

**SAN LEANDRO BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING**

City Council Chambers, First Floor
835 East 14th Street
San Leandro, California 94577

Minutes for April 3, 2014
7:00 p.m. Regular Meeting

Item 1: Roll Call

Present: Members Philip Daly (District 1); Catherine Vierra Houston (District 4); Gayle Hudson (District 5); Lee Thomas (District 3); Vice Chair Janet Palma (At Large); Chair René Mendieta (District 6).

Absent: Member Earl Crawford (District 2).

Staff: Sally Barros, Principal Planner and Secretary to the BZA; Jennifer Faight, Assistant City Attorney; Larry Ornellas, Facilities Coordinator; Barbara Templeton, Recording Secretary.

Item 2: Public Comments

None.

Item 3A&B: Minutes

*Motion to approve the minutes of the
January 30, 2014 Special Joint Work Session with the Planning Commission
and February 6, 2014 BZA Regular Meeting*

Houston/Hudson: 6 Aye, 0 No

Item 4: Correspondence

None.

Item 5: Oral Communication

None.

Item 6: Public Hearings

None.

Item 7A: Miscellaneous

Consideration of amendments to the City of San Leandro Zoning Code related to Industrial and Commercial Uses; Telecommunications; Hazardous Materials; Recycling; Signs; Parking; Application Processing and General Text Update. (Barros)

Planner Barros said changes recommended and discussed during the January 30, 2014 joint work session with the Planning Commission have been incorporated into the text of the proposed Zoning Code, plus some changes in response to comments gathered at the work session and also some produced by staff since the work session. The proposed Zoning Code sections affected were included in Planner Barros' staff report of April 3, 2014, using the typical protocol of ~~striketrough~~ type for language deleted and **underscored boldface** type for insertions.

The proposed document:

Adds provisions related to commercial roll-up doors

- Clarifies the Temporary Use and Outdoor Facilities allowed in the Industrial General (IG) Districts
- Expands uses in the Commercial Regional Mall (C-RM) District stemming from a meeting with the Bayfair Center owners to allow Bayfair to be on footing comparable to that of the north parcel of the Kaiser project
- Raises the threshold for requiring formal parking exceptions to increase flexibility

Referring to the staff report, Planner Barros drew attention to some of the key changes:

Beer and Wine Stores: Amended to include accessory food sales

Brewpub: Added language to ensure consistency with federal as well as state law

Planner Barros pointed out that although the revision also limits brewing to 5,000 gallons annually, staff now plans to omit reference to any specific volume to avoid discouraging a larger brewery from opening a brewpub on their premises. Vice Chair Palma said other terms may be more appropriate than "brewpub" in this context, including nano-breweries, micro-distilleries; she will provide Planner Barros with a list of those terms.

Business and Trade Schools: Added university and college extension programs

Community Gardens: Removed extraneous definitions about kitchen gardens, etc., and added language to ensure that this use would be well managed

Proposed Article 16 amendments include a new section on Community Gardens (4-1690), which contains a list of requirements that range from maintaining a robust management plan to posting management contact information on the site.

Dance Clubs: Responded to recommendations to focus on dancing as the primary use

Entertainment Activities: Tabled for further study except to require conditional use permits (CUPs) only:

For planned entertainment events (e.g., a show) rather than more spontaneous activities (e.g., strumming a guitar at a restaurant)

After the sixth event in a calendar year (instead of the current maximum of three)

Fast Food Establishments: Revised to reflect recommendation that fast food establishment not be allowed in the South Area 2 (SA-2) District, which is in close proximity to McKinley Elementary School

Health and Fitness Centers: Removed bowling alleys from the definition and clarified that any facilities offering alcoholic beverages would be defined as Commercial Recreation instead

Live-Work: Tabled previous proposals for changes pending further study

Massage Therapy: Left the existing Massage Therapy and Retail Services definitions (for massage therapy) unchanged

The proposal presented at the January worksession was to treat massage therapists the same as Professional Services, as required by SB731, the Massage Therapy Law. With the fate of that law being debated due to unintended and undesirable consequences (i.e., having opened the door to increased human trafficking and prostitution), staff now recommends keeping the status quo in terms of the Zoning Code rather than institutionalizing provisions that are likely to change as legislators address the problems.

