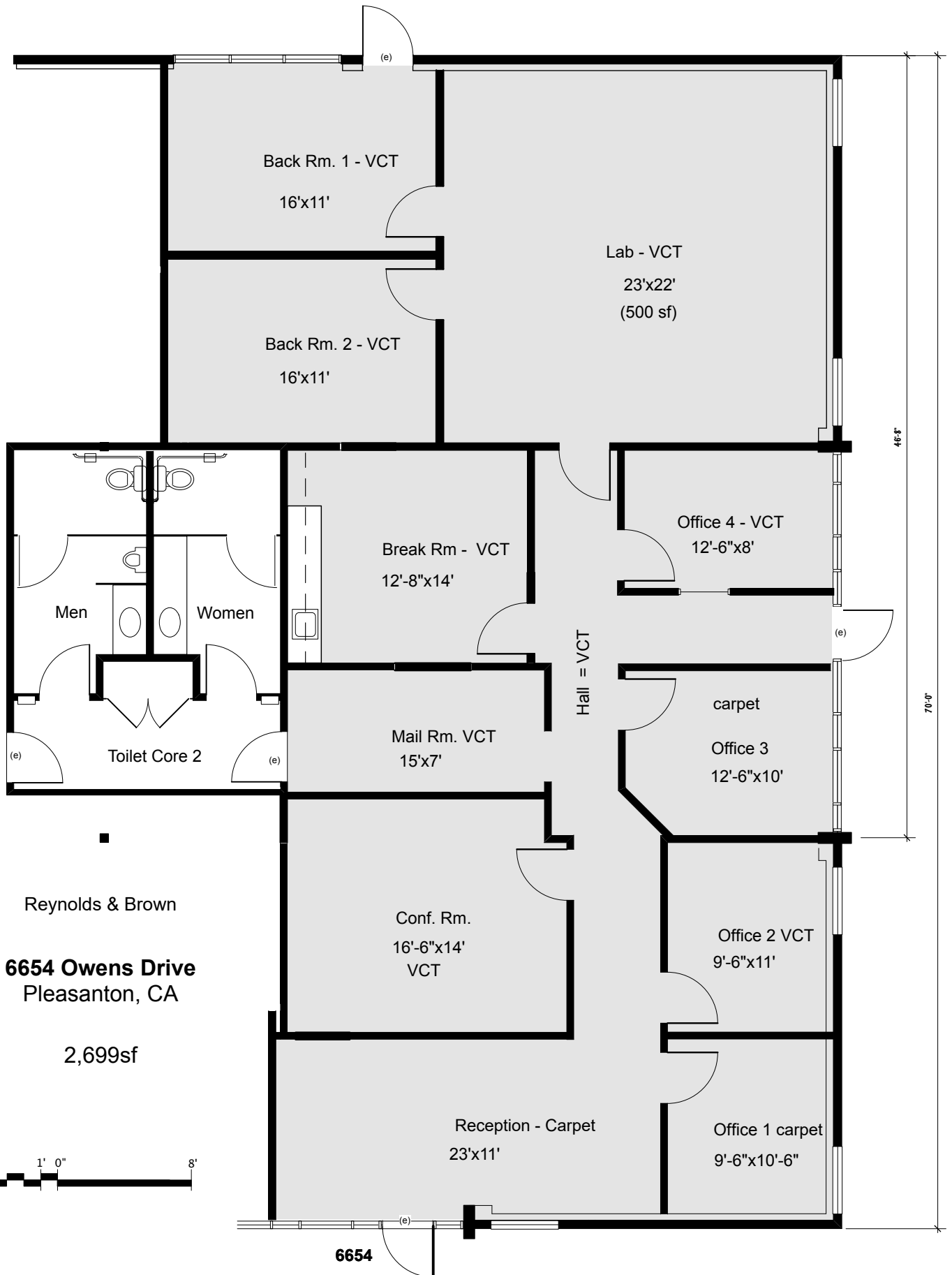
Many of our students will be dropped off by parents, who will likely not wait for their students, but will run errands in the area and return after class is complete. There is ample parking around the building, and our operating hours have minimal overlap with general office hours of neighboring businesses. There is sufficient parking to accommodate the staff and parents dropping off and picking up students from the tutoring.

Conclusion

The proposed facility will be a valuable asset to our community. It will provide much-needed STEM education and recreational services to children of all ages. It will also be a safe and supervised place in the community for children to go after school. Plus, it will also create jobs and boost the local economy.

Request

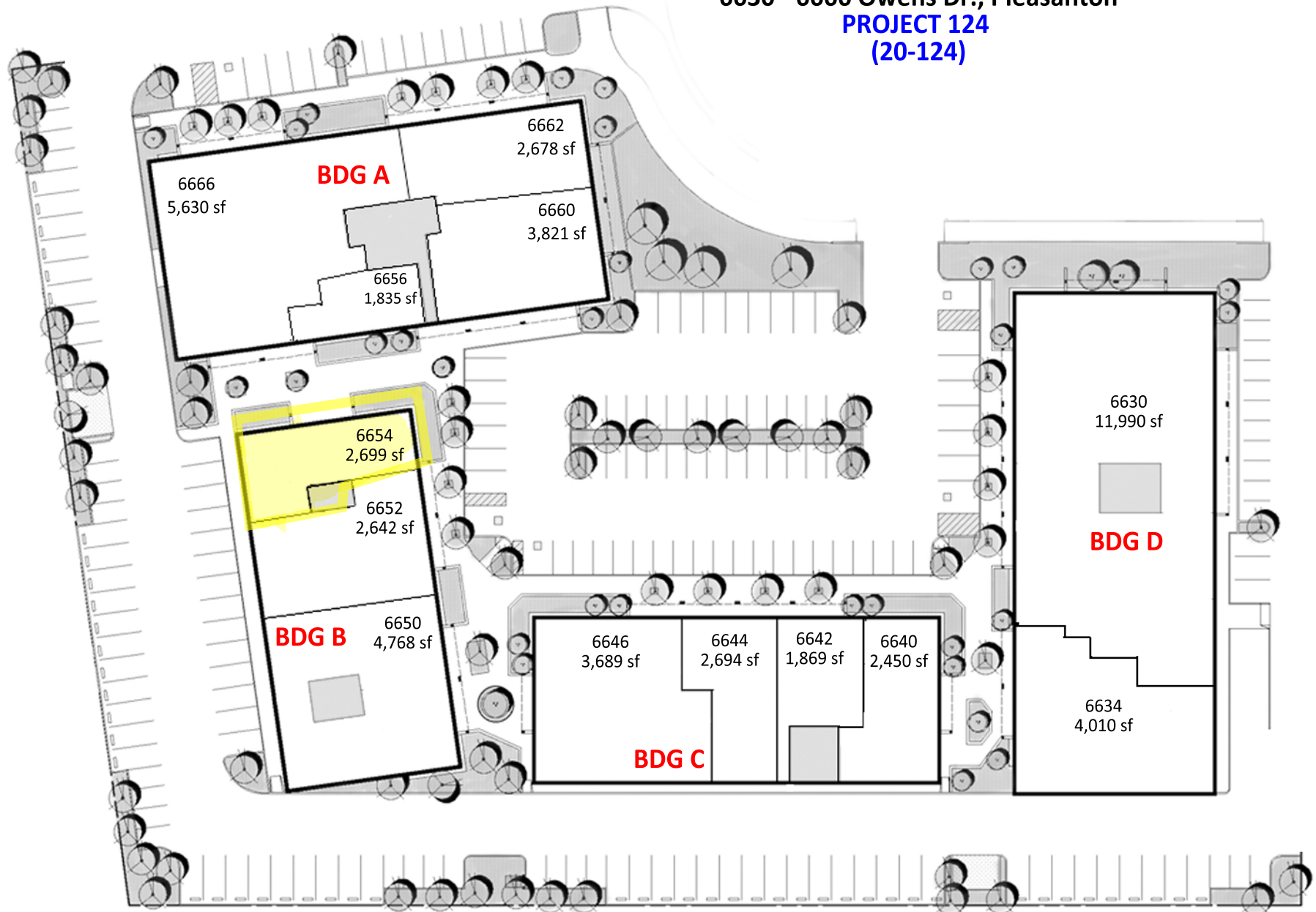
We respectfully request that the Conditional Use Permit Review Board approve the conditional use permit application to allow this facility to have no more than forty (40) students at any one time. We believe that the proposed facility will be a valuable asset to the community and that it will meet the needs of many families.



