



PLANNING COMMISSION

AGENDA Regular Meeting Tuesday, October 26, 2021 7:00 p.m.

***** Virtual Location *****

This meeting is being held in accordance with California State Assembly Bill 361 and Government Code Section 54953(e). Given the proclaimed state of emergency and the Contra Costa County Health Officer's recommendation for social distancing for public meetings, which is also consistent with Cal-OSHA requirements for social distancing, the Planning Commission is conducting this meeting via phone/video conferencing. The public is invited to view or listen to the meeting and to address the Planning Commission via the methods listed under "Instructions for Virtual Planning Commission Meeting Participation," below.

Chair: Terri Denslow
Vice Chair: Ed Miller
Commissioner: Bassam Altwal
Commissioner: Justin Cesarin
Commissioner: Frank Gavidia

Agendas are posted at: 1) City Hall, 6000 Heritage Trail; 2) Library, 6125 Clayton Road; and 3) Ohm's Bulletin Board, 1028 Diablo Street, Clayton. A digital copy of the Agenda with a complete packet of information including staff reports and exhibits related to each agenda item is available for public review on the City's website at <https://claytonca.gov/community-development/planning/planning-commission/planning-commission-agendas/>.

Any writings or documents provided to a majority of the Planning Commission after distribution of the Agenda Packet and regarding any public item on this Agenda is available for review on the City's website at <https://claytonca.gov/community-development/planning/planning-commission/planning-commission-agendas/>.

If you have a physical impairment that requires special accommodations to participate, please call the City Clerk's office at least 72 hours in advance of the meeting at 925-673-7300.

Most Planning Commission decisions are appealable to the City Council within 10 calendar days of the decision. Please contact Community Development Department staff for further information immediately following the decision. If the decision is appealed, the City Council will hold a public hearing and make a final decision. If you challenge a final decision of the City in court, you may be limited to raising only those issues you or someone else raised at the public hearing(s), either in spoken testimony at the hearing(s) or in written correspondence delivered to the Community Development Department at or prior to the public hearing(s). Further, any court challenge must be made within 90 days of the final decision on the noticed matter.

Instructions for Virtual Planning Commission Meeting Participation

To protect our residents, officials, and staff, and in accordance with California State Assembly Bill 361 and Government Code Section 54953(e), this meeting is being conducted using teleconferencing. The following options are provided to view, listen to, or provide comments during the meeting.

Videoconference: To follow the meeting on-line, click this link: <https://us02web.zoom.us/j/83628897968>; or through the Zoom application, enter Webinar ID: 836 2889 7968. No registration or meeting password is required.

Phone-in: Dial toll free 877-853-5257. When prompted, enter the Webinar ID above.

E-mail Public Comments: If preferred, please e-mail public comments to the Community Development Director at danaa@claytonca.gov by 5:00 p.m. on the day of the Planning Commission meeting. All emailed public comments received prior to 5:00 p.m. on the day of the Planning Commission meeting will be forwarded to the entire Planning Commission.

Each person attending the meeting via video conferencing or telephone and who wishes to speak on an agendized or non-agendized matter shall have a set amount of time to speak as determined by the Planning Commission Chair.

1. **CALL TO ORDER**
2. **PLEDGE OF ALLEGIANCE**
3. **ROLL CALL**
4. **PRESENTATION AND ANNOUNCEMENTS**
5. **ACCEPTANCE OF THE AGENDA:** The Planning Commission will discuss the order of the agenda, may amend the order, add urgency items, note disclosures or intentions to abstain due to conflict of interest on agenda items, and request Consent Calendar items be removed from the Consent Calendar for discussion. The Planning Commission may also remove items from the Consent Calendar prior to that portion of the Agenda.
6. **PUBLIC COMMENT (Non-Agenda Items):** This time has been set aside for members of the public to address the Planning Commission on items of general interest within the subject matter jurisdiction of the City. Although the Planning Commission values your comments, pursuant to the Brown Act, the Planning Commission generally cannot take any action on items not listed on the posted agenda. At the Chair's discretion, up to three minutes will be allotted to each speaker.
7. **CONSENT CALENDAR:** The following routine matters may be acted upon by one motion. Individual items may be removed by the Planning Commission for separate discussion at this time or under Acceptance of the Agenda.
 - A. **MINUTES:**
Planning Commission Meeting of September 14, 2021

