

Attachment A: Excerpt of the Draft Minutes from the April 18, 2013 Planning Commission Meeting

Item 7A: Public Hearings

Matter of **Proposed Amendments to the City of San Leandro Zoning Code** related to Cottage Food Operations (CFO) in Article 3, Section 1-304 ; Article 5, Section 2-574; Article 16, Section 4-1688; Article 17, Section 4-1704; to Create a definition of Cottage Food Operations; Create regulations for Cottage Food Operations to allow for such use in all zoning districts within a residential unit; Add Cottage Food Operation parameters to the Administrative Exception process; and Create a parking standard whereby one off-street employee parking space is required for a Cottage Food Operation (Barros)

Planner Barros explained that the proposed amendments had been reviewed by the Board of Zoning Adjustments at its April 4, 2013 meeting. AB 1616, introduced by Assemblyman Mike Gatto (D-Los Angeles) last fall, was signed into law in the Fall 2012, and went into effect on January 1, 2013, but cities weren't aware of it until December 2012. Only one person so far has sought permission to establish a Cottage Food Operation.

Planner Barros explained that the bill was intended to come to terms with trends that favor locally grown foods and healthier food preparation with fewer additives, and it allows preparation of certain foods, prohibiting others (such as meat- and cream-based fillings). She referred to lists of currently allowed foods in the Commissioners' agenda packets.

She said that San Leandro has basically taken material from the state law and Health and Safety Code (HSC) to spell out the City's definition of CFOs to ensure alignment with state law, but incorporates the list of foods by reference to the state code.

In contrast to San Leandro's home occupation permits, which do not allow client visits, she said that state law grants CFOs the right to have customers come to their homes to buy their products. They also have the right to employ one non-family member (in addition to family members who may work for the CFO).

Under the new law, local jurisdictions have regulatory authority over very few areas – spacing and concentration, parking, traffic and noise. San Leandro's regulations governing Large Family Day Care generally address those areas, and because those regulations have been vetted by the community, she said they've been used to guide development of parameters to apply to CFOs. The proposed amendments include:

Spacing: No CFO could be located within 300 feet of any other CFO (as measured from the exterior lot lines). Planner Barros said the BZA favored using the Administrative Exceptions process in some cases, thereby giving neighbors an opportunity to weigh in if applicants request exceptions.

On-Street Parking: No CFO could be located on a lot with less than 32 feet of legally permitted parking along the front of the home. Planner Barros said this regulation stemmed from the BZA, which discussed parking requirements at length. Some BZA members were quite concerned about changing the character of residential districts. She explained that the BZA also agreed to provide for an Administrative Exception to waive this requirement in locations where lots may be too narrow.

Employee and Customer Parking and Circulation Plan: The driveway of a CFO may be used for off-street parking (required by Article 17) if it doesn't obstruct a sidewalk or other public right-of-way (ROW). Planner Barros explained that this would essentially be a site plan that indicates locations of both employee and visitor onsite parking.

Noise Control: The level of noise could be no more than 55 decibels (as measured along or beyond the property line).

Traffic: CFOs could not create pedestrian or vehicular traffic detrimental to property in the vicinity or use delivery vans/trucks larger than 3/4 tons.

Parking: A CFO cannot reduce or eliminate any required parking space, and off-street parking would be required for employees. This could be in a driveway, Planner Barros said, and would not require a covered spot.

Vehicles: If used in conjunction with the CFO, no vehicles could be parked where they're visible from a public street unless they're standard passenger vehicles or trucks/vans smaller than 3/4 tons.

Commissioner Leung asked what would happen if two families within 300 feet of each other both applied for business licenses for CFOs, had no conflicts and met all other requirements. Planner Barros said that would be specifically the type of situation some BZA Members wanted to address, noting that some BZA Members wanted more – rather than less – space between CFOs. She verified that the Administrative Exception process would be applied in that scenario.