6630 - 6666 Owens Dr., Pleasanton

PROJECT 124

(20-124)

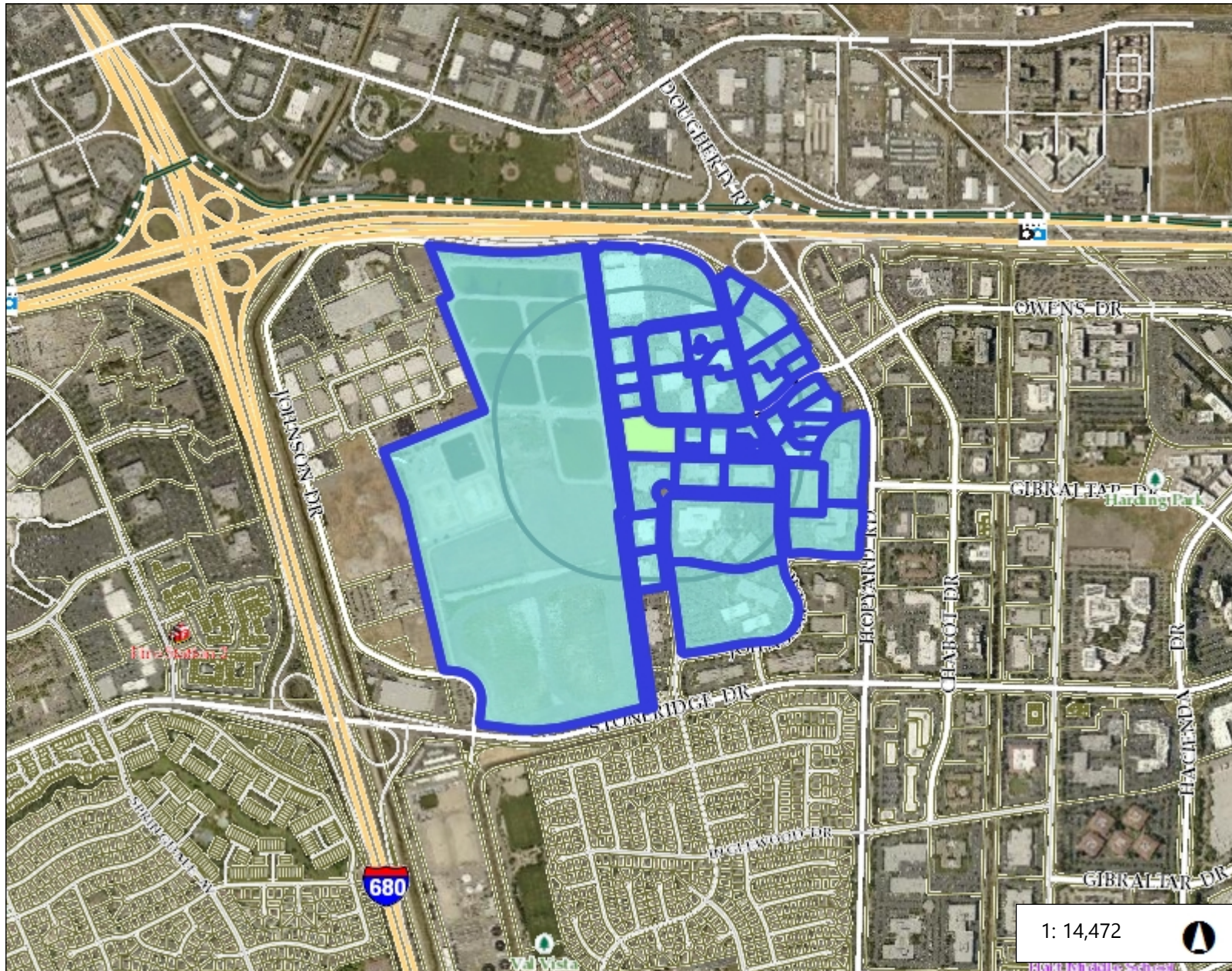


* Schedule is when school is at CAPACITY - for first year or two it will be less students, and not 5 days a week

August through May	3:00 - 4:00	3:15 - 4:15	4:30- 5:30	4:45-5:45	6:00- 7:00	6:15-7:15
Class Room 1	4		4		4	
Class Room 2		4		4		4
Class Room 3	4					
Class Room 4		4	4	4	4	4
Class Room 5	4					
Class Room 6		4	4	4	4	4
student per class	12	12	12	12	12	12
Maximum students	24		24		24	

Winter/Summer breaks June/July

	8:15 - 3:15	8:45 - 3:45
Class Room 1	5	
Class Room 2		5
Class Room 3	5	
Class Room 4		5
Class Room 5	5	
Class Room 6		5
Conference room	5	
Lab		5
Student per class	20	20
Maximum students	40	



Legend

- Fire Station
- School
- Park
- Parcels
- AerialOrtho2017cache

Notes

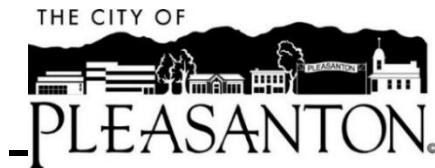
Notes

2,412.1 0 1,206.04 2,412.1 Feet

NAD_1983_2011_StatePlane_California_III_FIPS_0403_Ft_US
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This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION



PLANNING COMMISSION MEETING MINUTES

Wednesday, December 13, 2023

CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL

Chair Pace called the special meeting of the Planning Commission to order at 7:03 p.m. from the Remillard Conference Room located at 3333 Busch Road and via Zoom.

Chair Pace led the Pledge of Allegiance.

Commissioners Present: Commissioners Matt Gaidos, Anurag Jain, Ken Morgan, Stephanie Wedge, and Chair Brandon Pace

Commissioners Absent: Vivek Mohan

AGENDA AMENDMENTS

CONSENT CALENDAR

1. Actions of the Zoning Administrator

Recommendation: Receive report.

2. Approve the meeting minutes of November 8, 2023

Recommendation: Approve the meeting minutes.

Commissioner Jain disclosed a possible conflict of interest on Item 1 of the Consent Calendar, due to a project site's proximity to his property.

MOTION: It was m/s by Gaidos/Jain to approve Item 2 of the Consent Calendar, as recommended.
Motion passed by the following vote:

Ayes:	Commissioners Gaidos, Jain, Morgan, Wedge, and Chair Pace
Noes:	None
Absent:	Mohan
Abstain:	None

Commissioner Jain recused himself and exited the meeting room at 7:06 p.m.

MOTION: It was m/s by Gaidos/Morgan to approve Item 1 on the Consent Calendar, as recommended.
Motion passed by the following vote:

Ayes:	Commissioners Gaidos, Morgan, Wedge, and Chair Pace
Noes:	None
Absent:	Mohan
Abstain:	None
Recuse:	Jain

Commissioner Jain returned to the meeting room at 7:07 p.m.

MEETING OPEN TO THE PUBLIC

3. Public comment regarding items not listed on the agenda.

Chair Pace opened the public comment. Public comments were received by: Gerard T. Rawson.

Chair Pace closed the public comment.

PUBLIC HEARING AND OTHER MATTERS

4. PUD-148, Meenu Gochhwal, 2207 Martin Avenue – Review and affirm the conditions of approval as modified by the Planning Commission at the August 23, 2023 public hearing, and finalize recommendation to the City Council for final approval.

Recommendation: Adopt resolution No. PC-2023-18 recommending City Council approve the application for a Planned Unit Development (PUD) Development Plan to establish development standards for 2207 Martin Avenue, as filed under case No. PUD-148

Associate Planner Diego Mora presented the item.

Chair Pace opened the public comment. Public comments were received by: Ashish Choudhary, applicant; Ray Peterson; and Michelle Peterson.

Chair Pace closed the public comment.