Staff Recommendation: Approve the minutes of the September 14, 2021 meeting.
8. **PUBLIC HEARINGS**
 - A. **Recommendation on an Ordinance to Amend Clayton Municipal Code Section 17.36.080 and Chapter 17.95 entitled "Medical and Adult-use Cannabis Regulations" Relating to Cultivation of Cannabis for Personal Use (ZOA-01-2021).**
This is a City-initiated proposal to amend Title 17 (Zoning) of Clayton Municipal Code to remove an existing prohibition on outdoor cannabis cultivation and allow outdoor cultivation of up to six cannabis plants at a residence, for personal use. After the hearing, the Planning Commission is asked to make a recommendation to the City Council on the proposed

Zoning Ordinance Amendment. If approved by the City Council, the Zoning Ordinance Amendment would apply City-wide.

CEQA Status: This proposed amendment to Clayton Municipal Code is not a project within the meaning of Section 15378 of State CEQA Guidelines (California Code of Regulations Section 15000 *et seq.*), and it is exempt under Section 15061(b)(3) and Section 15304 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly.

Staff Recommendation: Staff recommends that the Planning Commission open the public hearing and accept written and spoken testimony, close the public hearing and adopt the attached Resolution recommending amendments to Clayton Municipal Code Section 17.36.080 and Chapter 17.95 relating to cultivation of cannabis for personal use.

9. ACTION ITEMS

None.

10. COMMUNICATIONS: This time is set aside for the Planning Commission to make requests of staff, and/or for issues of concern to Planning Commissioners to be briefly presented, prioritized, and set for future meeting dates. This time is also provided for staff to share any informational announcements with the Commission.

11. ADJOURNMENT

The next Planning Commission Regular Meeting is Tuesday, November 9, 2021.

Minutes
City of Clayton Planning Commission
Regular Meeting
Tuesday, September 14, 2021

1. CALL TO ORDER

Chair Terri Denslow called the meeting to order at 7:01 p.m.

2. PLEDGE OF ALLEGIANCE

Commissioner Justin Cesarin led the Pledge of Allegiance.

3. ROLL CALL

Present: Chair Terri Denslow
 Vice Chair Ed Miller
 Commissioner Justin Cesarin

Excused: Commissioner Bassam Altwal
 Commissioner Frank Gavidia

4. SELECTION OF CHAIR AND VICE CHAIR

Chair Denslow confirmed with staff that this item was erroneously retained from the prior meeting's agenda.

5. PRESENTATIONS AND ANNOUNCEMENTS

Chair Denslow welcomed new Finance Director Katherine Korsak, who would be joining the City of Clayton staff on October 4, 2021 from the Kensington Police Protection and Community Services District. Chair Denslow also announced that Interim Community Development Director Dana Ayers would be joining City staff permanently as the Community Development Director starting September 27, 2021.

Vice Chair Ed Miller and Interim Director Ayers announced that the next meeting of the Clayton Planning Commission on September 28, 2021 would be a virtual special joint meeting with the Clayton City Council to discuss the regional housing needs allocation (RHNA) for Clayton and to kick off the General Plan Housing Element Update process.

6. ACCEPTANCE OF THE AGENDA

By consensus, the Planning Commission accepted the agenda as submitted.

7. PUBLIC COMMENT

None.

8. CONSENT CALENDAR

A. Minutes of Planning Commission Meeting of August 24, 2021.

Commissioner Cesarin moved and Vice Chair Miller seconded a motion to approve the minutes, as amended. The motion passed 3-0.

9. PUBLIC HEARINGS

A. Paul Regan and Angela Switzer – Request for approval of a Site Plan Review Permit to allow the construction of a second-story addition on an existing single-story residence (SPR-01-2021).

Request by Paul Regan and Angela Switzer for approval of a Site Plan Review Permit to allow the construction of a second-story addition measuring approximately 480 square feet in area and 19 feet, 6 inches in height on an existing single-story residence at 5856 Herriman Drive, Assessor's Parcel Number 119-101-002.

Assistant Planner Milan Sikela presented the staff report.

Chair Denslow asked if any of the neighboring houses had a second story.

