



Agenda

Planning Commission Meeting

7:00 P.M. on Tuesday, June 25, 2013

Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Review of agenda items.
- 1B. Commissioner Dan Richardson to report at the City Council meeting on July 2, 2013 (alternate Planning Commissioner: Vice Chair Gregg Manning).

Public Comment

Approval of Minutes

- 2. Approval of the minutes from the April 23, 2013 Planning Commission meeting.

Public Hearing

- 3A. **SPA-01-13, Specific Plan Amendment, Matt Mazzei**, 8130 Marsh Creek Road, APN 118-020-046. A request for consideration of an amendment to the Marsh Creek Road Specific Plan in order to establish residential accessory structure standards. An Environmental Impact Report (SCH# 95013014) was previously approved and certified for the Marsh Creek Road Specific Plan and pursuant to the California Environmental Quality Act (CEQA) Guideline 15061(b)(3) it can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment and, therefore, is not subject to CEQA.

Recommended Action: Staff recommends that the Planning Commission consider all information provided and submitted, take and consider all public testimony, and, if determined to be appropriate provide input and/or direction to staff on a possible preferred Option to consider at a follow-up meeting. Staff could then coordinate the appropriate application with the applicant (if necessary), bring back specific information or text wording, and/or bring back an accompanying resolution consistent with the identified preferred Option at a future specified Planning Commission meeting. It should be noted that staff is not requesting the Planning Commission to take an action at this meeting; staff is only seeking input and direction from the Commission on this matter.

- 3B. **ZOA-02-13, Municipal Code Amendment, City of Clayton.** Consideration of a City-initiated Ordinance amending the Clayton Municipal Code Title 17, establishing Prohibited Uses and Activities and specifically prohibiting medical marijuana dispensaries and certain cultivation activities.

Recommended Action: Staff recommends the Planning Commission consider all information provided and submitted, take and consider all public testimony and, if determined to be appropriate, adopt Resolution No. 03-13, recommending City Council approval of an Ordinance amending the Clayton Municipal Code Title 17, establishing Prohibiting Uses and Activities and specifically prohibiting Medical Marijuana Dispensaries and certain cultivation activities.

Old Business

4. None.

New Business

5. None.

Communications

- 6A. Staff.
6B. Commission.

Adjournment

7. The next regularly-scheduled meeting of the Planning Commission is on **Tuesday, July 9, 2013.**

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
Clayton Planning Commission Meeting
Tuesday, April 23, 2013

Call to Order

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

Present: Chair Keith Haydon
Vice Chair Gregg Manning
Commissioner David Bruzzone
Commissioner Sandra Johnson
Commissioner Dan Richardson

Absent: None

Staff: Community Development Director Charlie Mullen
Assistant Planner Milan J. Sikela, Jr.

CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG

Administrative

- 1A. Review of agenda items.
- 1B. Commissioner Dan Richardson to report at the City Council meeting on May 7, 2013.

Public Comment

None.

Approval of Minutes

2. Approval of the minutes from the April 9, 2013 Planning Commission meeting.

Vice Chair Manning moved and Commissioner Richardson seconded a motion to approve the minutes, as submitted. The motion passed 5-0.

Public Hearing

3. **SPR 03-13, Site Plan Review Permit, Rob and Cristie Sheffield, 1047 Pebble Beach Drive, APN:118-490-024.** A request for approval of a site plan review permit to consider construction of a new second-story balcony proposed to replace an existing second-story balcony located on the rear elevation of a two-story single-family residence.

The public hearing was opened.

Assistant Planner Sikela presented the staff report.

Commission questions included:

- Is the proposed balcony the same height and area as the existing balcony? *Assistant Planner Sikela responded that the proposed balcony is the same height as the existing balcony but will be slightly larger in area.*

- Is the existing balcony still there? *Assistant Planner Sikela responded, yes, the existing balcony is still installed on the subject residence but will be demolished before construction of the proposed balcony commences.*

The public testimony period was opened.

The applicant had no comments.

The public testimony period was closed.

Commissioner Johnson moved and Vice Chair Manning seconded a motion to approve Site Plan Review SPR 03-13, with the findings of approval and conditions of approval recommended by staff. The motion passed 5-0.

Old Business

4. None.

New Business

5. None.

Communications

- 6A. Staff.

Community Development Director Charlie Mullen provided the following updates:

- There will be a first reading of the Off-Street Parking Waiver at the May 7, 2013 City Council meeting.
- The first reading of the Universal Design Ordinance occurred at the April 16, 2013 City Council meeting with the second reading slated for the May 7, 2013 Council meeting.
- I attended an ABAG Plan Bay Area meeting which included input from an outspoken Orinda coalition.
- After sending out RFPs for the Housing Element Update, three Proposals have been received as of today.
- Revised plans have been received for the Silver Oak Estates subdivision.

- 6B. Commission – None.

Adjournment

7. The next meeting of the Planning Commission on Tuesday, May 14, 2013 was cancelled. Tonight's meeting was adjourned at 7:17 p.m. to the regularly-scheduled meeting of May 28, 2013.

Submitted by
Charlie Mullen
Community Development Director

Approved by
Keith Haydon
Chair

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**CITY OF CLAYTON
PLANNING COMMISSION
STAFF REPORT**

Meeting Date: June 25, 2013

From: Charlie Mullen
Community Development Director 

Subject: Public Hearing to Consider a Request to Amend the Marsh Creek Road Specific Plan in Order to Establish Residential Accessory Structure Standards (SPA-01-13).

REQUEST

The applicant, Matt Mazzei is requesting the City to consider amending the Marsh Creek Road Specific Plan in order to establish residential accessory structure standards where currently no regulations/standards exist.

PROJECT INFORMATION

Applicant/Location: Matt Mazzei
8130 Marsh Creek Road
APN: 078-020-046

General Plan Designation: Low Density Residential

Zoning Classification: Planned Development

Specific Plan Designation: Marsh Creek Road Specific Plan

Public Notice: On June 14, 2013, a public hearing notice was advertised in the Contra Costa Times and notice was mailed to property owners within 300 feet of the site and posted at designated locations.

BACKGROUND

A complaint was filed with the Community Development Department on July 19, 2012 regarding possible construction activity at 8130 Marsh Creek Road. Upon investigation of the complaint by City staff, it was determined that the construction activity involved the unauthorized construction of an approximately 500 s.f. accessory structure addition onto a previously existing approximately 120 s.f. accessory structure located in the rear yard of the property behind the primary residence. The applicant indicates the use of the accessory structure is proposed for

personal storage. The accessory structure is almost completely constructed, with the exception of the decorative exterior siding, paint, and roof material to match the primary residence (see attached photos).

Upon researching City files and records it was confirmed that no City permits had been obtained and the Contra Costa County Building Services also confirmed that no Building Permits had been issued for the new accessory structure.

With regard to the previously existing 120 s.f. accessory structure, that structure was considered legal non-conforming, because it was constructed prior to and met all applicable Zoning standards prior to the small accessory building code amendments of 2007 (Ord. No. 406). An approved Tentative Parcel Map (File 1191-02) confirms that the previous 120 s.f. accessory structure existed as of October 2002. The applicant does not recall the exact date of construction.

DISCUSSION

On April 5, 2013, the applicant submitted an application to amend the Marsh Creek Road Specific Plan (MCRSP) with the intent to establish residential accessory structure standards, where currently no regulations/standards exist. However, the applicant's application did not include, recommend, or propose any specific wording or text that would be added to the MCRSP. Due to the new Community Development Director coming on board with the City at the end of April 2013, the applicant cooperatively agreed to allow the new Director time to research and get brought up to speed on the subject application and issues.