MOTION: It was m/s by Gaidos/Morgan to adopt resolution No. PC-2023-18 with modifications to the Conditions of Approval, adding item 4E stipulating that an Administrative Design Review permit shall be required for tennis court lighting above 8 feet in height. Motion passed by the following vote:

Ayes:	Commissioners Gaidos, Morgan, Wedge, and Chair Pace
Noes:	Jain
Absent:	Mohan
Abstain:	None

MATTERS FOR COMMISSION'S REVIEW/ACTION/INFORMATION

5. Adoption of Planning Commission schedule of meeting dates for 2024

Recommendation: Adopt the Planning Commission schedule of meeting dates for 2024

MOTION: It was m/s by Gaidos/Jain to adopt the Planning Commission schedule of meeting dates for 2024, as recommended. Motion passed by the following vote:

Ayes:	Commissioners Gaidos, Jain, Morgan, Wedge, and Chair Pace
Noes:	None
Absent:	Mohan
Abstain:	None

6. Selection of Planning Commission Chair and Vice Chair for 2024

Recommendation: Appoint Chair and Vice Chair for one-year term beginning in January 1, 2024

MOTION: It was m/s by Morgan/Wedge to appoint Commissioner Gaidos to the Chair position for the one-year term beginning January 1, 2024. Motion passed by the following vote:

Ayes:	Commissioners Gaidos, Jain, Morgan, Wedge, and Chair Pace
Noes:	None
Absent:	Mohan
Abstain:	None

MOTION: It was m/s by Gaidos/Jain to appoint Commissioner Morgan to the Vice Chair position for the one-year term beginning January 1, 2024. Motion passed by the following vote:

Ayes:	Commissioners Gaidos, Jain, Morgan, Wedge, and Chair Pace
Noes:	None
Absent:	Mohan
Abstain:	None

7. Selection of Sub-Committee Representatives for 2024

Recommendation: Appoint sub-committee representatives at the discretion of the commission, for terms beginning January 1, 2024.

Since there were no sub-committee vacancies, by consensus the commission did not modify current representatives to the various sub-committees.

8. Reports from Meetings Attended (e.g., Committee, Task Force, etc.)

Commissioner Morgan reported attending the Heritage Tree Meeting on December 13, 2023.

9. Actions of the City Council

Director Ellen Clark provided a brief overview of the items listed in the report.

10. Future Planning Calendar

Planning Manager Melinda Denis provided a brief overview of the items listed in the report.

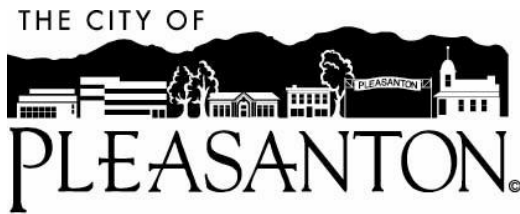
MATTERS INITIATED BY COMMISSION MEMBERS

None.

ADJOURNMENT

Chair Pace adjourned the meeting at 8:04 p.m.

Estela Ramirez, Recording Secretary



Planning Commission Agenda Report

January 24, 2024
Item 5

SUBJECT: P24-0023

APPLICANT: Stacy Call, Bottoms Up Espresso

PROPERTY OWNER: Pleasanton Valley Plaza LLC

PURPOSE: Appeal of the Zoning Administrator's decision denying an application for Zoning Approval for Bottoms Up Espresso at an existing drive-up kiosk

LOCATION: 4299 Valley Avenue

GENERAL PLAN: Retail/Highway/Service Commercial, Business and Professional Offices

ZONING: PUD-C (Ord. No.719), CN (Neighborhood Commercial) Zoning District

EXHIBITS:

- A. Draft Resolution Denying Appeal
- B. Zoning Administrator Denial Letter dated December 21, 2023
- C. Appeal Letter dated "Received January 2, 2024"
- D. Location and Notification Map

STAFF RECOMMENDATION

Staff recommends the Planning Commission deny the appeal, thereby upholding the Zoning Administrator's decision, based on the findings in Exhibit A.

EXECUTIVE SUMMARY

The applicant is appealing the Zoning Administrator's December 21, 2023, decision denying an application for Zoning Approval for Bottoms Up Espresso at an existing drive-up kiosk located at 4299 Valley Avenue. The denial was based on the business meeting the definition of an adult entertainment establishment, which is not permitted in the CN zoning district where the existing drive-up kiosk is located.

Pleasanton Municipal Code (PMC) Section 18.144 outlines the procedures for appeals; specifically, PMC Section 18.144.050 describes the administrative appeal procedure. An appeal may be made to the Planning Commission by any interested party of any administrative determination or interpretation made under Title 18, Zoning. The applicant filed an appeal on

January 2, 2024, during the applicable appeal period, and therefore, the item is before the Planning Commission.

BACKGROUND

The subject site is zoned PUD-C (Planned Unit Development – Commercial) as adopted under Ordinance Number 719 on December 17, 1973, for an approximately 5.8-acre site, now known as Valley Plaza Shopping Center. The PUD final development plan designated the approximately 1.37-acre subject site as the CN zoning district. Subsequent development and uses are to follow the CN zoning district.

On November 1, 2023, the applicant submitted a Zoning Approval application to operate a Bottoms Up Espresso for drive-thru coffee, espresso, energy drinks, and packaged sandwiches at an existing kiosk where Black & White Coffee and Boba currently operate. The Zoning Approval application was supplemented with information provided by the applicant on November 9 and November 16, 2023.

Upon review of the application and supplemental information provided, the Zoning Administrator determined that the use met the definition of an adult entertainment establishment, which is not permitted in the CN zoning district. The request for Zoning Approval was denied by the Zoning Administrator on December 21, 2023, and the applicant filed an appeal on January 2, 2024.

SITE AND AREA DESCRIPTION

The existing drive-up kiosk is located on a portion of an approximately 1.37-acre parcel located (4301 Valley Avenue) on the north side of Valley Avenue, near the intersection of Santa Rita Road and Valley Avenue, in the Valley Plaza Shopping Center. There are multiple parcels under separate ownership in the Valley Plaza Shopping Center. The subject site is owned by Pleasanton Valley Plaza LLC and contains a multi-tenant commercial building, associated parking, and the drive-up kiosk.

Figures 1 and 2 below show an aerial photograph of the subject site and a street view of the drive-up kiosk from Valley Avenue. There are a variety of neighborhood commercial uses in the Valley Plaza Shopping Center, ranging from traditional and fast-food restaurants, a hardware store, a donut shop, a tutoring center, a financial institution, and a small grocery store.

Figure 1: Aerial photograph of subject site



Figure 2: Street view of the drive-up kiosk



PROJECT DESCRIPTION

The drive-up kiosk is currently operated by Black & White Coffee and Boba who obtained Zoning Approval in February 2022. It is City staff's understanding the existing operator is

interested in selling the business or subleasing it to another operator. On November 1, 2023, the applicant submitted the Zoning Approval application to allow for her business to operate within the existing drive-up kiosk at 4299 Valley Avenue. As described above, the request was denied by the Zoning Administrator on December 21, 2023 (see Exhibit B) and the applicant filed an appeal on January 2, 2024 (see Exhibit C).

ANALYSIS

As described above, the proposed business is located on a subject site with the CN zoning designation. The permitted and conditional uses for the CN zoning district are listed in PMC Section 18.44.080. The uses applicable to the proposed business include “restaurants and catering establishments,” which are permitted, and “adult entertainment establishments,” which are not permitted.¹

The Zoning Administrator determined that Bottoms Up Espresso met the definition of an adult entertainment establishment based on the company website content and images, and social media images of staff at existing Bottoms Up Espresso locations in other jurisdictions (see Exhibit B). The PMC provides the following definition for adult entertainment establishments (emphasis added):

CHAPTER 18.114 ADULT ENTERTAINMENT ESTABLISHMENTS

18.114.020 Definitions.

For the purposes of this chapter, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this section have the meaning given them in this section.

- A. “Adult entertainment establishment” means any place or business at which one or more of the following activities is conducted:
 - 1. “Adult bookstore” means...
 - 2. “Adult motion picture theater” means...
 - 3. “Adult video store” means...
 - 4. “Other businesses” means any business not otherwise herein defined or identified which involves “specific sexual activities” or display of “specified anatomical areas.”
- I. “Specified anatomical areas” means less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

The company website content and images and social media images of staff at existing Bottoms Up Espresso locations show portions of bare buttocks displayed and bare breasts

¹ Adult entertainment establishments are particular types of uses which can be subject to additional regulation because they often create negative secondary impacts, such as increased criminal activity. The Pleasanton Police Department’s crime analyst asked colleagues in the City of Tracy about calls for service at the Bottoms Up Espresso kiosk that operates in that jurisdiction. The Tracy Police Department provided calls for service from 2022-2023. They had a total of six (6) crime calls for service at their Bottoms Up location at 2355 W Grant Line Rd. These calls for service included suspicious persons and vehicles, vandalism, and trespassing. Comparatively, Pleasanton had a total of seven (7) calls for service across our three coffee drive through locations: Black & White Coffee and Boba at 4299 Valley Avenue, Starbucks at 4283 Rosewood Drive, and Java Detour at 6750 Santa Rita Road.

below the top of the areola displayed. In addition, the Bottoms Up Espresso company attire policy provides for the display of what the PMC defines as “specified anatomical areas”.