Commissioner Cesarin reported that he had visited the subject property and observed that a house to the east of the property and another house across the street were two-story residences. He indicated that he also observed that the subject residence appeared to visually fall into a "saddle" of the ridgeline of Mt. Diablo and, as a result, would not obstruct any views of the mountain. Assistant Planner Sikela added that another house across the street, to the northwest of the subject property, was also two stories tall. Vice Chair Miller further added that views of the nearby peaks of Mt. Diablo from 5859 Herriman Drive, the property across the street from the subject property, would be partially occluded, but he observed that that house had a second-story balcony that would afford views over the project residence.

Chair Denslow then asked if the window in the proposed stairwell would be frosted glass, or if there were other measures planned to ensure privacy for the residence next door to the west. Assistant Planner Sikela suggested deferring the question to the applicant for response.

Chair Denslow asked when construction was expected to start. She also inquired why the recommended conditions of approval did not include a condition limiting hours of construction. Assistant Planner Sikela responded that staff used to identify construction hours as advisory notes on previous approvals. Generally, staff was of the opinion that, if something was already a requirement of Clayton Municipal Code, the requirement was not normally then made a condition of approval. Advisory notes had previously been used to inform applicants of codified regulations. Assistant Planner Sikela advised that the applicant intended to apply for a building permit if no appeal was received after the 10-day appeal period had expired on the Commission action, assuming the Commission approved the Site Plan Review Permit request. Interim Director Ayers added that the Clayton Municipal Code contained general noise control regulations in Sections 9.30.020 and 9.30.040 that the City could enforce if construction of the project became bothersome to neighbors.

Chair Denslow asked why sheets A4 and A5, which had been referenced on the plan set, were not in the agenda packet. Assistant Planner Sikela advised that the information on those sheets consisted of construction-level details that were more relevant to the County's review of the building permit application.

Chair Denslow opened the public hearing.

Ashk Naraghi, the project contractor, was present to speak on behalf of the applicant. Mr. Naraghi confirmed that the neighborhood included a mix of single-story and two-story residences, and that he and his client had decided to keep the roofline of the addition low with only a 5-foot increase in height over the existing height of the subject residence so as not to obstruct others' views. He reported that the window proposed on the stairwell wall would be a standard, vinyl, double-hung window with clear glass and that there were existing large shrubs on that side of the house that would prevent visibility of the neighbor's house from the proposed window. In response to Chair Denslow, Mr. Naraghi stated that the wall of the neighbor's house closest to the addition was the side of the neighbor's garage, and he did not recall there being a window on that wall of the neighbor's house. He believed that with the shrubs being 12 to 16 feet tall, it would be very difficult to see from his client's house into the neighbor's house. Also in response to Chair Denslow, he estimated that construction would start in about four months but would be dependent on weather and on how much time would be needed to complete the City's permit review and the County's plan check process. Lastly, Mr. Naraghi advised that his construction crew typically started work no earlier than 7:30 a.m. and did not work beyond 6:00 p.m., but that they honor whatever construction hours are defined by the jurisdiction in which the job is located.

Assistant Planner Sikela shared an aerial perspective of the neighboring residence, which showed the garage wall and a single window on that elevation. He also noted that none of the existing trees visible in the aerial view were proposed to be removed for the project.

Chair Denslow closed the public hearing.

Vice Chair Miller stated that he was initially concerned about occlusion of views, but with the information he now had, he believed the project would fit into the neighborhood and would not block views. Regarding the stairwell window, he referred back to the aerial perspective of the neighboring house and surmised that the window observed on the neighbor's wall was not a bedroom or bathroom but rather a living area because of the chimney he had also observed in the aerial image. With that, he did not see that the project would cause privacy issues.

Vice Chair Miller asked Interim Director Ayers about the requirement for a permit to build an addition over 16 feet tall when the zoning code allowed up to 35-foot building heights, and whether that permit requirement was common. Interim Director Ayers replied that, in her experience with other jurisdictions, a proposal like the subject project did not need a public hearing provided that the structure complied with maximum building heights and minimum setbacks. If such projects were compliant with jurisdictional development regulations, those projects would be subject to administrative review by staff as part of the building permit plan check. Assistant Planner Sikela added that the Clayton Municipal Code requirement for a Site Plan Review Permit for these types of projects facilitated consideration of standards for complementary development of projects in terms of their colors, materials, size and bulk.