Upon conducting field inspections of the property and accessory structure, it has been determined that accessory structure does not meet the current applicable Zoning Code standards for accessory structures. Due to the absence of accessory structure standards in the MCRSP and the absence of any Planned Development standards for this property, the standards of the Zoning Code are then applied. The Zoning Code offers two alternative standards for accessory structures of this size (see attached Code Section 17.36.055).

One of the Code standards requires accessory structures to be separated from the main building by at least 12 feet (including roof overhangs). If this 12-foot separation can be provided then the accessory structure can be setback a minimum of 5 feet from the side and rear property lines. The subject "L" shape accessory structure does not meet the 12-foot separation standard (see attached Site Plan Diagram). It has a corner pinch-point separation of approximately 4 feet (wall to wall) and only provides a 7'6" separation along the front north side and a 5-foot separation along the west side. The accessory structure side yard setback of 16'10" and the rear setback of 6'6" exceed the minimum 5-foot setback requirements.

Alternatively, the second Code standard allows accessory structures of this size to provide a minimum 5-foot separation from the main building (including roof overhangs). In this situation the accessory structure must then meet the minimum side and rear setbacks of the main building. The MCRSP requires a minimum 25-foot rear setback and a minimum 10-foot side setback. The subject accessory structure does not meet these standards.

Upon reviewing the MCRSP, the Zoning Code standards for accessory structures and Planned Development (PD) standards for similar zoned PD projects; staff believes several different options may be available for the Planning Commission to consider. These options are discussed below.

Option 1 – Amend Marsh Creek Road Specific Plan

As currently applied for by the applicant, an option would be to amend the MCRSP that was first adopted in 1995 and later amended in 2005. Upon reviewing the MCRSP in detail, staff has confirmed that, while the MCRSP does provide development standards and direction for primary/main residential structures (see attached excerpt), the MCRSP is silent on development standards for residential accessory structures. It is staff's professional experience that the absence of residential accessory structure standards in a Specific Plan is not entirely uncommon, particularly in Specific Plans that are nearly 20 years old.

A potential downside of amending the MCRSP to add specific accessory structure standards is that the standards would then apply throughout the entire Plan area and this may not be desirable, given the varying topography, varying uses, and varying development goals that exist in the Plan area. While it would certainly be possible to amend the MCRSP to include residential accessory structure standards, it is staff's opinion that another more desirable and preferred option is available to consider, if so desired

Option 2 – Amend Zoning Code

A second available option would be to consider amending the Zoning Code, Accessory Buildings and Structures standards (Section 17.36.055). However, staff understands that a significant amount of community discussion and effort was spent on developing the current standards and it may not be desirable to modify these standards on a citywide basis. Similar to the discussion above in Option 1, a potential downside of amending the Zoning Code accessory structure standards is that such standards would apply throughout the entire City and this may not be desirable, given the varying zoning designations and varying development goals. Again, while it would certainly be possible to also amend the Zoning Code standards, it is staff's opinion that another more desirable and preferred option is available to consider, if so desired.

Option 3 – Create Planned Development Standards

A third option would be to create specific set of accessory structure standards under a Planned Development (PD). Many of the approved residential PD's in Clayton also included standards for specific accessory structures that are unique and tailored to the individual PD (see attached PD Summary Standards Table). In the case of the subject property, it is part of a 5-lot subdivision (originally 4 lots) that was created under the County. All the lots have one commonly shared private driveway access off of Marsh Creek Road. In 1990, when the adjacent Oakwood Subdivision Planned Development was annexed, these lots were included in the larger Oakwood annexation and were given a PD zoning designation at that time. However, because the lots already existed the City did not require a PD Development Plan permit for them.

Because many of the City PD's include standards for accessory structures in addition to standards for primary residences, if the Planning Commission so desires, Option 3 may be the preferred option to establish PD standards that would be specific and unique to these 5 lots. This

process would generally be consistent with the intent established behind our other existing PD's and could potentially allow for the creation of accessory structure standards that take into consideration the unique features and circumstances that exist at this specific location.

Staff believes Option 3 may be the preferred option as it would allow flexibility to establish standards for accessory structures that could be unique to these 5 lots, if so desired.

Option 4 – Make No Changes to Any Existing Plans, Codes, or Standards.

Lastly, the Planning Commission may feel that it is not desirable to make any changes or amendments to the MCRSP or Zoning Code or to create specific PD standards for accessory structures.

RECOMMENDATION

Staff recommends that the Planning Commission consider all information provided and submitted, take and consider all public testimony, and, if determined to be appropriate provide input and/or direction to staff on a possible preferred Option to consider at a follow-up meeting. Staff could then coordinate the appropriate application with the applicant (if necessary), bring back specific information or text wording, and/or bring back an accompanying resolution consistent with the identified preferred Option at a future specified Planning Commission meeting.

It should be noted that staff is not requesting the Planning Commission to take an action at this meeting; staff is only seeking input and direction from the Commission on this matter.

ATTACHMENTS

- 1 Vicinity Map
- 2 Site Plan Diagram for 8130 Marsh Creek Rd.
- 3 Photographs of Accessory Structure at 8130 Marsh Creek Rd.
- 4 Marsh Creek Road Specific Plan (excerpt page 57)
- 5 Zoning Code Section 17.36.055, Accessory Buildings and Structures
- 6 PD Summary Standards Table

X:\Com Dev\SP A\2013\Mazzei - SPA-01-13\PCR - Mazzei\Marsh Creek Road Specific Plan Amendment - SPA-01-13 for 6-25-13 mtg.doc



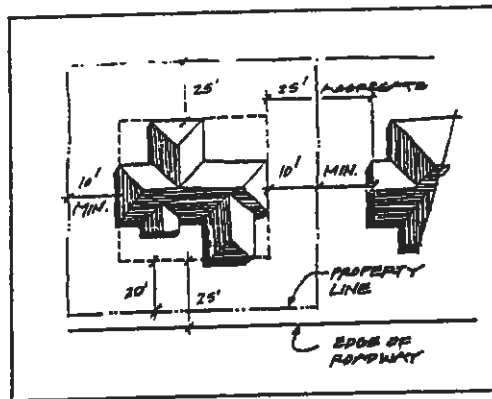
**PLANNING DIVISION
Vicinity Map**

 CITY OF CLAYTON FOUNDED 1957 INCORPORATED 1966	Matt Mazzei SPA-01-13 8130 Marsh Creek Rd. APN: 078-020-046	N  (Not to Scale)
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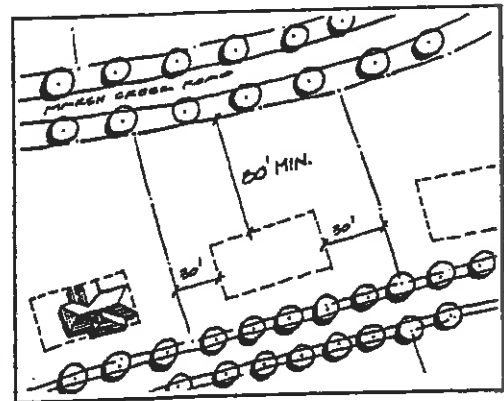


ATTACHMENT - 3





A



B

Policy DD-2: All buildings in the Specific Plan area shall conform to the following building setbacks:

DD-2a. Standard setbacks. All buildings must conform to the following minimum setbacks, as shown in Figure A:

- Front property line: 25 feet to the edge of the paved street and 20 feet to the property line. The setback may be reduced to 15 feet to the property line for side-loaded garages only where the slope of the lot is 15 percent or greater.
- Rear property line: 25 feet.
- Side property line: 25 feet aggregate between two houses, with a ten foot minimum for each lot.