ALTERNATIVES

As articulated above, it is the staff’s recommendation that the Planning Commission deny the appeal. However, an alternative the Planning Commission could consider includes:

1. Approve the appeal. The Planning Commission could approve the appeal and determine the applicant’s business is not classified as an adult entertainment establishment and, therefore, defined as a restaurant business, which is permitted in the CN zoning district.

NOTE: In discussions with staff, the applicant had proposed a possible Pleasanton-specific dress code for employees. As that was not part of the original application, it is not provided here for discussion. Even if a Pleasanton-specific dress code is subsequently submitted for consideration as a new application by Bottoms Up Espresso, staff would have practical concerns regarding ongoing enforcement.

PUBLIC NOTICE

Notices of this application were sent to surrounding property owners and tenants within a 1,000-foot radius of the site. Staff has provided the location and noticing map as Exhibit D for reference. At the time this report was published, staff had not received any public comments about the project.

ENVIRONMENTAL ASSESSMENT

The denial of a project is not an action subject to the California Environmental Quality Act (CEQA). Therefore, no environmental document accompanies this report.

SUMMARY/CONCLUSION

As described above, the proposed business meets the definition of an adult entertainment establishment which is not permitted in the CN zoning district. Staff recommends the Planning Commission deny the appeal, thereby upholding the Zoning Administrator’s decision.

Primary Author:

Melinda Denis, Planning and Permit Center Manager, 925-931-5631 or mdenis@cityofpleasantonca.gov

Reviewed/Approved By:

Ellen Clark, Director of Community Development
Larissa Seto, Assistant City Attorney

RESOLUTION NO. PC-2024-02

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PLEASANTON
DENYING THE APPEAL OF STACY CALL, BOTTOMS UP ESPRESSO, THEREBY
UPHOLDING THE ZONING ADMINISTRATOR'S DECISION DENYING AN APPLICATION
FOR ZONING APPROVAL FOR BOTTOMS UP ESPRESSO AT AN EXISTING DRIVE-UP
KIOSK LOCATED AT 4299 VALLEY AVENUE, AS FILED UNDER CASE NO. P24-0023**

WHEREAS, on November 1, 2023, Stacy Call, Bottoms Up Espresso, applied for Zoning Approval to operate a Bottoms Up Espresso for drive-thru coffee, espresso, energy drinks, and packaged sandwiches at an existing drive-up kiosk located at 4299 Valley Avenue; and

WHEREAS, zoning for the property is PUD-C (Planned Unit Development - Commercial) and the Planned Unit Development final development plan designates the subject site as the CN (Neighborhood Commercial) zoning district; and

WHEREAS, Municipal Code Section 18.114.020 defines adult entertainment establishments as any business which displays specified anatomical areas, including less than completely and opaquely covered buttock and female breast below a point immediately above the top of the areola; and

WHEREAS, within the Neighborhood Commercial zoning district adult entertainment establishments are not permitted; and

WHEREAS, on December 21, 2023, the Zoning Administrator issued a denial of the Zoning Approval application defining the proposed use as an adult entertainment establishment based on the submitted application information, company website content and images, and social media images; and

WHEREAS, on January 2, 2024, the applicant filed an appeal of the Zoning Administrator's decision to the Planning Commission; and

WHEREAS, on January 24, 2024, the Planning Commission held a duly-noticed public hearing and considered relevant exhibits, recommendations of the City staff concerning this appeal, and received testimony from the applicant and interested parties; and

WHEREAS, denial of a project is not an action subject to the California Environmental Quality Act (CEQA).

NOW, THEREFORE BE IT RESOLVED by the Planning Commission of the City of Pleasanton, based on the entire record of proceedings, including the oral and written staff reports and all public comment and testimony:

Section 1:

The Planning Commission hereby denies the appeal of Stacy Call, Bottoms Up Espresso, and upholds the Zoning Administrator's decision denying Case No. P24-0023 to operate a Bottoms Up Espresso for drive-thru coffee, espresso, energy drinks, and packaged sandwiches at an

existing drive-up kiosk, since the proposed use meets the definition of an adult entertainment establishment which is not permitted in the Neighborhood Commercial zoning district.

Section 2:

This resolution shall become effective 15 days after its passage and adoption unless appealed prior to that time.

PASSED, APPROVED AND ADOPTED by the Planning Commission of the City of Pleasanton at a regular meeting held on January 24, 2024, by the following vote:

Ayes: Commissioners
Noes: Commissioners
Absent: Commissioners
Abstain: Commissioners

ATTEST:

Melinda Denis
Secretary, Planning Commission

Matthew Gaidos
Chair

APPROVED AS TO FORM:

Julie Harryman
Assistant City Attorney

December 21, 2023

via email: scall@bottomsupespresso.com

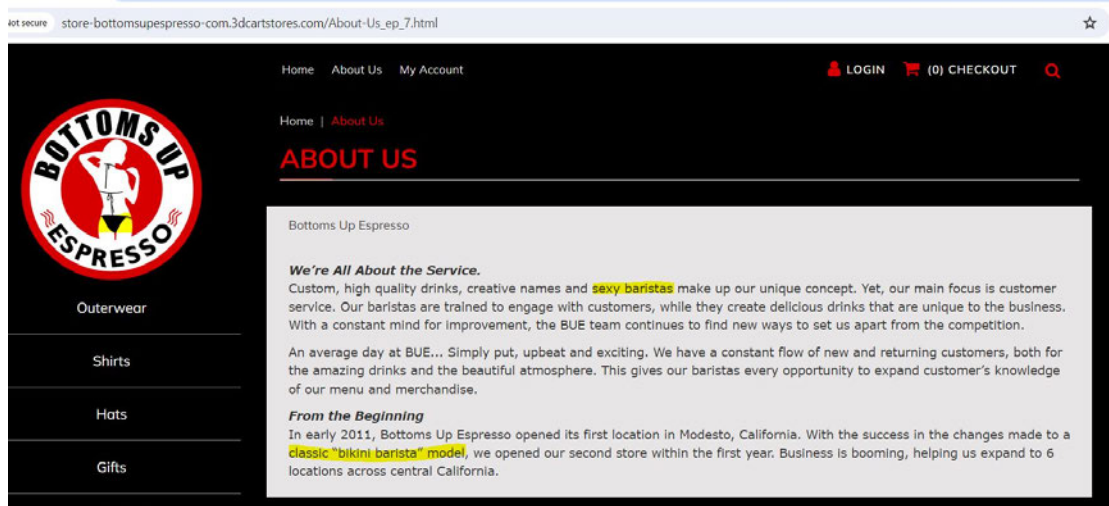
Stacy Call, Operations and Development
Bottoms Up Espresso
5278 Jerusalem Court, Ste. 11
Modesto, CA 95356

RE: Denial of Application for Zoning Approval for Bottoms-Up Espresso at Drive-up Kiosk at 4299 Santa Rita Road, Pleasanton

Dear Ms. Call:

I am writing with regard to your Application for Zoning Approval, attached, to operate a Bottoms-Up Espresso for “drive-thru coffee, espresso, energy & packaged sandwiches” at an existing kiosk at 4299 Santa Rita Road, where Black & White Coffee and Boba is currently operating. Your November 1, 2023, application was then supplemented with information that you provided to Riley Eidson, Project Planner, copied here, on November 9th, as well as further information that you emailed to Larissa Seto, Assistant City Attorney, copied here, on November 16th.

The location of your proposed business is on a parcel with a Neighborhood Commercial (CN) zoning designation. As your company’s business website from November 2023 states, “Good coffee is sexy!”, includes a figure in a bikini, and discusses “sexy baristas” and a “classic ‘bikini barista’ model”:



P.O. Box 520, Pleasanton, CA 94566-0802

123 Main Street

City Manager
(925) 931-5002
Fax: 931-5482

City Attorney
(925) 931-5015
Fax: 931-5482

Economic Development
(925) 931-5038
Fax: 931-5485

City Clerk
(925) 931-5027
Fax: 931-5492

staff requested additional information about your use. Based on information provided about other Bottoms Up Espresso locations, employees' dress involves the display of "specified anatomical parts" and therefore defines your business as an adult entertainment establishment. See attached.