Commissioner Cesarin confirmed with staff that staff sent notices of the project and the public hearing to neighbors of the project site. He and Vice Chair Miller asked if anyone had communicated with staff about the project. In response,

Interim Director Ayers advised that staff had received a late email after the September 14, 2021 at 5:00 p.m. comment deadline. The email contained questions about the setback of the addition from the rear property line and whether any trees would be removed. Interim Director Ayers reiterated that the addition would be over 50 feet from the rear property line and that no trees would be removed for the project. Assistant Planner Sikela added that the residence on the other side of the rear property line was itself approximately 40 feet from the rear property line, so there would be approximately 90 or more feet between the rear walls of the two residences. Assistant Planner Sikela also reported that staff had mailed public hearing notices to owners of properties that fell fully or partially within a 300-foot radius from the boundaries of the subject parcel, and that staff posted the copies of the notices on the posting boards at City Hall, Clayton Community Library, and the Ohm's Bulletin Board in the Town Center across the street from Skipolini's Pizza.

Chair Denslow stated that her concerns had been addressed but suggested that the Commission add a condition of approval regarding acceptable times and days of construction, consistent with other projects' conditions of approval.

Vice Chair Miller moved and Commissioner Cesarin seconded a motion to approve Site Plan Review Permit SPR-01-2021 to allow the construction of a second-story addition measuring approximately 480 square feet in area and 19 feet, 6 inches in height on an existing single-story residence at 5856 Herriman Drive, subject to an additional condition of approval that construction of the project be limited to normal hours of construction for noise abatement purposes. The motion passed 3-0.

10. ACTION ITEMS

None.

11. COMMUNICATIONS

None.

12. ADJOURNMENT

The meeting was adjourned at 7:51 p.m. to the special joint meeting of the Planning Commission and City Council on September 28, 2021.

Respectfully submitted:

Dana Ayers, AICP, Interim Secretary

Approved by the Clayton Planning Commission:

Chair Terri Denslow



AGENDA REPORT

To: Honorable Chair and Planning Commissioners

From: Dana Ayers, Community Development Director

Date: October 26, 2021

Subject: Agenda Item 8.A.
Recommendation on an Ordinance to Amend Clayton Municipal Code Section 17.36.080 and Chapter 17.95 entitled “Medical and Adult-use Cannabis Regulations” Relating to Cultivation of Cannabis for Personal Use (ZOA-01-2021).

SUMMARY

This is a public hearing on a City-initiated proposal to amend Title 17 (Zoning) of Clayton Municipal Code to remove an existing prohibition on outdoor cannabis cultivation and allow outdoor cultivation of up to six cannabis plants at a residence, for personal use. After the hearing, the Planning Commission is asked to make a recommendation to the City Council on the proposed Zoning Ordinance Amendment. If approved by the City Council, the Zoning Ordinance Amendment would apply City-wide.

RECOMMENDATION

Staff recommends that the Planning Commission open the public hearing and accept written and spoken testimony, close the public hearing and adopt the attached Resolution recommending amendments to Clayton Municipal Code Section 17.36.080 and Chapter 17.95 relating to cultivation of cannabis for personal use.

BACKGROUND

Since 2016, Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), legalized the use and possession of marijuana (now termed cannabis) by adults over 21 years of age. AUMA, as amended by Senate Bill (SB) 94 in 2017, also allows adults to possess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants and to possess the cannabis produced by the plants, subject to the following restrictions:

(1) A person shall plant, cultivate, harvest, dry, or process plants in accordance with local ordinances, if any, adopted in accordance with Health and Safety Code, § 11362.2(b).

(2) The living plants and any cannabis produced by the plants in excess of 28.5 grams

are kept within the person's private residence, or upon the grounds of that private residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.

(3) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time.

(Health and Safety Code, §§ 11362.1(a)(3) & 11362.2(a).)

AUMA, as amended, authorizes local governments to enact and enforce reasonable regulations on personal cultivation of cannabis activities. While local governments cannot completely prohibit personal cultivation of cannabis indoors (i.e., either inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure), local governments may choose to completely prohibit personal cannabis cultivation outdoors. (Health and Safety Code, § 11362.2(b).)