Commissioner Rennie asked what parts of San Leandro had lots too narrow to accommodate 32 feet of parking in front. Planner Barros said standard lots, particularly those built since the 1950s, are 50x100 feet wide. Most of the narrower lots are in the North Area, Estudillo Estates and the Broadmoor. She said that even some lots 40 feet wide might not have the 32 feet of parking space in front if they have 10-foot driveways. In response to a further question from Commissioner Rennie, she said 32 feet would accommodate two cars.

Commissioner Rennie asked whether there's concern that street parking would be scarce during the day in a residential neighborhood. Planner Barros explained that the rationale for the requirement is to avoid creating impacts on other neighbors. For instance, she said if a CFO does a good job of marketing a pie sale, maybe 10 customers could easily arrive in a short amount of time, and at least two spaces would be available for parking.

Commissioner Rennie asked whether selling directly from the home is the typical model for a CFO. Planner Barros said there's no typical model yet; the phenomenon is too new to have any data.

In terms of the 300-foot spacing requirement, **Commissioner Rennie** asked about the potential CFO impact on a neighborhood in comparison to a Large Family Day Care operation, given that the law imposes a ceiling on a CFO's annual revenue. Planner Barros said a Large Family Day Care can accommodate up to 14 children, yet it is not unlikely to have 14 children being delivered or picked up at about the same time. That was the reasoning behind requiring on-street parking and circulation plans for Large Family Day Care operations, she said, and the case with CFOs could be similar. She said certain CFOs could make such fabulous foods that people would be flocking to their homes. Some members of the BZA were concerned, she reiterated, that closer spacing could have the effect of change neighborhoods that are zoned for residential use into mixed-use commercial areas.

Commissioner Rennie requested clarification about the term "abutting" in the context of spacing requirements and notifications to abutting properties within 300 feet for Administrative Exceptions. He asked whether it meant a 300-foot radius that would even capture the block

behind a CFO property, or 300 feet along the ROW that services the property. For variances and conditional use permits (CUPs) that go to the BZA, Planner Barros replied, that the 300-foot radius would reach the next block. For adjacent property notification (for Administrative Exceptions), it includes the three properties across the street, three behind and two on either side.

Commissioner Rennie asked Ms. Faught whether San Leandro's ability to regulate CFOs in terms of concentration is flexible enough to apply only when the CFO proposes to have on-site sales.

Ms. Faught said there are Class A and Class B CFOs. Class A allows for direct sales only; Class B allows for direct and indirect sales. She said that an applicant could say they have no intention of doing direct sales but sell only at farmers' markets and holiday bazaars, and perhaps San Leandro could make a decision locally on that basis. According to the statute, she said we'd have to assume any CFO is engaged in direct sales, and regulating on the basis of that assumption would be reasonable.

So, **Commissioner Rennie** said, we could have a different spacing rule that would apply for CFOs that don't have direct sales off the property.

Ms. Faught said yes, she believes we could do that, and it gets to the heart of the BZA's concern.

Planner Barros said that she had not reached the part of her presentation that discusses the fees involved. Currently Class A and Class B permits from the County cost \$150 and \$225, respectively; those fees are expected to increase in July 2013. In San Leandro, the zoning permit is \$104, the business license has not yet been determined, and the Administrative Exception costs \$434.

In response to **Chair Collier**, Planner Barros said the fee is part of the City's cost-recovery effort, because of the work involved in developing mailing lists and the noticing involved.

Commissioner Hernandez asked about the enforcement of the rezoning. Planner Barros said the zoning permit for a business license is a one-time cost, and there's no follow-up enforcement or monitoring. The Director of Finance may revoke a business license if a business is doing something other than what it's licensed to do. If a CFO has sales exceeding the state allowance, it's under the County Health Department's jurisdiction. The sales ceiling also is included in San Leandro's proposed CFO definition, Planner Barros said, but the City isn't expecting to monitor receipts in any way.

Commissioner Leichner asked whether it might make sense to remove the language about gross receipts from the proposed zoning changes so we aren't somehow put in a position to enforce it if we should receive a complaint about a CFO exceeding its gross-receipts limit. Planner Barros said that she would favor doing that, and Ms. Faught agreed.

Ms. Faught said the definition should refer to the state statute. CFOs would still have to get their permits from the County. She said that to make it simpler, the definition could refer to the HSC section without including detail about the gross revenues. The first sentence would have to be reworked as well.

