

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

1. CALL TO ORDER

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

2. PLEDGE OF ALLEGIANCE

Commissioner Cesarin led the Pledge of Allegiance.

3. ROLL CALL

Present: Chair Terri Denslow
Vice Chair Ed Miller
Commissioner Justin Cesarin
Commissioner Frank Gavidia
Commissioner Amy Hines-Shaikh

4. PRESENTATIONS AND ANNOUNCEMENTS

Chair Denslow welcomed Commissioner Hines-Shaikh to the Planning Commission.

5. ACCEPTANCE OF THE AGENDA

There were no changes to the Agenda as submitted.

6. PUBLIC COMMENT

None.

7. CONSENT CALENDAR

A. Minutes of Planning Commission Meeting of October 26, 2021.

Vice Chair Miller moved to approve the minutes as submitted. Commissioner Cesarin seconded the motion. The motion passed 4-0, with Commissioner Hines-Shaikh abstaining because she did not attend the October 26, 2021 meeting.

8. PUBLIC HEARING

A. **Evergreen Healing Center – Request for Approval of a Use Permit for a Massage Therapy Business (UP-03-2021).**

This is a request by Son Hang Wong for approval of a Use Permit (UP-03-2021) to allow the Evergreen Healing Center massage therapy business to operate within an existing tenant space (Suite B) located in an existing commercial building at 1520 Kirker Pass Road, Assessor's Parcel Number 118-031-037.

Community Development Director Dana Ayers presented the staff report.

Vice Chair Miller confirmed with staff that the subject tenant space was previously occupied by a realtor to whom the Commission had recently granted a use permit to operate on a ground-floor tenant space in the Town Center. He was also curious if staff knew the name of the property owner. Director Ayers replied that she did not know but that information would be in the project file, which she did not have with her.

Vice Chair Miller also noted that the staff report indicated that the business would have four employees, but that only three certificates for massage therapists had been included in the packet. He and Chair Denslow confirmed with staff that under recommended Condition of Approval 7 of the Use Permit, the business operators would have to comply with all applicable laws of the State or other public agencies, which could include maintaining or providing evidence of any State-mandated certifications for practicing massage therapy.

Commissioner Hines-Shaikh appreciated the thoroughness of the staff report and the involvement of the Police Department in the review of the Use Permit application. She expressed concern about the safety of the employees of the business and shared previous experiences of her friend who is a certified massage therapist. Those experiences included inappropriate behavior of some customers and expectations of services these troublesome customers had at the massage therapy business where her friend worked at the time. Commissioner Hines-Shaikh requested that the applicants address these health and safety concerns when it was their time to speak.

Commissioner Cesarin requested that staff clarify recommended Condition of Approval 2 of the Use Permit, which specified days and hours of operation of the business. He confirmed with staff that the intent of the condition was to specify the "outer limits" of the days and hours of operation of the business but said that the phrasing could be read to require the applicant to receive new Planning Commission approval for *any* change in the specified days and hours, including a reduction in those days and hours.

He suggested a revision to the wording of the condition to better clarify intent of the recommendation.

Chair Denslow expressed that she had the same interpretation of Condition of Approval 2 as Commissioner Cesarin did, particularly in the context of recommended Condition of Approval 5. She asked that staff clarify what changes in the business operation would result in new review of the Use Permit by the Planning Commission. Director Ayers advised that an operational change in the business that would result in new impacts could necessitate that the Use Permit be brought back to the Planning Commission for new review. As an example, Director Ayers said that expansion of the business footprint into an adjacent tenant space or increasing the number of staff and clients could necessitate a new review of the Use Permit by the Planning Commission, since that change could increase the parking impacts of the business beyond what was currently proposed.

Chair Denslow inquired about sufficiency of off-street parking available. In response, Director Ayers advised that the off-street parking requirement for the other tenants in the building was one stall per 250 square feet of building area, which was the same ratio that applied to the proposed massage therapy business. Director Ayers also advised that the same ratio applied to the real estate office use that previously occupied the tenant space and that, because the new massage therapy business did not have a parking requirement that was greater than the prior office use, the current parking standards in the City's zoning code were not applicable, and new off-street parking stalls would not have to be added to the site.

Chair Denslow said she had read through the website of the California Massage Therapy Council (CAMTC) and saw that cities can require massage therapists to have State certification. She asked if Clayton had such a requirement. Director Ayers advised that, currently, there was not a regulation in the Clayton Municipal Code that required massage therapists to have State certification, but that massage therapy was identified in the zoning ordinance as a conditional use and, as a result, the reviewing body could require State certification as a condition of the Use Permit approval.

Chair Denslow opened the public hearing.

