

**Minutes
City of Clayton Planning Commission
Regular Meeting
Tuesday, October 26, 2021**

1. CALL TO ORDER

Chair Terri Denslow called the meeting to order at 7:00 p.m.

2. PLEDGE OF ALLEGIANCE

Commissioner Altwal led the Pledge of Allegiance.

3. ROLL CALL

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

4. PRESENTATIONS AND ANNOUNCEMENTS

There were no presentations or announcements.

5. ACCEPTANCE OF THE AGENDA

Commissioner Altwal moved and Commissioner Cesarin seconded a motion to accept the agenda as submitted. The motion passed 5-0.

6. PUBLIC COMMENT

None.

7. CONSENT CALENDAR

A. Minutes of Planning Commission Meeting of September 14, 2021.

Vice Chair Miller moved and Commissioner Cesarin seconded a motion to approve the minutes, as amended. The motion passed 3-0, with Commissioners Altwal and Gavidia abstaining because they did not attend the September 14, 2021 meeting.

8. PUBLIC HEARING

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.

Community Development Director Dana Ayers presented the staff report.

Chair Denslow requested clarification on the role of the Planning Commission in the City Council-initiated Ordinance Amendment. Director Ayers advised that the Clayton Municipal Code allowed for Zoning Ordinance Amendments to be initiated by an applicant, by the Planning Commission or by the City Council. The role of the Planning Commission in any of those cases is to act in an advisory capacity to the City Council. The recommendation of the Planning Commission on a text amendment to the Zoning Ordinance, whether in favor of or opposition to the proposed Amendment, would be forwarded to the City Council for the Council's ultimate decision on whether to amend Clayton Municipal Code.

Chair Denslow said she recalled a concern raised by Councilmember Jim Diaz regarding proximity of outdoor cannabis plants to schools and inquired why that concern had not been addressed in the draft Ordinance.

Amanda Charne from the City Attorney's office clarified that Councilmember Diaz's question was regarding whether a city could adopt a restriction on personal outdoor cultivation of cannabis within a certain distance of a school or sensitive use. She advised that Health and Safety Code 11362.2 gave cities discretion to allow outdoor cannabis cultivation, as well as authority to adopt reasonable restrictions on outdoor cultivation. She advised that, based on State statute, it would be within the City's authority and discretion to adopt a school buffer standard. However, no such standard was included in the draft Ordinance because it was not directed by a majority of Councilmembers at the May 4, 2021 meeting at which the City Council initiated the amendment.

Vice Chair Miller reported that he observed roughly one-third of Bay Area cities allowed outdoor cannabis cultivation. He suggested that common sense provisions for outdoor cannabis cultivation, such as keeping plants

out of sight, below the fence line, behind locked gates and outside of a specified radius from schools made sense to him as possible restrictions, since cities did not have to allow outdoor cannabis cultivation.

Chair Denslow opened the public hearing. No one in attendance requested to speak on the matter. Chair Denslow closed the public hearing.

Commissioner Altwal said he was in agreement with the Zoning Ordinance Amendment to allow outside growing of cannabis because the City already allowed growing of up to six cannabis plants indoors, and indoor cultivation demanded more energy than outdoor cultivation where the sun could provide the light needed for the plants to grow. With provisions written into the proposed Ordinance that the plants be out of sight and gated, he did not see a problem with it.

Commissioner Cesarin agreed with Commissioner Altwal. He believed that applying a standard for a buffer around schools would be comparable to regulating houses that were located near schools and that had alcohol or home brewing equipment inside them. He noted that such standards for alcohol in residences were not being considered. He was supportive of the proposed Zoning Ordinance Amendment as written.

Vice Chair Miller expressed concern that, if the cannabis plants were grown outside and not in a locked container or area, and if the property was located near a middle school or high school, students walking home from school could be tempted to trespass into private yards with the objective of taking the plants. He did not think the concern was the same for indoor cultivation, where a young person would have to break through a window or door to come into the house to gain access to the plants.

Commissioner Altwal understood Vice Chair Miller's concern but did not think it was a problem. He stated that the student passerby would have to know who was cultivating the plants, would have to see them, and would have to be inclined to steal them. He thought the probability of coincidence of all of those factors was very low. He added that plants grown under the Ordinance would be for personal rather than commercial use, that most people growing them were sick and needed the plants for health reasons, and that it was very expensive to purchase. He thought the benefits outweighed the isolated incidence of a young person jumping a fence.

Chair Denslow agreed that the risks of allowing outdoor cultivation were low, and she did not anticipate that many people would take advantage of the expanded allowance of the Ordinance. She did not have significant concerns with the Amendment.

Commissioner Cesarin believed the proposed Ordinance as written was appropriate and made a motion to adopt Resolution No. 08-2021 recommending that the City Council approve the Zoning Ordinance Amendment (ZOA-01-2021). Commissioner Miller seconded the motion. The motion passed 4-0, with Commissioner Gavidia abstaining.

9. ACTION ITEMS

None.

10. COMMUNICATIONS

Vice Chair Miller reported that he had attended the Housing Element Community Workshop that had been held on October 20. He stated that he did not share any of his personal ideas about housing but did voice what he had heard from community members as concerns and requested that those concerns be addressed in a future meeting.

Chair Denslow reported that attendance at the October 20 workshop was reasonable, but she hoped community engagement in the Housing Element process would increase. She recommended that community members continue to check the City website and social media pages for updates. Director Ayers added that City staff would be releasing an online survey in the next week requesting community input on housing in the City as well as visioning for the City-owned Downtown Site in the Town Center.

11. ADJOURNMENT

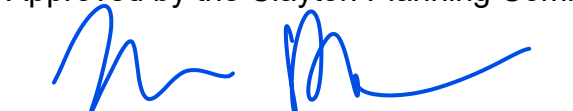
The meeting was adjourned at 7:35 p.m. to the next regular meeting of the Planning Commission on November 9, 2021.

Respectfully submitted:



Dana Ayers, AICP, Secretary

Approved by the Clayton Planning Commission:



Terri Denslow, Chair