



Agenda
Planning Commission Meeting
7:00 P.M. on Tuesday, December 9, 2008
Clayton Community Library Meeting Room
6125 Clayton Road, Clayton

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Review of agenda items.
- 1B. Commissioner Armstrong to report at the December 16, 2008 City Council meeting.

Public Comment

Approval of Minutes

- 2. Approval of minutes from the meeting of November 25, 2008.

Public Hearings

- 3. **ZOA 03-08, Municipal Code Amendment, City of Clayton.** Consideration of an amendment to the Clayton Municipal Code to allow personal property sales in specified residential districts.
Proposed Action: Recommend City Council Approval of Resolution No. 05-08.

Old Business

- 4. None.

New Business

- 5. None.

Communications

- 6A. Staff.
- 6B. Commission.

Adjournment

- 7. The next meeting of the Planning Commission is a special meeting scheduled for **Thursday, December 18, 2008.**

Most Planning Commission decisions are appealable to the City Council within ten (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 oral 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. If you have a physical impairment that requires special accommodations to participate, please contact the Community Development Department at least 72 hours in advance of the meeting at 925-673-7340. An affirmative vote of the Planning Commission is required for approval. A tie vote (e.g., 2-2) is considered a denial. Therefore, applicants may wish to request a continuance to a later Commission meeting if only four Planning Commissioners are present. Any writing or documents provided to the majority of the Planning Commission after distribution of the agenda packet regarding any item on this agenda will be made available for public inspection in the Community Development Department located at 6000 Heritage Trail during normal business hours.

Minutes
City of Clayton Planning Commission Meeting
Tuesday, November 25, 2008

Call to Order

Chair Catalano called the meeting to order at 7:00 p.m. at the Library Meeting Room, Clayton Community Library, 6125 Clayton Road, Clayton.

Present: Chair Tuija Catalano, Vice Chair Ed Hartley, Commissioner Bob Armstrong, Commissioner Keith Haydon, Commissioner Sandra Johnson

Absent: None

Staff: Community Development Director David Woltering
Assistant Planner Milan Sikela, Jr.

Administrative

1A. Review of agenda items.

1B. Vice Chair Hartley to report at the December 2, 2008 City Council meeting.

Public Comment

Approval of Minutes

2. Approval of minutes from the meeting of October 28, 2008.

Commissioner Armstrong moved and Commissioner Haydon seconded a motion to approve the minutes from the meeting of October 14, 2008, as submitted. The motion passed 5-0.

Public Hearings

3A. **SPR 09-08, Site Plan Review Permit, Robert Staehle, 215 Mountaire Circle, APN 119-142-003.** A Site Plan Review Permit to allow the construction of a second-story balcony and staircase measuring approximately 14 feet in height and 250 square feet in area.

The public hearing was opened. Assistant Planner Sikela presented the staff report. The applicant was available for questions. The Planning Commission had no comments.

Commissioner Armstrong moved and Commissioner Haydon seconded a motion to approve site plan review permit SPR 09-08, with the findings and conditions recommended by staff. The motion passed 5-0.

3B. **SPR 08-08, Site Plan Review Permit, Toni Guttry, 5571 Morningside Drive, APN 118-110-010.** A Site Plan Review Permit to allow the construction of a custom two-story single-family residence measuring approximately 28 feet in height and 4,400 square feet in area.

The public hearing was opened. Assistant Planner Sikela presented the staff report.

The representative of the applicant, Robert Kendall, indicated the following:

- The residence was designed with a country theme in terms of the scale and massing.
- The project site is flat, with only two feet of elevation differential.
- After discussing flood plain issues with the City Engineer, he is proposing to raise the pad of the residence one foot in order that the residence is above the flood plain.
- He has worked with the City Engineer and the Assistant to the City Manager to resolve project-related runoff issues.
- Horse manure for the two horses on site is collected on a regular basis by Allied Waste.

There being no further public comment, the public testimony period was closed. Commission questions and comments included:

- Is a stormwater retention levee required? *Mr. Kendall responded that a levee is not required but that an overall stormwater collection system is part of the project.*
- The design of the residence is quite attractive.
- Where would the fenced-in horse paddock be located? *Assistant Planner Sikela indicated that the horse paddock would be located in the rear (northernmost) 10,000 square feet of the subject property.*
- Is there sufficient land area to have a contiguous 10,000 square-foot paddock area, given the location of the proposed residence and gardens? *Assistant Planner Sikela indicated that he had reviewed the matter with the applicant and checked the project plans and determined that this requirement could be satisfied.*
- Amend Condition 2 to add "certificate of occupancy for the residence" and "if horses are kept on the subject property."

Commissioner Armstrong moved and Commissioner Johnson seconded a motion to approve site plan review permit SPR 08-08, with the findings and conditions recommended by staff and with Condition 2 as amended by the Commission. The motion passed 5-0.

Old Business

4. None.

New Business

5. None.

Communications

- 6A. Staff.

Director Woltering described the projects planned for the upcoming Planning Commission and City Council agendas.

- 6B. Commission.

Regarding the Town Center Retail Study discussion and approval action at the November 18, 2008 City Council meeting, Chair Catalano and Commissioner Haydon indicated the following:

- At the Council meeting, they asked that the Retail Study be strengthened to better ensure results.
- The City Council formally accepted and approved the Retail Study.
- Councilmember-elect Howard Geller asked if the Clayton Business and Community Association had been contacted for input and Councilmember-elect Joe Medrano requested that there be more input from the business community.

Commissioner Armstrong indicated the following:

- We need to ensure that there are periodic updates and that a reporting schedule be established.
- The Rossmoor newspaper is an excellent source for advertising Clayton businesses as a way of boosting interest in Clayton. He had communications with the City Manager about ways to undertake that advertising.

Director Woltering indicated that Clayton resident Lynn Hadley had indicated general concerns about the lack of input from the business community regarding the Retail Study.

Adjournment

7. The meeting was adjourned at 7:44 p.m.

Submitted by
David Woltering, AICP
Community Development Director

Approved by
Tuija Catalano
Chair

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PLANNING COMMISSION STAFF REPORT

Meeting Date: December 9, 2008

From: David Woltering, Community Development Director *DW*
Milan Sikela, Assistant Planner *MS*

Subject: Municipal Code Amendments to Allow Personal Property Sales in Residential Neighborhoods (ZOA 03-08)

BACKGROUND

On August 26, and again on November 12, 2008, the Clayton Planning Commission held study sessions to review the matter of whether the City should consider amending the Clayton Municipal Code to allow outside sales in residential neighborhoods (Zoning Districts) (see **Exhibits E** and **C** for the August 26, and November 12, 2008 Planning Commission minute excerpts, respectively). Staff had previously determined that outside sales in the City's residential districts would be precluded by the Home Occupation Permit provisions, Chapter 17.71, of the Clayton Municipal Code (see **Exhibit B** for a copy of Chapter 17.71). It is stated in this Chapter that limited commercial activities are allowed within a home in a residential district and that there is to be no external display of business activity. At the August 26th Planning Commission meeting, the Commission requested that staff research and report back on how other communities are addressing the matter of outside sales in residential districts.