Within the neighborhood commercial district, the permitted and conditional uses are listed in the table in Pleasanton Municipal Code §18.44.080. The following uses are relevant to your application:

	CN - Neighborhood Commercial District
CULTURAL AND ENTERTAINMENT	
Adult entertainment establishments ³	
RETAIL	
Restaurants and catering establishments ²⁹	Permitted - P

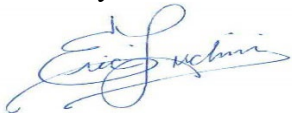
³ See Chapter 18.114 of this title.

²⁹ Any use that includes a drive-through shall be subject to a conditional use permit as prescribed in Chapter 18.124.

As adult entertainment establishments are not permitted in the CN zoning district where the 4299 Santa Rita Road kiosk is located, your application is denied per my authority as Zoning Administrator pursuant to Pleasanton Municipal Code §18.12.060.

While I can be reached at (925) 931-5612 or eluchini@cityofpleasantonca.gov, your ability to appeal my decision to the Planning Commission is governed by Pleasanton Municipal Code §§18.144.020 and 18.144.050. You may appeal my decision by submitting an application for appeal with a letter stating the basis for the appeal, along with a fee in the amount of \$339.00, to the City Clerk's Office at 123 Main Street, Pleasanton, prior to the expiration the appeal period (January 2, 2024).

Sincerely,



Eric Luchini
Senior Planner and
Zoning Administrator

Electronic copy:

Riley Eidson, Project Planner
Larissa Seto, Assistant City Attorney

Attachment:

Application for Zoning Approval
Analysis of Bottoms Up Espresso as adult entertainment establishment



COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION
200 Old Bernal Avenue • P.O. Box 520
Pleasanton, California 94566-0802
Phone 925-931-5600 • pod@cityofpleasantonca.gov

APPLICATION FOR ZONING APPROVAL

Required prior to establishing a business; making tenant improvements; or changing a business location.

Location of business: 4299 Valley Ave Pleasanton CA 94566
(Street Address) (Suite No.) (Zip Code)

Is this a: ☐ Pleasanton change of address ☒ Change of ownership ☐ New business to Pleasanton

Are you the business owner? ☒ Yes or ☐ No, name of business owner: _____

Name of Business: Whiskey Tango Foxtrot Enterprises LLC as Bottoms Up Espresso

Contact Person: JORDAN BLANCO Bus. Phone: (707) 372-4445

Email: _____ Estimated start date: 12/2023

Mailing Address (if different from above): _____

Description of Business: Describe the business activities (e.g., automotive repair, retail sales, party supply rental, research and development, office, etc.) being conducted at the proposed location. Also describe any use of hazardous materials. **Please be specific.**

Drive thru coffee, espresso, energy & prepackaged sandwiches

Square-footage of tenant space: 600 sq ft Tobacco sales? ☐ Yes or ☒ No

PRIVATE SCHOOL, TRADE SCHOOL, INDOOR RECREATION, AND TUTORING FACILITIES ONLY

By initialing, you hereby understand the proposed business must comply with all applicable Federal, State, and local regulations. _____ Number of participants/students: _____

To the extent permitted by law, the applicant shall defend (with counsel reasonably acceptable to the City), indemnify and hold harmless the City, its City Council, its officers, boards, commissions, employees and agents from and against any claim (including claims for attorneys fees), action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside, or void the approval of the application or any permit authorized hereby for the application, including (without limitation) reimbursing the City its attorneys fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its choice.

By signing below, you are certifying that; (1) you have read and understand the requirements noted on both sides of this application; (2) the above information you provided is correct; and (3) you understand that this application only applies to the address and suite noted above and that if you expand or move from this location you will need to complete a new "Application for Zoning Approval."

Applicant's signature: JORDAN BLANCO Date: Nov 1, 2023

Additional applicant information on the second page

(OFFICE USE ONLY)	
Zoning Designation: _____	Planning No.: _____
Municipal Code Use Definition: _____	Bus. Lic. No.: _____
Routing: ☐ Police ☐ Fire ☐ Code Enforcement ☐ Other _____	Approved by: _____

ANALYSIS OF BOTTOMS UP ESPRESSO AS ADULT ENTERTAINMENT ESTABLISHMENT

The Pleasanton Municipal Code provides the following definitions:

Chapter 18.114 ADULT ENTERTAINMENT ESTABLISHMENTS

18.114.020 Definitions.

For the purposes of this chapter, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this section have the meaning given them in this section.

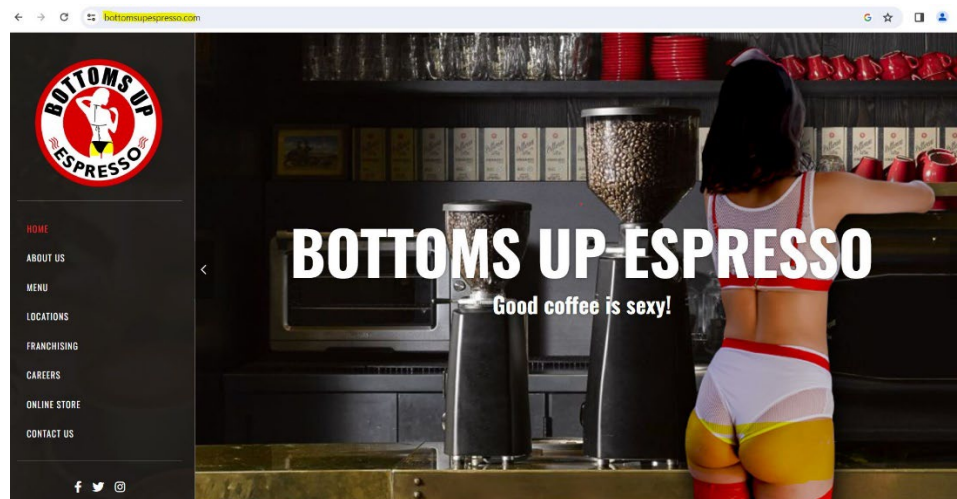
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3. “Adult video store” means ...
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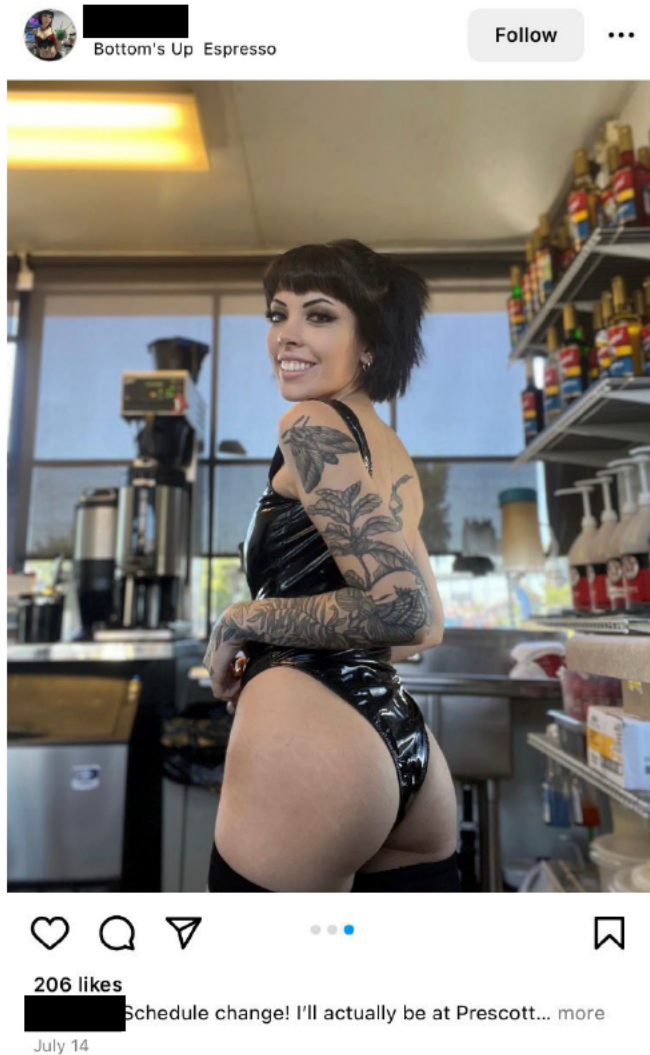
...

