



## Memorandum

**MEMO:** July 11, 2019  
**TO:** Zoning Administrator  
**FROM:** John Dacey, AICP, Assistant Planner  
**RE:** **Fence Height Exception for Taqueria Los Gallos, AP-19-1430 (ZA)**

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ORIGINATED BY: Jorge Cardenas, 3720 San Michele Drive, Concord, CA 94520.

SUBJECT: This is a public hearing on a request for zoning administrator approval to construct a six-foot-tall wrought-iron fence within the required front yard setback located at 266 Diane Avenue in the RS-5 (Single Family Residential, 5,000 Square Foot Minimum Lot Size) District. Assessor's Parcel Numbers. 073-181-011 and 073-181-012.

RECOMMENDATION: Staff recommends the Zoning Administrator adopt Resolution No. 340, approving Fence Height Exception Application No. 19-1430, subject to conditions.

BACKGROUND:

On March 21, 2019, Jorge Cardenas filed Design Review Application No. 19-1418, requesting administrative design review approval to remodel and repaint the exterior façade on the existing building, construct a new 120-square-foot trash enclosure, and restripe the existing parking lot located at 266 Diane Avenue. On June 12, 2019, the zoning administrator adopted Resolution No. 337 approving Design Review Application No. 19-1418. The approved project plans dated May 23, 2019 included a six-foot-tall wrought-iron fence within the front yard setback. Prior to approval of the plans, the applicant was informed a separate zoning administrator approval would be required for the fence.

Mr. Cardenas filed Fence Height Exception Application No. 19-1430 on June 7, 2019. The Notice of Intent to Conduct a Zoning Administrator Public Hearing for this item was provided to the Planning Commission on June 25, 2019.

PROJECT DESCRIPTION:

Existing Conditions: The subject site is in the Biltmore Subdivision. It is made up of two adjacent interior lots, for a total square footage of 12,800 square feet, and is developed with a non-conforming 4,800 square-foot, multi-tenant commercial building constructed

in 1938. Similar non-conforming commercial buildings are located to the east and south of the site. Single-family homes are located to the west and undeveloped land is located to the north. Taqueria Los Gallos is a tenant on-site, with a 1,800 square-foot space in the non-conforming building.

Proposed Project: The applicant requests to construct of a six-foot-tall fence and gate located in the front yard setback (see Attachment 2, Site Plan).

CODE COMPLIANCE:

The property is located in the RS-5 District. Pittsburg Municipal Code (PMC) section 18.84.205(B)(3) states that the maximum height of a fence within the required front yard setback in a residential zoning district is four and one-half feet, provided, that the portion of the fence located above three feet in height must have uniformly spaced interstices to allow 66 and two-thirds percent open area between the fence material. PMC section 18.84.205(F) allows for the maximum allowable fence height to be increased through the issuance of a fence height exception approved by the Zoning Administrator.

PMC section 18.78.050(C)(3) requires that the visibility of a driveway crossing a street property line may not be blocked between a height of three and one-half feet and seven feet for a depth of five feet from the street property line. The six-foot-tall fence in question is proposed to be located four feet away from the property line along Diane Avenue. As such, it is recommended the fence be conditioned to be located a minimum five-foot distance from the front property line.

Required Findings: In order to approve a fence height exception, the Zoning Administrator must make findings pursuant to PMC section 18.84.205 (F)(2) that the proposed fence:

- A. will not infringe upon the light, air circulation, or visual openness of surrounding properties;
- B. will not detract, impair, or destroy the characteristics of the established area; and,
- C. will not be detrimental to the health, safety or welfare of persons residing or working in or adjacent to the area or neighborhood of such structure.

Environmental: This item is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Class 3, "New Construction or Conversion of Small Structures" of the State CEQA Guidelines, section 15303.

Public Noticing: On or prior to July 1, 2019, notice of the July 11, 2019 public hearing was posted at City Hall, near the subject site, and on the 'Public Notices' section of the city's website; was delivered for posting at the Pittsburg Library; and was mailed via first class or electronic mail to the applicant, to the property owner, to owners of property located within 300 feet of the project site, and to individuals who had previously filed

Zoning Administrator Staff Report  
Taqueria Los Gallos Fence Height Exception, AP-19-1430 (ZA).  
July 11, 2019

written request for such notice, in accordance with Pittsburg Municipal Code (PMC) section 18.14.010 and Government Code section 65091.

