

Minutes
Clayton Planning Commission Meeting
Tuesday, February 9, 2016

1. CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Chair David Bruzzone called the meeting to order at 7:00 p.m. at Hoyer Hall, 6125 Clayton Road, Clayton, California.

Present: Chair David Bruzzone
Vice Chair Sandra Johnson
Commissioner Gregg Manning
Commissioner Tuija Catalano

Absent: Commissioner Dan Richardson

Staff: Community Development Director Mindy Gentry
Assistant Planner Milan Sikela, Jr.

2. ADMINISTRATIVE

- 2.a. Review of agenda items.
- 2.b. Declaration of Conflict of Interest.
- 2.c. Chair Dave Bruzzone to report at the City Council meeting of February 16, 2016.

3. PUBLIC COMMENT

None

4. MINUTES

- 4.a. Approval of the minutes for the January 26, 2016 Planning Commission meeting.

Commissioner Manning moved and Vice Chair Johnson seconded a motion to approve the minutes, as submitted. The motion passed 4-0.

5. PUBLIC HEARINGS

- 5.a. **ZOA-01-16, Zoning Ordinance Amendment, City of Clayton.** Review and consideration of a City-initiated Ordinance amending the Clayton Municipal Code Title 17, prohibiting cannabis testing laboratories and delivery of cannabis. This ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment.

Director Gentry presented the staff report.

Commissioner Manning had the following questions:

- For licensed medical marijuana purposes, is there a requirement to have a minimum or maximum number of dispensaries per a certain amount of population? Director Gentry responded that, currently, State law allows local governments to regulate their own jurisdictions and either prohibit or allow medical marijuana dispensaries.
- What about someone who needed medical marijuana delivered because they do not have access to a vehicle or public transportation? Director Gentry indicated that an argument could be made that some might not be able to travel to obtain their prescription and would need delivery services.

Commissioner Catalano inquired about the definition of “retail sales” as related to medical marijuana or cannabis dispensaries.

Director Gentry responded that State law would regulate transaction sales related to medical marijuana and cannabis dispensaries. However, in terms of the land use aspects, the City prohibits cannabis dispensaries in areas where retail uses are permitted by right such as in the Town Center or Clayton Station.

Vice Chair Johnson asked if staff had been contacted by members of the public regarding this Zoning Ordinance Amendment.

Director Gentry responded that no comments or questions have been received by staff.

Chair Bruzzone asked if cannabis delivery services are occurring now in Clayton.

Director Gentry indicated that, according to weedmaps.com, there are ten delivery services providing deliveries to Clayton.

Chief of Police Chris Wenzel indicated the following:

- There is no true existing legislation regarding cannabis deliveries. The State defers to local jurisdictions to address this type of service.
- It is extremely difficult to enforce. Currently, the maximum amount allowed to be in a vehicle delivering cannabis is eight ounces. When an officer pulls a delivery vehicle over, he has to check the amount of marijuana by weighing it with a scale, verify the driver is licensed for cannabis—it is very time consuming and not an effective method of enforcement.

Commissioner Catalano asked if there was a way to regulate the type of transactions such as wholesale sales.

Chief Wenzel had the following responses:

- Marijuana is often just sent in the mail; there is no regulation on this type of service.
- If a bank knows that money is from a dispensary, they do not accept the money.
- It is a difficult situation for law enforcement as there have been situations where police officers have tried to interpret the marijuana delivery laws and faced lawsuits where plaintiffs have claimed officers have violated their rights.

Chair Bruzzone asked if other cities have prohibitions of cannabis dispensaries.

Chief Wenzel responded that Antioch, Oakley, Brentwood, Lafayette, and Danville all have prohibitions on cannabis dispensaries and deliveries.

The public hearing was opened.

There was no public comment.

The public hearing was closed.

Chair Bruzzone indicated that it seems like enforcement of this issue would bring undue burden on the Police Department, but would be good to address testing laboratories.

Commissioner Manning asked what was the impetus for processing this Zoning Ordinance Amendment.

This Zoning Ordinance Amendment is a result of State law and because the City's ordinance does not address cannabis testing laboratories and delivery of cannabis and, instead, defers to local jurisdictions to establish regulations or prohibitions. If a local jurisdiction does not establish regulations or prohibitions, then a jurisdiction would have to default to State law.

By consensus, the Planning Commission expressed support of the Zoning Ordinance Amendment as a good way to address the City's current marijuana regulations since they do not address cannabis testing laboratories and delivery of cannabis.