DD-2b. Front yard variation: Front yard setbacks shall be varied along each street.

DD-2c. Corner lots. Street side yards on corner lots shall have the same setbacks as front yards.

DD-2d. Marsh Creek Road. In order to preserve the rural character along Marsh Creek Road, a house on any parcel bordering the road's right-of-way shall have the following minimum setbacks, as shown in Figure B:

- Marsh Creek Road property line: 80 feet.
- Side property line: 30 feet.

All buildings in development areas along Marsh Creek Road will generally be oriented away from the road through appropriate siting and screening of buildings.

Zoning Code Excerpt

17.36.055 Accessory Buildings and Structures. (Ord 375, 2004)

- A. Accessory buildings and structures may be located on any portion of a lot wherein a main building is permitted.
- B. No accessory building or structure shall be erected on a vacant lot unless approved by a use permit.
- C. An accessory building or structure shall not exceed sixteen (16) feet in height.
- D. Accessory buildings shall conform to the requirements of the respective zoning district, except as modified by the following standards.
 - 1. Interior Side Setback and Rear Setback. If an accessory building is at least twelve (12) feet from the main building (and all other accessory buildings) and at least sixty-five (65) feet from the front lot line, the interior side setback and rear setback for accessory structures are reduced to five (5) feet. These reduced setbacks must be clear of all structural protrusions, including roof overhangs (Ord. 434, 2011).
 - 2. Minimum Passageway. An accessory building must be fully separated from the main building (and any other accessory buildings) by a passageway at least five (5) feet in width which is clear of all structural protrusions, including roof overhangs. The Planning Commission may determine that a wider passageway is appropriate as part of the site plan review process.
 - 3. Minimum Attachment. If an accessory building is attached to the main building (or any other accessory buildings), the accessory building shall be structurally part of and have a common roof or wall with the main building (or respective accessory building).
 - 4. Small Accessory Building. A small accessory building (e.g., storage shed) is exempt from the above interior side and rear setback, minimum passageway, and minimum attachment requirements if the small accessory building complies with all of the following:
 - a. The floor area does not exceed 120 square feet;
 - b. The height (including any foundation) does not exceed eight (8) feet six (6) inches;
 - c. It is located at least ten (10) feet behind the nearest front corner of the main building; and
 - d. It is substantially concealed from public view by a legally-constructed solid fence or structure with a minimum height of six (6) feet. (Ord No. 406, 2007)

PLANNED DEVELOPMENT (PD) STANDARDS

DEVELOPMENT	SETBACKS						BUILDING HEIGHT		OTHER STANDARDS
	FRONT	INTERIOR SIDE ₁	EXTERIOR SIDE ₁	REAR ₂	REAR YARD Useable area	ACCESSORY STRUCTURE	PRINCIPAL BUILDING	ACCESSORY STRUCTURE	
Peacock Creek	20'	7.5'	15'	15'	1500 sf	5' if structure is separated from residence by at least 10'	35'	16'	See Design Criteria (approved 9/10/91) for add'l info. See Oakhurst Fencing Std's folder for fencing reqmts Driveways - 20' min length * Side setbacks are 5'/12.5' aggregate for following lots (per Development Plan) 118-480-012 118-490-004 118-510-016 " -029 " -016 " -021 " -046 " -039 " -047
Chaparral Springs		10' single story; 20' 2-story ₁		15'		3' from all P/L ₂	2 1/2 stories 35' max.	1 story 16' max.	See Oakhurst Fencing Std's folder for fencing reqmts
Black Diamond	Opposing 35' agg., 15' min.	15' agg. 5' min. ₁	15' on street side	15'		3' from all P/L ₂	2 1/2 stories 35' max.	1 story 16' max.	See Oakhurst Fencing Std's folder for fencing reqmts
Windmill Canyon	Opposing 35' agg., 15' min.	15' agg. 5' min. flat ₁	15' on street side	15'	1000 sf	3' from all P/L ₂ *	2 1/2 stories 35' max.	1 story 16' max.	See Oakhurst Fencing Std's folder for fencing reqmts * 3' setbacks for accessory structures approved by P/C (Files 425-90 & 414-90).
Ironwood Falcon Ridge	Opposing 35' agg., 15' min.	15' agg. 5' min. flat ₁	15' on street side	15'	1000 sf	5' from all P/L ₂	2 1/2 stories 35' max.	1 story 16' max.	See Oakhurst Fencing Std's folder for fencing reqmts
Eagle Peak	Opposing 35' agg., 15' min.	15' agg. 5' min. flat ₁	15' on street side	15'	1125 sf * 1200 sf **	5' from all P/L ₂	2 1/2 stories 35' max.	1 story 16' max.	See Oakhurst Fencing Std's folder for fencing reqmts * 75' wide lot ** 80' wide lot
Oak Hollow	15'	5'	15'	15' flat*					* Minimum 10' flat area at one corner.
Diablo Ridge	20'	5'		15'; 10' golf course.					* 19' for Buildings F-2, F-13, F-15.
Oakwood Circle	20'	35' agg. 10' min.		15'			2 1/2 stories 35' max.		
Regency Woods	20'	15' agg. 5' min.*	15' bldg. 5' fence	20'					Original fence is minimum 5' from corner. No fencing in front setback. 35% lot coverage (as tempered by GP requirements) * Regency I Subdivn 4343; 5' min. side setbacks

DEVELOPMENT	SETBACKS						BUILDING HEIGHT		OTHER STANDARDS
	FRONT	INTERIOR SIDE ₃	EXTERIOR SIDE ₃	REAR ₃	REAR YARD Useable area	ACCESSORY STRUCTURE	PRINCIPAL BUILDING	ACCESSORY STRUCTURE	
Westwood	20' - 2 story 15' - 1 story	10' on one side, 8' otherwise*		15'			2 1/2 stories 35' max.**		* Minimum side setback per lot shall avg. 10' when the dwelling is placed on the opposite property line (0 side setback) & 8' otherwise. ** Lots 1,4,5,6,7,8,9 one story max. Lots 56-64 must be reviewed for 2 story.
Clayton Green (Use R-12)	20'	25' agg. 10' min.	20'	15'			2 1/2 stories 35' max.	1 story 16' max.	
Silver Creek II	20'	15' agg. 5' min.	15' street side 5' min./20'agg	20' regular lot 15' cul-de-sac**			2 1/2 stories 35' max.	1 story 16' max.	Building coverage 35% * No fencing in front yard. ** 10' fencing setback on corner
Stranahan - West NE SE Center	20'	4' *		20'			23' 6"		* 8' min between residences Trellis & patio covers - 10' from rear P/L and no wider than residence (Staff interpretation since construction)
		3' *		15'					
		3' *		20'					
		3' *		22'					
Greystone	20' front garage 15' side garage	15' agg. 5' min.		15'					Lots 1-8 no grading or earthwork on slopes.
Hays (File 52-76-108)	25'	35' agg. 15' min.	20'	15'		Side: 3' (if 65' from front P/L) Rear: 3'	2 1/2 stories 35' max.		Stds per 11/18/76 application submittal.
Hollinger (File 1257-02)	20'	15' agg. 5' min.	-	15'	-		2 1/2 stories 35' max.	1 story 16' max.	30% lot coverage 8,712 sf min lot size
Diablo Village	20' front garage 15' side garage	10' agg. 5' min*	5'	10'	-	-	-	-	*Chimneys shall maintain a 5-foot setback from side and rear property lines.
Dana Ridge	CC&R's prohibit any structural changes. Two trellis designs are specified in CC&R's.								
Marsh Creek Villas	CC&R's prohibit any structural changes.								
Briarwood I	Standards were not established as part of project approval (File 52-77-44). R-40 standards have been used for lots with wide frontages.								

