

**ORDINANCE NO. 2039**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PLEASANTON AMENDING CHAPTER 18.44 (C COMMERCIAL DISTRICTS) OF THE PLEASANTON MUNICIPAL CODE, AS FILED UNDER CASE P12-0042**

**WHEREAS**, at its meeting of February 22, 2012, the Planning Commission recommended that the City Council amend sections of Chapter 18.44 (C Commercial Districts) of the Pleasanton Municipal Code to modify existing language regarding financial institutions; and

**WHEREAS**, at its meeting of March 20, 2012, the City Council discussed the issue and continued the matter to a future meeting; and

**WHEREAS**, at its meeting of May 1, 2012, the City Council reviewed the report of the Director of Community Development regarding amendments to sections of Chapter 18.44 (C Commercial Districts) of the Pleasanton Municipal Code and the recommendations of the Planning Commission.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PLEASANTON DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** The City Council finds that the proposed amendments to the Pleasanton Municipal Code are consistent with the Pleasanton General Plan.

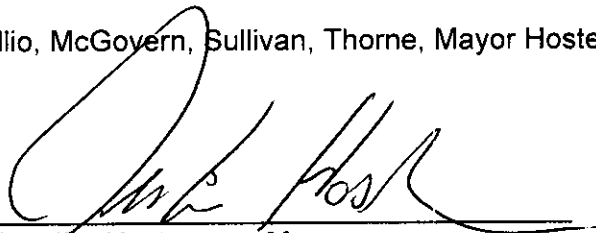
**SECTION 2.** Sections of Chapter 18.44 (C Commercial Districts) of the Pleasanton Municipal Code pertaining to financial institutions are amended to read as set forth in Exhibit A, attached hereto and incorporated herein by this reference.

**SECTION 3.** A summary of this ordinance shall be published once within fifteen (15) days after its adoption in "The Valley Times," a newspaper of general circulation published in the City of Pleasanton, and the complete ordinance shall be posted for fifteen (15) days in the City Clerk's office within fifteen (15) days after its adoption.

**SECTION 4.** This ordinance shall be effective thirty (30) days after the date of its final passage and adoption.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Pleasanton on May 1, 2012 and adopted at a regular meeting of the City Council of the City of Pleasanton on May 15, 2012 by the following vote:

Ayes: Councilmembers Cook-Kallio, McGovern, Sullivan, Thorne, Mayor Hosterman  
Noes: None  
Absent: None  
Abstain: None

  
Jennifer Hosterman, Mayor

ATTÉST:

*Karen Gonzalez*  
for Karen Diaz, City Clerk

APPROVED AS TO FORM:

*Jonathan Lowell*  
for Jonathan Lowell, City Attorney

**EXHIBIT A**  
**Revisions to Chapter 18.44 (C Commercial Districts)**

**Table 18.44.090**  
**PERMITTED AND CONDITIONAL USES**

The following uses shall be permitted uses or conditional uses in a C district where the symbol "P" for permitted use, "C" for conditional use, or "TC" for temporary conditional use appears in the column beneath the C district:							
Note:							
* Uses which are part of a completely enclosed mall complex, all activities take place entirely indoors.							
** Uses on peripheral sites physically separated from a central enclosed mall.							
	<b>CR*(m)</b>	<b>CR**(p)</b>	<b>CN</b>	<b>CC</b>	<b>CS</b>	<b>CF</b>	<b>CA</b>
Financial institutions, including banks, savings and loan offices, finance companies, credit unions and related services	P	P	P	P***	P		
<p><b>*** Conditionally permitted use if the subject location:</b></p> <ol style="list-style-type: none"> <li><u>1. Is zoned Central-Commercial (C-C) or is zoned Planned Unit Development (PUD) that references uses of the C-C district; AND</u></li> <li><u>2. Is located within the Downtown Revitalization District; AND</u></li> <li><u>3. Has ground floor frontage on Main Street.</u></li> </ol> <p><u>Financial institutions that propose to locate on properties that do not meet all three of the above parameters shall be permitted uses and shall not be subject to the following additional considerations:</u></p> <p><u>When reviewing an application for a conditional use permit for a financial institution that meets the above three parameters, the Planning Commission shall discourage more than one financial institution within any block of Main Street (including both sides of the street as defined by address, e.g. 100 block, 200 block, etc.) and encourage retail businesses on corners that add to the vitality and pedestrian interest in Downtown.</u></p> <p><u>Existing financial institutions may remain as nonconforming uses. Notwithstanding Chapter 18.120 of this code, if an existing financial institution has been abandoned, discontinued, or changed to a conforming use for a continuous period of 180 days or more, the nonconforming use shall not be reestablished without securing a Conditional Use Permit. Abandonment or discontinuance shall include cessation of a use regardless of intent to resume the use.</u></p>							
Microbrewery	P****	P****		P****	P****		
**** Permitted use subject to the following conditions:							
1. The zoning administrator finds that adequate parking is available for said use.							
2. If the zoning administrator determines that the use will be or is creating odor problems, an odor abatement device determined to be appropriate by the zoning administrator shall be installed within the exhaust ventilation system to mitigate brewery odors.							
3. The applicant is in compliance with all applicable requirements of Chapter 9.04 of this code.							
4. If operation of the use results in conflicts pertaining to parking, noise, odors, traffic, or other factors, the zoning administrator may modify or add conditions to mitigate such impacts, or may revoke the zoning certificate for the use.							