STAFF ANALYSIS:

The proposed fence in question would not infringe upon the light, air circulation, or visual openness of the subject property or surrounding properties, since there are no buildings immediately adjacent to the front property line of the project site, and the proposed fence is consistent with other fences in the neighborhood. Further, as conditioned, the location of the proposed fence would leave clear sight lines for driver safety. Therefore, staff supports the applicant's request for a fence height exception, subject to the conditions.

REQUIRED ACTION:

Move to adopt Resolution No. 340, approving Fence Height Exception Application No. 19-1430, subject to conditions.

ATTACHMENTS:

1. Proposed Resolution No. 340
2. Project Plans, dated May 23, 2019
3. Public Hearing Notice/Vicinity Map

PROPOSED  
BEFORE THE ZONING ADMINISTRATOR OF THE CITY OF PITTSBURG

In the Matter of:

|  |   |                    |
|--|---|--------------------|
| Resolution Approving a Fence Height      | ) |                    |
| Exception for a Six-Foot-Tall Fence, for | ) | Resolution No. 340 |
| “Taqueria Los Gallos Fence Height        | ) |                    |
| Exception, AP-19-1430 (ZA).”             | ) |                    |

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The Zoning Administrator DOES RESOLVE as follows:

Section 1. Background

- A. On June 7, 2019, Jorge Cardenas, filed Fence Height Exception Application No. 19-1430, requesting approval to construct a six-foot-tall wrought-iron fence located within the required front yard setback at 266 Diane Avenue in the RS-5 (Single Family Residential, 5,000 Square Foot Minimum Lot Size) District. Assessor’s Parcel Nos. 073-181-011 and 073-181-012.
- B. On June 25, 2019, the Zoning Administrator submitted to the Planning Commission a Notice of Intent to exercise delegated authority for the subject application pursuant to Pittsburg Municipal Code (PMC) section 18.84.205(F)(2).
- C. The fence height exception request is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) under Class 3, “New Construction or Conversion of Small Structures” of the State CEQA Guidelines, section 15303.
- D. On or prior to July 1, 2019, notice of the July 11, 2019 public hearing was posted at City Hall, near the subject site, and on the ‘Public Notices’ section of the city’s website; was delivered for posting at the Pittsburg Library; and was mailed via first class or electronic mail to the applicant, to the property owner, to owners of property located within 300 feet of the project site, and to individuals who had previously filed written request for such notice, in accordance with Pittsburg Municipal Code (PMC) section 18.14.010 and Government Code section 65091.
- E. PMC section 18.84.205(F), *Exceptions to Fence Height Regulations*, allows for the maximum allowable fence height to be increased through the issuance of a fence height exception approved by the Zoning Administrator. In order to approve a fence height exception, the Zoning Administrator must make findings (PMC section 18.84.205.F.2) that the proposed fence structures:
  - 1. will not infringe upon the light, air circulation, or visual openness of surrounding properties;
  - 2. will not detract, impair or destroy the characteristics of the established area;

and,

3. will not be detrimental to the health, safety or welfare of persons residing or working in or adjacent to the area or neighborhood of such structure.
- F. On July 11, 2019, the Zoning Administrator held a public hearing on Fence Height Exception Application No. 19-1430, at which time oral and/or written testimony was considered.

### Section 2. Findings

- A. Based on all the information contained in the Planning Division files on this project, incorporated herein by reference and available for review in the Planning Division located at 65 Civic Avenue in Pittsburg, and based on all oral and written testimony presented at the public hearing, the Zoning Administrator finds that:
1. All recitals above are true and correct and are incorporated herein by reference.
  2. The proposed fence, as designed, will not infringe upon the light, air circulation, or visual openness of the subject property or surrounding properties, in that it is located at the front of the property, not adjacent to any existing buildings, and that the picket fence design would allow for visibility and the permeability of light and air between posts.
  3. The proposed fence, as designed, will not detract, impair or destroy the characteristics of the established area, in that the proposed fence will be constructed in a sound and workmanlike fashion using new materials, consistent with other fences in the neighborhood.
  4. The proposed fence will not be detrimental to the health, safety, or welfare of persons residing or working in or adjacent to the area or neighborhood, if the fence is conditioned to be placed at least five feet back from the front property line to provide sufficient driveway visibility.

### Section 3. Decision

- A. Based on the findings set forth above, the Zoning Administrator hereby approves Fence Height Exception Application No. 19-1430, subject to the following conditions.
1. Site Plan. The proposed fence shall be developed substantially as presented in the site plan date-stamped May 23, 2019, except as may be modified by the conditions below.
  2. Fencing Material. Fencing along the front property line shall be of wrought iron

or similar materials, in a picket fence design to allow for light and air circulation and visual openness.

