

PLANNING COMMISSION REGULAR MEETING, TOWN OF PORTOLA VALLEY, FEBRUARY 21 2018, SCHOOLHOUSE, TOWN CENTER, 765 PORTOLA ROAD, PORTOLA VALLEY, CA 94028

Chair Targ called the Planning Commission regular meeting to order at 7:00 p.m. Interim Planning Director Cassidy called the roll.

Present: Commissioners Hasko and Taylor; Chair Targ

Absent: Commissioner Gilbert, Vice Chair Goulden

Staff Present: Arly Cassidy, Interim Planning Director
Cara Silver, Town Attorney

ORAL COMMUNICATIONS

None.

OLD BUSINESS

1. Recommendation to Town Council on Proposed Ordinance adding Chapter 18.39 [Cannabis Land Uses] and amending Section 8.12.010 [Definition of Nuisance] of the Portola Valley Municipal Code (continued from February 7, 2018, meeting).

Town Attorney Silver presented the background, executive summary, and staff's recommendations regarding the proposed Ordinance and Municipal Code amendment, as detailed in the staff report.

Chair Targ invited questions from the Commission.

Commissioner Hasko asked for discussion and clarification regarding the link between the ownership of property and the Applicant.

Commissioner Hasko asked for discussion and clarification about using the defined term for "cultivate" in certain areas of the Ordinance.

Commissioner Hasko asked if the link between Nathhorst would be appended to the youth center definition. She said just being on the list of Sensitive Receptors would not be legally binding. She also asked if its inclusion on the list of Sensitive Receptors was appropriate, considering the list can change at any time. Town Attorney Silver said they added the language "publicly-owned facilities that support activities for youth" to the definition of youth center, so it would capture Nathhorst Triangle Park. Commissioner Hasko pointed out that Nathhorst Triangle Park also supports activities for adults. She said there was a lot of public concern about Nathhorst Triangle being a site where these commercial activities should not be present around the children, and she was not convinced that the youth center definition would include Nathhorst Triangle. She said there is not a clear-enough link between something that's Nathhorst and something that's a Sensitive Receptor or youth center.

Commissioner Taylor asked if the Sensitive Receptors list (Attachment 3) was part of the Ordinance and legally binding. Commissioner Hasko said it was indicated the Town could maintain a list of Sensitive Receptors, but it was not clear if it could be modified. Town Attorney Silver said the definition of Sensitive Receptor states the Town shall maintain a publicly available list of Sensitive Receptors. She said Attachment 3 is not part of the Ordinance and would not be codified in the Municipal Code, but would be a living document that would be continually updated. Town Attorney Silver agreed that

language should be added that clarified that Nathhorst Triangle should be designated as a Sensitive Receptor, and also to clarify that the list may be updated from time to time.

Chair Targ suggested making the list part of the Ordinance, and that the Ordinance further state that the list may be updated from time to time by the Planning Director. Interim Planning Director Cassidy said an Ordinance cannot be updated by the Planning Director and would need to return to the Planning Commission, unless it is specifically allowed in the Ordinance.

Commissioner Taylor said he thinks the list is pretty static and will not be growing and shrinking, but if the list does change, there should be a public hearing. Commissioner Hasko said she agreed the list is probably static, but her concern is that Nathhorst does not fall cleanly into the categories listed.

Chair Targ asked Town Attorney Silver if there was any issue with having the list being incorporated into the Ordinance and modified by way of the Planning Commission. Town Attorney Silver suggested everything be itemized in the list of Sensitive Receptors. She asked if the Planning Commission wanted to be able to change the list or if it would require an Ordinance amendment each time the list changed. Commissioner Taylor suggested the list remain as an attachment that can be altered by the Planning Commission rather than incorporating it into the Ordinance. Interim Planning Director Cassidy said the Ordinance, if it is recommended for approval tonight, will go to the Town Council and have two readings, at which time the staff report can clearly call out that if the list is included in the Ordinance it becomes a hard list and will require a process to change it. She agreed that the list is unlikely to change unless a new facility, including a playground, comes online. She said there is also an annual review process in place for the next five years. She said she did not think it would add an extreme amount of extra work to codify the list. Commissioner Taylor said if a new school opened in Town, it would automatically be covered by the Ordinance. He said the explicit list is an attempt to be as clear as possible and make sure that Triangle Park is explicitly included.

Commissioner Taylor asked about the underlying logic for the different buffers required for personal and commercial – 600 feet to the site versus 600 feet to the property line. Town Attorney Silver said there was a Commissioner's comment that if there was a very large residential property, they may be prevented from growing personal cannabis because of their property line being within 600 feet of a Sensitive Receptor, even though the personal cannabis could be grown well away from a Sensitive Receptor with no impact.