- I. “Specified anatomical areas” means less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

The Bottoms Up Espresso website highlights the phrase “Good coffee is sexy!” and its primary image is a server with portions of the server’s bare buttocks (highlighted with yellow) exposed:

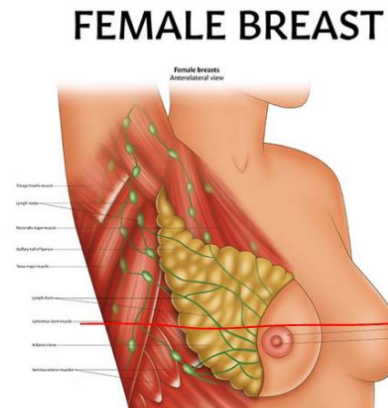


Social media images of staff at Bottoms Up Espresso sites from Modesto and Chico, respectively, also show portions of servers' bare buttocks exposed and displayed for the photo:

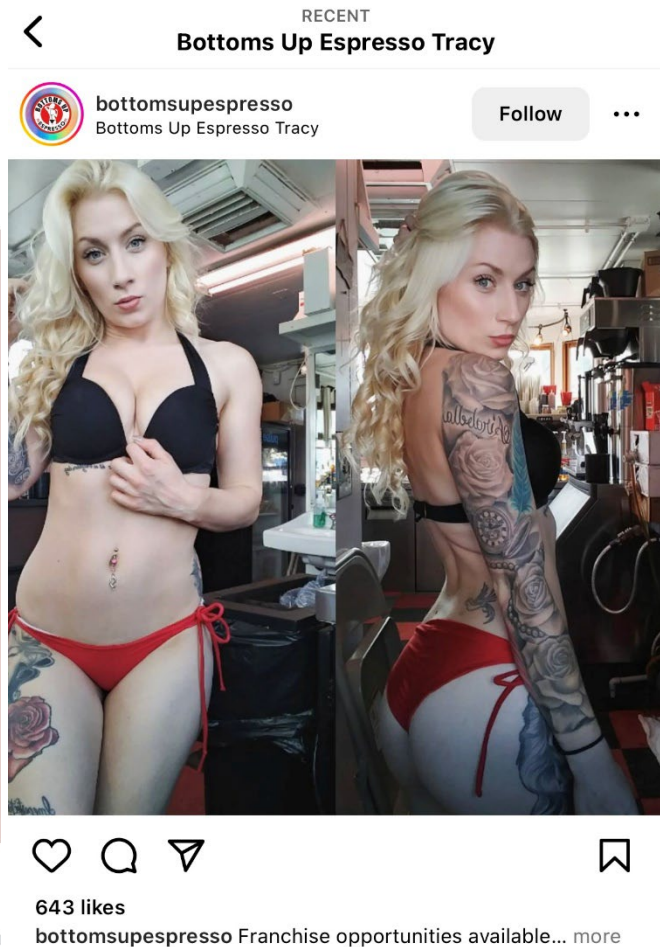
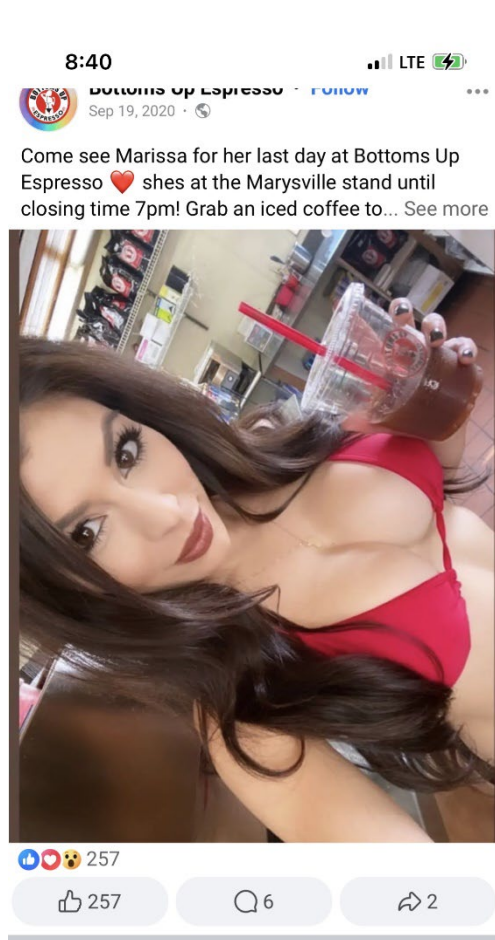


which bare portions of buttocks would be visible to customer drivers through the kiosk window.

The anatomical image, below, highlights with the red line the “female breast below a point immediately above the top of the areola”.



Social media images of staff at Bottoms Up Espresso sites from Marysville and Tracy, respectively, also show portions of servers' bare breasts below the top of the areola being displayed:



Bottoms Up Espresso Dress Code. On November 16th, Ms. Call provided this Attire Policy for City's staff's information:



Attire Policy

* The following are strictly prohibited

- Thongs
 - Pasties
 - Sandals or flip flops
 - High Heels
 - Clothing items that are see through
 - Excessive side or under boob showing
 - Facial piercings including but not limited to nose, lip, and tongue
 - Unnatural colored hair (blue, pink, red and other like colors)
 - Facial Tattoos
 - Gang related, offensive, or vulgar tattoos
 - Any sort of nudity or exposed inappropriate body exposure
 - Loose fitting clothing
 - T shirts or sweaters
 - Nails longer than "active" length
 - Cut tops
 - Body Chains/ Stomach Jewelry
- Store managers, district managers, and owners are in charge of supervising outfits and maintaining the BUE standards. Any employee wearing inappropriate, incorrect or an outfit that is below the BUE standard they will immediately be written up and sent home to change into appropriate attire.

Employee signature: _____ Date: _____

Print employee's name: _____

However, as the above images demonstrate, the Attire Policy still results in the display of specified anatomical areas as defined in the Pleasanton Municipal Code.

Ms. Call indicated that a Pleasanton-specific attire policy could be adopted. Given Bottoms Up Espresso's stated business model of: "Good coffee is sexy!", "sexy baristas" and "classic 'bikini barista' model", a revised attire policy contradicts the business model and would create enforcement challenges.

Ms. Call asserted that:

- (a) female wait staff in other restaurants in Pleasanton wear clothing that shows portions of their bare breasts below the top of the areola;
- (b) female high school students in Pleasanton wear tops that show portions of their bare breasts below the top of the areola; and
- (c) lifeguards at the City's aquatic center wear swimsuits while working;

and that these examples are not being subject to the same regulations as Bottoms Up Espresso.

City staff's response is that:

- (a) Ms. Call has not demonstrated that other restaurants in Pleasanton are advertising "Good coffee is sexy!", "sexy baristas" or "classic 'bikini barista'" as part of any restaurant's primary business model;
- (b) school students are not employees of a business;
- (c) lifeguards need to wear swimsuits to swim quickly for emergency response, and "Any activity conducted or sponsored by any school district or other public agency." is exempt from the adult entertainment establishment regulations per §18.114.180.B.

//

Bottoms Up Espresso

EXHIBIT C

Cell 209-281-8311
Fax 702-933-1442

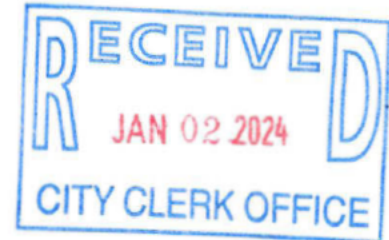
5278 Jerusalem Ct. Ste. 11
Modesto CA 95356

www.bottomsupespresso.com
scall@bottomsupespresso.com



January 1, 2024

Eric Luchini, Senior Planner
City of Pleasanton
200 Old Bernal Ave 94566



RE: Appeal for Zoning Approval/ Business License Approval, 4299 Valley Ave, Pleasanton

City of Pleasanton recently denied our application to obtain a business license to do business at 4299 Valley Ave stating we are an adult entertainment establishment based on found social media graphics, the appearance of our business website, and attire policy violations from our handbook. We would like to appeal the denial because, as mentioned on our webpage, "with the success in the changes made to a classic 'bikini barista' model...", we have actually created a more conservative and structured approach.

We pride ourselves on quality drinks and great customer service. We have contracts with large brands like Red Bull, source our espresso beans from a local roaster in Modesto that is custom to Bottoms Up Espresso and use other familiar brands like Ghirardelli, Torani and Seattle's Favorite Cookies. And as you can see from several online reviews, not only are we a coffee shop, but one to rave about...

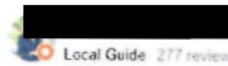


97 reviews · 1 photo

★★★★★ · 4 days ago · NEW

I drive by here everyday for work and had never stopped before. Finally stopped to give it a try and was not disappointed. The barista made me the best latte and accommodated all my little requests. I will definitely be making this my coffee stop on the way to work from now on.