At the November 12th meeting, staff presented its research findings from other communities regarding the matter of outside sales, focusing primarily on communities within Contra Costa County. Staff had contacted the cities of Concord, Lafayette, Martinez, Moraga, Orinda, Palo Alto, and Pleasant Hill. Staff had asked representatives of these communities whether and under what circumstances might their communities allow outside sales in residential districts. In general, like Clayton, staff learned that these communities have home occupation regulations that allow only limited commercial activities within a home and, generally, no external evidence of business activity (e.g., signage, exterior display or storage of goods and materials, etc.). However, as with Clayton, the home occupation regulations in certain cases allow client visits to occur within the residence, thereby, not impacting the residential character of the neighborhood. The City of Pleasant Hill does allow outside sales in association with a home occupation in residential districts, subject to the Zoning Administrator making a written finding that the activity will not have an adverse effect on the neighborhood; and, the Zoning administrator may attach conditions to his/her finding(s) and action. Additionally, two of the communities surveyed, Concord and Orinda, specifically allow garage sales, three times in a six month period and twice per calendar year, respectively. The City of Pleasant Hill allows two "sales of personal property" per year. The following table summarizes staff's findings.

CITY	REGULATIONS
Concord	<u>Home Occupations (CMC § 122-304)</u> Prohibits exterior indications of home based businesses, including advertising signs or window displays.
	<u>Garage Sales (CMC § 90-104)</u> Allowed in all residential districts three times per any six-month period.
	<u>Holiday Boutiques, Lemonade/Produce Stands</u> The CMC stays silent on these activities.
Lafayette	<u>Home Occupations (LMC § 6-327)</u> Requires that the home occupation “involves no evidence outside the structure or visible from outside the structure that the activity is being conducted on the premises.”
	<u>Residential Business (LMC § 6-347)</u> Indicates that the residential business shall not involve an activity that is incompatible with the surrounding land uses because of “noise, vibration, glare, odor, or appearance...”
	<u>Garage Sales, Holiday Boutiques, Lemonade/Produce Stands</u> The LMC stays silent on these activities.
Martinez	<u>Home Occupations (MMC § 22.040.020)</u> Stipulates that the home occupation shall be conducted “within a dwelling” and that there shall be “no external alteration of the dwelling” as a result of the home occupation.
	<u>Garage Sales, Holiday Boutiques, Lemonade/Produce Stands</u> The MMC stays silent on these activities.
Moraga	<u>Home Occupations (MMC § 122-304)</u> Prohibits the home occupation being visible from off-site and prohibits any exterior evidence of the home occupation.
	<u>Garage Sales, Holiday Boutiques, Lemonade/Produce Stands</u> The MMC stays silent on these activities.
Orinda	<u>Home Occupation (OMC § 17.3.7)</u> Requires that there shall be “no outside display, advertising sign, window display, or storage of goods or materials that could be used to identify the business.”

CITY	REGULATIONS
	<u>Garage Sales (OMC § 17.3.3)</u> Allowed in all residential districts twice per calendar year.
	<u>Holiday Boutiques, Lemonade/Produce Stands</u> The OMC stays silent on these activities.
Palo Alto	<u>Home Occupation (PAMC § 18.42.060)</u> Outdoor storage of any material, equipment, or goods is prohibited “in connected with the home occupation.”
	<u>Garage Sales, Holiday Boutiques, Lemonade/Produce Stands</u> The PAMC stays silent on these activities.
Pleasant Hill	<u>Home Occupations (PHMC § 18.20.070)</u> Allows outside sales if “the zoning administrator makes a written finding that the home occupation will not have an adverse affect on the neighborhood. In doing so the zoning administrator may impose reasonable conditions necessary to ensure that the home occupation will comply with the provisions of this section.”
	<u>Garage Sales (PHMC § 17.3.3)</u> Classified as “Personal Property Sales” in the PHMC. Two “sales of personal property” are allowed per year.
	<u>Holiday Boutiques, Lemonade/Produce Stands</u> The PHMC stays silent on these activities.

Based on the research conducted by staff, Clayton’s Home Occupation Permit regulations in Municipal Code Chapter 17.71 appear very consistent with how other communities are addressing commercial activities in residential districts. Generally, the objective is to assure that the limited commercial activities allowed for occur within the home in residential districts, consistent with the expectations of the community members living in those districts as to the specific types of activities and potential impacts caused by those activities (e.g., noise, traffic, odors, aesthetics, etc.).

DISCUSSION

As acknowledged by the Planning Commission at the November 12, 2008 Planning Commission meeting, other communities, like Clayton, attempt to balance allowing some commercial activity in residential neighborhoods by, typically, not allowing for external evidence (e.g., signs, displays, etc.) of commercial activity. Based on this information and further consideration of this matter, the Commission indicated a preference essentially to “stay the course” and not amend the previously cited Chapter 17.71, the Home Occupation Permit provisions of the City’s code. Amending this portion of the code to allow outside sales in residential districts could result in an undesirable change in character (i.e., commercial influence) in these districts which the Commission wanted to avoid. However, the Commission did want to allow for “personal property sales” within specified parameters. These sales would include garage and yard sales, with the understanding that what is being sold are items owned by the residents of the home(s) involved in the sale. The Commission also wanted to establish parameters for these sales to protect the residential character of the residential districts involved. The parameters that the Commission suggested specified the following:

- Personal property sales to be allowed up to a maximum of four (4) days per calendar year;
- Personal property sale to be limited to the hours between 8:00 a.m. and 5:00 p.m.; and,
- Personal property sales should not result in adverse impacts related to noise, traffic, safety, congestion, and parking.

Staff prepared the attached draft ordinance (see **Exhibit A**) based on the input received from the Planning Commission. This draft ordinance defines personal property sales and provides limitations for these sales, including that these sales would be limited to four days in a calendar year and be held between 8:00 a.m. and 5:00 p.m., as specified by the Planning Commission. This draft ordinance has been reviewed and edited by City Attorney Dan Adams. Staff suggests that this ordinance clarifies under what circumstances the City of Clayton would allow for sales within residential neighborhoods and, in conjunction with the existing Chapter 17.71 of the Clayton Municipal Code, attempts to balance commercial interests in the City’s residential districts, while maintaining the overall residential character of these areas.

RECOMMENDATION

Staff recommends that the Planning Commission adopt Resolution No. 05-08, thereby recommending City Council approval of the proposed ordinance to allow “personal property sales” within Clayton’s residential districts, subject to conformance with the specified parameters.