Commissioner Taylor asked for clarification regarding Section 18.39.080(A)(5), where it mentions "conviction of an offense." Town Attorney Silver said it was taken from State Law, California Business & Professions Code Section 26057(b)(4), (b)(6): *"The applicant, owner, or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant, owner, or licensee is otherwise suitable to be issued a license, and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant or owner, and shall evaluate the suitability of the applicant, owner, or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following: (A) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code. (B) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code. (C) A felony conviction involving fraud, deceit, or embezzlement. (D) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor."*

In response to Commissioner Taylor's question, Chair Targ said it was discussed that there needed to be an appropriate waiting period to reapply after losing a license.

Commissioner Taylor asked if a Permittee needed to report a change of address immediately or only at the next renewal process. Commissioner Hasko said the Permit only covers the Permittee with respect to the premises and does not run with the land. She asked what happens if the Permittee gets the Permit and then moves a day later. Town Attorney Silver said the language could be clarified to require notification of a change. She said the intent is the Permittee should retain residency throughout the period of the Permit. Commissioner Hasko said the Ordinance reads that the Applicant must have the primary domicile and does not say the Permittee. Interim Planning Director Cassidy suggested another bullet point could be added under 18.39.070(D), Permit Conditions, that the Permittee shall maintain residency. She suggested it could be made clearer that the Permittee must have physical residency, and not just have the status of residency. Town Attorney Silver said many residents live in Portola Valley six months and somewhere else six months. She said staff researched the different definitions of "resident," and decided on "primary domicile," which does require being on the premises 100 percent of the time. Chair Targ suggested more specificity under Section 18.39.170(A)(4) – Revocation or Suspension.

Commissioner Taylor asked why a Colorado statute was attached to the Ordinance. Chair Targ said he requested that because the basis for the 12-plant limit is material.

Commissioner Taylor asked if there was anything to prevent an owner from subcontracting the growing to someone else. Town Attorney Silver said someone could be hired to do the work for the Applicant or Permittee.

Commissioner Taylor asked for an update on the status of Track and Trace. Town Attorney Silver said it is up and running now, but she does not know if the Town can access the information yet.

With no further questions, Chair Targ invited public comment. Hearing none, Chair Targ asked Interim Planning Director Cassidy to summarize the letter received from John and Patti Zussman.

Interim Planning Director Cassidy said Mr. Zussman commented at a previous meeting that the maximum allowance of 12 plants is not enough for a viable commercial operation. She said in his letter, he requested allowing up to 25 plants and 500 square feet for an indoor license or 2,500 square feet for a greenhouse or mixed-light license. He also requested microbusiness licenses be considered, from production and growing to drying, curing, etc., into sales, possibly on-site.

Chair Targ invited comments from the Commission regarding the Zussmans' letter.

Commissioner Hasko said these are things that should be taken into consideration as the Town gains more experience, perhaps over the next year, rather than be implemented right now. She said there has been a lot of public participation and concern about making sure the metes and bounds of the new Ordinance are carefully considered in light of community values and children coming and going. She said the points are well taken from an economical point of view, although she does not have personal experience to know what scale is correct to achieve economic viability. She said it should be looked at in the longer term after the initial steps have been taken of setting up the basics.

Commissioner Taylor agreed with Commissioner Hasko. He suggested making sure the Zussmans' letter is part of the one-year review. He said at that time, additional data (local, statewide, and other states) would be available for review.

Chair Targ agreed with the Commissioners. He said he was initially intrigued by the concept of the microbusiness. He said, however, that the Sheriff's office pointed out where the problems would be, and said Portola Valley did not have staffing capability to handle it. He said he was also influenced by the decision in Colorado to limit residential cultivation to 12 plants. He said Proposition 64 put most of the issues soundly and squarely before the municipalities that would be deciding the issues, except for the limit of six plants for personal use. Commissioner Taylor asked Chair Targ if the Narcotics Officer was concerned about sales or manufacturing. Chair Targ said it was both – that it is a high-valued commodity once manufactured, and a high-valued cash-oriented business with opportunity for problems to arise.

Chair Targ returned the discussion to property ownership. Town Attorney Silver suggested changing 18.39.140(B) from "Applicant" to "Permittee" – Permittee must have his or her primary domicile in the Town of Portola Valley. She also suggested adding a third bullet under that section stating that the residency requirements shall be maintained during the life of the Permit.

Commissioner Hasko asked where the link was between the Permittee and the owner of the property as opposed to the primary resident. Commissioner Taylor said it reads as though someone could be an individual who does not own the premises, but still be the Applicant. He said if that were tightened up a little bit to be clear about the requirements for an individual or LLC that owns a property. Town Attorney Silver said she will make that clarification before it goes to Council. Commissioner Hasko suggested it may be as simple as adding that the individual must own the property to which the Permit attaches.