In response to **Commissioner Hernandez'** question about baking medical marijuana products, Planner Barros said that would not be allowed in San Leandro at this time.

Commissioner Hernandez also asked whether San Leandro would collect any taxes from CFOs. Planner Barros said that the state Board of Equalization would be the agency to collect any sales taxes due.

Commissioner Rennie asked about parking in relation to multi-family housing. For a four-plex, for example, he asked whether there's a requirement for visitor parking. Planner Barros said yes,

and that the requirement is based on bedroom count. Except in the Transit-Oriented Development (TOD) districts where parking requirements are lower, the Zoning Code requires 2.5 spaces for three-bedroom units in multi-family developments, and the half space goes to guest parking. Accordingly, a four-plex of three-bedroom units in a multi-family neighborhood would have two guest parking spaces. The requirement in multi-family developments is 2.25 parking spaces per two-bedroom unit and 1.5 spaces per one-bedroom unit. The fractional amounts in each instance are for guest parking.

Commissioner Leichner asked whether lease or Homeowners' Association prohibitions against CFOs would supersede state law. Planner Barros said yes, just as a home occupation business license cannot be issued to tenants without the landlord's signature on the application.

Commissioner Leichner asked what would happen in the case of a person who lives in an apartment complex and cannot fulfill the off-street parking requirement. Planner Barros said that staff would evaluate that on a case by case basis. The BZA has requested a follow-up report in a year to see how everything is working out in practice. Commissioner Leichner said that the spirit of the law seemed to want to help people in the direst economic straits.

Secretary Liao said that we also might expect adjustments in the state law that would address some of the issues the Commissioners are raising.

Ms. Faught said a possibility would be to build in an automatic approval for Class B CFOs that declare on their permits that they intend no direct sales, which would exempt them from parking and concentration conditions. In that way, she said, we could avoid imposing the Administrative Exception fee on those who could least afford it.

Commissioner Rennie said he was thinking that same way. Direct sales is apparently broader than onsite sales under the statute, he said, but if they won't be selling products to customers in their homes, the concentration, parking and frontage requirements for those CFOs ought to be eliminated.

In any event, **Commissioner Rennie** said that 300 feet is far too restrictive. It would cover the entire block in some areas, he said, and the one person in an apartment complex lucky enough to get a CFO first would be the only one permitted. If the purpose is to help people supplement their income, the balance of concerns doesn't seem to be in the right place, he said, adding that walking a few extra feet to get a parking space would be a fair tradeoff. He said that he agrees with Ms. Faught's suggestion to eliminate the parking, frontage and concentration requirements for applicants declares that they won't sell food on the premises. Multi-family housing that already has guest spaces included should also be exempted, he said.

For those that would engage in direct sales, **Commissioner Rennie** said 150 feet – about three lots in many neighborhoods – would be more reasonable.

Ms. Faught summarized the changes requested by Commissioner Rennie:

- CFOs declaring that they will not engage in onsite sales would be exempt from conditions on concentration and 32 feet of on-street parking in front
- Changing concentration from 300 to 150 feet spacing requirement
- Exempting CFOs in multi-family complexes exempt from onsite parking requirements if they can demonstrate two guest parking spaces are available

Commissioner Rennie agreed, except that the multi-family complex CFOs would be able to engage in onsite direct sales.

In terms of the circulation plan, **Commissioner Rennie** said the CFO applicants won't be developers or others who are accustomed to site plans. It may be a difficult requirement to meet from a practical standpoint. Planner Barros said that there have been no problem getting site plans from people who are operating businesses from their homes.

Commissioner Hernandez asked whether any dialogue regarding fire safety in CFOs in multi-family environments when this bill was developed. Planner Barros said she didn't believe so. The laws specifically states that they can be operated in apartments as well as homes. She said CFO kitchens must be up to code, but CFOs aren't required to have commercial kitchens.

Chair Collier invited public comments. There were none.