Mobile Food Vendor/Mobile Food Vending: Revised definition of Mobile Food Vendor to read, “The sale of food from any motorized or trailer vehicle, designed to be portable and not permanently attached to the ground, from which only food and beverages are sold, served free or sampled, displayed or offered for sale, as required by the San Leandro Municipal Code”

Retail Services: Requesting BZA feedback on options relative to language about tattoo parlors before finalizing the proposed amendment

Wireless Telecommunications Facilities: Included allowance for timed shutoff mechanisms for lighting (versus manual shutoff only)

Signs: Edited language pertaining to political signs in response to public input and upon the advice of the City Attorney’s office

Article 21 – Zoning Permits Required: Added language specifying that non-applicants be included among those who may appeal a Zoning Enforcement Official (ZEO) decision

Article 22 – Use Permits, Variances and Parking Exceptions: Withdrew recommendation to eliminate posting of public hearing notices on and within 300-foot radius of subject sites and properties, and added language to enable two separate one-year extensions of permits

Article 6 – re Commercial Rollup Doors: Added a section specifying that retractable security gates, window bars and mall-style rollup doors be installed inside existing windows or glass doors rather than on the outside and making the installation subject to the Community Development Director’s review and approval

Article 16 – re Temporary and Outdoor Uses in Industrial Zones: Modified to explicitly allow an Outdoor Facility in the Industrial General district and specify a 90-day timeframe for a Temporary Use Permit

Planner Barros explained that Article 16 language currently allows outdoor storage without a permit, but prohibits outdoor displays and merchandise. The proposed change would, for instance, give a restaurant the flexibility to provide outdoor seating. The 90-day timeframe language was added to be consistency with Article 22, Section 5-2222.

Article 17 – re Off-Street Parking and Loading Requirements: Improves flexibility by changing the point that triggers the requirement for a parking exception

At this time, Planner Barros explained, a project proposing 15 percent less parking than required needs a parking exception; the change would increase the trigger point to 20 percent of the deficiency.

C-RM Commercial Regional Mall Uses: Expands the list uses that would be:

- Permitted – artists’ studios, brewpubs and supermarkets
- Conditionally permitted – animal hospitals, bars, beer and wine stores, commercial recreation, dance clubs, emergency healthcare (e.g., urgent care clinic), entertainment events, liquor stores, retail sales/big box
- Permitted with Administrative Review – animal boarding, automatic teller machines (ATMs), catering services, community gardens, game centers, nurseries

Note: The Commissioner comments and questions that follow are grouped by topic.

Entertainment Activities: **Vice Chair Palma** said the decision to prohibit live entertainment in industrial areas, which she opposed since the start and believes was made in a “reactive mode,” should be completely rethought. When she was at Drake’s recently on Alameda County business, they complained about that decision because it rules out the live entertainment Drake’s provided for large numbers of patrons participating in its popular First Friday events. **Vice Chair Palma** also pointed out the irony of prohibiting live entertainment in the industrial zones at the same time that the City wants to encourage the kinds of businesses in the industrial area, such as microbreweries, which lend themselves to entertainment and live action.

Chair Mendieta agreed that nothing should be done that would impede First Fridays entertainment at Drake’s. **Member Hudson** concurred also, saying there’s no reason to punish Drake’s, which has been a very responsible company, and prohibiting entertainment there would affect the whole community.

Member Daly echoed their comments, noting that plans for the 21st Amendment Brewery that’s moving into the old Kellogg’s site at 2010 Williams Street include a restaurant and event space. He said it’s the kind of place where people would expect live entertainment, and because it’s not far from the new Kaiser development and the proposed Office/Technology Campus, it could be an important destination for those who work there.

Secretary Barros said these are among the reasons the entertainment issue has been removed from the zoning change cleanup effort. It’s a big issue that needs more time for public outreach, with the Business Development Department and with the City Attorney’s office to make sure it’s handled the best way possible.

Signs: **Member Hudson** said the language doesn’t make it clear how long candidates have to remove political signs after an election.

Later in the meeting, after checking with the City Attorney Richard Pio Roda, who worked on this during her leave of absence, Ms. Faught reported that having time limits on signs, even temporary signs, may be unconstitutional, because they represent an expression of the First Amendment right to free speech. She referred to the recent U.S. Supreme Court ruling in the *McCutcheon v. Federal Election Commission* case as affirming how important a First Amendment issue the U.S. Supreme Court considers the ability to campaign.

