

Minutes
Clayton Planning Commission Meeting
Tuesday, October 24, 2017

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

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

Present: Chair Carl Wolfe
 Commissioner A. J. Chippero
 Commissioner Peter Cloven
 Commissioner William Gall

Absent: Vice Chair Bassam Altwal

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. Commissioner William Gall will report at the City Council meeting of November 7, 2017.

3. PUBLIC COMMENT

None.

4. MINUTES

- 4.a. Approval of the minutes for the September 26, 2017 Planning Commission meeting.

Commissioner Chippero moved and Commissioner Gall seconded a motion to approve the minutes, as submitted. The motion passed 4-0.

5. PUBLIC HEARINGS

- 5.a. **ZOA-06-17, City of Clayton.** The City of Clayton is requesting a public hearing to consider a City-initiated Ordinance to amend the Clayton Municipal Code to allow six-foot fences to be located within the required exterior side setback or at the public right-of-way line.

The staff report was presented by Director Gentry.

Commissioner Cloven asked, with these new proposed regulations, can a six-foot fence be placed directly atop a retaining wall in the exterior side setback? Director Gentry responded that, if the City Code was amended per staff recommendations, a six-foot fence could be placed right at the property line on the exterior side property line. However, if a retaining wall were located on the exterior side property line, the fence would be required to be a minimum of three feet behind the footing of the retaining wall. This City Code requirement for separation between a retaining wall and a fence are in place for height concerns regarding public safety purposes for such things as, if there were any police issues, a police officer would be able to still look over a six-foot fence rather than having to try and look over a taller combined retaining wall/fence structure.

Commissioner Gall asked are retaining walls required to be located five feet behind the exterior side property line? Director Gentry responded that retaining walls can be located directly on the exterior side property line and then a six-foot fence could be located a minimum of three feet behind the footing of any nearby retaining walls.

Commissioner Chippero asked what is the tallest a fence could be if it were located a minimum of three feet behind the footing of any nearby retaining walls? Director Gentry responded that six feet is the maximum height allowance for fences located on exterior side property lines as permitted by right.

Chair Wolfe asked, if we were to deny recommending approval to the City Council of these proposed amendments, would there be any consequences related to existing fences located directly on the exterior side property line? With approval of these amendments, it would provide more City-wide conformity with the City Code as related to existing fences located on exterior side property lines.

Commissioner Cloven asked is there a plan to be more proactive regarding educating the citizens of Clayton and contractors about these fencing regulations? Director Gentry responded City staff is proposing a public education campaign including, but not limited to, informing local homeowners associations, fencing companies, and contractors of City fencing regulations.

Commissioner Gall asked what the term “no man’s land” referred to as part of these proposed amendments? Director Gentry responded that “no man’s land” refers to, as the current regulations require, the unusable area created between the back of the sidewalk (or curb, gutter, and street, as applicable, if there is no sidewalk) and a six-foot fence located five feet behind the exterior side property line.

Commissioner Gall asked if there would be any impact to property taxes or other any financial impacts to property owners as a result of these proposed amendments being approved? Director Gentry responded that, no, there would no fiscal impact to property owners as the City is not proposing to relocate any property lines vis-à-vis right-of-way areas within Clayton.

Chair Wolfe asked what is the “sight vision triangle”? Director Gentry responded that the “sight vision triangle” is a triangular area bounded by the right-of-way lines and a diagonal line joining points of the right-of-way lines 35 feet back from the point of their intersection that prohibits fencing, structures, vegetation, or shrubbery above 30 inches in height from being located within this triangular area. This prohibition on height within this triangular area is to prevent sight obstructions at corners which improves safety for pedestrians and vehicles.

Chair Wolfe asked would these amendments impact the “sight vision triangle”? Director Gentry responded that there would be no impact to the “sight vision triangle” since fencing would still have to comply with the height limitations within this triangular area, regardless of whether or not these amendments are approved.

Commissioner Cloven asked staff if there has been any pushback regarding existing or these proposed amendments? Assistant Planner Sikela indicated, based on feedback received from property owners within the City, there is public support of these amendments because, with a six-foot fence being allowed to be located on the exterior property line, property owners would have a larger usable area of their property while still being able to maintain their privacy.

Chair Wolfe asked what does the eight-foot maximum fence height allowance pertain to? Director Gentry responded that the City Code allows an eight-foot fence height at the setback lines of the property so that an eight-foot fence could be located far inside the property and away from the property lines. This allowance for eight-foot fence heights could be for, but not limited to, increased privacy purposes or possible improvements to the property.

The public hearing was opened.

Paul Swiatko, 2 Regency Drive, expressed support for the amendment.

The public hearing was closed.

Commissioner Cloven expressed support for the amendment based on the amount of existing non-compliance throughout Clayton as related to existing exterior side yard fence locations. Approval of the amendments would allow for increased compliance throughout Clayton.