EXHIBITS

- A Planning Commission Resolution No. 05-08 and related Draft Ordinance
- B Chapter 17.71 Home Occupation Permit of the Clayton Municipal Code
- C November 12, 2008 Planning Commission Minutes
- D Attorney Dan Adam's September 2, 2008 Memorandum to the City Council
- E August 26, 2008 Planning Commission Minutes

ZOA\2008\03-08.sr2

**CITY OF CLAYTON PLANNING COMMISSION
RESOLUTION NO. 05-08**

**MUNICIPAL CODE AMENDMENT TO MODIFY
SECTION 5.04.010.D (BUSINESS LICENSE & TAXES DEFINITIONS),
SECTION 15.08.020.O (SIGN PROVISION DEFINITIONS),
SECTION 15.08.040.Q (EXEMPT SIGNS),
SECTION 15.08.070.F (REGULATIONS FOR SPECIAL SIGNS),
CHAPTER 17.04 (DEFINITIONS),
SECTION 17.16.020 (SINGLE FAMILY RESIDENTIAL DISTRICT PERMITTED
USES), AND
SECTION 17.28.060 (PLANNED DEVELOPMENT PERMITTED USES) PERTAINING
TO ALLOWING PERSONAL PROPERTY SALES
(ZOA 03-08)**

Whereas, Section 17.56.060 of the Clayton Municipal Code requires the Planning Commission to make a formal recommendation to the City Council on Zoning Ordinance amendments; and

Whereas, the Planning Commission held study sessions on August 26, 2008 and November 12, 2008 regarding consideration of amending the Clayton Municipal Code to allow outside sales in residential neighborhoods within the City of Clayton; and

Whereas, based on the information received at the study sessions on August 26, and November 12, 2008, the Planning Commission determined that it would be in the public interest to consider amending the Clayton Municipal Code to allow personal property sales, subject to specified parameters, within residential neighborhoods in the City of Clayton; and

Whereas, at the November 12, 2008 Planning Commission meeting, the Commission requested that the staff prepare an amendment to the Clayton Municipal Code for its consideration to allow personal property sales within the City of Clayton; and,

Whereas, the Planning Commission held a duly-noticed public hearing on December 9, 2008 to consider the proposed amendment to the Clayton Municipal Code prepared to allow personal property sales, subject to specified circumstances; and

Whereas, the Planning Commission considered the public testimony and staff reports submitted on the matter at its December 9, 2008 meeting; and

Whereas, the proposed amendments to the Clayton Municipal Code (ZOA 03-08) are exempt from the California Environmental Quality Act (CEQA) in accordance with Sections 15305 of the CEQA Guidelines; and

EXHIBIT A

Now, Therefore, Be it Resolved That:

Section 1. The Planning Commission determines that the proposed amendments of the Clayton Municipal Code regarding personal property sales described in the **Attachment** would be in general conformance with the General Plan, including any affected implementation programs, and would be in the public interest as well as support the public necessity, convenience, and general welfare.

Section 2. The Planning Commission recommends that the City Council approve the proposed amendments to the Clayton Municipal Code to allow personal property sales as provided in the **Attachment**.

Adopted by the Planning Commission on _____.

APPROVED

ATTEST

Tuija Catalano
Chair

David Woltering, AICP
Community Development Director

Attachment: Draft Ordinance to amend the Clayton Municipal Code to allow personal property sales

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CLAYTON
AMENDING THE FOLLOWING SECTIONS OF THE CLAYTON MUNICIPAL CODE
PERTAINING TO ALLOWING PERSONAL PROPERTY SALES:
SECTION 5.04.010.D (BUSINESS LICENSE & TAXES DEFINITIONS),
SECTION 15.08.020.O (SIGN PROVISION DEFINITIONS),
SECTION 15.08.040.Q (EXEMPT SIGNS),
SECTION 15.08.070.F (REGULATIONS FOR SPECIAL SIGNS),
CHAPTER 17.04 (DEFINITIONS),
SECTION 17.16.020 (SINGLE FAMILY RESIDENTIAL DISTRICT PERMITTED
USES), AND
SECTION 17.28.060 (PLANNED DEVELOPMENT PERMITTED USES) (ZOA 03-08)**

**THE CITY COUNCIL
City of Clayton, California**

THE CITY COUNCIL OF THE CITY OF CLAYTON FINDS AS FOLLOWS:

WHEREAS, the term “personal property sale” would more appropriately define the sale of personal property from a residence rather than the term “garage sale” as defined in Section 5.04.010.D of the Municipal Code; and

WHEREAS, the term “personal property sale sign” would more appropriately describe a sign for the sale of personal property rather than the term “garage or yard sale sign” as defined in Section 15.08.020 O. of the Municipal Code; and

WHEREAS, the term “personal property sale sign” would more accurately identify a personal property sale sign than the term “garage or yard sales signs” as found in Section 15.08.040.Q of the Municipal Code; and

WHEREAS, the Zoning Ordinance Definitions in Chapter 17.04 of the Municipal Code do not currently provide a definition for a “personal property sale”; and

WHEREAS, the Permitted Uses for Single Family Residential Districts in Section 17.16.020 of the Municipal Code do not currently allow for “personal property sales”; and

WHEREAS, the Permitted Uses for Planned Development Districts in Section 17.28.060 of the Municipal Code do not currently allow for a “personal property sale”; and

WHEREAS, Chapter 17.56 of the Municipal Code authorizes the City Council to amend Title 17 (Zoning) of the Municipal Code; and

WHEREAS, the Clayton Planning Commission held a duly-noted public hearing on December 9, 2008 on amending the Municipal Code to allow for personal property sales; determined that the amendment would be in conformance with the General Plan; determined that the public necessity, convenience, and general welfare would support adoption of the amendment; and recommended City Council approval of the amendment; and

WHEREAS, on _____ and _____, the City Council held duly-noticed public hearings and gave due consideration to all testimony, comments, and documents received regarding this matter; and

WHEREAS, the public necessity, conveniences, and general welfare require the adoption of the following amendment; and

WHEREAS, the following amendments are in general conformance with the General Plan; and

WHEREAS, the following amendment of the Municipal Code are minor alterations of land use limitations which will not result in any changes in land use or density and, therefore, qualify for categorical exemptions from the California Environmental Quality Act in accordance with Section 15305 of the State CEQA Guidelines; and

WHEREAS, there is no evidence that the amendments will have the potential for any individual or cumulative adverse effects on fish and wildlife resources or their habitat, as defined in Section 711.2 of the Fish and Game Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CLAYTON DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 5.04.010.D of the Municipal Code is amended to read as follows:

- “D. “Personal property sale” includes garage and yard sales and shall mean a sale conducted at the residence of the owners of the used goods, wares, and merchandise being offered for sale. Any such sale shall comply with the provisions of Sections 17.16.020 E or 17.28.060 as applicable.”

SECTION 2. Section 15.08.020.O of the Municipal Code is amended to read as follows:

- “O. Personal Property Sale Sign: A temporary sign advertising a personal property sale.”

SECTION 3. Section 15.08.050.Q of the Municipal Code is amended to read as follows:

- “Q. Personal property sale signs, in accordance with the standards of Section 15.08.070 of this Chapter.”

SECTION 4. Section 15.08.070.F of the Municipal Code is amended to read as follows:

- “F. Personal Property Sale Signs. Personal property sale signs are allowed for residential uses subject to the following standards:
1. A total of one (1) on-site sign and up to six (6) off-site signs.
 2. Only one (1) off-site sign may be displayed at any one intersection for each personal property sale.
 3. The signs shall not exceed three (3) feet in height nor two (2) feet in width.
 4. The signs shall only be displayed up to one (1) hour before, during, and up to one

- (1) hour following the personal property sale.
5. The signs shall not be displayed in a public right-of-way nor shall they obstruct a pedestrian walkway, except signs shall be allowed behind the sidewalk or behind the curb if there is no sidewalk.
 6. No signs shall be displayed on private property without the consent of the property owner.
 7. Balloons, flags, pennants, animated devices, and similar objects are prohibited.”