3. Driveway Visibility. The fence shall be located at least five feet from the street property line to allow for sufficient visibility at the driveway entrance.
4. Fence Maintenance. The fence shall be maintained erect and in a state of good repair. A dilapidated, dangerous, or unsightly fence or wall must be repaired, replaced, or removed, as the situation may warrant.
5. Encroachment Permit. The applicant shall obtain approval and enter into a revocable encroachment agreement with the City of Pittsburg Engineering Division within 30 days of this approval.
6. Property Maintenance. The entire site including paved, unpaved, and landscaped areas must be kept in a neat and orderly manner, free of weeds loose trash, debris, and other litter.

Standard Conditions:

7. Construction. All site development shall comply with Title 15 (Building and Construction) of the Pittsburg Municipal Code.
8. Other Agency Requirements. The applicant shall comply with all requirements of the Pittsburg Building and Engineering Divisions, the Contra Costa County Fire Protection District, and all other applicable local, state and federal agencies. It is the responsibility of the business owner to contact each local, state, or federal agency for requirements that may pertain to this project.
9. Standard Conditions. The Standard Conditions of Development as adopted by the Pittsburg Planning Commission by Resolution No. 8931 shall apply as conditions of approval for this project as applicable. Where there is a conflict between this resolution and the Standard Conditions of Development, this Zoning Administrator resolution shall govern.
10. Indemnification. Applicant agrees to indemnify, defend, and hold harmless the City, its officials, officers, employees, agents and consultants from any and all administrative, legal or equitable actions or other proceedings instituted by any person challenging the validity of this project approval, subsequent project approval, or other action arising out of, or in connection with, this project approval. The parties shall cooperate in defending such action or proceeding. The parties shall use reasonable efforts to select mutually agreeable defense counsel but, if the parties cannot reach agreement, City may select its own legal counsel at applicant's sole cost and expense. Applicant may select its own legal counsel to represent applicant's interests at applicant's sole cost and expense. Applicant shall pay for City's costs of defense, whether directly or by timely

reimbursement to City on a monthly basis. Such costs shall include, but not be limited to, all court costs and attorney's fees expended by City in defense of any such action or other proceeding, plus staff and City Attorney time spent responding to and defending the claim, action or proceeding.

11. Expiration. This approval will expire on July 11, 2020, unless an encroachment permit has been issued or a written request for extension is filed with the Planning Division prior to the expiration date and subsequently approved by the Zoning Administrator. The approval shall be valid for no more than six months from the date of permit issuance, unless work is commenced and diligently pursued prior to the expiration of the permit.

#### Section 4. Effective Date

This resolution shall take effect immediately upon adoption of this resolution.

The foregoing resolution was passed and adopted the 11<sup>th</sup> day of July 2019, by the Zoning Administrator of the City of Pittsburg, California.

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KRISTIN POLLOT, AICP  
ZONING ADMINISTRATOR





SEAL & SIGNATURE



DATE

AGENCY APPROVAL

REVISIONS:

- ▲ MAY 16, 2019
- PARKING LOT ADJUSTED; PLANT AREAS REVISED; LIGHTING ADDED AT NORTH WALL; 8'-0" FENCE REMOVED AT REAR
- PARAPET EXTENDED AT NORTH WALL; BIKE RACKS ADDED;
- SIDE WALK REPLACEMENT NOTE MODIFIED.