Service 5/5



Local Guide · 277 reviews · 383 photos

★★★★★ · a month ago

Take-out | Other | \$1-10

Very fast service and such good energy drinks

Food 5/5 | Service 5/5 | Atmosphere 5/5



251 · 53 · 19

★★★★★ Sep 22, 2022

1 photo

Hands down best coffee in the 209! The girls are seriously amazing. Nikki (the manager) is the nicest girl ever. It's so nice having someone know your order regardless if you're getting coffee or something else. It allows for time to chat and get to know your customers. All of the girls are great here and my favorite thing is the drinks consistently taste good and the same.

If you stop in, be sure to try the Sweet Senorita iced with half white/half regular espresso and oat milk! You will not regret it!

As noted from the reviews, we are simply a drive thru kiosk serving coffee and energy drinks. Our customer base is a great mix of women, men, families, elderly and students.

In order to be classified as an adult entertainment business, we would require identification to shop, which we do not. Additionally, we also offer franchising and are bound by a Federal Disclosure Document to do so where we are simply listed as a coffee shop.

Description

The franchise described is known as "Bottoms Up Espresso"™ ("BUE"). BUE is involved in the business of providing gourmet coffee drinks and specialty beverages. BUE franchisees provide gourmet coffee drinks, specialty beverages, and other related merchandise products to customers in a retail, drive-thru setting with baristas dressed in daily themes

At this time I feel a lot of the denial has been based on one individual's interpretation of the code, with graphics provided proving this is all based on personal opinion, rather than other city staff taking an unbiased approach. The code states "female breast below a point immediately above the areola". All of the graphics from our pages do not have the area above nor below, but to the side which is not what the code states. You will see in graphics below if this truly is the understanding of the code there are several businesses not compliant.

During my conversations with City staff, although not necessary, I mentioned we have the possibility of creating a dress code more specific to the City of Pleasanton's vague code – bandeau type tops to cover the cleavage although not the same as the area above the areola, as well as boy short style bottoms to avoid butt cheek visibility, although a bathing suit is not much different than what pole dancing and gym instructors in Pleasanton wear. We have adopted City requests in other locations pertaining to menu name changes that are still in place today. This shows we can follow through with modifications to our concept if needed. We have also made roadside signage modifications at the request of other cities/ property owners.

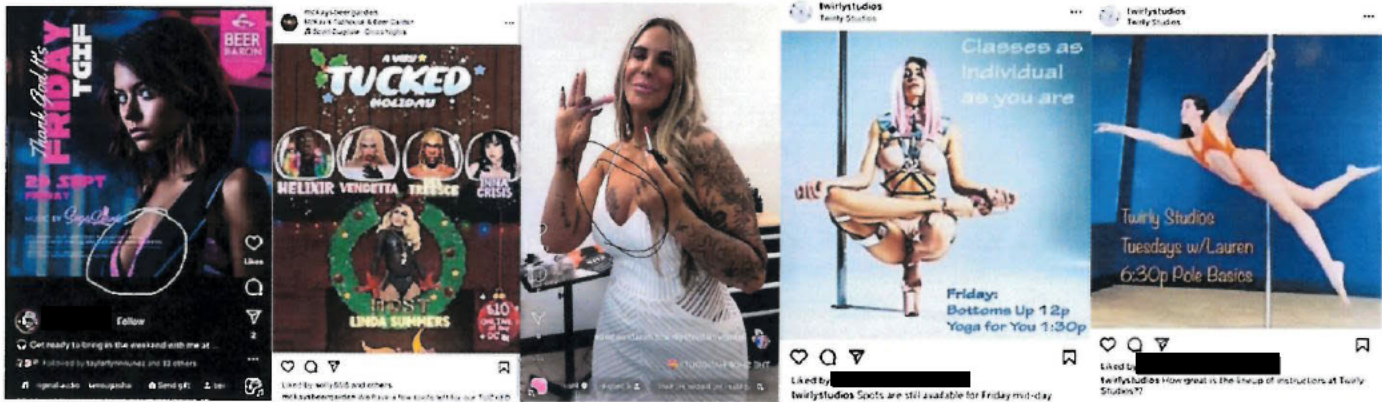
Examples of logo alternatives we have designed for use:



I believe these examples show we can do more than adapt to requests of covering the areas of concern – cleavage and lower butt cheeks, despite cleavage being vastly different from the “female breast below a point immediately above the top of the areola”.

City staff continues to mention the appeal of some of the adjectives and the perceived business model would “create enforcement challenges”, yet there appears to be several businesses in the City of Pleasanton where there is no enforcement standard. These businesses are not zoned adult entertainment, yet violate the said code you are trying to enforce upon us, giving their business the same “perception”.

It is not uncommon for brands to use sex appeal to advertise nor is it uncommon to use words like “sexy”. There are cosmetic brands with names like “sex kitten” as a color, brands like “Sexy Hair” displayed throughout cosmetic stores and big box stores and alcohol brands with phrases like “#sexresponsibly” plastered on signage. Furthermore, throughout Pleasanton there are perfume brands, swimwear brands, lingerie brands all using models with implied nudity in family malls and shopping centers.





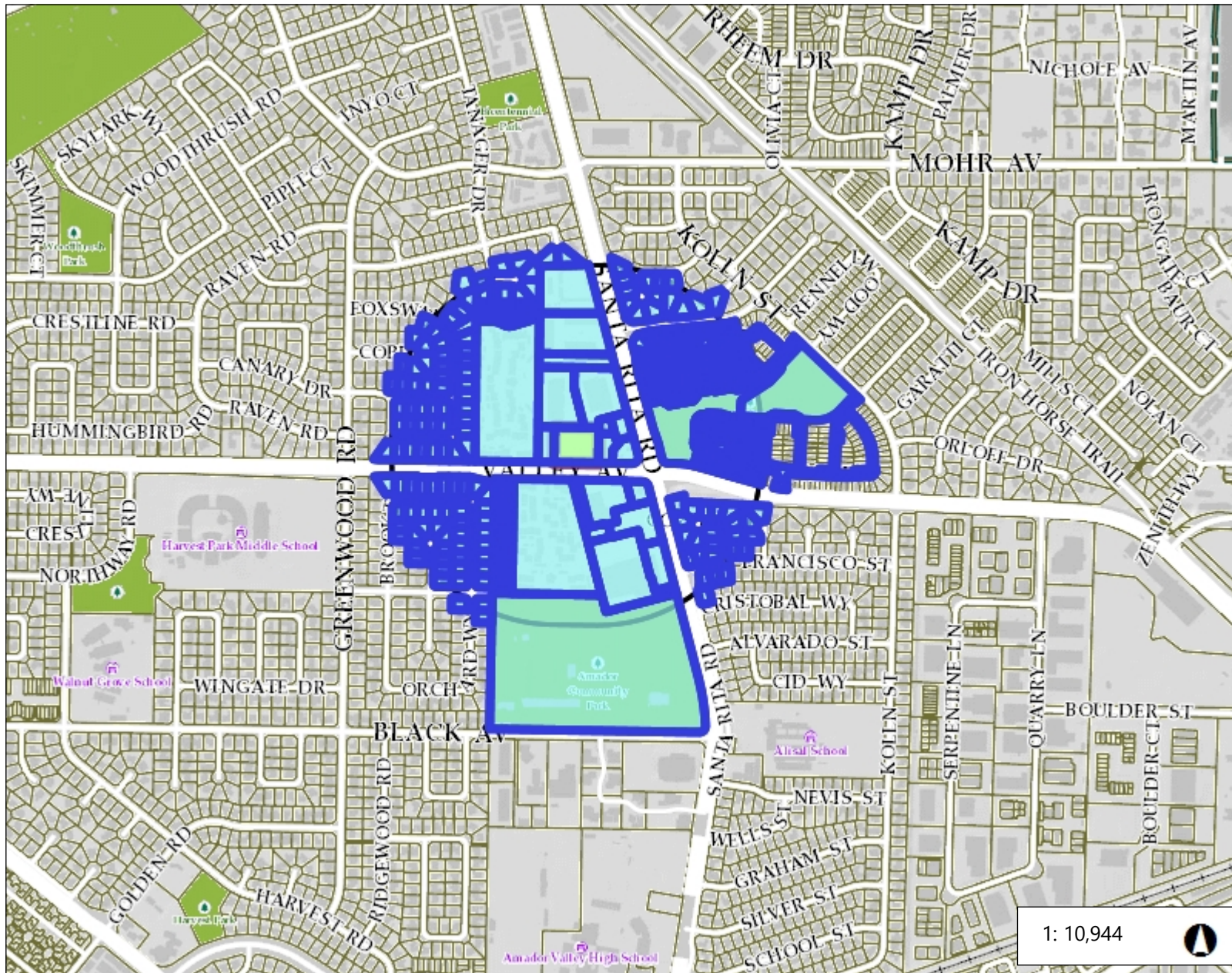
We are kindly requesting the same respect you have given these other businesses to operate and not make decisions for the revenue of the city based on personal beliefs.