**CITY COUNCIL AGENDA REPORT**

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March 20, 2012  
Community Development  
Planning Division

**TITLE: INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER 18.44 (C COMMERCIAL DISTRICTS) OF THE PLEASANTON MUNICIPAL CODE REGARDING FINANCIAL INSTITUTIONS (P12-0042)**

**SUMMARY**

The subject application is a City-initiated amendment to the Pleasanton Municipal Code that would designate financial institutions as conditionally permitted uses for properties located within the Downtown Revitalization District, have frontage on Main Street, and are zoned Central-Commercial (C-C). Financial institutions are currently permitted uses in the C-C District, both within and outside the Downtown Revitalization District. In addition to being subject to a conditional use permit, financial institutions would be subject to additional criteria as outlined in the "Proposed Code Amendment" and "Discussion" sections of this report.

**PLANNING COMMISSION ACTION**

Recommended approval to the City Council by 4-0 vote and also recommended that staff explore changes to other permitted commercial uses in the downtown area.

**RECOMMENDATION**

Introduce the attached draft ordinance, amending Chapter 18.44 (C Commercial Districts) of the Pleasanton Municipal Code.

**FINANCIAL STATEMENT**

No fiscal impact to the City or public services is anticipated.

## **BACKGROUND**

Financial institutions are permitted uses in the O – Office District and C – Commercial District. The Downtown Specific Plan considers financial institutions to be similar to traditional retail uses. Historically, there was an interest in promoting financial institutions in the downtown area and from 1973 to 1995 the City required that banks, savings and loan institutions, and other financial institutions first locate a branch in the downtown area before locating elsewhere in the city (with the exception of the C-R District, which is the zoning designation for Stoneridge Mall and the area surrounding it) unless there were at least eight financial institutions in the downtown area.

As a result of the City's previous policies requiring financial institutions in the downtown area, these businesses are prevalent in the area. Attachment 2 provides the location of existing financial institutions in the downtown area. As an example, currently the 800 block is the only portion of Main Street without a financial institution. Further, six of the seven existing financial institutions are located on prominent corners. While these institutions have provided a specific type of benefit to the area, it is also beneficial to strive to continue to attract other types of "retail" throughout the entire downtown area. As a result staff is recommending consideration of an ordinance that acknowledges the importance of financial institutions while also trying to ensure that properties that have significant visibility and prominence, such as those along Main Street and those that are corner properties, are available for other types of uses.

## **DISCUSSION**

The proposed ordinance would affect financial institutions (which include banks, savings and loan offices, finance companies, credit unions, and other similar uses) in the downtown area in three basic ways:

1. Requires a Conditional Use Permit from the City Planning Commission if the site meets the following three conditions:
  1. zoned Central-Commercial (C-C) or zoned Planned Unit Development (PUD) that references uses of the C-C district; and
  2. located within the Downtown Revitalization District; and
  3. has frontage on Main Street.

Financial institutions that do not meet all three criteria noted above would be considered permitted uses.

2. Discourages the Planning Commission from approving more than one financial institution within any block of Main Street (counting both sides) and would also discourage the location of a financial institution on a corner property on Main Street in favor of encouraging other uses that would add more vitality and pedestrian interest in these highly visible and character defining locations.
3. Would not impact existing uses as they would remain as nonconforming uses. However, a Conditional Use Permit would be required for a new financial institution where one currently exists unless another financial institution replaces it within 180 days. The code currently allows no more than 90 days before other

nonconforming uses lose their “nonconforming status.” The proposed language for financial institutions extends this time frame in recognition of the specialized investment that may have been made in these locations (e.g. vaults, reinforced walls, etc.). As an alternative, the City Council could elect to further extend this protection of non-conforming uses in the ordinance to, for example, a period of one year, or any other timeframe they consider appropriate.

### **PUBLIC COMMENT**

Mr. Peter MacDonald submitted an email to the Planning Commission, conveying his opposition to the proposed changes since they would result in additional regulation and requirements. Mr. MacDonald’s email is attached to this report as Attachment 3.

The Pleasanton Downtown Association Board discussed the code amendment at their meeting on February 14, 2012, and voted to support the proposed code amendment. The Economic Vitality Committee will review the code amendment on March 15, 2012, and staff will inform the City Council of any comments.

### **ENVIRONMENTAL ASSESSMENT**

This project is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3), as it has been determined that the ordinance will not cause a significant negative effect on the environment.

Submitted By:



Brian Dolan  
Director of  
Community Development

Approved By:



Nelson Fialho  
City Manager

### **Attachments:**

1. Draft Ordinance with Exhibit A, Proposed Code Amendments to Chapter 18.44 of the Pleasanton Municipal Code
2. Map Showing Downtown Revitalization District and Existing Financial Institutions
3. Email correspondence from Mr. Peter MacDonald dated February 22, 2012
4. February 22, 2012, Planning Commission Meeting Minutes

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**SECTION 4.** This ordinance shall be effective thirty (30) days after the date of its final passage and adoption.