**TAQUERIA LOS GALLOS RESTAURANT**  
266 DIANE AVE  
PITTSBURG, CA 94565

APN 073-181-011-5  
+ APN 073-181-012-03

DRAWING TITLE

**SITE PLAN + PARKING PLAN**

DRAWN: WB

CHECKED: CB

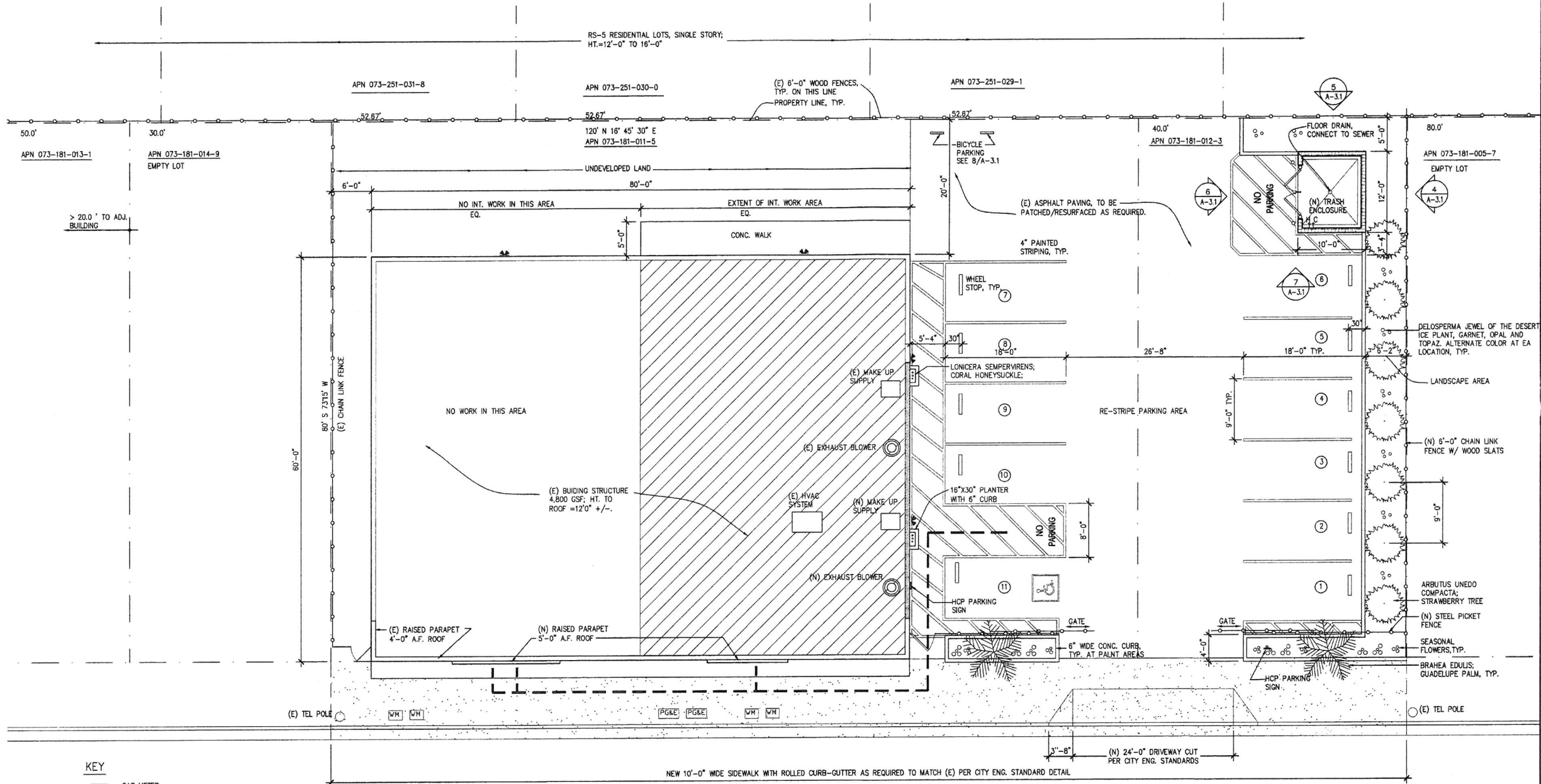
DATE: MARCH 15, 2019

SCALE: AS NOTED

PROJECT NO.: JC

SHEET NO.:

**A-1.0**



- KEY**
- PG&E GAS METER
  - WM WATER METER
  - ACCESSIBLE ROUTE OF TRAVEL
  - (N) PARAPET WALL, HT. = 4'-0"
  - † WATER SPIGOT, H=HOT, C=COLD
- NOTE: SEE A-2.1 FOR ELEV. KEYING

**ROOF PLAN, SITE PLAN AND AREA OF PROPOSED WORK**

SCALE: 1/8"=1'-0"

DIANE AVENUE (80.0' R.O.W.)







# City of Pittsburg

Community Development Department – Planning Division

65 Civic Avenue, Pittsburg, CA 94565 | Tel: (925) 252-4920 | Fax: (925) 252-4814

## NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the **ZONING ADMINISTRATOR** of the **City of Pittsburg** will conduct a public hearing on:

**DATE:** July 11, 2019  
**TIME:** 2:00 p.m.  
**PLACE:** First Floor, Conference Room 4B  
65 Civic Avenue, Pittsburg, California

Concerning the following matter:

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### **Taqueria Los Gallos Fence Height Exception, AP-19-1430 (ZA).**

This is an application by Jorge Cardenas, requesting Zoning Administrator approval of a fence height exception to construct a six-foot-tall wrought-iron fence within the front yard setback, where only four-and-a-half feet would otherwise be allowed. The site is located at 266 Diane Avenue in the RS-5 (Single-Family Residential, 5,000 Square Foot Minimum Lot Size) District. Assessor's Parcel Numbers: 073-181-011 and 073-181-012.