Please reevaluate Bottoms Up Espresso's business license request in reversing the original denial and issuing a business license.

Your timely response is requested.

Kindly,

Stacy Call
 Vice President
 Bottoms Up Espresso, INC
 BUE Franchising LLC
 D: 844.268.8668 x703
 O: 209.578.2707



Legend

- Fire Station
- School
- Park
- Parcels

Notes

Notes

1,824.0 0 911.98 1,824.0 Feet

NAD_1983_2011_StatePlane_California_III_FIPS_0403_Ft_US
© Latitude Geographics Group Ltd.

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

THIS MAP IS NOT TO BE USED FOR NAVIGATION

SUBJECT: Committee, Commission, and Task Force List

Bicycle, Pedestrian, and Trails Committee

Advise the Parks and Recreation Commission and the City's Traffic Engineering Division on bicycle, pedestrian and trail related items. The committee reviews and prioritizes potential projects and provides input on policies related to bikeways and trails.

Meeting Time: Fourth Monday of each month at 6:45 p.m.
Meeting Location: Pleasanton Senior Center, 5353 Sunol Blvd., Pleasanton
Representative: Commissioner Jain
Alternate: Chair Pace
Staff Contacts: Matt Nelson, Traffic Engineer, 931-5671; Matt Gruber, Landscape Architect, 931-5672

Civic Arts Commission

Promote the acquisition, construction and installment of works of public art in Pleasanton. Make recommendations to the City Council regarding the City Civic Arts Program.

Meeting Time: First Monday of each month at 7 p.m.
Meeting Location: City Council Chamber, 200 Old Bernal Ave., Pleasanton
Staff Contact: Lia Bushong, Asst. Director, Library and Recreation, 931-3412

Committee on Energy and the Environment

Works closely with City staff to prepare an Energy and Environmental Priorities Plan focusing on energy and environmental issues and strategies reflecting community opportunities, needs and interests.

Meeting Time: Fourth Wednesday of every other month at 5:00 p.m.
Meeting Location: Operations Service Center, 3333 Busch Rd., Pleasanton
Staff Contact: Becky Hopkins, Assistant to the City Manager, 931-5009

Economic Vitality Committee

Assess the current and ongoing business climate in the City of Pleasanton and offer suggestions and recommendations to the City Council intended to maintain a strong economic development base in the City.

Meeting Time: Third Thursday of each month at 7:30 a.m.
Meeting Location: Remillard Conference Room, 3333 Busch Rd., Pleasanton
Staff Contact: Lisa Adamos, Economic Development Manager, 931-5039

Heritage Tree Board of Appeals

Make findings of fact upholding, reversing or modifying the director's decision with regard to heritage tree removal permits.

Meeting Time: As needed
Meeting Location: City Council Chamber, 200 Old Bernal Ave., Pleasanton
Representatives: Commissioners Morgan and Wedge
Alternate: Commissioner Mohan

Housing Commission

In cooperation with the community and the development and construction industry, the commission is responsible for initiating and pursuing opportunities for developing, promoting and retaining affordable housing within the community and the region. Recommend policies related to affordable housing. Provide oversight of City affordable housing developments.

Meeting Time: Third Thursday of each month at 7 p.m.
Meeting Location: City Council Chamber, 200 Old Bernal Ave., Pleasanton
Staff Contact: Steve Hernandez, Housing Manager, 931-5007

Human Services Commission

Advise the City Council on the human service needs of the community and methods of fulfilling these needs. Particular emphasis is given by the commission to the human service needs of the socially and economically disadvantaged, the elderly and the youth of the community.

Meeting Time: First Wednesday of each month at 7 p.m.
Meeting Location: City Council Chamber, 200 Old Bernal Ave., Pleasanton
Staff Contact: Jay Ingram, Community Services Manager, 931-5346

Library Commission

Advise the City Council on matters related to the Pleasanton Library and library services in general. Promote the use of library services to the community.

Meeting Time: First Thursday of each month at 7 p.m.
Meeting Location: City Council Chamber, 200 Old Bernal Ave., Pleasanton
Staff Contact: Heidi Murphy, Director of Library and Recreation, 931-3400

Parks and Recreation Commission

Advise the City Council, City Manager, and Parks and Community Services Department on matters related to the development and provision of services pertaining to parks and recreation facilities, programs and services.

Meeting Time: Second Thursday of each month at 7 p.m.
Meeting Location: City Council Chamber, 200 Old Bernal Ave., Pleasanton
Staff Contact: Heidi Murphy, Director of Library and Recreation, 931-3400

Youth Commission

Act as the liaison between Pleasanton's youth community and the City Council; advise the Council on youth-related issues; promote an understanding and appreciation of community affairs among the youth of Pleasanton.

Meeting Time: Second Wednesday of each month at 7 p.m., September-May
Meeting Location: Remillard Conference Room, 3333 Busch Rd., Pleasanton
Staff Contact: Nicole Thomas, Recreation Supervisor, 931-3432

SUBJECT: Actions of the City Council

December 5, 2023

Consent Calendar:

Actions of the Zoning Administrator and Planning Commission

Introduce an ordinance to amend the Stoneridge Shopping Center Development Agreement, for a previously approved 362,790-square-foot shopping center expansion, to extend the term for one year with an option to extend for an additional year subject to the completion of performance standards, and waive first reading (This item was pulled from the consent calendar and discussed under Public Hearings. The Council modified the terms of the Development Agreement to limit the term of the extension to six months, with conforming modifications to other sections of the Agreement)

Approve a professional services agreement with Economic & Planning Systems Inc. to conduct a comprehensive study of the City's Development Impact Fees, Inclusionary Zoning Ordinance, and Affordable Housing Fee, for a total cost of \$203, 928 and approve budget amendments in the General Fund and Lower Income Housing Fund and authorize the City Manager to approve administrative amendments to the agreement

Council approved the consent calendar

Public Hearings and Other Matters:

Continued from November 7, 2023 - Introduce an ordinance to add a new Chapter 9.06 Leaf Blower Restrictions to the Municipal Code to ban gasoline-powered leaf blowers effective June 1, 2024, and waive first reading

Introduce ordinances to amend the Municipal Code to: (1) Create a Housing Opportunity Zone District; and (2) Create the Objective Design Standards Housing Sites Compliance Review Process; and (3) Introduce 21 Ordinances to rezone 21 Housing Opportunity Sites identified in the 6th Cycle Housing Element to the Housing Opportunity Zone District; and waive first readings

Council approved the hearing items

December 19, 2023

Consent Calendar:

Actions of the Zoning Administrator and Planning Commission

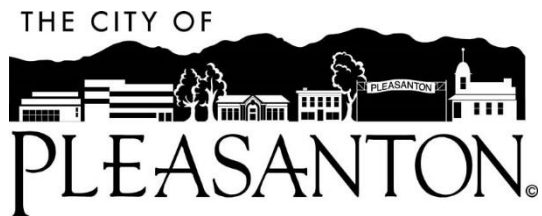
Adopt and waive second reading of Ordinance No. 2249 approving the fifth amendment to the Stoneridge Shopping Center Development Agreement to extend the term for six months

Adopt and waive second reading of Ordinance No. 2250 to add a new Chapter 9.06 Leaf Blower Restrictions to the Municipal Code to ban gasoline-powered leaf blowers effective June 1, 2024

Adopt and waive second readings of Ordinance Nos. 2251 through 2272 to amend the Municipal Code to create a Housing Opportunity Zone District and rezone 21 housing opportunity sites identified in the 6th Cycle Housing Element to the Housing Opportunity Zone District

Accept as complete the project to transfer five parcels to CalTrans for the original construction of the I-680 and Stoneridge Drive Interchange (constructed 1989), CIP 16506

Council approved the consent calendar



Planning Commission Agenda Report

January 24, 2024
Item 8

SUBJECT: Future Planning Calendar

No items to report.