Since 2016, Clayton Municipal Code (CMC) Section 17.36.080 and text of CMC Chapter 17.95 have prohibited outdoor cannabis cultivation. At its regular meeting on May 4, 2021, the City Council heard a presentation by a member of the public and discussed whether the City should allow outdoor cultivation of cannabis for personal use. The City Council discussed problems related to indoor cannabis cultivation, such as increased risk of fire from grow light systems, increased energy use, and use of pesticides, and considered whether outdoor cannabis cultivation might help reduce reliance on indoor cultivation. The City Council then directed staff to prepare an ordinance allowing personal use cultivation of cannabis outdoors for the Council's consideration.

DESCRIPTION OF PROPOSAL

Clayton Municipal Code currently allows indoor growing of up to six cannabis plants at a residential property, for personal use. This maximum number of plants is consistent with the allowances of State law, as noted above. As drafted, the proposed Zoning Ordinance Amendment would allow outdoor growing of all or some of the allowed six cannabis plants at a residential property. Though a residential property would not be allowed more than six plants, and growing of cannabis must be exclusively for personal use, there is no proposed requirement that all plants be indoor or outdoor within the State-permitted maximum. For example, within the provisions of the draft text, all six plants could be grown indoors, or all six plants could be grown outdoors, or plants could be divided between indoor and outdoor spaces, provided that no more than six cannabis plants are on the residential property at any time. The proposed Ordinance would not change the current requirement of CMC that growing of cannabis at a residential property must be for personal use and not for any commercial use. Additional regulations on both indoor and outdoor growing would be imposed with the proposed amendment, including requirements that: 1) cannabis plants not be visible from a public right-of-way or other public place; 2) all structures and equipment used for cultivation comply with applicable building, plumbing, electrical and fire codes; and 3) cannabis plants grown outdoors be enclosed by fencing with entry points controlled by locked gates.

ANALYSIS

Code Compliance: CMC Section 17.56.010 authorizes the City to amend the Zoning Ordinance (CMC Title 17) whenever the public necessity, convenience and general welfare require such amendment. Amendments to the Zoning Ordinance can be initiated by the City Council, Planning Commission, or qualified applicant pursuant to CMC Section 17.56.020. In addition to a finding that the proposed amendment would serve the public necessity, convenience and

general welfare, the Planning Commission must find that the proposed amendment is in general conformance with the General Plan before the Commission can affirmatively recommend an amendment to the Zoning Ordinance (CMC Section 17.56.060). The City Council must make the same findings before approving the amendment.

Required Findings: The proposed amendment is consistent with the General Plan. While there are not specific General Plan policies addressing cannabis, there are General Plan Safety Element policies and objectives intended to reduce air emissions and risks of fire hazards. With a spring to fall growing season (germination in spring, flowering and harvest in early fall), cannabis plants grow naturally with the extended hours of sunlight typical of the warmer months. To replace outdoor sunlight, indoor growing requires artificial lighting that requires electricity—and consequently, more greenhouse gas emissions from generation of that electricity—when compared with outdoor growing. Additionally, outdoor growing of cannabis is potentially safer and results in fewer fire hazard risks because it does not rely on wiring needed to provide electricity for synthetic light for the plants. The reduced greenhouse gas emissions and reduced risk of fire from wiring for synthetic light sources that would result from allowing outdoor growing would also serve the public necessity, convenience and general welfare of the City.

California Environmental Quality Act (CEQA): This proposed Zoning Ordinance Amendment is not a project within the meaning of Section 15378 of State CEQA Guidelines (California Code of Regulations Section 15000 *et seq.*), and it is exempt under Section 15061(b)(3) and Section 15304 of the State CEQA Guidelines, because it has no potential for resulting in a physical change in the environment, directly or indirectly. The text amendments described in this staff report would authorize minor private alterations in the condition of land, water, and/or vegetation akin to new gardening or landscaping on private residential property, and they do not approve the removal of healthy, mature, scenic trees or other significant alterations to land. The amendments would impose reasonable regulations on the ability of individuals to cultivate cannabis for personal use on residential properties otherwise authorized by State law. Based on the limited number of plants, the limited outdoor personal cultivation activities authorized under this proposed amendment would not create any significant changes to the character or use of private residential properties in the City.

CONCLUSION

At tonight's meeting, the Planning Commission is asked to make a recommendation to the City Council on the draft amendments in the proposed Resolution attached to this staff report. The City Council will then be asked to consider the recommendation of the Planning Commission, whether or not the recommendation is in support of the proposed Zoning Ordinance Amendment, and to accept written and spoken testimony at its own noticed public hearing, before deciding whether to adopt the amendments into the Clayton Municipal Code.