SECTION 5. A new Section 17.04.165 of the Municipal Code is added to read as follows:

“17.04.165 Personal Property Sale. “Personal property sale” shall mean a sale conducted at the residence of the owners of the used goods, wares, and merchandise being offered for sale. Any such sale shall comply with the provisions of Sections 17.16.020 E or 17.28.060 as applicable ”

SECTION 6. A new Section 17.16.020.E of the Municipal Code is added to read as follows:

- “E. Personal property sales in accordance with the following regulations:
- a. Personal property sales shall be allowed up to a maximum of four (4) days per calendar year;
 - b. Personal property sales shall be limited to the hours between 8:00 a.m. and 5:00 p.m.; and
 - c. Personal property sales shall not result in adverse impacts related to noise, traffic, safety, congestion, and parking.”

SECTION 7. Section 17.28.060 of the Municipal Code is amended to read as follows:

“17.27.060 Permitted Uses. The Planned Development District is designed to effectively control the development of a single use or mixture of uses as defined in the overlying category (or categories) designated in the General Plan. Personal property sales are allowed in residential neighborhoods within Planned Development Districts subject to the following standards:

- A. Personal property sales shall be allowed up to a maximum of four (4) days per calendar year;
- B. Personal property sales shall be limited to the hours between 8:00 a.m. and 5:00 p.m.;
- C. Personal property sales shall not result in adverse impacts related to noise, traffic, safety, congestion, and parking; and
- D. Personal property sales are only allowed in higher-density residential developments if the sales area does not adversely impact common areas or public areas.”

SECTION 8. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance, or the application thereof to any person or circumstances, is held to be unconstitutional or to be otherwise invalid by any court competent jurisdiction, such invalidity shall not affect other provisions or clauses of this Ordinance or application thereof which can be implemented without the invalid provisions, clause, or application, and to this end such provisions and clauses of the Ordinance are declared to be severable.

SECTION 9. Conflicting Ordinances Repealed. Any ordinance or part thereof, or

regulations in conflict with the provisions of this Ordinance, are hereby repealed. The provisions of this Ordinance shall control with regard to any provision of the Clayton Municipal Code that may be inconsistent with the provisions of this Ordinance.

SECTION 10. Effective Date and Publication. This Ordinance shall become effective thirty (30) days from and after its passage. Within fifteen (15) days after the passage of the Ordinance, the City Clerk shall cause it to be posted in three (3) public places heretofore designated by resolution by the City Council for the posting of ordinances and public notices. Further, the City Clerk is directed to cause Section 1 of this Ordinance to be entered into the City of Clayton Municipal Code.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Clayton held on ____.

Passed, adopted,____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

THE CITY COUNCIL OF CLAYTON

_____, Mayor

ATTEST

Laci J. Jackson, City Clerk

APPROVED AS TO FORM

APPROVED BY ADMINISTRATION

Dan Adams, City Attorney

Gary A. Napper, City Manager

I hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Clayton held on ____, and was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on ____.

Laci J. Jackson, City Clerk

ZOA\2008\03-08.ord2

Chapter 17.71

HOME OCCUPATION PERMITS

Sections

- 17.71.010 Purpose
- 17.71.020 Administrative Review
- 17.71.030 Planning Commission Review

17.71.010 Purpose. The purpose of the home occupation permit is to allow residents in residential districts to conduct limited commercial activities within the dwelling unit. The limited commercial activities must be subordinate and incidental to the residential use of the property.

17.71.020 Administrative Review.

A. Review Procedure. The Community Development Director may approve, approve with conditions, or deny a home occupation permit upon receipt of a completed application form and payment of a fee established by resolution of the City Council, provided that any approval of a proposed home occupation shall meet the standards set forth in subsection B. Decisions of the Community Development Director shall be documented in a notice of decision. The notice of decision shall be mailed on the day of the decision to the applicant and all owners of real property, as shown on the latest equalized assessment roll, within 300 feet of the subject site.

The Community Development Director shall refer any application to the Planning Commission for a decision if, in the judgment of the Community Development Director, the application may potentially have an adverse effect on the neighborhood residents.

B. Standards of Approval. Home occupation permits approved by the Community Development Director shall meet the following standards at all times.

1. The home occupation shall be subordinate and incidental to the primary use of the dwelling unit for residential-purposes.
2. The home occupation shall be compatible with and not change the character of adjacent residential areas.
3. The dwelling unit shall be located in an Agricultural, Residential, or Planned Development (Residential) District.
4. The home occupation shall not use more than one (1) room, or twenty-five percent (25%) of the habitable floor area of the principle structure, whichever is greater. Garage areas and living areas within accessory structures and secondary dwelling units shall not be considered as part of the habitable floor area of the principal structure.
5. No persons shall be employed, except the applicant and members of the resident family, in the conduct of the home occupation.
6. There shall be no merchandise or services for sale, except that produced or made on the premises, and which can be shipped directly, electronically, or sold at another location.
7. There shall be no signage or exterior indication of the home occupation.
8. There shall be no outside display or storage of goods or materials.

9. The home occupation shall not create any noise, odor, dust, fumes, vibrations, electrical interference, or other interference with the residential use of adjacent areas.

10. There shall be no use of utilities or community facilities beyond that normal to the residential use of the property.

11. The home occupation shall not decrease the number or size of parking spaces below that needed to meet the minimum off-street parking requirements for the residence.

12. Delivery vehicles shall be limited to those types of vehicles, which typically make deliveries to residential neighborhoods, such as postal service, parcel deliveries, pickup trucks, and light vans. A maximum of four deliveries per day is allowed.

13. The home occupation shall not generate client/student traffic to the residence.

14. Any chemicals or hazardous materials used or stored on the property shall not exceed that associated with normal household activities or hobby uses.

15. Any use of materials or mechanical equipment shall not exceed that associated with normal household activities or hobby uses.

C. Appeal Procedure. Any decision of the Community Development Director regarding a home occupation permit may be appealed to the Planning Commission within ten days of the notice of decision.

17.71.030 Planning Commission Review

A. Review Procedure. In accordance with the provisions of section 17.64.110, the Planning Commission may approve, approve with conditions, or deny a home occupation permit upon receipt of a completed application form and payment of a fee established by resolution of the City Council, provided that any approval of a proposed home occupation shall meet the standards set forth in subsection B. Decisions of the Planning Commission shall be filed in accordance with the provisions of section 17.68.010.

B. Standards of Approval. Home occupation permits approved by the Planning Commission shall meet the following standards at all times.

1. Standards listed in subsection 17.71.020.B.1 through 17.71.020.B.12.

2. The home occupation shall not generate client/student traffic to the residence in excess of six (6) clients/students per day, unless the number is reduced by the Planning Commission. On Saturdays, client/student traffic may only occur between 9:00 a.m. and 5:00 p.m.) Client/student traffic is prohibited on Sundays.

3. Any chemicals or hazardous materials used or stored on the property, beyond that associated with normal household activities or hobby uses, shall not create a hazard for the applicant or neighborhood residents.