Commissioner Rennie asked if the spacing regulation could be made along a ROW so that it doesn't bleed over from one block to the next. Chair Collier agreed that back-to-back spacing considerations are unnecessary, and suggested that linear feet along the front made more sense than circumference.

Planner Barros suggested adding "as measured along the street frontage" to the spacing regulation.

Commissioner Rennie recapped the motion he proposed:

- To the extent that spacing applies, it should be 150 feet versus 300 feet, measured in linear feet along the frontage
- Spacing (Regulation C-1) and on-street parking (C-2) requirements would not apply to CFOs that either 1) declare they will not engage in sales on the premises or 2) are located in multi-family developments that have two or more guest parking spaces
- Gross revenue figures would be removed from the definition

Planner Barros said that City enforcement of the on-site sales prohibition would not be practical. The County allows sales from the home. **Ms. Faught** said that in the event of a complaint, we could potentially revoke the permit. Planner Barros said yes, but it would lead to considerable staff time.

Commissioner Rennie said he's sensitive to the issue of staff time, so requested some clarification about the staff time she'd anticipate. Planner Barros said it would take considerable effort to determine whether someone is actually selling product from the home. In the past, for example, staff have dealt with complaints about people selling flowers out of their garage. She personally drove by the home several times and never witnessed it, and the community compliance people also have checked and never witnessed it. She said we have to assume that CFOs will sell from their homes, which is what the law and the County certification allow. It does not say we can disallow selling from the home.

Commissioner Rennie said we aren't saying they cannot sell from their homes; we're saying if they want to sell from their homes, they cannot be located within a certain proximity to another CFO. Ms. Faught said she thought the proposal he made was acceptable from a legal viewpoint.

In the event of a complaint, **Commissioner Rennie** suggested something he has done in the past – ask the complaining party to take a picture, or take down license plate numbers, etc. Planner Barros said the complaining neighbor in the example she'd cited didn't want to go on record or provide evidence.

Planner Barros said that originally staff considered prohibiting signage in front of the home, but the state does not allow us to do that. Accordingly, these regulations include nothing about signage and relaxing the concentration requirement could mean signs posted at every other home.

Commissioner Rennie asked what the residential signage allotment is. Planner Barros said it's a total of 25 square feet for nonresidential uses in residential zoning. Chair Collier said signage for home occupation is not allowed. Planner Barros explained that this isn't a pure home occupation situation, which is why the staff is proposing a whole new section for CFOs in the Zoning Code. She said that Planning staff conferred about this, and at first borrowed signage restrictions from the home occupation rules before realizing that state law does not give us the authority to do that. A local agency is able to regulate only "spacing and concentration, traffic control, parking and noise control relating to those homes."

Commissioner Rennie said that according to the law, he thinks the CFOs are ancillary residential uses. Ms. Faught said he might be correct, but she didn't recall seeing that.

In the past, **Planner Barros** said, signage requirements in residential districts have been linked to non-residential uses in those districts, such as churches and day care operations.

Commissioner Rennie read from a list in the HSC (Government Code Section 51035) that local jurisdictions can "classify a CFO as a permitted use of residential property" and "CFOs shall be considered residences for the purposes of the State Uniform Building Standards Code and local building and fire codes."

After a brief recess, **Commissioner Hernandez** requested a summary of the Planning Commission's recommendations.

Commissioner Rennie summarized again the changes he proposed (see above).

Commissioner Leichner pointed out that Regulation C-7 includes the term "home occupation," which he suggested should be changed to "CFO." Planner Barros thanked him for catching that.

Planner Barros said that staff would be taking the proposed Zoning Code amendments to the City Council (scheduled for the May 20, 2013 agenda), and the Planning Commission recommendations will be included along with BZA comments. While the BZA is not the recommending body, **Planner Barros** said, the BZA comments also will be relayed to the Council, because BZA members have substantial "on the ground" knowledge about uses, and most of the items they hear relate directly to zoning matters, CUPs, design reviews, etc. They hear often from residents in single-family neighborhoods about proposals for additions and other uses that affect them. She said that some of the BZA members favored spacing CFOs considerably more than 300 feet apart, even as much as 500 feet.