* See "OTHER STANDARDS" column

Notes

- 1 A minimum 5' flat area, clear of all obstructions is required in the side setback, unless otherwise noted.
- 2 Accessory structures can be 1' from P/L of any common walls. Gazebos must be 5' from P/L.
- 3 Pools/spas: 5' from side & rear P/L, 10' from corner street side. Equipment must be 10' from any neighboring dwelling.

**CITY OF CLAYTON
PLANNING COMMISSION
STAFF REPORT**

Meeting Date: June 25, 2013

From: Charlie Mullen
Community Development Director



Subject: Public Hearing to Consider An Ordinance Amending the Clayton Municipal Code Title 17, Establishing Prohibited Uses and Activities, and Specifically Prohibiting Medical Marijuana Dispensaries and Certain Cultivation Activities (ZOA-02-13)

REQUEST

Public Hearing to consider a City-initiated Ordinance amending the Clayton Municipal Code Title 17, establishing Prohibited Uses and Activities and specifically prohibiting medical marijuana dispensaries and certain cultivation activities.

PROJECT INFORMATION

Applicant/Location: City/Citywide

General Plan Designation: Citywide

Zoning Classification: Citywide

Public Notice: On June 14, 2013, a public hearing notice was published in the Contra Costa Times and posted at designated locations in the city.

BACKGROUND

On May 7, 2013 the Clayton City Council received an informational update from the City Attorney on the City's enhanced ability to exercise its land use authority to prohibit medical marijuana dispensaries pursuant to the recent California Supreme Court case of *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, Cal.4th (2013). At that public meeting the Council subsequently instructed staff to prepare an Ordinance on the matter.

The discussion of prohibiting medical marijuana dispensaries was previously considered by the City in 2005, through the Introduction and First Reading of Ordinance No. 387 to similarly prohibit such dispensaries. However, the City deferred actual adoption of the Ordinance at that time due to the uncertainty of and risks associated with pending court cases and legal challenges. Since that time, a number of significant court cases have concluded and the Federal government has more publicly stated their position on medical marijuana.

DISCUSSION

The purpose of this staff report is to help inform the Planning Commission on the highly controversial topic of medical marijuana, and to thereby empower the Commission to make informed decisions on this topic. Staff can professionally testify that this has been one of the more complicated and constantly changing topics that cities have recently been facing. In fact, new information and opinions from Federal agencies and the court systems are ongoing. Adding the conflict and controversy between the Federal and State laws, the topic has become a constantly moving target.

In addition, there are many view points and opinions, both for and against, marijuana and medical marijuana. This report attempts to present a balance of credible information to assist the Commission in obtaining a better overall understanding of the topic. Under the following topic headings, staff has discussed, raised, or identified key issues and information for consideration. This discussion and content are based on volumes of reference material and published documents that staff has researched and used in reporting on this topic.

Federal Law

Federal law through the Controlled Substances Act (CSA) of 1970, established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense or possess any controlled substance. The CSA reflects the federal government's view that "*marijuana is a drug with no currently accepted medical use.*" Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense.

The CSA established five categories, known as schedules, to which different levels of requirements, restrictions, and prohibitions are attached. A drug's classification in a specific schedule is determined by its abuse and dependence potentials on the one hand, and by the evidence of its safety and therapeutic effectiveness on the other. Substances in both Schedules I and II are subject to the greatest restrictions because they have a "*high potential for abuse.*"

Marijuana (cannabis) is classified as a Schedule I substance under the CSA which prohibits the use of raw marijuana for either medical or recreational use. Under the CSA marijuana cannot be legally prescribed as medicine by a physician. From a governmental hierarchical standpoint, Federal regulation supersedes any state regulation such that under Federal Law, the California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana – even with a physician's recommendation for medical use.

Many states, counties, cities, communities, organizations, law enforcement organizations and individual persons consider the State medical marijuana laws to be in direct conflict with and in violation of Federal laws. Others say there is no conflict with the CSA because State laws do not "legalize" medical marijuana but, instead, chose not to punish certain marijuana offenses under State law.

The Federal agencies that enforce Federal laws on marijuana include the Department of Justice (DOJ) and the Drug Enforcement Administration (DEA). Regarding enforcement, these agencies have made it very clear that they will continue to primarily focus their efforts and resources on the arrest and prosecution of significant traffickers of illegal drugs, including marijuana. This priority will also include targeting marijuana dispensaries that are exposed as fronts for drug trafficking. The DOJ's position is that State laws or local ordinances are not a defense to civil or criminal enforcement of Federal law with respect to such conduct, including enforcement of the CSA. Those who engage in transactions involving the proceeds of such activity may also be in violation of federal money laundering statutes and other federal financial laws.

The DOJ previously advised that it is likely not an efficient use of federal resources to focus enforcement efforts on individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or their caregivers. However, a recent DOJ Attorney General correspondence states: *"The term 'caregiver' meant just that: individuals providing care to individuals with cancer or other serious illnesses, not commercial operations cultivating, selling or distributing marijuana."* Another recent DOJ correspondence sent to the State of Washington included the following statements: *"Accordingly, the Department could consider civil and criminal legal remedies regarding those who set up marijuana growing facilities and dispensaries as they will be doing so in violation of Federal law."....."In addition, State employees who conduct activities mandated by the Washington legislative proposals would not be immune from liability under the CSA."*

These recent correspondences from the DOJ appear to be sending a clear message that Federal agencies are not looking the other way on State medical marijuana laws anymore and they even intend to hold State legislators and government employees potentially liable for violations of Federal law.

It is staff's position the current Federal law and the recent indicators from the DOJ need to be taken under serious consideration, and appear to provide very clear support for those communities desiring to establish local prohibitions on medical marijuana.

State Law

Under California Law (with the exceptions for medical use), the possession, sale, cultivation, or transportation of marijuana is ordinarily a crime. State law establishes the following as misdemeanors: the possession of marijuana; possession of less than 1 oz. of marijuana while driving; transporting, selling, or giving away marijuana in California under 28.5 grams. State law establishes the following as felonies: cultivation of marijuana; possession with intent to sell any amount of marijuana; transporting, selling, or giving away marijuana in California over 28.5 grams; selling marijuana to minors, or using a minor to transport, sell or give away marijuana.

In 1996, California voters approved the Compassionate Use Act (Proposition 215), which decriminalized the cultivation and use of marijuana for medical purposes by seriously ill

individuals. The Act removed State level criminal penalties on the use, possession and cultivation of marijuana by qualified patients who possess a *“written or oral recommendation”* from their physician that he or she *“would benefit from medicinal marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or other illness for which marijuana provides relief.”*

In 2004, Senate Bill (SB) 420 (Medical Marijuana Program Act, or MMP) became State law and imposed statewide guidelines outlining how much medicinal marijuana patients may grow and possess. SB 420 also prohibits the smoking of medical marijuana within 1,000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence). SB 420 allows qualified patients and primary caregivers who possess a State-issued identification card to possess 8 oz. of dried marijuana and to cultivate/possess not more than 6 mature or 12 immature plants, per qualified patient. SB 420 also defines “Primary Caregiver” as *“the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person”* It is also important to note the Law requires both the qualified patient and the designated primary caregiver to reside in the same city or county. SB 420 defined certain terms and recognized the collective and cooperative cultivation of medical marijuana.