ATTACHMENTS

1. Proposed Planning Commission Resolution No. 08-2021
2. Minutes and Video of May 4, 2021, City Council Meeting (online at <https://claytonca.gov/city-clerk-department/city-council/city-council-agendas/>)

**CITY OF CLAYTON
PLANNING COMMISSION
PROPOSED
RESOLUTION NO. 08-2021**

**A RESOLUTION OF THE CLAYTON PLANNING COMMISSION RECOMMENDING THAT
THE CITY COUNCIL AMEND CLAYTON MUNICIPAL CODE SECTION 17.36.080 AND
CHAPTER 17.95 ENTITLED “MEDICAL AND ADULT-USE CANNABIS REGULATIONS”
RELATING TO CULTIVATION OF CANNABIS FOR PERSONAL USE
(ZOA-01-2021)**

WHEREAS, pursuant to the authority granted to the City of Clayton (“City”) by Article XI, Section 7 of the California Constitution, the City has the police power to regulate the use of land and property within the City in a manner designed to promote public convenience and general prosperity, as well as public health, welfare, and safety; and

WHEREAS, in 1996, the voters of the State of California approved the Compassionate Use Act of 1996 (“CUA”) (codified as Health and Safety Code, § 11362.5 *et seq.*) to enable seriously ill Californians to legally possess, use, and cultivate marijuana for personal medical use free from criminal prosecution under enumerated provisions of State law; and

WHEREAS, in 2003, the California Legislature adopted the Medical Marijuana Program Act (“MMPA”) (codified as Health and Safety Code, § 11362.7 *et seq.*), which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under State law; and

WHEREAS, in 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that nothing in the CUA or MMPA preempted cities’ authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, in 2016, California voters approved Proposition 64, the Control, Regulate and Tax Adult Use of Marijuana Act (AUMA), which legalized the use and possession of marijuana (now termed cannabis) by adults over 21 years of age, among other changes; and

WHEREAS, AUMA, as amended, legalizes persons 21 years of age or older to possess, plant, cultivate, harvest, dry, or process not more than six living cannabis plants and possess the cannabis produced by the plants (Health and Safety Code, § 11362.1(a)(3)); and

WHEREAS, AUMA, as amended, provides that personal cultivation of cannabis under paragraph (3) of subdivision (a) of Section 11362.1 is subject to the following restrictions:

(1) A person shall plant, cultivate, harvest, dry, or process plants in accordance with local ordinances, if any, adopted in accordance with Health and Safety Code, § 11362.2(b).

(2) The living plants and any cannabis produced by the plants in excess of 28.5 grams are kept within the person’s private residence, or upon the grounds of that private

residence (e.g., in an outdoor garden area), are in a locked space, and are not visible by normal unaided vision from a public place.

(3) Not more than six living plants may be planted, cultivated, harvested, dried, or processed within a single private residence, or upon the grounds of that private residence, at one time. (Health and Safety Code, § 11362.2(a).)

WHEREAS, AUMA, as amended, provides that a city may enact and enforce reasonable regulations to regulate personal cultivation of cannabis activities, provided a city shall not completely prohibit personal cultivation of cannabis inside a private residence or inside an accessory structure to a private residence that is fully enclosed and secure, but may choose to completely prohibit personal cultivation of cannabis outdoors (Health and Safety Code, § 11362.2(b)); and

WHEREAS, on May 4, 2021, the City Council heard a presentation from a member of the public, discussed the matter of personal cannabis cultivation, and directed staff to prepare amendments to the Clayton Municipal Code to allow outdoor cultivation of cannabis for personal use in accordance with State law; and

WHEREAS, on October 26, 2021, the Clayton Planning Commission held a duly-noticed public hearing on the City-initiated Zoning Ordinance Amendment Application ZOA-01-2021 pertaining to outdoor cultivation of cannabis for personal use, and received and considered testimony and evidence, both spoken and written.