**ADOPTED** at a regular meeting of the City Council of the City of Pleasanton on April 3, 2012.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Pleasanton on March 20, 2012 by the following vote:

Ayes:  
Noes:  
Absent:  
Abstain:

And adopted at a regular meeting of the City Council of the City of Pleasanton on April 3, 2012 by the following vote:

Ayes:  
Noes:  
Absent:  
Abstain:

\_\_\_\_\_  
Jennifer Hosterman, Mayor

ATTEST:

\_\_\_\_\_  
Karen Diaz, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jonathan Lowell, City Attorney



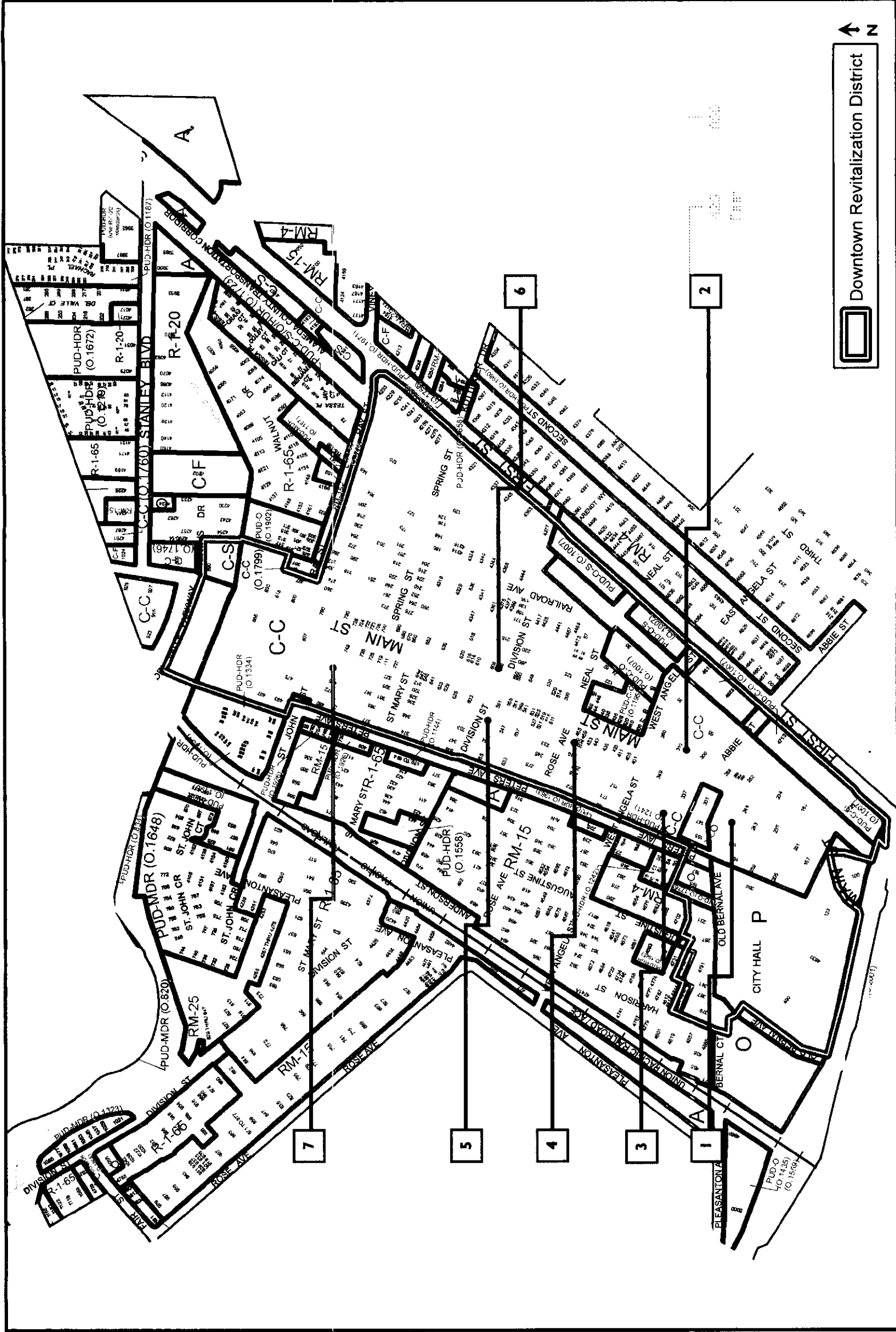
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3. The applicant is in compliance with all applicable requirements of Chapter 9.04 of this code.							
4. If operation of the use results in conflicts pertaining to parking, noise, odors, traffic, or other factors, the zoning administrator may modify or add conditions to mitigate such impacts, or may revoke the zoning certificate for the use.							

**MAP KEY**

- 1 **249 Main Street**  
First Republic Bank
- 2 **300 Main Street**  
Heritage Bank of Commerce
- 3 **337 Main Street**  
Bank of America
- 4 **465 Main Street**  
Valley Community Bank
- 5 **561 Main Street**  
Chase Bank
- 6 **600 Main Street**  
Comerica Bank
- 7 **749 Main Street**  
U.S. Bank



**From:** Peter MacDonald  
**Sent:** Wednesday, February 22, 2012 3:31 PM  
**To:** Maria Hoey  
**Cc:** Scott Raty; Laura Olson; Kathy Narum; Peter MacDonald  
**Subject:** Item 6 a Bank Regulation - Oppose

Dear Members of the Planning Commission,

I mildly oppose the proposed ordinance that will require banks on Main Street to obtain a conditional use permit. This ordinance includes an outright prohibition on banks on corners, or on the same block as another bank. I am writing only for myself.