Commissioner Rennie said that 300 feet for noticing purposes doesn't seem to be a good basis for regulating a use. The use would be more appropriately regulated on the basis of its impact. He said that the Large Family Day Care operations have a lot of people showing up all at once to drop children off and pick them up, a burst of impact twice a day in terms of traffic. With the CFOs, he said, the situation is different, with people coming and going throughout the course of the day, but we don't know what to expect that traffic impact to be. Even so, he said by the very nature of the operation, the comparison to Large Family Day Care isn't appropriate. He said he is open to hearing a rationale for the 300-foot spacing requirement, but hasn't heard one yet.

In response to **Chair Collier**, Planner Barros affirmed that she's talking about 300 linear feet, covering both sides of the street along the front of the property, rather than a 300-foot radius around the property. Chair Collier noted that would be six lots.

Commissioner Rennie said he favors 150 feet.

Commissioner Hernandez asked whether the spacing issue could be decided on a case-by-case basis. Ms. Faught said the Zoning Code could omit spacing requirements altogether or use any number for which a rational basis could be established.

Commissioner Rennie said 300 feet does not have a rational basis because it's neither data driven nor based on the CFO use. It's based on the Large Family Day Care use.

Planner Barros said that on a practical level, it's difficult to operate with no rules, and in the case of CFOs, there's very little we're allowed to regulate in any case. Because CFOs are part of a movement that's growing, she added, it could expand considerably. She said staff took a cautious approach to this new territory, and looked at the Administrative Exceptions process as a way to address some of the issues that would come up.

Ms. Faught said that reducing the spacing to zero feet would not necessarily result in a need for case-by-case analysis. The CFO would simply be allowed provided it complied with other conditions. With spacing set at a particular number, on the other hand, she said that if an applicant were to be denied an application on that basis, the Zoning Administrator would then have an opportunity to examine that situation and permit it if he/she could make the finding that the CFO would not create adverse impacts, etc.

Secretary Liao said that the law, although probably imperfect, is already in effect, so the City is a bit behind the curve in terms of developing guidelines and setting up some standards.

Considering that CFOs are part of a growing movement, **Commissioner Hernandez** asked whether a survey of residents might give us a better gauge on the potential impact that could be considered when discussing the kinds of rules we should have.

Commissioner Rennie said that lots in some San Leandro neighborhoods have frontages of about 50 feet. Measuring 150 feet from the property line would go four houses down the block. He said to imagine living there, and think about the last time someone who lived four houses away did anything that affected you – cars parked up and down the street for a party or family gathering at that house. Further, he said that's on a weekend or evening, when people are more likely to be home, as opposed to weekdays when they're at work.

If you consider 300 feet versus 150 feet, **Commissioner Rennie** continued, it would take you seven houses down from the property line – if there are seven houses left on the block. He said in the situation of a Large Family Day Care operation, he can imagine 14 cars arriving within a 10-minute window, but with CFOs there would be no such window of intense activity. People would arrive over a period of, say, eight hours rather than 10 minutes. He said the impact on parking would be practically indiscernible.

Motion to forward to the City Council a recommendation to approve the resolution proposing Zoning Code amendments to add regulations /related to Cottage Food Operations in

Article 3, Section 1-304 Definitions

Article 5, Section 2-574 Administrative Exceptions

Article 16, Section 4-1688 Cottage Food Operations (new section)

Article 17, Section 4-1704 Off-Street Parking and Loading Spaces Required with changes recommended by the Planning Commission to:

- 1) Omit language related to annual revenue amounts in Article 3, Section 1-304 Definitions***
- 2) Reduce spacing requirement to 150 linear feet along frontage ROW in Article 16, Section 4-1688 C-1***
- 3) Exempt CFO applicants who declare that they will not engage in sales on the premises from Article 16, Section 4-1688 C-1 (spacing) and C-2 (on-street parking)***
- 4) Exempt CFO applicants who demonstrate that the CFO residence is within a complex served by at least two dedicated onsite guest parking spaces from Article 16, Section 4-1688 C-1 and C-2***

Rennie/Hernandez: 6 Aye, 0 No, 1 Absent (Fitzsimons) – Approved