Commissioner Manning moved and Vice Chair Johnson seconded a motion to adopt Resolution 01-16, recommending City Council approval of an Ordinance banning cannabis delivery services and cannabis testing facilities. The motion passed 4-0.

- 5.b. **UP-01-16, Use Permit, Sylvia Philis, 6064 Main Street (APN: 119-014-007).** Review and consideration of a Use Permit for massage therapy services ("Simple Health Massage and Wellness") at the existing Frontier Beauty Salon in Clayton's Town Center. Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301 – Existing Facilities, the project is categorically exempt from CEQA.

Assistant Planner Sikela presented the staff report.

Commissioner Catalano had the following questions:

- Is the Use Permit valid only for the applicant or for the property? Director Gentry indicated that the Use Permit runs with the land.
- Is the certification of each massage therapist handled by the City or the State? Director Gentry indicated that massage therapy certification is handled by the State.

Vice Chair Johnson had the following questions:

- Was there a previous Use Permit approval for massage therapy services located in the Town Center? Assistant Planner Sikela indicated that the Planning Commission approved a Use Permit for massage therapy services in 2001 directly west of this location on Main Street.

- The applicant is only allowed one client to be receiving massage therapy services at one time? Assistant Planner Sikela indicated that was correct.
- The client can only have a maximum of six clients on any given day? Assistant Planner Sikela said there is no condition of approval requiring a maximum of six clients; that number was based on the applicant's proposal. The only time the Clayton Municipal Code requiring a six-client maximum is through the Home Occupation Permit process which would not apply to this proposal.

The public hearing was opened.

Sylvia Nuzzo Philis, the applicant, indicated the following:

- She expressed concerns over Condition of Approval 1 addressing indemnification of the City.
- She agreed with all other Conditions of Approval and staff recommendation.

Commissioner Catalano inquired if the days and hours that massage therapy are provided are consistent with the days and hours that Frontier Beauty Salon is operating.

The applicant responded that, in general, the hours and days would be consistent; however, services provided in Frontier Beauty Salon (massage or otherwise) are by appointment so there may be times when not all services are transpiring concurrently.

Director Gentry indicated that, regarding the applicant's concerns over Condition of Approval 1, this is a standard condition of approval that protects the City from legal challenges and litigation fees brought against the applicant or the City as a result of the use permit approval.

Shelly Baker, the business owner of Frontier Beauty Salon, expressed support for approval of the Use Permit and explained that the applicant is professional and experienced.

The public hearing was closed.

Commissioner Manning inquired that, as long as the parameters of the massage therapy services do not change, the Use Permit can apply to new masseuses?

Director Gentry responded that was correct.

Commissioner Manning indicated he did not see a reason to deny the Use Permit.

Commissioner Catalano indicated that the massage therapy services are consistent with existing personal care services being conducted out of Frontier Beauty Salon.

Chair Bruzzone indicated he visited the establishment, was impressed with the quality and professionalism of the services provided, and believes the massage therapy services would be a good fit.

Commissioner Catalano moved and Commissioner Manning seconded a motion to conditionally approve Use Permit UP-01-16, with the findings of approval and conditions of approval recommended by staff. The motion passed 4-0.

6. **OLD BUSINESS**

None.

7. **NEW BUSINESS**

None.

8. **COMMUNICATIONS**

8.a. Staff

Assistant Planner Sikela addressed a question asked by Chair Bruzzone during the public hearing for the Vicki Sexton Second Dwelling Unit Permit and Site Plan Review Permit at the January 26, 2015 Planning Commission meeting regarding researching the Easley Estates conditions of approval to see if there were any restrictions placed on second-story additions on homes located along the west side of Easley Drive where the Sexton residence was located. Assistant Planner Sikela indicated that there were no restrictions placed on adding second-story additions to existing single-story residence in the Easley Estates subdivision and that, interestingly enough, second-story residences were clustered on the east side of Easley Drive to assist with sound impacts to Easley Estates generated by traffic on Clayton Road.

8.b. Commission

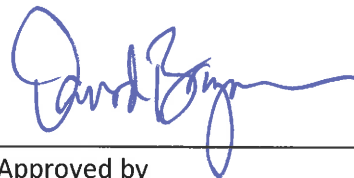
Director Gentry provided updates on the Silver Oak Estates, Oak Creek Canyon, Verna Way, and Southbrook Drive projects.

9. **ADJOURNMENT**

9.a. The meeting was adjourned at 7:45 p.m. to the regularly-scheduled meeting of the Planning Commission on February 23, 2016.



Submitted by
Mindy Gentry
Community Development Director



Approved by
David Bruzzone
Chair