I have never seen the City develop an ordinance so fast, and congratulate the City for its streamlined process, which hopefully will be used for future processes.

In moving to regulate specific uses, the City is adopting the state of the art from 25 years ago, typified primarily by cities with redevelopment agencies. The world view of redevelopment was that the downtown is a big shopping center, and "We" (the government, as owners of the shopping center) need to place the right users in the right locations vis a vis each other to maximize our return on investment (sales tax). That approach to downtown planning is giving way to the new urbanist philosophy, which welcomes mixing of uses, eschews micro-management of uses, and focuses on providing the habitat in which a lively street life can thrive (e.g. wide sidewalks, civic centers like theatres, and rules encouraging evening activities).

It is interesting that while in the 1980's, Pleasanton mandated banks to locate downtown, Livermore (in its redevelopment phase) was prohibiting banks downtown with its mandatory first floor retail ordinance. Now, Pleasanton is restricting banks, while Livermore (in its new urbanist phase) has made banks and business services permitted uses in its core area. Somehow, Livermore is not experiencing a rush of banks to downtown, but then, neither is Pleasanton.

The immediate impact of restrictive regulations is zoning blight. In this case, the bank prohibition will probably cause the Past Time Pool building to remain unrehabilitated – a typical example of the perfect driving out the good. Higher vacancy rates are a frequent outcome of mandatory first floor retail ordinances. But, the government never helps to make mortgage payments on those forced vacancy buildings.

Lastly, anytime a potential business is subject to a conditional use permit requirement it is bad news for the business. It adds an automatic 6 months to the time required to get open. Under discretionary authority, the details of daily operation become the subject of conditions of approval, and the City regularly requires more substantial building rehabilitation than required by the Building Code.

In general, we can best promote downtown vitality by expanding the area within which vital businesses like restaurants can locate and lightening the burden of regulation, preferably in the form of generally applicable ordinances as opposed to case by case discretionary use permits.

Take care, Pete

Peter MacDonald  
Law Office of Peter MacDonald

**P12-0042, City of Pleasanton**

**Application to amend Chapter 18.44 (Commercial Districts) of the Pleasanton Municipal Code to designate financial institutions as conditionally permitted uses in the Central Commercial (C-C), Downtown Revitalization District.**

Commissioner Olson recused himself due to a conflict of interest.

Shweta Bonn presented the staff report and described the scope and key elements of the proposal.

Commissioner Narum inquired whether a bank would be permitted to open not on Main Street and not on a corner that intersected with Main Street, for example, on Division Street.

Ms. Bonn said yes.

Commissioner Narum indicated that she was trying to understand the language of the proposed changes in relation to giving the Planning Commission some discretion in terms of pedestrian interest and adding vitality to the Downtown. She inquired, assuming the Commission adopted this amendment, if a bank that would like to build and operate where the Union Jack Pub used to be, which has been a vacant property for so long, be an example of bringing in vitality to the Downtown, and if this is what staff envisions as promoting and bringing in vitality.

Commissioner O'Connor stated that he thinks it would be up to the Commission to determine if this was bringing in vitality.

Chair Pentin stated that he is reading it differently, with the consideration being whether a proposed financial institution would not add to vitality and pedestrian interest.

Commissioner Narum continued that, turning Chair Pentin's statement around, in this particular case, which is obviously not a space where people would like to run a restaurant, a bank could be said that it would add to vitality in the Downtown.

Mr. Dolan stated that this is an interesting situation which staff did not really think of. He explained that staff put this together over a relatively short period of time in response to a specific concern. He indicated that, in terms of the change, staff was so definitive about never having a financial institution on a corner and never more than one a block, that staff thought there may be circumstances, and Commissioner Narum's example may be one of those, where the Commission may want the flexibility; therefore, staff put in place the criteria for consideration that would give the Commission plenty of reason to not approve financial institutions at specific locations, but would also give the Commission the opportunity to approve them if the circumstances were right.

Commissioner Narum inquired if staff had another example where they think discretion would come into play.

Mr. Dolan replied that he did not know if he can anticipate one example. He continued that it would leave the Commission's options open if, for instance, in the evolution of the bank business, a financial institution came in and would provide some service that does not now exist and is not known of, but for some reason was necessary.

Commissioner Narum noted that staff is looking at it differently than she is, and it is probably a good thing as it provides even more wiggle room. She added that at this point, she would be in favor of somebody coming in and filling that hole on Main Street, even if it were a bank or a financial institution, so the hole would go away.

Chair Pentin stated that what he sees most in the changes, if taken as Commissioner Narum has mentioned, is taking "*shall*" out and using "*discouraged*" instead. He presented another scenario, that of the shopping center where Vic's Restaurant is located, with buildings in the parking lot at the back, and inquired if those buildings would be precluded from a savings and loan or credit union. He pointed out that the strip mall is not on Main Street, but the property is.

Ms. Stern replied that it would not be precluded but may require a use permit because it does have frontage on Main Street. She added that the Commission would view this case accordingly because it is not something that is preventing activity on Main Street.

Chair Pentin indicated that he is then more comfortable with the revisions using "*discourage*" as it gives the Commission some opportunity to view cases such as these, rather than having the previous one which indicates that financial institutions cannot come in unless it will be replacing a pre-existing institution.