Planner Barros, emphasizing that Zoning Code regulations apply to private property rather than public property, clarified that in general signs are not supposed to be posted in the public right-of-way (ROW).

Member Daly said he thinks the most annoying political signs are those posted in the ROW or on private property without the owner’s permission, and there’s probably a way of getting those signs removed – when they shouldn’t even be there in the first place. He asked whether residents could call to complain if campaigns or candidates leave signs up on telephone poles or posted in shopping center parking lots. Planner Barros said she’d check whether complaints should go to the San Leandro Police Department’s community compliance unit or the Public Works Department.

In response to **Member Hudson**, she confirmed that sidewalks are considered part of the public ROW, and if someone leaves a sofa, for instance, on the sidewalk, one would complain to the Community Compliance Division.

C-RM Commercial Regional Mall Uses: **Member Daly** asked for more details about the additional uses recommended for Bayfair Center. Planner Barros said the C-RM District additions correspond to many permitted CC Commercial Community District uses, but there are exceptions. For instance, auto repair facilities are allowed with CUPs in the CC District, but are not among those staff is recommending to add to the C-RM District. She also pointed out that the new uses fall into three groups: 1) some to be permitted outright; 2) some that may be permitted by the ZEO after Administrative Review; and 3) those subject to a BZA-approved CUP. She said the purpose of the additions is to give Bayfair the flexibility of bringing new uses to the Center.

In response to a follow-up question from **Member Daly**, Planner Barros said that the C-RM District corresponds exactly with the Bayfair Center and the King Family Trust's 3.7 acres, which is used for parking. The nearby Fairmont Square Shopping Center (location of Lucky's) and Fashion Faire Plaza (location of the new BevMo!) are both zoned Commercial Community - CC(PD).

Retail Services: Addressing the issue of tattoo studios, **Member Houston** said she opposes the idea of limiting tattoos to only cosmetic services (e.g., permanent makeup).

After some discussion, members agreed that Retail Services should be defined as:

Provision of recurrently needed services of a personal nature. This classification includes barber and beauty shops, tattoo studios, seamstresses, tailors, shoe repair shops, dry cleaning businesses (excluding large-scale plants), photocopying and self-service laundries. Tattoo studios are establishments principally engaged in the business of creating indelible marks or figures fixed upon the body by insertion of pigment under the skin or by production of scars for pay. Retail Services excludes coin-operated self-service laundries and coin-operated dry cleaning businesses.

Tattoo Studios wouldn't require CUPs, but be permitted outright along with other Retail Services except in the SA-2 District due to the proximity to McKinley Elementary School).

When **Member Houston** asked how body piercings are addressed, Planner Barros said the City's code is silent on that, basically relying on state regulations applicable to those with cosmetology licenses.

Chair Mendieta asked whether someone working in a hair salon who has an appropriate license would be able to perform permanent makeup tattooing services. Planner Barros said yes, as long as it's explicit in the facility's business license as well, both artistic and cosmetic tattooing would be permissible.

Mobile Food Vending: Acknowledging that trailers aren't necessarily motorized, **Vice Chair Palma** asked whether pushcarts are included in the definition. **Member Thomas** noted that especially during baseball season, ice cream vendors come by with pushcarts, which is a valuable service for teams and their parents. In response, Planner Barros said she'd follow up to make the definition clear in regard to pushcarts, and emphasized that the intent was to be more flexible, not more restrictive. In fact, she explained that the Mobile Food Vending ordinance covers what is allowed in the public ROW, but staff was seeking a definition applicable to private property and supportive of an Administrative Review process for approving events that include Mobile Food Vending in more districts throughout the City (e.g., industrial areas and Bayfair Center). She also made it clear that pushcarts would still be allowed in the ROW.

Massage Therapy: **Chair Mendieta** said we need to do everything possible to stem or stop human trafficking and prostitution. **Member Hudson** agreed, pointing out that there's quite a problem in the North Area, and it's not being handled well. She said these facilities are not ready to be either self-regulated or state-regulated, but need city oversight.