In 2008, the State Attorney General issued “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use” (Guidelines). The Guidelines sought to further clarify the State law/Federal law discrepancy and to establish compliance guidelines for individual qualified patients, primary caregivers, and collectives and cooperatives. Under California law, medical marijuana patients and primary caregivers may *“associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.”* The Guidelines established that *“Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes.”* The Guidelines further directed cooperatives and collectives to be organized and run like *“nonprofit corporate entities”* and that they *“should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.”*

Under the section “Storefront Dispensaries” the Guidelines state: *“Although medical marijuana dispensaries have been operating in California for years, dispensaries, as such are not recognized under the law”;.....“the only recognized group entities are cooperatives and collectives”;.....“dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful.”*

Regarding the discrepancy between State law and Federal law the Guidelines state: *“The incongruity between Federal and State law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently..... Congress has provided that states are free to regulate in the area of controlled substances,*

including marijuana, provided that State law does not positively conflict with the Controlled Substances Act (CSA). (21 U.S.C. § 903.) Neither Proposition 215, nor the Medical Marijuana Program Act (MMP), conflict with the CSA because, in adopting these laws, California did not legalize medical marijuana, but instead exercised the State's reserved powers to not punish certain marijuana offenses under State law when a physician has recommended its use to treat a serious medical condition."

In 2011, Assembly Bill (AB) 2650, became State law and established that *"No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school."* This Bill also established that *"nothing in the Bill shall prohibit a city, county, or city and county from adopting ordinances that further restrict the location or establishment of these medical marijuana establishments."* This last cited provision recognizes the rights of individual cities and counties to establish more restrictive distance separation standards for medical marijuana establishments, to limit or restrict their location, or to outright ban and prohibit medical marijuana cooperatives, collectives or dispensary establishments.

In staff's opinion, the clear discrepancy between State law and Federal law and the uncertainties and possible legal exposure that this creates need to be taken under serious consideration. In the hierarchy of government, staff believes taking a conservative stance on marijuana is clearly supported by Federal Law. And now, pursuant to the California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, Cal.4th (2013), a local ban on facilities that distribute medical marijuana is not preempted by California's medical marijuana statutes.

Terms Used Under California Law

The Compassionate Use Act (Proposition 215) and subsequent amendments are codified in the California Health and Safety Code Sections 11362.5 – 11362.83, with further clarifications of terms also being contained in the State Attorney General's Guidelines. The following are some key terms of the State law and/or the Guidelines.

"Qualified Patient" – means a seriously ill person who possesses a "written or oral recommendation" from their physician that he or she "would benefit from medicinal marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or other illness for which marijuana provides relief."

An individual obtaining, growing and/or using marijuana for recreational pleasure use would not be classified as a "Qualified Patient."

"Primary Caregiver" – means "the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person." The only facilities authorized under State law to serve as primary caregivers are licensed clinics, health care facilities, residential care facilities, home

health agencies and hospices which actually provide medical care or supportive services to qualified patients. It is important to note that State law also requires both the qualified patient and the designated primary caregiver to reside in the same city or county and for the primary caregiver person to be 18 years of age or older.

“Medical Marijuana Cooperatives and Collectives” – are not defined under State law but are addressed under the Attorney General Guidelines. The Guidelines state: *cooperatives and collectives should be organized and run like “nonprofit corporate entities” and that they “should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.”*

What is not clear and what is not addressed in State law or the Guidelines is how cooperatives and collectives can actually be designated as or meet the criteria of a primary caregiver. Cooperatives and collectives operations do not consistently assume responsibility for the housing, health or safety of the qualified patients. There appears to be internal inconsistencies within and between State Law and the Guidelines. In staff's opinion this internal inconsistency raises concern and doubt as to whether medical marijuana cooperatives and collectives can or should be allowed to establish such operations, unless they meet the definition of primary caregiver.

“Medical Marijuana Storefront Dispensaries (Dispensaries)” - are not defined under State law but are addressed under the Attorney General Guidelines. The Guidelines state: *“Although medical marijuana dispensaries have been operating in California for years, dispensaries, as such are not recognized under the law”;..... “the only recognized group entities are cooperatives and collectives”;..... “dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful.”*

The Attorney General Guidelines make it clear that typical dispensaries do not meet the criteria of a Primary Caregiver and therefore they are not legal establishments under State law.

Community Crime and Community Impacts

Information published and/or endorsed by the California Police Chiefs Association, California Narcotic Officers Association and California Peace Officers Association document and/or indicate that Medical Marijuana Storefront Dispensaries/Cooperatives/Collectives do in fact have both direct and indirect community crime and impacts. The following is a list of typical crime and impacts identified by these organizations:

- Increased armed robberies and murders
- Increased burglaries
- Increased organized crime and money laundering
- Increased firearms violations
- Increased Drug dealings
- Increased proliferation of grow houses

- Increased life safety hazards by grow houses
- Increased exposure of minors to drugs
- Loss of Business Tax Revenue
- Blight and deterioration of business districts and residential neighborhoods

In this regard, Clayton's top law enforcement official, Clayton Chief of Police Chris Thorsen, in the attached memo dated May 28, 2013 further validates these impacts and "whole heartedly supports" the prohibition of medical marijuana dispensaries.

Conversely a recent report published by the RAND Corporation evaluated crime just before and after the closure of large dispensaries in Los Angeles and concluded there was an increase in crime in neighborhoods with closed dispensaries. However, even this study says "Researchers say their findings should be interpreted cautiously, given that they studied a relatively short period of time and that the margin of error was high." In addition, this study did not evaluate crime before and after the opening of new dispensaries, so there is no baseline crime level from which to gauge the decrease in crime at the closed dispensary locations. In other words, we do not know if crime levels had already risen due to the opening of a dispensary and then lowered again with their closure.

Based on law enforcement agency information and statements, community crime and negative impacts appear to increase with the establishment of marijuana dispensaries.

Medical Benefits or Impacts

The issue of medical benefits or impacts associated with marijuana is also highly debated among groups and individuals. There have been both positive and negative medical reports on the subject. Based on staff's analysis and research the overall negative health impact of smoked or consumed raw marijuana appears to outweigh the limited positive health benefits.