Commissioner Narum noted that there are a lot of permitted uses in the C-C District. She indicated while she understands the thinking behind the amendment and certainly supports and wants to do anything and everything to make the Downtown more alive and have more vitality, she has a bit of discomfort in singling out one of the uses. She inquired if there would be any consideration, as staff time allows, to look at all the uses. She noted that if the Commission adopts this tonight and she were a salon owner on Main Street, she would come in and ask why salons are not being regulated as there are already enough salons on Main Street. She added that she would not know what the answer to that would be because she tends not to believe in regulating uses, but rather, in letting the market drive them.

Mr. Dolan stated that he did have a conversation with the City Manager this morning about that issue. He noted that staff knew that when it comes forward with this, people will ask the question why staff is not looking at some of these other uses that have the reputation for not bringing the most vitality and foot traffic, one of which is definitely the salons. He stated that this is a more complicated issue and is something staff should look into at some point. He noted that it would take more time and that at this point, staff is trying to respond to a very real situation, and the bank use appears to be much more clear, particularly because they seem to be attracted to these really critical corners. He noted that Ms. Bonn identified that the vast majority of the banks are on these corners; no salons actually occupy a corner.

Mr. Dolan stated that staff actually did a quick survey today of salons in the Downtown area. He indicated that there are 18 salons on Main Street, although that number is slightly inflated because some of them are on the second floor, and some have a Main Street address but are located somewhere around the back of the lot as mentioned in an earlier discussion. He continued that the salons are further classified into hair only (11), hair and nails (2), nails only (5), skin care (3), spa (2), and tanning salon (1). He added that there are probably a few others.

Mr. Dolan stated that he felt this needs a more protracted discussion; it is something worth talking about but requires more time. He noted that staff is certainly open to considering this in the future when staff resources allow.

Commissioner Narum inquired if staff would you be open to the Commission including in the motion something that said that the Commission supports the Code amendment and recommends or strongly encourages that as staff has time, staff go back and take a global view of all permitted uses on Main Street.

Mr. Dolan said yes. He added that the Commission could reinforce that recommendation when it is asked later in the year what it would like the Council to consider as part of the Council's priorities.

**Commissioner Narum moved recommend approval to the City Council of Case P12-0042, as modified by the staff memo dated February 22, 2012, with the addition of language that the Planning Commission strongly encourages and supports having staff take a global look at the permitted uses on Main Street as time becomes available.**

**Commissioner Pearce seconded the motion.**

The Commissioners agreed with including the additional language.

**ROLL CALL VOTE:**

**AYES: Commissioners Narum, O'Connor, Pearce, and Pentin**

**NOES: None**

**ABSTAIN: None**

**RECUSED: Commissioner Olson**

**ABSENT: Commissioner Blank**

Resolution No. PC-2012-11 recommending approval of Case P12-0042 was entered and adopted as motioned.

Chair Pentin noted that he did not open the public hearing and that he did not have any speaker cards for the item. He asked if there was anyone in the audience who wanted to speak on the item.

**THE PUBLIC HEARING WAS OPENED.**

There were no speakers from the public.

**THE PUBLIC HEARING WAS CLOSED.**

**MINUTES  
CITY OF PLEASANTON  
REGULAR CITY COUNCIL MEETING  
March 20, 2012**

**CALL TO ORDER**

Mayor Hosterman called the regular meeting to order at the hour of 7:00 p.m. Councilmember Cook-Kallio lead the Pledge of Allegiance and she provided introductory remarks.

**ROLL CALL**

Present: Councilmembers Cook-Kallio, McGovern, Sullivan, Thorne, Mayor Hosterman  
Absent: None

**CLOSED SESSION REPORT**

City Attorney Lowell stated that the Council met in Closed Session concerning existing litigation, Urban Habitat, et al v. City of Pleasanton and that no reportable action was taken.

**AGENDA AMENDMENTS**

City Manager Fialho stated that Item 14, Consider the scope, work plan, general schedule and public input process for preparation of an East Pleasanton Specific Plan, was pulled from the agenda and would be scheduled for another time.

Councilmember Thorne requested Council support to continue Item 6, Public Hearing: P12-0042. He felt the item represented an unwarranted reaction to what could be an isolated situation and said he lacked sufficient information to make an informed decision. While he acknowledged a Councilmember's ability to pull an item without consensus, he did not feel it appropriate to do so with a published agenda item.

City Attorney Lowell explained that the Council could either choose to act on the item through the Consent Calendar, move it to the regular part of the agenda for further discussion, or continue it to a future meeting for discussion.

Councilmember Cook-Kallio and Mayor Hosterman offered support for a continuance. Councilmember McGovern Councilmember supported removing the item to the regular agenda and felt he had the right continue the item on his own and should do so. She noted that protection of this councilmember right is important to her. Councilmember Sullivan supported moving the item to the regular agenda but did not support a continuance.

Councilmember Sullivan asked to reverse the order of Items 12 and 13. The Council offered support.

**CONSENT CALENDAR**

Administrative Services

1. Approved regular meeting minutes of February 7, 2012 (as corrected) and special meeting minutes of February 13 and March 1 and 6, 2012

Vice-Mayor Cook-Kallio noted one minor correction that she would submit to the City Clerk.