NOW, THEREFORE, THE COMMISSION DOES HEREBY FIND:

- A.** The foregoing recitals are true and correct and are incorporated herein by reference.
- B.** The proposed Zoning Ordinance Amendment is consistent with the General Plan. While there are not specific General Plan policies addressing cannabis, there are General Plan Safety Element policies and objectives intended to reduce air emissions and risks of fire hazards. With a spring to fall growing season (germination in spring, flowering and harvesting in early fall), cannabis plants grow naturally with the extended hours of sunlight typical of the warmer months. To replace outdoor sunlight, indoor growing requires artificial lighting that requires electricity—and consequently, more greenhouse gas and other air emissions from generation of that electricity—when compared with outdoor growing. Additionally, outdoor growing of cannabis is potentially safer and results in fewer fire hazard risks because it does not rely on wiring needed to provide electricity for synthetic light for the plants.
- C.** Expanding the allowances for cannabis cultivation to include both indoor and outdoor growing would serve the public necessity, convenience and general welfare, as indoor cultivation of cannabis presents potential risks to health, safety and general welfare, including but not limited to, increased risk of fire from grow light systems, increased energy use, and exposure to fertilizers, pesticides and anti-fungus/mold agents. Allowing both indoor and outdoor cultivation would reduce these risks by reducing reliance on exclusively indoor cultivation.

- D. In accordance with Health and Safety Code, § 11362.2(b), this recommended Ordinance effects reasonable regulations governing the conduct of outdoor cultivation of cannabis for personal use set forth in paragraph (3) of subdivision (a) of Section 11362.1.
- E. This recommended amendment to Clayton Municipal Code is not a project within the meaning of Section 15378 of State California Environmental Quality Act (CEQA) Guidelines (California Code of Regulations Section 15000 *et seq.*), and it is exempt under Section 15061(b)(3) and Section 15304 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or indirectly. The amendments contained in this recommendation authorize only minor private alterations in the condition of land, water, and/or vegetation akin to new gardening or landscaping on private residential property, and does not approve the removal of healthy, mature, scenic trees or other significant alterations to land. The Planning Commission finds that this recommended amendment merely imposes reasonable regulations on the ability of individuals to cultivate cannabis for personal use on residential properties otherwise authorized by State law. Based on the limited number of plants, the limited outdoor personal cultivation activities authorized under this recommended amendment would not create any significant changes to the character or use of private residential properties in the City. It can be seen with certainty that the amendments would have no significant effect on the environment. Accordingly, the Planning Commission finds that this recommended amendment is categorically exempt from further CEQA review.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission does hereby make the following recommendations to the City Council for amendments to Clayton Municipal Code Section 17.36.080 and Chapter 17.95 pertaining to cultivation of cannabis for personal use:

- A. **Amendment to Clayton Municipal Code Section 17.36.080**. That Clayton Municipal Code Section 17.36.080 be hereby amended and restated as shown in underline/strike-through to read in its entirety as follows:

“17.36.080 Prohibited Uses and Activities. The following uses and activities are prohibited in all zoning districts:

- A. Any use or activity which is prohibited by local, regional, state, or federal law unless expressly and affirmatively authorized by this code.
- B. Outdoor cannabis cultivation, except personal cannabis cultivation as provided in ~~See~~ Section 17.95.020.
- C. Commercial cannabis uses, as described in Section 17.95.030.
- D. Reserved.
- E. Reserved.
- F. Other uses or activities as may be determined by the Planning Commission to be of the same general character as those specifically prohibited.”

- B. **Amendment to Clayton Municipal Code Section 17.95.010**. That Clayton Municipal Code, Section 17.95.010, be amended to revise the definition of “Commercial cannabis uses” in subparagraph (I) and to insert as subparagraph (L)

the definition of "Personal cannabis cultivation" and re-designate the definition of "Private residence" as subparagraph (M), as shown in underline/strike-through below:

"17.95.010 Definitions.

For purposes of this Code, the following definitions shall apply.

- A. "Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also includes marijuana as defined by Section 11018 of the Health and Safety Code. Cannabis also includes "Cannabis" as defined in Business and Professions Code, Section 26001, as may be amended from time to time.
- B. "Cannabis cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- C. "Cannabis delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a cannabis retailer of any technology platform that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of cannabis or cannabis products.
- D. "Cannabis distribution" means the procurement, sale, and transport of cannabis and cannabis products and any other activity allowed under the state distributor license(s), including, but not limited to, cannabis storage, quality control and collection of state cannabis taxes.
- E. "Cannabis manufacture" means to compound, blend, extract, infuse, or otherwise make or prepare a cannabis product. "Cannabis manufacture" includes the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.
- F. "Cannabis products" means cannabis that has undergone a process whereby the plant material has been transformed into a concentrate, including, but not limited to, concentrated cannabis, or an edible or topical product containing cannabis or concentrated cannabis and other ingredients. Cannabis products include "cannabis products" as defined in Business and Professions Code, Section 26001, as may be amended from time to time.
- G. "Cannabis retailer" means a facility where cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale or conducts sales exclusively by delivery. For purposes of this Code, the term "cannabis retailer" includes microbusinesses as well as nonprofits licensed under Business and Professions Code, Section 26070.5. For purposes of this Code, "cannabis retailer" also includes medical cannabis dispensaries, patient collectives and cooperatives operating, or proposing to