The position that smoked or consumed raw marijuana is overall a negative health impact, is rigorously enforced and supported by the top Federal government agencies, coupled by acts that oversee and are in charge of protecting the health and safety of the general public. The following are the primary agencies and acts:

- Food and Drug Administration (FDA)
- Drug Enforcement Administration (DEA)
- Controlled Substances Act (CSA)
- Food, Drug and Cosmetic Act (FDCA)
- Department of Health and Human Services
- National Institute on Drug Abuse (NIDA)

The above agencies and acts all play a critical role in ensuring that medications are properly tested and produce rigorous scientific data before they are legalized and made available for appropriate medical use. Before a medical product may be approved by the FDA and be released for marketing to the public, it must be assessed in various nonclinical and preclinical laboratory

tests, including drug-drug and drug-food interaction tests. Its final formulation must be analyzed for batch consistency, stability, and absence of dangerous contaminants. Its manufacturing process must be validated and quality-controlled. Even after extensive preclinical studies have demonstrated the likely safety of the product for human use, several phases of clinical (human) research must be conducted. If a product is intended to be used for a chronic condition, carcinogenicity and reproductive toxicity tests must be performed. Adverse events must be reported and described in the product label. The research is published in peer-reviewed journals, enabling physicians to judge the quality of the research, as well as the relative safety and efficacy of the project. The FDA also inspects and supervises the pharmaceutical manufacturer's facility. This thorough and dynamic process reduces the likelihood that patients will be exposed to dangerous or ineffective products, and provides important data to allow physicians to conduct meaningful dialogues with and give informed advice to patients regarding treatment options.

Under the FDA, some marijuana (cannabis) derived medications have and are working their way through this rigorous scientific testing process to become available medications for prescribed consumer medical use. One such FDA approved medicine is Marinol (Dronabinol).

"Dronabinol is used to treat nausea and vomiting caused by chemotherapy in people who have already taken other medications to treat this type of nausea and vomiting without good results. Dronabinol is also used to treat loss of appetite and weight loss in people who have acquired immunodeficiency syndrome (AIDS). Dronabinol is in a class of medications called cannabinoids. It works by affecting the area of the brain that controls nausea, vomiting, and appetite."

While the FDA process may be rigorous and time consuming, it is the only legal process for establishing and creating medications derived from marijuana (cannabis).

The FDA and DEA believe that by individual states (including California) allowing the establishment of marijuana dispensaries, they are undermining FDA efforts to bring properly tested marijuana derived medications to market, a result at odds with the Administration's positions that its policies should be based on sound science.

Marijuana Impacts on Children/Teenagers

The overwhelming information and research that accumulated by staff document and show an overall negative direct or indirect impact of smoked or consumed marijuana on children and teenagers. Some of the negative impacts include the following:

- Brain impacts – short and long term problems with memory and learning
- Brain impacts – decreased serotonin leading to depression and anxiety
- Distorted perception (sights, sounds, time, touch)
- Trouble with thinking and problem solving
- Loss of motor coordination
- Lack of motivation
- Increased heart rate

- Exposure to cancer-causing chemicals
- Increased breathing/lung problems (coughing, wheezing, lung infections)
- Increased risk of infections due to immune system breakdown
- Increased risk of driving accidents while under the influence
- Increased health risk to unborn babies of pregnant women

Staff was unable to find credible information or research to contradict the negative impacts listed above.

Some Organizations Supporting Marijuana Use

The following lists some of the organization in support of legalizing marijuana for both medical and recreational use:

- Americans for Safe Access
- California Cannabis Coalition
- The National Organization for the Reform of Marijuana Laws (NORML)
- Medical MJ.org
- 1800 Medical Marijuana.com
- Medical Marijuana ProCon.org

Some Organizations Opposing Marijuana Use

The following lists some of the organization in opposition to legalizing and using marijuana:

- California Peace Officers Association
- California Police Chiefs Association
- California Narcotic Officers Association
- Californians for Drug Free Youth
- Californians for Drug Free Schools
- Coalition for Drug Free California
- STAND – Students Taking Action Not Drugs
- Drug Free America Foundation
- National Drug-Free Workplace Alliance
- SOS – Save our Society From Drugs
- Educating Voices
- Dads Against Drug Dealers
- Inland Valley Drug Free Community Coalition
- Friends of the DEA

PROPOSED ORDINANCE PROHIBITING USES AND ACTIVITIES

In order to comprehensively address this issue and establish local control and regulation as permitted by State and Federal law, the City Attorney has prepared the attached Ordinance amending the Clayton Municipal Code Title 17, establishing Prohibited Uses and Activities and

specifically relating to prohibiting medical marijuana dispensaries and certain cultivation activities.

The proposed Ordinance includes a new definition for “Medical Marijuana Dispensary” to be added as Section 17.04.138, and a new Section 17.36.080 “Prohibited Uses and Activities” to be added to the Clayton Municipal Code. The following are the new sections in their entirety:

“17.04.138 Medical Marijuana Dispensary. A facility or location where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 (Proposition 215)”; and

“17.36.080 Prohibited Uses and Activities.

The following uses and activities are prohibited in all zoning districts;

- (a) Any use or activity which is prohibited by local, regional, State, or Federal law;
- (b) Establishment or operation of medical marijuana dispensaries, as defined in Section 17.04.138;
- (c) Outdoor cultivation or production of medical marijuana;
- (d) Indoor cultivation or production of medical marijuana, excepting medical marijuana cultivation or production in residential zones within a detached, fully-enclosed, and secure secondary structure, or within a primary residential structure at a location legally inhabited by a qualified patient or primary caregiver as defined in Health and Safety Code section 11362.7; and
- (e) Other use or activities as may be determined by the Planning Commission to be of the same general character as those specifically prohibited.”

It should be noted the above proposed Ordinance language does not prohibit personal medical marijuana use or indoor cultivation of medical marijuana by a qualified patient or primary caregiver in residential zones within a detached, fully-enclosed and secure secondary structure or within a primary residential structure at a location legally inhabited by a qualified patient or primary caregiver as defined in Health and Safety Code section 11362.7.

It is the opinion of staff and the City Attorney the proposed Ordinance language is legally defensible and does not impinge on the personal individual rights of a qualified patient to use medical marijuana as envisioned under the Compassionate Use Act (Proposition 215). Further, after evaluation of the information accumulated on the controversial subject and in consideration of the recent California Supreme Court ruling upholding local authority to regulate or prohibit medical marijuana dispensaries and cultivation, it is staff's professional recommendation the proposed Ordinance should be approved for implementation in the City of Clayton.

CEQA

Pursuant to California Environmental Quality Act (CEQA) Guideline 15061(b)(3) it can be seen with certainty that there is no possibility that this zoning amendment to the Clayton Zoning Ordinance/Municipal Code may have a significant effect on the environment, and therefore it is not subject to CEQA.

RECOMMENDATION

Staff recommends the Planning Commission consider all information provided and submitted, take and consider all public testimony and, if determined to be appropriate, adopt Resolution No. 03-13, recommending City Council approval of an Ordinance amending the Clayton Municipal Code Title 17, establishing Prohibiting Uses and Activities and specifically prohibiting Medical Marijuana Dispensaries and certain cultivation activities.