City Manager

2. Approved Second Amendment to the Loan Agreement and Ground Lease for the Parkview Assisted Living Development

Councilmember McGovern requested a brief update.

Assistant City Manager Bocian stated that Parkview has operated at near 100% occupancy since the project opened. The overall budget and financing of the project have been strong and operations generally smooth. As part of this item, the City is creating a long-term CAP improvement reserve for the project.

Community Development

3. Accepted actions of the Zoning Administrator and Planning Commission
4. Approved and authorized the City Manager to execute a professional services agreement with Mackay & Soms in the amount of \$191,504 for the design of the Staples Ranch; Stoneridge Drive at Santa Rita Road Intersection Improvements, CIP No. 115034
5. Accepted public improvements perform by J3C Construction for the Bernal Property Mitigation Pond Observation Deck Project, CIP No. 117024; authorized the City Clerk to file a notice of completion, payment of retention in the amount of \$5,625; and the transfer of the project balance of \$20,908 back to the Parks CIP General Fund
6. **Continued to April 3, 2012** – Public Hearing: P12-0042, City of Pleasanton – Consider an ordinance to amend Chapter 18.44: C Commercial Districts, Special Purpose-CC Central Commercial District of the Pleasanton Municipal Code to designate financial institutions as a conditional use within the Downtown Revitalization District

Finance

7. Waived full reading and adopted **Resolution No. 12-509** accepting the Fiscal Year 2010/11 Capital Improvement Program Year-End Financial Report and amend said budget
8. Approved the write-off of various uncollectible accounts receivable in excess of \$10,000

Fire

9. Waived full reading and adopted **Resolution No. 12-510** declaring that weeds, dirt, rubbish and refuse on various properties within the city constitute public nuisances; that they be abated; and setting a date for the protest hearing regarding abatement

Operations Services

10. Authorized the City Manager to execute a letter of intent for an energy and environmental performance contract with Honeywell Corporation in the amount of \$176,700

MOTION: It was m/s by Cook-Kallio/McGovern to approve Consent Calendar, with amendments. Motion carried by the following vote:

Ayes: Councilmembers Cook-Kallio, McGovern, Sullivan, Thorne, Mayor Hosterman  
Noes: None  
Absent: None

## **MEETING OPEN TO THE PUBLIC**

### 11. Public Comment

Roxanne Lindsey, Altamont Commuter Express (ACE) Train, provided the Council with updated fee and train schedules. She explained that due to an increase in ridership, ACE would be adding a 7<sup>th</sup> car and likely a 4<sup>th</sup> train to its regular schedule. ACE is also working with the 49ers to establish a Sunday trip through the valley to a new Santa Clara station.

Jeff Harlan stated that crime rates and robberies are on the rise, encouraged City staff to work with the Police Department to boost awareness of crime prevention especially in light of some of the Section 8 housing under development and new transient laws in neighboring jurisdictions that will move certain behaviors in Pleasanton's direction. He specifically requested more proactive communication and a stronger police visibility during critical crime periods.

Mayor Hosterman said it is her experience that Pleasanton generally enjoys a phenomenal relationship with its police force. She offered to place him in contact with them so that he could better understand the robust array of services they offer to the community.

## **PUBLIC HEARINGS AND OTHER MATTERS**

### 13. 2012 Regional and Local Water Supply Update

Director of Operation Services Smith provided a slide presentation of the staff report. He gave a brief summation of the 2011 report and reviewed regional and local sources of water. He presented a chart of historical water deliveries, noting that Zone 7 has not received its full deliveries from the state water project since 2006, though it has been able to use local groundwater sources and non-local storage to supply retailers with their full need. A significant source of Zone 7 water stems from local groundwater supplies, which have steadily declined over the past five years due to decreased precipitation and the ability to recharge these sources. Ongoing challenges to the provision of water include legal and environmental access to the Sacramento-San Joaquin Bay Delta, cost and competition, population growth, and surface water pollution.

Mr. Smith briefly reviewed the City's Urban Water Management Plan of 2010, which was developed in conjunction with Zone 7, and discussed key legislation that requires a 20% reduction in water use by 2020. Using a ten-year baseline, Pleasanton would need to reduce its per capita use from 244 to 195 gallons per day to meet its goal. While conservation efforts reduced consumption to 208 gallons per day in 2010, more aggressive programs like recycled water will be needed to meet the overall goal by 2020. He discussed average use by service type, current conservation incentives, and the City's water use reduction plan.

Councilmember Thorne said he is frequently asked why the City's sprinkler systems operate even during rainfall. Mr. Smith explained that while the City's larger parks are equipped with weather-based irrigation the costs are prohibitive for smaller parks. Staff is looking into lower cost weather-based controls with a web interface that would allow for a retrofit of all City parks. Until then, staff is working aggressively to reduce consumption at least 10% per year.

The Council and staff discussed turf removal as a conservation method. As discussed at a previous Council meeting, staff will be providing residents with examples of successful and attractive conversions as part of the roll out of the residential turf rebate program.

Councilmember Sullivan asked what effects recycled water is likely to have on potable water. Mr. Smith displayed a map of and described one potential system. With the eventual goal of providing around 4,000 acre feet of water annually, the recycled water system would provide Pleasanton with about 20%

of its total use. One caveat is that the use of recycled water can increase salt build up in the groundwater basin that is situated directly beneath Pleasanton. While manageable, it could increase the overall costs of the program.