4. Any use of materials or mechanical equipment beyond that associated with normal household activities or hobby uses, shall not create a nuisance for neighborhood residents.

C. Appeal Procedure. Any decision of the Planning Commission regarding a home occupation permit may be appealed to the City Council in accordance with the provisions of section 17.68.020. (Ordinance 357, 2001)

Minutes
City of Clayton Special Planning Commission Meeting
Wednesday, November 12, 2008
(Excerpt)

Call to Order

Chair Catalano called the meeting to order at 7:00 p.m. at the Library Meeting Room, Clayton Community Library, 6125 Clayton Road, Clayton.

Present: Chair Tuija Catalano, Commissioner Bob Armstrong, Commissioner Keith Haydon, Commissioner Sandra Johnson

Absent: Vice Chair Ed Hartley

Staff: Community Development Director David Woltering
Assistant Planner Milan Sikela, Jr.

Administrative

1A. Review of agenda items.

1B. Chair Catalano to report at the November 18, 2008 City Council meeting.

Public Comment

Approval of Minutes

2. Approval of minutes from the meeting of October 28, 2008.

Commissioner Armstrong moved and Commissioner Haydon seconded a motion to approve the minutes from the meeting of October 14, 2008, as amended. The motion passed 4-0.

Public Hearings

3. None.

Old Business

4. None.

New Business

5. **ZOA 03-08, City of Clayton.** Study session item regarding possible amendment of the Clayton Municipal Code to allow outside sales in residential districts.

Director Woltering presented the staff report.

Commission questions included:

- Does the reference to open houses and yard sales apply to garage sales in the Sign Provisions? *Director Woltering answered "yes."*
- Did the City Attorney have concerns with limiting what is sold with outside sales? *Director Woltering indicated that the City Attorney had indicated it would be difficult to restrict what is sold as part of outside sales.*
- We should add a finding that the garage/yard sale is consistent with the residential character

- of the neighborhood.
- We need to ensure that there are no traffic, noise, or congestion impacts related to the outside sales.

The public comment period was opened.

Jim Schwandt, 1092 Mitchell Canyon Road, indicated that he would like to see a copy of the proposed Code amendment allowing outdoor sales in residential districts. *Chair Catalano indicated that there is no formal Code amendment at this time. This study session is being held to review the issue and discuss the options available in the circumstance that the City would want to amend its Code to possibly allow outside sales.*

Lynn Hadley, 527 Hamburg Circle, indicated the following:

- If the City considers any amendments to the Code, the amendments should only address garage and yard sales.
- Farmers' markets already exist as a vehicle to allow outdoor sales of produce and the Clayton Woman's Club sponsors holiday boutique sales.

Jon Van Brusselen, 5851 Pine Hollow Road, indicated the following:

- There are already appropriate outlets for outdoor sales of produce within the community without having to amend the Code.
- We will be opening a can of worms if we amend the Code to allow outdoor sales of produce in residential districts.
- Consideration of amending the Code appears to be focused on allowing one family to sell produce outdoors.

Jim Schwandt, 1092 Mitchell Canyon Road, indicated that this is not for one family but for the entire City.

Jenny Lewis, 1098 Mitchell Canyon Road, indicated the following:

- The City should amend the Code to allow a permitting process for outside produce sales in residential areas.
- The frequency of outside sales events should be ten times per year.

Commissioner Johnson asked if the home occupation permit process would address outside sales events. *Director Woltering indicated that, if the home occupation permit were approved, sales could only occur inside of the residence with no external evidence of the business activity.*

Rande Jaffe, 851 Coachman Place, indicated the following:

- There are already outside sales occurring in residential neighborhoods when kids go house-to-house offering to rake leaves for pay.
- Outside sales should be allowed twice a month.
- The City could place a maximum limit on the amount of money generated by the outside sales.

The public comment period was closed. Commission comments and questions included:

- Could a complaint stop a garage sale? *Director Woltering answered that, yes, theoretically a complaint could stop a garage sale if there were such impacts as traffic congestion.*
- Mr. and Mrs. Lewis have gone through great expense to screen their property by installing a wooden fence.
- Garage and yard sales should be clarified within the Code. We should be allowing them within certain parameters.
- It is difficult to define all possibilities and nuances in a Code provision.
- I think we should stay on the course we are currently on. Vagueness in the Code can sometimes be a good thing.
- It is appropriate to address garage/yard sales, but we should not go further than that.
- We should allow four garage sales per year.
- The term “personal property sales” would seem to encompass both garage and yard sales.
- Language that deals with traffic, noise, and congestion should be added as a parameter for allowing garage/yard sales.
- We should ensure that all areas of the Code are consistent with regard to personal property sales, including the Sign Provisions. Since we are on the subject of Sign Provisions, is it appropriate to allow balloons? *Director Woltering indicated that it is common in most cities to preclude and discourage the use of balloons as an advertising device since, once they are deflated, they become an environmental hazard.*

The Commission concluded their discussion by directing staff to return with a draft amendment to the Clayton Municipal Code that would address the following with respect to outside sales in residential areas:

- Outside sales should be limited to personal property sales (the term “personal property sales” would replace the term “garage/yard sales”).
- Personal property sales should be allowed a maximum of four days per calendar year.
- Personal property sales should be limited to the hours between 8:00 a.m. and 5:00 p.m.
- Personal property sales should not result in adverse impacts related to noise, traffic, safety, congestion, and parking.
- The Sign Provisions should be reviewed and modified, as needed, to support the described personal property sales.

The Commissioners asked Director Woltering when he expected the draft ordinance amendment to come back to the Planning Commission for consideration. Director Woltering indicated that he expected that the draft ordinance would be presented back to the Commission at its December 9, 2008 meeting.

Commissioner Armstrong stated that he strongly recommended that the Lewis family follow-up on the offer made by community members for their sponsorship at the Clayton Farmer’s Market.

MEMORANDUM

Received

SEP 02 2008

City of Clayton

To: Clayton City Council

From: J. Daniel Adams, City Attorney

Date: September 2, 2008

Subject: Possible Amendment of the Clayton Municipal Code
To Allow Outside Sales in Residential Areas

The above referenced matter was the subject matter of a Study Session of the City of Clayton Planning Commission on Tuesday, August 26, 2008. Because of misunderstandings arising from the Study Session and statements made by or attributed to the Commission, I have been asked to address this subject.

After Community Development Director, David Woltering, presented his Staff Report, the Commission discussed the matter and received public testimony. Following public testimony, it provided guidance to staff. Although there was understandable confusion as to the Commission's guidance to staff, neither the scope of the Agenda Item, nor the authority of the Planning Commission support any action other than guidance or general direction and a careful review of the proceedings reveals that the Commission's ultimate guidance was in accordance with these established parameters. The Commission's guidance was three-fold. First it requested staff to prepare a draft Ordinance for future consideration which would consider allowing occasional outside sales in residential neighborhoods; second it requested staff to explore whether there was a process to allow such sales on an interim basis pending any amendment of the Ordinance; and third, it suggested that staff explore the withdrawal of the Notice of Violation.