ATTACHMENTS

- 1 Planning Commission Approval Resolution No. 03-13
- 2 Proposed Ordinance Establishing Prohibited Use and Activities
- 3 Clayton Chief of Police memo, dated May 23, 2013

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**CITY OF CLAYTON
PLANNING COMMISSION
RESOLUTION NO. 03-13**

**RECOMMENDING CITY COUNCIL APPROVAL OF
AN ORDINANCE AMENDING CLAYTON MUNICIPAL CODE
TITLE 17, ESTABLISHING PROHIBITED USES AND ACTIVITIES,
SPECIFICALLY PROHIBITING MEDICAL MARIJUANA DISPENSARIES
AND CERTAIN CULTIVATION ACTIVITIES
(ZOA-02-13)**

WHEREAS, the City of Clayton Planning Commission held a duly noticed public hearing at a regular meeting on June 25, 2013 to review and consider an Ordinance amending the Clayton Municipal Code Title 17, establishing Prohibiting Uses and Activities and specifically prohibiting Medical Marijuana Dispensaries and certain cultivation activities; and

WHEREAS, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code 11362.5 and entitled the Compassionate Use Act of 1996 ("Prop. 215")); and

WHEREAS, the State enacted SB 420 (codified as Health & Safety Code 11362.7 *et seq.*) in 2003 to clarify the scope of Prop. 215; and

WHEREAS, Prop. 215 and SB 420 provide for a limited defense to state law prohibitions on marijuana use, cultivation and possession for qualified patients and their primary caregivers; and

WHEREAS, while SB 420 entitles qualified patients and their primary caregivers to collectively cultivate medical marijuana, no provision of Prop. 215 or SB 420 grants qualified patients and their primary caregivers an absolute right to medical marijuana or otherwise restricts cities' ability to prohibit medical marijuana uses, including medical marijuana dispensaries; and

WHEREAS, the sale and distribution of all marijuana remains prohibited by federal law, specifically the Controlled Substances Act (the "Act"); and

WHEREAS, the United States Supreme Court, in *Gonzales v. Raich*, 545 U.S. 1 (2005), confirmed the validity of the Act's prohibition of marijuana sale and distribution and the application of the Act in California, notwithstanding the possible medicinal uses of marijuana and the limited authorization for sale and distribution of marijuana created by California state law. The Court noted that California's system of limited decriminalization for medical marijuana is susceptible to abuse, and confirmed that California's medical marijuana laws are superseded by the Act to the extent that they conflict with the Act; and

WHEREAS, the United States Supreme Court, in *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001), concluded that there is no exemption for medical necessity from the Act's prohibition on the sale and distribution of marijuana; and

WHEREAS, the cities where medical marijuana dispensaries have been permitted to operate have experienced significant problems, including burglaries and takeover robberies of dispensaries, robberies of customers leaving dispensaries, an increase in crime (especially thefts and robberies) in the vicinity of dispensaries, illegal re-selling of marijuana obtained from dispensaries, physicians issuing apparently fraudulent recommendations for the use of marijuana, dispensary staff selling marijuana to customers with obviously counterfeit patient identification cards, street dealers attempting to sell marijuana to dispensary customers, dispensary customers using marijuana and then driving under the influence of marijuana, the sale of illegal drugs other than marijuana in the dispensaries and sales of marijuana to minors; and

WHEREAS, after studying the regulation of medical marijuana dispensaries, considering testimony from members of the public and reviewing the legal status of medical marijuana dispensaries under applicable law, the Planning Commission finds that adoption of a ban on the establishment and operation of medical marijuana dispensaries is necessary to protect the public health, safety, and welfare; and

WHEREAS, the City Council's ability to exercise its land use authority to prohibit medical marijuana dispensaries was recently recognized by the California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, Cal.4th (2013); and

WHEREAS, the Planning Commission also wishes to regulate the cultivation of medical marijuana as set forth in this Ordinance; and

WHEREAS, medical marijuana cultivation, without certain safeguards, increases the risk of criminal activity, degradation of the natural environment and malodorous smells; and

WHEREAS, as marijuana plants begin to flower, and for a period of approximately two months or more during the growing season, they produce an extremely strong odor that is offensive to many people and detectable well beyond property boundaries upon which they are grown; and

WHEREAS, the strong odor of marijuana may create an attractive nuisance, alerting individuals to the location of plants, thereby creating the risk of potential crimes such as burglary, robbery, armed robbery, assault, attempted murder, and murder; and

WHEREAS, the limited right of qualified patients and their primary caregivers under state law to cultivate marijuana for medical purposes does not confer upon them the right to create or maintain a public nuisance or otherwise exempt these persons from local land use regulations; and

WHEREAS, it is the Planning Commission's intention that nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Act, nor to otherwise permit any activity that is prohibited under that Act. It is further the Planning Commission's intention that nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance, (2) allow the use of marijuana for non-medical purposes, or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under state law.

Resolution No. 03-13

Page 3

WHEREAS, pursuant to California Environmental Quality Act (CEQA) Guideline 15061(b)(3) it can be seen with certainty that there is no possibility that this zoning amendment to the Clayton Zoning Ordinance/Municipal Code may have a significant effect on the environment, and therefore it is not subject to CEQA.

WHEREAS, proper notice of this public hearing was given in all respects as required by law; and

WHEREAS, the Planning Commission has reviewed all written evidence and oral testimony presented to date; and

NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Clayton based on substantial evidence in the administrative record of proceedings and pursuant to its independent review and consideration, does hereby recommend City Council approval an Ordinance (ZOA-02-13) amending the Clayton Municipal Code Title 17, establishing Prohibiting Uses and Activities and specifically prohibiting Medical Marijuana Dispensaries and certain cultivation activities.

PASSED AND ADOPTED by the Planning Commission of the City of Clayton at a Regular meeting on the 25th day of June, 2013.

APPROVED:

ATTEST:

Keith Haydon
Chair

Charlie Mullen
Community Development Director

ATTACHMENT: Ordinance

ORDINANCE NO. _____

**AN ORDINANCE AMENDING CLAYTON MUNICIPAL CODE
TITLE 17, ESTABLISHING PROHIBITED USES AND ACTIVITIES,
SPECIFICALLY PROHIBITING MEDICAL MARIJUANA DISPENSARIES AND
CERTAIN CULTIVATION ACTIVITIES**

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

WHEREAS, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code 11362.5 and entitled the Compassionate Use Act of 1996 ("Prop. 215")); and

WHEREAS, the State enacted SB 420 (codified as Health & Safety Code 11362.7 *et seq.*) in 2003 to clarify the scope of Prop. 215; and

WHEREAS, Prop. 215 and SB 420 provide for a limited defense to state law prohibitions on marijuana use, cultivation and possession for qualified patients and their primary caregivers; and

WHEREAS, while SB 420 entitles qualified patients and their primary caregivers to collectively cultivate medical marijuana, no provision of Prop. 215 or SB 420 grants qualified patients and their primary caregivers an absolute right to medical marijuana or otherwise restricts cities' ability to prohibit medical marijuana uses, including medical marijuana dispensaries; and

WHEREAS, the sale and distribution of all marijuana remains prohibited by federal law, specifically the Controlled Substances Act (the "Act"); and

WHEREAS, the United States Supreme Court, in *Gonzales v. Raich*, 545 U.S. 1 (2005), confirmed the validity of the Act's prohibition of marijuana sale and distribution and the application of the Act in California, notwithstanding the possible medicinal uses of marijuana and the limited authorization for sale and distribution of marijuana created by California state law. The Court noted that California's system of limited decriminalization for medical marijuana is susceptible to abuse, and confirmed that California's medical marijuana laws are superseded by the Act to the extent that they conflict with the Act; and

WHEREAS, the United States Supreme Court, in *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001), concluded that there is no exemption for medical necessity from the Act's prohibition on the sale and distribution of marijuana; and

WHEREAS, the cities where medical marijuana dispensaries have been permitted to operate have experienced significant problems, including burglaries and takeover robberies of dispensaries, robberies of customers leaving dispensaries, an increase in crime (especially thefts and robberies) in the vicinity of dispensaries, illegal re-selling of marijuana obtained from dispensaries, physicians issuing apparently fraudulent recommendations for the use of marijuana, dispensary staff selling marijuana to customers with obviously counterfeit patient identification cards, street dealers attempting to sell marijuana to dispensary customers, dispensary customers

using marijuana and then driving under the influence of marijuana, the sale of illegal drugs other than marijuana in the dispensaries and sales of marijuana to minors; and