Applicants Leo Wong and Wendy Miao were present to speak on the item. In response to Commissioner Hines-Shaikh comments, Mr. Wong reported that this would be his first massage therapy business. Commissioner Hines-Shaikh also asked about what measures the business owner would put in place to ensure the safety of employees. Mr. Wong replied that all employees would have certification in massage therapy, and at least two employees would work at any given time and could call him or Ms. Miao in

the event of an emergency. He also said each room would have a written notice or poster describing the professional services that the business would offer. Mr. Wong said that, for sanitation and health purposes, each massage therapy room would be cleaned between customers and that sanitizer, masks, and a thermometer would be placed at the front desk for all customers and employees to use.

Vice Chair Miller recalled that the Clayton Valley Shopping Center located in Concord across Clayton Road from the subject site had a security guard. Expressing concern about the safety of the employees of the proposed massage therapy business, he asked if anyone knew whether the shopping centers on the Clayton side of Clayton Road had a security patrol. The applicants were not sure if there was a security patrol in the shopping centers on the Clayton side of Clayton Road.

Commissioner Cesarin asked the applicants about their prior business or massage therapy experience. Mr. Wong reported that his uncle operated a foot massage business in San Jose where they worked previously and that his uncle was an example to the applicants for running their business. Commissioner Cesarin also asked the applicants if they ever anticipated changing their proposed business hours, to which Mr. Wong and Ms. Miao responded that they might close early on a day that business was slow, but that they did not plan to increase their proposed business hours beyond 8:30 p.m. Also, in response to Commissioner Cesarin, Mr. Wong and Ms. Miao reported that they did not plan to sell any retail products related to the proposed massage therapy business.

Commissioner Gavidia did not have questions for the applicants but wanted to wish them good luck with their proposed massage therapy business.

Chair Denslow asked the applicant to clarify the difference between the acupressure and acupuncture services that were mentioned in the proposed business statement. Ms. Miao advised that acupressure involved use of the fingers to apply pressure to acupoints, and that only acupressure services would be offered at the business. Chair Denslow also asked the applicants to clarify the certification documents that had been included in the agenda packet. Ms. Miao responded that the certificate that had been provided for Mr. Wong was documentation of his completing a massage therapy training course as an alternative to the CAMTC certificate; Mr. Wong did not have certification from CAMTC but had a full-time job elsewhere and would not be working much at the proposed business site. Ms. Miao reported that she would primarily work at the proposed business site with one other massage therapy employee whose certification had been provided. Ms. Miao confirmed that they would require any new massage therapy employee at the proposed business to have CAMTC certification.

With no further requests from an audience member to speak on this item, Chair Denslow closed the public hearing.

Commissioner Hines-Shaikh made a motion to adopt Resolution No. 09-2021 approving Use Permit Application UP-03-2021 with revision to the text of recommended Condition of Approval 2 to clarify the intent of the condition to set limitations on the days and hours of operation. Commissioner Gavidia seconded the motion. The motion passed 5-0.

9. ACTION ITEMS

None.

10. COMMUNICATIONS

Director Ayers reported that staff had tentatively scheduled for the January 4, 2022 regular meeting of the City Council an agenda item regarding the preliminary housing site inventory, to receive Council input on goals, and to report out on the results of the recent online community survey about housing, all of which pertained to the Housing Element Update. She would confirm with the City Manager about the meeting being a joint City Council/Planning Commission meeting but, if not, the Commissioners could still attend the meeting as any member of the public could.

Chair Denslow said that she had observed the City Council interviews for the Planning Commission vacancy in November 2021. She observed that all three applicants showed tremendous passion for the City and willingness to give back to the community through service on the Planning Commission. As Planning Commission Chair, Chair Denslow said she was saddened to see personal politics brought into the discussion and used in a divisive manner on social media. She noted that the majority of the work of the Planning Commission is in review of projects and initiatives in compliance with established codes, design criteria, and standards. The Planning Commission is not a legislative body and often does not have final say in a legislative decision, but the City Council relies on the Planning Commission to study details with an objective eye. Alignment with a political party or political issue did not suit a Planning Commission applicant better or worse for the role of being a Commissioner; instead, willingness to put time and service into to the community is what is needed. She encouraged people to be engaged in the community, to volunteer, and to have conversations with their neighbors. As the holidays approached, she hoped people could embrace their common ground and let go of their differences. With a lot of work to do in the coming year, the community would be stronger to do the work together. She wished happy holidays to the rest of the Commission and the community online.

11. ADJOURNMENT

The meeting was adjourned at 7:49 p.m. to the next regular meeting of the Planning Commission on December 28, 2021.

Respectfully submitted:



Dana Ayers, AICP, Secretary

Approved by the Clayton Planning Commission:



Terri Denslow, Chair