Kurt Aaron, Zone 7 Assistant General Manager, Engineering and Operations, said Zone 7 does a significant amount of planning to ensure an adequate supply year to year; the real concern is more long-term. In recent years, planning was based on the assumption that Zone 7 would receive only 76% of its contracted amount from the state but new long-term projections are indicating that will decrease to nearly 60%. He briefly discussed the Bay Delta Conservation Plan, which most believe to be the best chance at creating a long-term solution that balances the ecosystem, water supplies, and the needs of all users.

Mayor Hosterman said it is her understanding that the state has entered into water contracts amounting to roughly 8.4 times the available supply. She asked if there is any truth to this and if so, how Zone 7 and other agencies will be able to cobble together the resources to serve the current population and that required under state housing mandates. Mr. Aaron confirmed that members of the State Water Project have contracted for certain amounts of water and that this is not always the amount provided. The focus of local agencies, however, is more on getting a reliable amount rather than the full contract. At present, they may not be getting the full amount but in the end, depending on what occurs in the Delta, they may receive more.

Councilmember Sullivan referred to the Annual Water Retailers Report, which identified short-term supplies over the next five to ten years but not beyond that. At the latest Water Retailers meeting, discussion turned to the regional desalination project. Zone 7 is relying largely on this project but there are a number of unknowns that may make it unviable. Given the overall uncertainty in terms of supply and the projected population growth, at what point do state housing mandates enter the discussion?

The Council generally voiced similar frustration in terms of the lack of accountability. It is clear that Association of Bay Area Governments (ABAG) is issuing growth mandates without consideration of what current supplies can support. Meanwhile, local agencies are desperately trying to get a handle on the bottom line in terms of how much water is needed to be able to maintain the level of service and quality of life that residents deserve. Local elected officials need to be much more proactive with state legislators about tackling these issues now rather than later.

Mr. Fialho concurred and said this also ties into the Council's discussion on growth management. There is a clear need for dialogue at both the state and local levels about how the legislative landscapes between Regional Housing Needs Assessments (RHNA) and the available water supply conflict. In the short-term, from a current RHNA cycle perspective, there is sufficient water but a conflict could possibly present in the next round or two.

## **BREAK**

Mayor Hosterman called a brief recess at 8:31 p.m. and reconvened the regular meeting at 8:37 p.m.

### **12. Review of framework for amended Growth Management Ordinance**

Assistant City Manager Bocian provided a slide presentation of the staff report. He briefly reviewed the City's existing growth management program and the subcommittee, comprised of Councilmembers McGovern and Thorne, efforts to date.

As part of the 2009 settlement with Urban Habitat, the City Council requested a review of the existing Growth Management Ordinance in order to ensure consistency with state law, develop a nexus between limited infrastructure and the future rate of construction, and to retain current quality of life standards for existing residents and businesses. Both state and regional laws and regulations as well

as certain City ordinances and policies guide the review process, which involves feedback from staff, the public, the Planning Commission, and City Council.

Mr. Bocian discussed the following potential objectives, as identified by the subcommittee:

- Retention of the current development review process in a manner that is consistent with the recently adopted Housing Element;
- Development of a new unit allocation structure, either based upon an equal distribution of RHNA units throughout the planning period or linked directly to actual population growth;
- Development of a comprehensive program to address infrastructure constraints and update the growth management report on a biannual basis;
- Continued reliance on the General Plan to enforce growth control measures;
- Continued focus on residential growth, with consideration given to expanding these principles to commercial development if warranted;
- Development of an allocation process, perhaps based on a point system tied to the overall impacts and amenities of a project.

Mayor Hosterman noted there no speakers wishing to address this item.

Councilmember Thorne said his primary concerns relate to the ability to introduce the concept of matching some sort of growth management effort to infrastructure when the state is clear in that infrastructure is not a defensible excuse for failing to meet RHNA. He echoed the Council's comments on the previous item and said unmitigated growth would affect more than just water; schools and social services are also a significant concern.

Councilmember McGovern said she was looking to the Council for some sort of consensus. The subcommittee has and continues to wrestle with a number of points, but both agree that these are decisions for the entire Council to make. When the process began, she had envisioned using the growth management ordinance to regulate growth relative to the available infrastructure but it is becoming clear that state law makes this virtually impossible. The Department of Housing and Community Development (HCD) talks about removing constraints, but there are a multitude of reasons why that is not possible.

Councilmember Sullivan asked and Mr. Fialho confirmed that with the RHNA allocation, the City does have the ability to require that developers pay for the infrastructure needed to support their development. This can be accomplished through the payment of a fee that is justified or some kind of financing agreement that all parties enter into and include the construction of school sites, water and sewage infrastructure, and roads.

Councilmember McGovern acknowledged this but could foresee a time when the geographic ability just does not exist or the mitigations sacrifice the quality of life and needs of the community.

Mr. Fialho suggested that the Council could approach this in chunks, realizing that the Growth Management Ordinance is document that changes over time as legislative priorities and demands change. The Council could establish a strict growth management cap based on RHNA, divisible by the number of years granted. If the demand exceeds the annual cap, the Council then has the ability to determine, based on merit, which project moves forward first and which are delayed to subsequent years. He noted that with only about 18 months left in the five to six year RHNA cycle, the hard cap concept does not apply in the immediate future. For now, it would be appropriate to state up front that the Growth Management Ordinance applies to this current RHNA cycle only, which would force the issue to reopen with the next RHNA cycle and Housing Element update.