WHEREAS, after studying the regulation of medical marijuana dispensaries, considering testimony from members of the public and reviewing the legal status of medical marijuana dispensaries under applicable law, the City Council finds that adoption of a ban on the establishment and operation of medical marijuana dispensaries is necessary to protect the public health, safety, and welfare; and

WHEREAS, the City Council's ability to exercise its land use authority to prohibit medical marijuana dispensaries was recently recognized by the California Supreme Court in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.*, Cal.4th (2013); and

WHEREAS, the City Council also wishes to regulate the cultivation of medical marijuana as set forth in this Ordinance; and

WHEREAS, medical marijuana cultivation, without certain safeguards, increases the risk of criminal activity, degradation of the natural environment and malodorous smells; and

WHEREAS, as marijuana plants begin to flower, and for a period of approximately two months or more during the growing season, they produce an extremely strong odor that is offensive to many people and detectable well beyond property boundaries upon which they are grown; and

WHEREAS, the strong odor of marijuana may create an attractive nuisance, alerting individuals to the location of plants, thereby creating the risk of potential crimes such as burglary, robbery, armed robbery, assault, attempted murder, and murder; and

WHEREAS, the limited right of qualified patients and their primary caregivers under state law to cultivate marijuana for medical purposes does not confer upon them the right to create or maintain a public nuisance or otherwise exempt these persons from local land use regulations; and

WHEREAS, it is the City Council's intention that nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Act, nor to otherwise permit any activity that is prohibited under that Act. It is further the City Council's intention that nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance, (2) allow the use of marijuana for non-medical purposes, or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is illegal under state law.

THE CITY COUNCIL OF THE CITY OF CLAYTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The above recitals are hereby incorporated into this Ordinance.

Section 2. Section 17.04.137 of the Clayton Municipal Code, entitled "Lot, Through" is hereby renumbered as Section 17.04.136.

Section 3. Section 17.04.138 of the Clayton Municipal Code, entitled “Manufactured Home” is hereby renumbered as Section 17.04.137.

Section 4. Section 17.04.138 of the Clayton Municipal Code is hereby added to read in full as follows:

“17.04.138 Medical Marijuana Dispensary. A facility or location where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 (Proposition 215).”

Section 5. Section 17.36.080 of the Clayton Municipal Code is hereby added to read in full as follows:

“17.36.080 Prohibited Uses and Activities.

The following uses and activities are prohibited in all zoning districts;

- (a) Any use or activity which is prohibited by local, regional, state, or federal law;
- (b) Establishment or operation of medical marijuana dispensaries, as defined in Section 17.04.138;
- (c) Outdoor cultivation or production of medical marijuana;
- (d) Indoor cultivation or production of medical marijuana, excepting medical marijuana cultivation or production in residential zones within a detached, fully-enclosed and secure secondary structure or within a primary residential structure at a location legally inhabited by a qualified patient or primary caregiver as defined in Health and Safety Code section 11362.7; and
- (e) Other use or activities as may be determined by the Planning Commission to be of the same general character as those specifically prohibited.”

Section 6. Action to Challenge This Ordinance

Any action or proceeding to attack, review, set aside, void or annul this ordinance must be commenced and the service made on the City no later than ninety (90) days after its effective date.

Section 7. 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 8. Severability

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more section, subsection, sentence, clause or phrase thereof be declared unconstitutional, invalid or ineffective.

Section 9. CEQA

Pursuant to California Environmental Quality Act (CEQA) Guideline 15061(b)(3) it can be seen with certainty that there is no possibility that this zoning amendment to the Clayton Zoning Ordinance/Municipal Code may have a significant effect on the environment, and therefore it is not subject to CEQA.

Section 10. Notice of Exemption

The City Council directs staff to prepare and file a Notice of Exemption no more than five (5) working days after adoption of this ordinance.

Section 11. Effective Date and Publication

This ordinance shall become effective thirty (30) days after its adoption by the city council. Within fifteen (15) days after the passage of the ordinance, the City Clerk shall cause a copy of the ordinance, including the names of the City Council members voting for and against it, to be posted in three (3) public places heretofore designated by resolution of the City Council for the posting of ordinances and public notices.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Clayton held on the _____th day of _____ 2013.

PASSED, ADOPTED AND ORDERED posted at a regular meeting of the City Council of the City of Clayton on the ____th day of _____ 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

The City Council of Clayton, California

Julie K. Pierce, Mayor

ATTEST:

Laci J. Jackson, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO ADMINISTRATION:

Malathy Subramanian, 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 the ____th day of _____ and was duly adopted and ordered posted at a regular meeting of the City Council held on the ____th day of _____, 2013.

Laci J. Jackson, City Clerk

**City of Clayton
Police Department
6000 Heritage Trail
Clayton, Ca. 94517**



**Chris Thorsen
Chief of Police**

DATE: May 28th, 2013

TO: Gary Napper, City Manager

FROM: Chris Thorsen, Chief of Police

SUBJECT: Medical Marijuana Dispensaries

It's come to my attention the City of Clayton is considering a ban on medical marijuana dispensaries within our boundaries. I whole heartedly support the pending legislation. I have been a law enforcement officer for over 26 years. During my career, I have personally made or been personally involved in the arrest of hundreds if not thousands of drug offenders. Of those arrests, many involved the possession and sales of marijuana.

In 1996 California passed the Compassionate Use Act which allowed citizens to obtain a prescription to possess and use marijuana for medicinal purposes. What followed was the rapid proliferation of "marijuana cards" issued by doctors for a plethora of "chronic illnesses". A simple internet search for marijuana cards will reveal any number of "doctors" willing to provide a prescription or card for a minimal fee.

On the heels of this new freedom to possess marijuana came a desire to lend credibility to its sale. These "dispensaries", according to the proprietors, are a means for law abiding citizens who need marijuana for treatment, a safe and secure place to obtain the drug. My experiences are different than those described by the people wanting to establish these businesses.

There are no legal commercial growers of marijuana to supply the sales outlets. As such, the growing and processing of the marijuana takes place in clandestine operations. Many times these operations are established in residential neighborhoods. Typically a home is rented from an absentee landlord. The operation is established inside the residence.

The growers bypass electrical service panels, construct irrigation systems and make other modifications to the residences. Often these modifications result in fire or other significant damage to the homes. These homes become targets for those seeking to obtain the marijuana grown at the location or the money derived from the sale of the marijuana. In other jurisdictions I worked, this resulted in armed robberies, burglaries, shootings and assaults at the properties.

The proponents of the dispensaries claim they are providing a vital service to those who need marijuana for medicinal purposes. Again my experience is different. For two years during my career, I was assigned as the supervisor of the Sheriffs Office Special Enforcement Team (J-Team). Our stated mission was to proactively address criminal behavior with specific emphasis on drugs, guns, gangs and crimes of violence. In this capacity, I personally made or supervised arrests of subjects who were selling marijuana on street corners in the most violent neighborhoods in the county. On several occasions our investigations revealed the marijuana was obtained at a local dispensary then broken into smaller quantities for street sales. In each case, the drug dealer was in possession of a medical marijuana card authorizing the possession of marijuana for personal use.

I have responded to the areas surrounding medical marijuana dispensaries for any number of calls. The details ranged from fights to robberies. In many cases, the victims were reluctant to cooperate with law enforcement.

In my professional opinion, the banning of marijuana dispensaries in Clayton is the best approach to deal with this matter.