operate, pursuant to Health and Safety Code Sections 11362.5 and/or 11362.775, as may be amended.

- H. "Cannabis testing laboratory" means a facility, entity, or site in the state that offers or performs tests of cannabis or cannabis products and that is both of the following:
 - 1. Accredited by an accrediting body that is independent from all other persons involved in commercial cannabis activity in the state; and
 - 2. Licensed by the Bureau of Cannabis Control.
- I. "Commercial cannabis uses" includes all cannabis cultivation, cannabis manufacture, cannabis distribution, cannabis testing laboratories, cannabis retailers, cannabis delivery, and sale of cannabis and/or cannabis products, whether intended for medical or adult-use, and whether or not such activities are carried out for profit. Commercial cannabis uses includes "commercial cannabis activity" as defined in Business and Professions Code, Section 26001, as may be amended from time to time, and includes any activity that requires a license from a state licensing authority pursuant to the Medicinal and Adult-Use Cannabis Regulation and Safety Act, as may be amended from time to time. Commercial cannabis activity does not include possession or cultivation for personal use ~~indoor cultivation of cannabis for personal use that is not sold and~~ in strict accordance with Health and Safety Code, Section 11362.1 et seq.
- J. "Indoor" means any location that is totally contained within a fully enclosed and secure private residence or accessory building located on the grounds of the private residence.
- K. "Outdoor" means any location that is not totally contained within a fully enclosed and secure accessory building or primary residence.
- L. "Personal cannabis cultivation or cultivation for personal use" means cannabis cultivation for personal, noncommercial purposes, that is not sold, and in strict accordance with Health and Safety Code, Section 11362.1 et seq. Personal cultivation by qualified patients and primary caregivers is further subject to the restrictions set forth in Business and Professions Code Section 26033.
- ~~L.~~ M. "Private residence" means a house, an apartment unit, accessory dwelling unit, a mobile home, or other similar dwelling occupied for residential purposes."

C. Amendment to Clayton Municipal Code Section 17.95.020. That Clayton Municipal Code, Section 17.95.020, be amended and restated as shown in underline/strikethrough to read in its entirety as follows:

"17.95.020 Personal Cannabis Cultivation. Personal cannabis cultivation is permitted subject to the following restrictions:

- A. No more than six (6) cannabis plants may be cultivated either indoors or outdoors, or a combination of both indoors and outdoors, at a private residence at one time regardless of the number of individuals residing at the residence.
- B. The cannabis plants shall not be visible from a public right-of-way or other public place.
- C. Structures and equipment used for cultivation, such as indoor grow lights, shall comply with all applicable building, plumbing, electrical and fire code regulations as adopted by the city.

- D. For outdoor cultivation: All cannabis plants cultivated outdoors must be enclosed by fencing, and all gates and other points of entry to the outdoor growing area must be locked at all times.
- E. Nothing in this section shall authorize commercial cultivation of cannabis.”
- ~~A. Outdoor cultivation of cannabis, including cannabis cultivation for personal medical use, personal adult use, or commercial purposes is prohibited in all zoning districts in the City of Clayton.~~
- ~~B. The indoor cultivation of cannabis is prohibited except to the extent that state law permits the indoor cultivation of up to six (6) marijuana plants for personal use per private residence. Persons engaging in indoor cultivation must comply with all state and local laws regarding fire safety, water use, electrical wiring, buildings, and indoor cultivation and personal use of cannabis.”~~

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a regular meeting on the ____ day of _____, 2021.

AYES:

NOES:

ABSTAINED:

ABSENT:

APPROVED:

ATTEST:

Terri Denslow
Chair

Dana Ayers, AICP
Community Development Director