The rest of the Planning Commission concurred with Commissioner Cloven’s comments.

Commissioner Cloven moved and Commissioner Chippero seconded a motion to adopt Resolution No. 06-17 recommending City Council approval of an Ordinance to allow six-foot fences to be placed at the property line or at the right-of-way line for exterior side setbacks. The motion passed 4-0.

- 5.b. **ZOA-10-16, City of Clayton.** The City of Clayton is requesting a public hearing to consider a City-initiated Ordinance amending Title 17 “Zoning” of the Clayton Municipal Code in order to continue to prohibit outdoor cannabis cultivation for personal use, and to prohibit all commercial cannabis activities except for cannabis deliveries originating outside of the City.

The staff report was presented by Director Gentry.

Chair Wolfe asked why is this being brought before the Planning Commission again after we have reviewed this before? Director Gentry responded that, the last time it was brought before the Planning Commission, it was prior to the passage of Proposition 64. There were components involved with the passage of Proposition 64 including, but not limited to, testing facilities, deliveries, etc. that the City Code is silent on. As a result, we have brought those components back before the Planning Commission to address these adult use-related components in the City Code.

Commissioner Cloven asked what commercial licenses would be issued to address all the different adult use categories? Director Gentry responded that licenses could be issued for all commercial cannabis categories, so the proposed Ordinance would address all those components in order to provide clear direction to the State in regards to what is allowable and not allowable in Clayton when the State starts to issue licenses on January 2, 2018. The City still maintains police power in order to determine whether or not the City wants to allow these types of uses within its boundaries.

Commissioner Cloven expressed concern over enforcement of the delivery aspects of these types of uses. Director Gentry agreed that it would be a challenge to enforce but the City would have something Codified to prohibit delivery to such places as the Clayton Club or The Grove.

Commissioner Gall asked if someone orders product from a licensed retailer, how much product can they order? Director Gentry responded that, per State requirements, a person can order and legally possess a maximum of eight grams of concentrate, including edibles, and a maximum of 28.6 grams of flower or bud.

Commissioner Chippero asked if any deliver companies have applied for a City business license? Director Gentry answered that, yes, City business licenses have been applied for but the City has not issued any business license to the applicants. The City knows deliveries are occurring; through the website, weedmaps.com, because they provide deliveries to Clayton. These regulations hopefully provide an opportunity for delivery services to come out of the shadows and legalize their businesses.

Chair Wolfe asked if this Ordinance is strictly for outdoor uses? Director Gentry responded that the Ordinance is all-encompassing and will address all the different components of Proposition 64 including, but not limited to, testing, manufacturing, retail, distribution, etc. One of the reasons there is a continued prohibition on outdoor cultivation within Clayton is because, on December 20, 2016, the City Council enacted an emergency ordinance to prohibit outdoor cultivation for personal use. State law allows cities to prohibit outdoor cultivation for personal use.

Commissioner Cloven asked, since the emergency ordinance was passed by the City Council, has there been reports of greenhouses or other forms of outdoor cultivation in Clayton? Director Gentry indicated that no official complaints have been submitted to the City regarding this issue.

Commissioner Chippero asked if there had been any discussion by the City Council regarding fire risk implications that possibly could be caused by indoor grow operations? Director Gentry responded that the City Council chose not to regulate indoor grow operations as allowed per Proposition 64, but these types of issues would be regulated by State law for compliance with building and electrical codes.

The public hearing was opened.

Paul Swiatko, 2 Regency Drive, expressed concern over the amendment, specifically the potential enforcement aspects that may develop, people driving under the influence of marijuana, and other aspects related to State-regulated legalization of marijuana.

The public hearing was closed.

Commissioner Cloven had the following questions:

- The six-plant maximum allowance for residents means a maximum of six plants per house? Director Gentry responded it means six plants per house.
- Anything above that six-plant maximum would then be classified as commercial cultivation? Director Gentry responded, yes, that is correct.
- Commercial cultivation would be prohibited by the proposed Ordinance? Director Gentry responded, yes, that is correct.

Commissioner Cloven moved and Chair Wolfe seconded a motion to adopt Resolution No. 05-17 recommending City Council approval of an Ordinance in order to continue to prohibit outdoor cannabis cultivation for personal use, and to prohibit all commercial cannabis activities except for cannabis deliveries originating outside of the City. The motion passed 4-0.

6. OLD BUSINESS

None.

7. NEW BUSINESS

None.

8. COMMUNICATIONS

8.a. Staff

None.

8.b. Commission

None.

9. ADJOURNMENT

9.a. The meeting was adjourned at 7:52 p.m. to the regularly-scheduled meeting of the Planning Commission on November 14, 2017.



Submitted by
Mindy Gentry
Community Development Director



Approved by
Carl Wolfe
Chair

Community Development\Planning Commission\Minutes\2017\1024