Pursuant to the Commission's guidance, staff is undertaking the process of preparing possible Amendments to the Municipal Code which we anticipate will be presented at the Commission within the next 30 to 60 days. With regard to the Commission's concern as to the intervening period before any action is taken on possible Amendments, following careful review, staff does not find legal means upon which to allow occasional uses such as the vegetable stand, under the current provisions of the Clayton Municipal Code. Clayton follows the well established legal principal in zoning law that any non-enumerated use is presumptively prohibited. Accordingly, unless a use is expressly permitted within a particular zone, it is prohibited. The recent case of *City of Corona v. Naulls* (2008) 08 Cal. Daily Op. Serv. 11,542 confirms this principle. In *Naulls*, the City of Corona's Municipal Code was examined and found to be drafted in a permissive fashion, i.e., any use not enumerated in the code is presumptively prohibited.

The City of Corona Code provisions are similar to the City of Clayton's. Specifically our Code provides in Chapter 17.16 entitled Single Family Residential that "all land within any of the single family residential districts . . . *may* be used for any of the uses described in, and under the regulations of, this Chapter". Thus, by its express language and subject to the more specific home occupation permit provisions (Chapter 17.71), only uses described in Chapter 17.16 are permitted.

Although the Planning Commission Meeting Agenda addressed the more general topic of possible amendment of the Municipal Code to allow outside sales in residential areas, much of the public's testimony was focused on one particular residential location and the activity of sales by minors at a vegetable stand for which the City had received a complaint. As discussed above, the direction/guidance of the Commission to staff was limited to working on a proposed Amendment(s) of the Code and exploring whether some form of interim relief could be available to allow uses such as those occurring at 1098 Mitchell Canyon Road. Because our Code is drafted in permissive fashion, this activity is prohibited unless expressly allowed under the City's provisions for the residential district. A careful reading of our Code reveals there is an absence of legal authority for the City allowing such a use absent its amendment.

Staff has now conducted a review of the Code and does not find any legitimate basis for allowing interim activities. As the City's legislative body, the City Council is empowered to enact and implement various Codes including the Zoning Code. While it may delegate certain powers to staff or other bodies, it has not chosen to do so in the instant matter. Accordingly, there is no legitimate basis for the Community Development Director or the Planning Commission to withdraw the Notice of Violation or otherwise waive the enforcement of Code provisions.

In summary, there is not a basis in the current City of Clayton Code to allow outside sales activities in the City's residential areas. The City may, through its Code amendment process, consider and perhaps adopt an amendment(s) to allow such activities in the future. In the meantime, as mentioned in the staff report and by comments of staff presented at the August 26, 2008 Planning Commission meeting, in the circumstance of the property owner at 1098 Mitchell Canyon Road, other means to sell and distribute excess produce grown at that property could be pursued that could comply with the current Code. These options include the following: sale of produce at the local Farmer's Market; Subscription Framing; and/or requesting Planning Commission approval through Chapter 17.71 of the City of Clayton Code to be allowed up to six customers to come to the residence per day to pick up excess process, while not having external evidence of business activity such as exterior signage or display.

JDA:lac

Clayton Muni Code: Possible Amendment
Sale in Residential 080828

Minutes
City of Clayton Planning Commission Special Meeting
Tuesday, August 26, 2008
(Excerpt)

Call to Order

Chair Catalano called the meeting to order at 7:00 p.m. at the Library Meeting Room, Clayton Community Library, 6125 Clayton Road, Clayton.

Present: Chair Tuija Catalano, Vice Chair Ed Hartley, Commissioner Bob Armstrong, Commissioner Keith Haydon, Commissioner Sandra Johnson

Absent: None

Staff: Community Development Director David Woltering
City Attorney Dan Adams
Assistant Planner Milan Sikela, Jr.

Administrative

1A. Review of agenda items.

1B. Commissioner Armstrong to report at the September 2, 2008 City Council meeting.

Public Comment

Approval of Minutes

2. Approval of minutes from the meeting of August 12, 2008.

Chair Catalano moved and Commissioner Armstrong seconded a motion to approve the minutes from the meeting of August 12, 2008, as amended. The motion passed 5-0.

Public Hearings

3. None.

Old Business

4. None.

New Business

5A. **CDD 11-08, City of Clayton.** Study session item regarding possible amendment of the Municipal Code to allow outside sales in residential areas.

The study session was opened. Director Woltering presented the staff report.

The Commission asked questions for clarification of staff as follows:

- How many days per year is the produce being sold at 1098 Mitchell Canyon Road? *Director Woltering indicated that the property owner had informed him that produce was sold 20 or more days per year.*
- Does the City's code define commercial activity? *Director Woltering responded that the code does not specifically define commercial activity, but that staff would refer to a Webster's dictionary definition for guidance and that an exchange of goods or revenue would typically be involved.*
- Do garage sales or yard sales require a Use Permit? *Director Woltering indicated that garage sales or yard sales do not require a Use Permit, nor, however, are permitting*

requirements addressed for these activities in the code.

- Do Home Occupation Permits apply to occupations, not to temporary outdoor uses such as garage sales? *Director Woltering indicated that the Home Occupation Permit section does not distinguish between the type of activities, only that outside commercial activity is not permitted.*
- Do we know if the Home Occupation Permit process was intended to apply to lemonade stands and garage sales? *Assistant to the City Manager Laura Hoffmeister responded that, when the wording was drafted for Chapter 17.71—the Chapter related to Home Occupation Permits—the intention was to address home-based businesses in a thoughtful manner. Lemonade stands and garage sales were only discussed in passing. Prior to the establishment of Chapter 17.71, the policy of the City was that three events per year or less was considered infrequent and did not constitute a business activity. So if an activity occurred three times a year or less, no permit was needed. In the instance that the City received a complaint about the activity, code enforcement would be applied. The Assistant to the City Manager noted that the City had previously shut down a holiday boutique activity that involved outside sales of various goods in a residential neighborhood.*
- So has the City code enforced garage sales? *Assistant to the City Manager Hoffmeister indicated that if the activity occurred less than three times a year, it was not code enforced. However, if staff received complaints about the activity, as in the case with the holiday boutique, then appropriate code enforcement measures would be initiated.*
- Was the complaint based on the sale of produce at 1098 Mitchell Canyon Road or the traffic generated by the activity? *Director Woltering indicated that the complaint related to traffic impacts.*
- Would a permit be required from the Health Department? *Director Woltering indicated that it is his understanding that the produce could be sold without a permit from the Health Department as long as the produce was not processed (cut, diced, canned, etc.).*
- What is the governmental interest in statutes such as the Home Occupation Permit regulations? *Director Woltering answered that preservation of the residential character of Clayton's neighborhoods is the objective.*
- In years past, the City shut down a residential business that involved the sales of garden statuary.
- Could a Variance be used to allow the sales of produce from 1098 Mitchell Canyon Road? *Director Woltering responded that a Variance could not be used since a Variance applies to requested deviations from required development standards, and not requested deviations to uses of land. The matter at 1098 Mitchell Canyon Road relates to the use of land.*
- Did the initial complaint have to do with traffic issues? *Director Woltering answered "yes".*

There being no further questions of staff, Chair Catalano opened the public hearing.