Chair Targ returned the discussion to the subject of Sensitive Receptors. Commissioner Taylor said he did not like that the 600-foot buffer automatically applied to any trail system labeled as a Safe Route to School. He said a trail did not feel like a youth center. He said the map shows some trails that appear to be arbitrarily defined as a Safe Routes to School. Commissioner Hasko asked if the Safe Routes to School were conferred with any other special treatment in Town, such as safety, etc. Interim Planning Director Cassidy said maps like this can be used for grants, such as applying for grants improving sidewalks or crossings along these routes. She said having an already-established Safe Routes to School map increases the likelihood of being allowed to apply for such a grant. She said the map is not a Town map, but is the School District's map. Commissioner Taylor suggested not including the Safe Routes to School on the Sensitive Receptors list. Chair Targ said the trails would still have an appropriate shield or buffer with the existing restriction that personal outdoor cultivation not be allowed in the ordinary view from public rights of way or publicly owned or maintained trails. Commissioner Hasko agreed. Interim Planning Director Cassidy said she did not know if Portola Valley organizations used the Safe Routes to Schools map for events such as Bike to Work Day. Commissioner Hasko asked if the routes labeled Safe Routes to School, even if not listed on the Sensitive Receptor list, would be considered youth centers. Commissioner Taylor said he considered a youth center a place people congregate, not pass through. He said a trail or a Safe Route to School is a passageway, not a place to congregate. Commissioner Hasko said the Safe Routes to School can be taken out of the Sensitive Receptor list, and it can be left for another day to decide if they would be considered youth centers. Chair Targ suggested it be added that the Town shall maintain a publicly available non-exclusive list of Sensitive Receptors. Commissioner Taylor asked if a Permit could be revoked if a school opened up next door, or if it would just not be allowed to be renewed. Chair Targ said it could be revoked based on a material change in fact upon which the Permit was granted.

Chair Targ suggested adding the non-exclusive list of Sensitive Receptors to the Ordinance at 18.39.030(T). The Commission agreed.

Commissioner Taylor asked for discussion about the underlying logic for the difference between the buffer requirements for personal and commercial – 600 feet to the cultivation site for personal versus 600 feet to the property line for commercial, as stated in Section 18.39.040(B)(2). Town Attorney Silver

said State law requires a minimum 600-foot buffer from Sensitive Receptors as measured property line to property line.

The Commission discussed amending Section 18.13.170(4). Town Attorney Silver said the Permit structure was intentionally couched as a one-year Permit and does not run with the land. She said it would not be fair to a Permittee that they be found in violation because a sensitive receptor neighbor moved in. Chair Targ said it is a Use Permit and not an entitlement and, renewal could be denied at the annual review. Interim Planning Director Cassidy said a family daycare requires a State permit, not a Town permit, and could potentially open right away next door. The Commission agreed that the Permittee would not lose their Permit immediately upon such a development; however, the Permit would not be renewed at the year review. The Commission decided to leave Section 18.13.170(4) as is and revisit it at the yearly review.

Commissioner Taylor said “odor not detectable” feels too strongly worded and suggested using the reasonable person standard. Town Attorney Silver said the reasonable person standard is always incorporated into enforcement procedures. Commissioner Taylor said he did not want to create insurmountable hurdles, but also did not want things to get out of hand. Town Attorney Silver pointed out that cannabis is a seasonable crop, and there may be more odor during blooming times, so the Commission might want to consider a time restriction; however, she said staff does not have the technical expertise at this point to make that kind of determination. The Commission agreed that could be a topic of discussion during the yearly review.

Commissioner Taylor said the Zussmans’ letter should be included in the yearly review, and disparity in the buffer requirements for personal and commercial should also be reviewed at that time.

Town Attorney Silver said staff will:

- Clarify the owner versus Applicant language;
- Modify Section 18.39.020(T) to read “Sensitive Receptor means schools providing education to K-12 grades, daycare centers, Youth Centers, and public parks, including, but not limited to, the following” and include the itemized list of Sensitive Receptors;
- Modify Section 18.39.140(b), changing “Applicant” to “Permittee,” add “and shall own the property” to the end of bullet point #1, and add a third bullet stating the residency requirement shall be maintained during the life of the permit;
- Modify Section 18.39.170(A)(4) to remove the word “or.”

Commissioner Hasko moved to recommend that the Town Council find the Proposed Cannabis ordinance exempt from the California Environmental Quality Act. Seconded by Commissioner Taylor; the motion carried 3-0.

Commissioner Taylor moved to recommend that the Town Council approve amending Section 8.12.010 [Definition of Nuisance] of the Portola Valley Municipal Code, including the modifications as discussed. Seconded by Commissioner Hasko; the motion carried 3-0.

Chair Targ congratulated staff and the Town Council in the excellent work in bringing the Planning Commission to this point. Commissioner Taylor also commended staff and the Town Council for getting this done in only two months, as has been commented on by the public as well.

COMMISSION, STAFF, COMMITTEE REPORTS AND RECOMMENDATIONS

2. News Digest: Planning Issues of the Day

Interim Planning Director Cassidy included in the staff packet articles concerning peak motorization and providing housing specific to teachers. She invited the Commission to suggest articles of interest for future staff packets.

APPROVAL OF MINUTES.

3. Planning Commission Meeting of February 7, 2018.

This agenda item was continued to the next meeting.

ADJOURNMENT [8:23 p.m.]