**PROJECT PLANNER:** John Dacey, (925) 252-4824 or [jdacey@ci.pittsburg.ca.us](mailto:jdacey@ci.pittsburg.ca.us)

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**Why am I receiving this notice?** You are receiving this notice because you have either previously requested notifications from the Planning Division, or a project has been proposed in your neighborhood and all property owners within a minimum 300-foot radius of the project site are required to be notified under the Pittsburg Municipal Code.

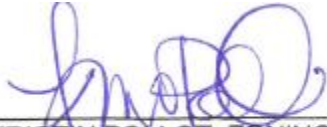
**Where can I get more information about this project?**

The complete file for this project is available for public inspection at the Planning Division, weekdays during the hours of 8:00 AM to 12:00 PM and 1:00 PM to 5:00 PM. You can also find out more about the project by contacting the project planner listed above.

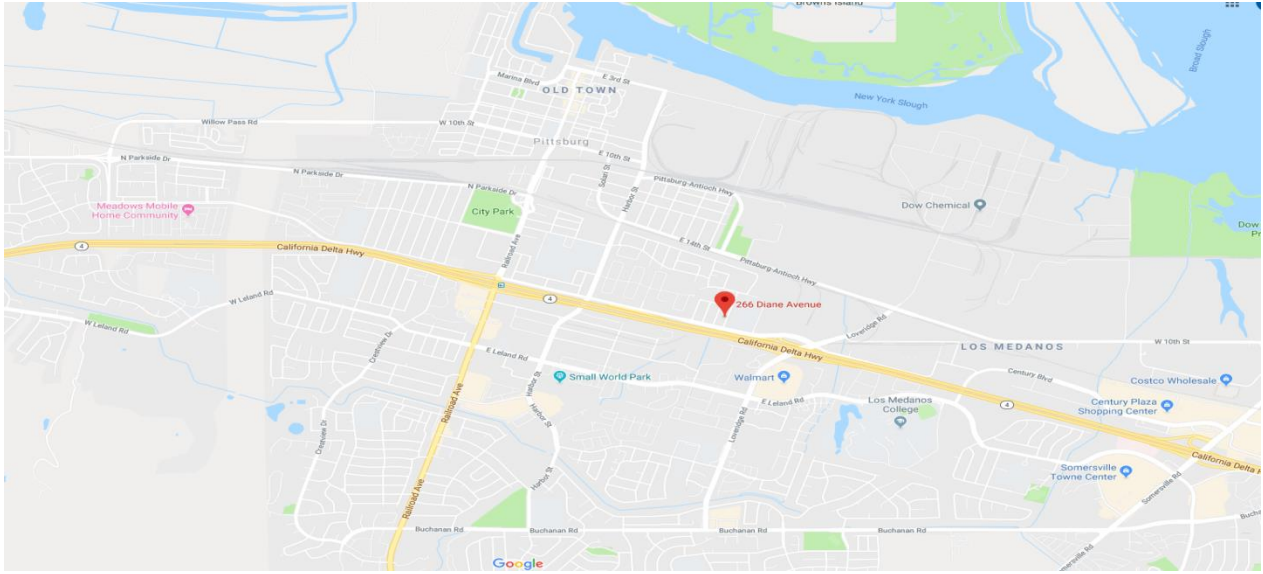
**What can I do if I have comments on the project?**

Comments or objections to the project can be made by writing or through oral testimony during the public hearing. Written comments citing the project name may be emailed to the project planner listed above, or may be mailed or delivered to: Pittsburg Planning Division, 65 Civic Avenue, Pittsburg, CA 94565. You may also register your comments or objections by attending the public hearing on the date and time listed above.

Pursuant to Section 65009 of the California Government Code, if you challenge this matter in court, you may be limited to those issues you or someone else raised at the public hearing described in this notice, or in written correspondence on the matter delivered to this agency at, or prior to the public hearing. Any written correspondence delivered to the Planning Division before the hearing body's action on the matter will become a part of the administrative record.

  
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KRISTIN POLLOT, ZONING ADMINISTRATOR  
CITY OF PITTSBURG

**Project Title:** Taqueria Los Gallos Fence Height Exception AP-19-1430 (ZA).  
**Location:** 266 Diane Avenue, APNs: 073-181-011 and 073-181-012



**City of Pittsburg**

Community Development Department - Planning Division  
65 Civic Avenue  
Pittsburg, CA 94565

## NOTICE OF PUBLIC HEARING