Charles Van Brusselen, 5851-A Pine Hollow Road, indicated the following:

- Chapter 8.08.010 of the Municipal Code addresses the violations that have occurred at 1098 Mitchell Canyon Road.
- The activities occurring at 1098 Mitchell Canyon Road are nuisances since they create traffic, parking violations, and noise.
- A tractor has been located in visible area of the lot, which violates the City's open storage regulations.

Jon Van Brusselen, 5851 Pine Hollow Road, indicated the following:

- I am impacted by the activities occurring at 1098 Mitchell Canyon Road. Most of the people in support of the produce stand do not live right across the street from it. I am impacted daily

by these activities.

- I consider the property at 1098 Mitchell Canyon Road to be a mess. They have a ladder, four-foot sprinklers, lumber rack, trailer, tractor, and an inoperable vehicle on the property. I have to look outside my window and see this across the street.
- The things that have been occurring at 1098 Mitchell Canyon Road are Code violations.
- During the winter when the vegetables are not growing, the front and exterior side yard areas look terrible.

Norma Alexander, 5856 Four Oaks Lane, indicated the following:

- I've purchased vegetables from the property owners of 1098 Mitchell Canyon Road.
- The two girls should be encouraged to sell vegetables.
- While traffic is a concern at times in this area, the additional traffic associated with the girl's selling vegetables is not an issue.
- I urge the Planning Commission to make it possible for the outside sales to occur at the subject property.

Mike Lewis, 1098 Mitchell Canyon Road, indicated the following:

- This started out as something for my daughters to do.
- We had no intention of visually impacting the neighborhood.
- He hopes that there will be some way for Katie and Sabrina to continue their vegetable sales.

Commission comments and questions to Mr. Lewis included:

- How often do you sell produce? *Mr. Lewis responded that produce was sold approximately 20 days per year.*
- Do any produce sales occur during the winter? *Mr. Lewis responded that produce sales only occurred during the spring and summer.*
- What are the hours and days that you sell produce? *Mr. Lewis responded that produce typically has been sold from 8 a.m. to noon, during the weekends.*
- How much money do you make on the produce? *Mr. Lewis responded "approximately \$400 to \$500 a year."*
- Are you aware of any traffic issues related to the produce sales? *Mr. Lewis responded that the vehicles either park on the street or pull into his driveway.*
- Have you could considered joining the Farmers' Market. *Mr. Lewis responded that he did not know what was required and that he preferred to stay on his property.*
- Do you have any signage? *Mr. Lewis responded that no signs are posted on the site.*
- Have you limited the size of the produce sales table or the area where the produce is sold? *Mr. Lewis responded that the table where produce has been sold is the size of a small card table so it would be hard to reduce it down further than where it already is.*

Katie Lewis, 1098 Mitchell Canyon Road, gave to the Commission a copy of a petition that was signed in favor of the produce stand and indicated that 30 signatures were collected.

Lynn Hadley, 527 Hamburg Circle, indicated the following:

- Appreciates the City for its work on this matter.
- Commends the children for their efforts to sell produce.
- Realizes that the City's Code cannot be selectively enforced.
- Suggested that the older girl might be able to use this issue as a beneficial civics lesson.
- Hopes there can be a reasonable resolution to the matter.

Randy Jaffe, 851 Coachman Place, expressed support for allowing produce sales at 1098 Mitchell Canyon Road, indicating the following:

- Shutting down the produce stand is not consistent with the spirit of the community.
- There are many benefits to the produce stand activity, including the following:
 - Increases opportunities for community contacts and relationships;
 - Emphasizes the bucolic nature of the community; and,
 - Supports the upscale nature of the community.
- It is the duty of the Planning Commission to determine an appropriate solution for this issue.

Colleen Culver-Jaffe, Landscape Architect, 851 Coachman Place, expressed support for allowing produce sales at 1098 Mitchell Canyon Road. She indicated the following:

- The produce stand provides an opportunity for connection.
- The produce sales are good for the children and the character of the community.
- It is her belief that a Variance could be used to resolve this matter.

Teresa Bentley, 5868 Four Oaks Lane, expressed support for allowing produce sales at 1098 Mitchell Canyon Road, indicating the following:

- She admires the garden and the work of the girls.
- There may be a traffic issue at times in the vicinity.

Dana Valory, 5800 Pine Hollow Road, indicated that the City should separate the issue of produce sales from the issue of outdoor storage of materials and items. She indicated that she supports the produce stand.

John Roskelley, 5675 Pine Hollow Road, expressed support for allowing produce sales at 1098 Mitchell Canyon Road and indicated the following:

- His family has been in Clayton since 1946.
- The City should approve a waiver to allow produce sales from the site.
- There has been talk about preserving the residential character; people going to people's homes enhances a sense of residential character.
- The produce sales are a wholesome activity.

Sam Albertson, (did not state address at meeting or list address on speaker card), expressed support for allowing produce sales at 1098 Mitchell Canyon Road. His comments included the following:

- The community should be more tolerant of activities like the produce sales.
- If the code does not currently allow produce sales in residential neighborhoods - fix it!

Barbara Vermuele, 1352 Indiana Drive, Concord, expressed support for allowing produce sales at 1098 Mitchell Canyon Road and indicated the following:

- Never noticed a traffic problem at the subject property.
- It is lovely to look at a property being used for sustainable agriculture.
- It is a good lesson for children to learn the value of entrepreneurial endeavors.

Richard Mitchell, 74 Nottingham Place, expressed support for allowing produce sales at 1098 Mitchell Canyon Road and indicated the following:

- He moved to Clayton in 1993.
- When the vegetable garden and flowers are in full bloom, the property visually accentuates our community in a beneficial way.

- Diablo Magazine came to the site two years ago to do a photo shoot. There being no further public comment, the public hearing was closed and Chair Catalano convened the meeting at 8:15 p.m. for a brief break.

Chair Catalano reconvened the meeting at 8:30 p.m.

Chair Catalano read from California Government Code Section 65906 that a Variance cannot be applied to a “use or activity” which is not expressly allowed by the applicable zoning regulations. Therefore, a Variance could not be approved as a means to allow outside commercial sales at 1098 Mitchell Canyon Road. City Attorney Dan Adams confirmed this position.

Vice Chair Hartley indicated the following:

- The City did not do anything wrong by following-up regarding the outside sales occurring at 1098 Mitchell Canyon Road. The City has an obligation to follow-up on a complaint. It would have been wrong if the City simply ignored the matter.
- The letters written by staff to the property owners were very thorough and explained that the outside commercial sales being conducted at the property did not meet the requirements of a Home Occupation Permit.
- He believes that sales of produce at the subject property as well as lemonade stands are part of the “residential character” of the City. He stated that these are traditions that are as old as the United States itself.
- Chapter 17.71 of the Clayton Municipal Code—which address Home Occupation Permits—does not apply to the situation at the subject property since the kids selling the produce are not involved with an “occupation.” The occupation of the children is being kids, and you do not need a permit for that.
- The Notice of Violation should be withdrawn.
- If there are other neighborhood impacts being created by the outside commercial sales at the subject property such as neon signs, traffic congestion, or safety issues, then we already have established regulations, i.e., nuisance regulations, that would address these violations.
- Chapter 17.71 is vague and did not consider such things as produce stands, lemonade stands, and garage sales. We need to clarify Chapter 17.71.
- Chapter 5.04 of the Municipal Code recognizes the temporary nature of garage sales.
- We should draft an exemption to Chapter 17.71 that indicates that a Home Occupation Permit should not be required for such things as garage sales, lemonade stands, and produce stands.
- We should craft exemption regulations for produce stands that require the produce to be grown on the property and put limits on the frequency of the sales.
- Chapter 17.71 does not apply to the issue at 1098 Mitchell Canyon Road.