Community Gardens: **Member Hudson** questioned part of Article 16.4-1690. She noted that B.2 reads, "If the Community Garden is enclosed by fencing, the fencing must be . . . covered by plant material or other vegetative screening within three years . . ." She asked whether that means it must be covered with vegetation within three years' time. Planner Barros said yes, that's a typical requirement designed to "soften" a fence. Member Hudson also asked about the height of the fencing. Planner Barros said in the front or side yard, it could be no more than three feet in height; outside of the required setbacks, fences could reach up to seven feet in residential districts and eight feet for commercial and industrial zones.

Member Houston suggested modifying the B.2 wording slightly to make it clear. She agreed with Planner Barros' proposal to break the first sentence into two sentences, i.e.:

If the Community Garden is enclosed by fencing, the fencing must be wood fencing or ornamental fencing. Chain link or woven wire fencing is also permitted if over half of the fence area that borders a public right-of-way will be covered by plant material or other vegetative screening within three years of the fence installation.

When **Member Hudson** pointed out that, except for trees, B.7 prohibits row crops that grow 24 inches tall in front and corner side yards and thus eliminates bush peas, tomatoes, green beans and other crops, Planner Barros said the intent was to keep crops such as corn out of that area. She suggested that a 36-inch limit might be more reasonable and also match fence height.

Member Hudson asked whether B.6 meant that soil deliveries, for example, would have to be limited to one per day. Planner Barros said yes, to minimize the impact on traffic and the neighborhood.

Member Houston noted that B.11 requires a manager to be identified for each Community Garden, with contact information posted in the event of complaints. She said the information should be posted – period – not only in the event of complaints. Planner Barros agreed.

Article 22 – Use Permits, Variances and Parking Exceptions: **Member Houston** asked how much additional work would be created by renewing permits incrementally, one year at a time, rather than a one-time approval of a two-year extension. Planner Barros explained it's only a matter of writing a letter, and that the change to one-year increments responded to a recommendation by Member Crawford.

Other

Vice Chair Palma asked about the overall plan for the “no man’s land” south of downtown, in the Bal Theatre district and around Bayfair. She said it’s a “dead zone” from the edge of downtown to the hospital. Planner Barros said the economic downturn hampered the vision that came out of the 2004 work on the South Area Development Strategy, but noting that the Bayfair owners and BART are interested in mixed-use, transit-oriented development, said the City recently put in a grant proposal to the Metropolitan Transportation Commission (MTC) for the Bayfair vicinity, including areas around the mall. If it plays out, this would ideally dovetail with strategic vision for the area.

In response to **Chair Mendieta’s** follow-up comments on the triangle formed where East 14th Street, 150th Avenue and Hesperian Boulevard intersect, Planner Barros said the South Area Development Strategy included a plan to create an attractive gateway in that area, but no funding has been available for the landscaping and art envisioned at that time. When Chair Mendieta noted that a number of businesses in the site of the former Pring’s have not lasted long, Planner Barros pointed out that their problems may have been operational rather than location-related, because Pring’s ran very successfully there for years.

Motion to close the discussion

Houston/Daly: 6 Aye, 0 No

Item 8: Members’ Comments

In response to **Member Daly’s** question about shifting of live entertainment from the Zoning Code to the Municipal Code, which had been discussed extensively during the BZA’s special joint work session with the Planning Commission on January 30, 2014, Planner Barros said the issue has moved to a separate track from the proposed Zoning Code changes because it needs more time and attention.

Item 9: Staff Updates/Project Status Report

Secretary Barros said that with BZA concurrence, future agenda packets would be mailed to Members rather than hand-delivered. Packets would be mailed on Fridays, as well as emails with electronic attachments.

Member Daly said it would make sense to shift to electronic delivery only at some point. **Secretary Barros** said that City Council does it that way, but the Community Development Division isn’t in a position yet to provide devices for Planning Commissioners and BZA Members, and it wouldn’t be appropriate to expect everyone to provide their own iPad or laptop.

The next BZA meeting will be on May 1, 2014.

Item 10: Adjourn

<p><i>Motion to adjourn</i></p>

<p><i>Houston/Daly: 6 Aye, 0 No</i></p>

Chair Mendieta adjourned the meeting at 8:07 p.m.

Respectfully submitted,

Sally Barros, Secretary

Barbara Templeton, Recording Secretary