Mayor Hosterman alternatively suggested that the Council could agree to set certain growth management parameters going into the future. If it is found that the benefits of a proposed project

outweigh the impacts and the Council and community are in agreement, the Council could exempt the project altogether.

Councilmember McGovern shared strong concerns with setting such a precedent as it ultimately erodes the entire process.

Councilmember Sullivan noted that the current ordinance process commences following approval of a residential project and thought it would be more appropriate to intertwine it with the approval process. He did not necessarily support a priority setting process for developments, particularly if it might push one over into the next RHNA cycle, because the needs of the community can change significantly over time. What constitutes a good fit today may not be the same five years from now.

Mr. Fialho cautioned that it does then force a first come, first served scenario and, in an environment where demand exceeds supply, it could be problematic.

Councilmember Sullivan said his initial thought is that if infrastructure cannot serve as the basis of growth management relative to RHNA, then RHNA allocations need to be the cap for that cycle. He said he is open to various methods for allocating development throughout the cycle. He felt that commercial and industrial growth should be examined as part of the overall growth management policy. He generally supported the idea of a points system, but thought it should also focus on project features that reduce overall impacts. He stressed the need to step up efforts to involve the school district and other key stakeholders and to be much more proactive in discussing the local effects of these issues with state legislators. He also felt strongly that the growth management reports should be resurrected to allow for a solid evaluation of the current and potential infrastructure impacts.

Vice-Mayor Cook-Kallio said that in speaking to several Assembly members about the development of RHNA numbers and what the expectations are, it seems clear that they have been allocated in a vacuum. It is also clear that the state expects local agencies to alleviate whatever deficiencies exist in light of what they are required to build. She, like others, was sickened by the lack of planning at the state level to accommodate the needs that will arise from these growth mandates. She expressed strong concerns for the quality of life of Pleasanton residents in all areas. She agreed that aggressive action is warranted in dealing with state legislators.

Councilmember McGovern reiterated her frustrations with trying to set an effective policy. She suggested it might be helpful to identify constraints during the development review process, which would allow the Council to understand the infrastructure issues that play a role in any development project moving forward. She also said she would like to see if those constraints could be used to set a growth rate based on the likely or anticipated removal of such constraints.

14. **PULLED FROM THE AGENDA** - Consider the scope, work plan, general schedule and public input process for preparation of an East Pleasanton Specific Plan
15. Consider a resolution accepting the Midyear 2011/12FY Operating Budget Update

Finance Director Wagner presented the staff report and reviewed midyear fund balances. The General Fund budget remains balanced, with revenues and expenditures increasing approximately \$2.6 million over what was originally anticipated. Revenue increases are attributable primarily to an increase in sales tax revenues, followed by development service fees, hotel/motel tax revenues, business licenses, and recreation fees. Expenditure increases predominantly include retiree medical contributions, consulting fees, water costs, and litigation fees. The 10% Reserve for Economic Uncertainty was increased marginally in accordance with actual revenues.

Ms. Wagner reviewed the Water Operation Fund, which has not experienced the anticipated rate of growth but is projected to end the year with \$6.6 million in reserves, which is an increase of \$300,000

over the previous year. The Sewer Fund is tracking as projected, with increases in retiree medical benefits offset by a reduction in personnel costs. The Golf Course Fund balance was bolstered by a \$330,000 transfer from the General Fund to make up for a \$250,000 decrease in projected revenues as well as an increase in capital repairs and replacements.

Mayor Hosterman opened the public hearing and seeing no speakers, immediately closed the public hearing.

Ms. Wagner noted a typographical error in the staff report, stating the "Youth Master Plan" should read "Youth Center."

**MOTION:** It was m/s by Thorne/Cook-Kallio to adopt **Resolution No. 12-511** accepting the Midyear 2011/12FY Operating Budget Update. Motion carried by the following vote:

Ayes: Councilmembers Cook-Kallio, McGovern, Sullivan, Thorne, Mayor Hosterman  
Noes: None  
Absent: None

### **MATTERS INITIATED BY COUNCIL**

Councilmember McGovern said she has received repeated complaints regarding excessive refuse in a resident's yard. She asked if any of the City's ordinances could be used to remedy the situation.

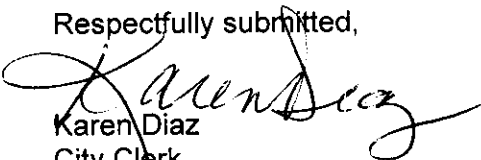
City Attorney Lowell said the laws currently on the books would speak more to a chronic and fairly extreme situation as opposed to one of general cleanliness. He said that a similar, if not the same, situation was recently brought to his attention and a code enforcement officer did visit the site. One potential remedy, if the City is not able to take action, would be for the complainant to take action through the small claims court process based on diminution of the value of the property.

### **COUNCIL REPORTS**

### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 9:54 p.m. The Council extended a tribute to our nation's men and women serving in the military. We wish to honor the memories of those who have died in past wars in defense of our country, including those who have died in the current conflicts in Iraq and Afghanistan.

Respectfully submitted,

  
Karen Diaz  
City Clerk