Commissioner Armstrong asked Vice Chair Hartley if he believes the prohibition on outside commercial sales at the subject property should be withdrawn.

Vice Chair Hartley answered “yes.”

Commissioner Haydon asked staff if the City was authorized to rescind the Notice of Violation and implement an amendment of the Municipal Code to allow produce stands. *City Attorney Dan Adams indicated that the City could research this issue.*

Commissioner Armstrong indicated that, if the City allowed produce sales at the subject property under an exemption, the City would have no way to condition the project for location of the produce stand, signage, and other project-related issues.

Chair Catalano indicated that she had concerns with allowing sales of produce at the subject property.

Vice Chair Hartley indicated that the City should craft some sort of document that exempts sales of produce from the subject property during the next one or two months which is the remainder of this year's growing season.

Commissioner Haydon indicated the following:

- The City needs to define the term "occupation".
- Currently, the sales of produce from the subject property is not allowed. The City should amend the Municipal Code to allow such uses.
- There is an interest among the citizens of Clayton to preserve this type of activity within the residential neighborhoods of the City. Our challenge is to develop a method of allowing these types of uses.
- We could amend Chapter 17.71 to allow these types of uses, under certain conditions.
- We would need to regulate the frequency of sales and the types of goods that could be sold.
- Some of the more specific regulations to allow produce sales from residential property would be that the produce has to be grown on site and sold by the owners or occupants of the property.
- We need to ensure that these uses are not abused and that the City will not be developing land uses that are not legally defensible.
- We should allow specified outside sales in residential neighborhoods without a permit, but our Municipal Code needs to specifically address what these uses are, and they must be clearly defined.

Commissioner Johnson indicated the following:

- We are here for a study session and not to review any specific project.
- I believe the Farmers' Market is a viable short-term solution.
- I researched the Farmers' Market and the property owners of the subject property could be included in the Farmers' Market within a week or two and it would cost \$10 per day to participate in the Farmers' Market. That way the produce would not be wasted and could be sold.
- I am not sure we have the authority to overturn the decisions made by the City in addressing the Code violations at the subject property.

Chair Catalano indicated the following:

- I agree with Commissioner Hartley that this issue is not addressed clearly within Chapter 17.71 but I disagree that these uses should be allowed without conditions.
- I am concerned with allowing produce sales from the subject property as a permitted use.
- I believe allowing these types of uses may open residential areas up to other detracting uses such as car washes.

Vice Chair Hartley indicated the following:

- This issue is not an action item so we cannot take a vote on it tonight.
- I get the sense that we all feel this type of use should be allowed to some extent.

- We should implement an amendment of the Municipal Code to allow this use. However, this takes many months.
- In the meantime, and in order to provide some immediate action, and since there are only two months left in the growing season, we should craft a document to allow this use.
- I understand the City has concerns that allowing this use may mean that lemonade stands, produce stands, and garage sales would begin to emerge throughout neighborhoods in Clayton, but I just do not see that happening.

Commissioner Armstrong indicated the following:

- A short-term solution would be selling the produce at the Farmers' Market.
- We should withdraw the prohibition that was issued, although I do not know how that would work.

Vice Chair Hartley indicated the following:

- Since the Community Development Director issued the Notice of Violation, the Director can also revoke the Notice of Violation.
- Would rescinding the Notice of Violation require Planning Commission approval? *Director Woltering indicated that he would have to research the matter.*

City Attorney Dan Adams indicated that Vice Chair Hartley's concerns have merit with regards to the application of Municipal Code Chapter 17.71 to the subject produce stand.

Chair Catalano indicated that she felt the Home Occupation Permit process was an option to deal with this issue on an interim basis, provided that there would be no external activity.

Vice Chair Hartley indicated that he was not sure what we are worried about here; we don't have any evidence that this is occurring all over town.

Commissioner Haydon indicated that he still had concerns around traffic impacts related to produce sales at the subject property.

Commissioner Johnson indicated the following:

- I have concerns with the actual location of the stand.
- I also have concerns related to the liability implications of the two children being out near the street selling produce with vehicles traveling so close by.

Commissioner Armstrong indicated the following:

- On weekdays, traffic is severely congested due to vehicles traveling to and from the Mount Diablo Elementary School.
- We have greater traffic problems related to the gravel trucks traveling along Mitchell Canyon Road than any circulation impacts caused by the property owners' produce stand.
- Traffic is not an issue and should not have been a complaint.

Vice Chair Hartley asked staff if it was within the Director's purview to enter into an agreement with the property owner to temporarily allow the sales of produce at the subject property. *Director Woltering indicated that he did not know that to be within his purview, but that he would consult with the City Attorney. After a brief consultation with the City Attorney, Director Woltering responded that such an agreement could be explored.*

Vice Chair Hartley indicated that the agreement should take into consideration the frequency, hours of operation, traffic, parking, signage, and that the produce be grown on-site and sold by the occupants. *Director Woltering indicated that he understood the Commission wanted the produce sales limited to weekends only, between 8 a.m. and 3 pm. He added that staff would research the process related to the agreement, and that staff could begin crafting a draft Ordinance for Commission review to address the long-term solution for possibly providing parameters for specified outside sales in residential neighborhoods. He anticipated that the time frame would be approximately six months for preparation and adoption of a formal Code amendment.*

Commissioner Armstrong indicated that only homegrown and homemade items should be allowed to be sold.

Commissioner Haydon indicated the following with respect to preparing the draft Ordinance to consider allowing the occasional outside sales in residential neighborhoods:

- The parameters need to be clearly defined.
- We should not be expanding the scope of the issue since Home Occupation Permits cover much of this already.
- Staff should look at other cities' regulations to learn how the more occasional outside sales activities in residential areas are addressed.

Director Woltering indicated the following:

- The City Attorney and myself would need to review these issues further.
- According to the direction provided by the Commission for the draft Ordinance, staff would suggest criteria for consideration so that a permit is not required for specified occasional outside commercial sales in residential neighborhoods.

Chair Catalano indicated that the wording in an agreement to allow produce sales at 1098 Mitchell Canyon Road should state that the creation of this agreement is not precedent setting.

Chair Catalano and other Commissioners asked Director Woltering if a motion was needed regarding the direction being provided. Director Woltering indicated that a motion would not be needed, and that he would meet with the City Attorney to follow-up on the matter. The consensus understanding of the Planning Commission was that the Community Development Director and the City Attorney would explore the possibility of pursuing an interim measure with specified conditions to allow the produce stand at 1098 Mitchell Canyon Road to re-open and, separately, they would begin work on a draft ordinance for consideration to allow occasional outside sales in residential neighborhoods.