



**AGENDA**  
**PLANNING COMMISSION**  
**Regular Meeting**

**7:00 P.M. on Tuesday, February 9, 2016**

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

1. **CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG**
2. **ADMINISTRATIVE**
  - 2.a. Review of agenda items.
  - 2.b. Declaration of Conflict of Interest.
  - 2.c. Chair Dave Bruzzone to report at the City Council meeting of February 16, 2016 (alternate Commissioner Dan Richardson).
3. **PUBLIC COMMENT**
4. **MINUTES**
  - 4.a. Approval of the minutes for the January 26, 2016 Planning Commission meeting.
5. **PUBLIC HEARINGS**
  - 5.a. **ZOA-01-16, Zoning Ordinance Amendment, City of Clayton.** Review and consideration of a City-initiated Ordinance amending the Clayton Municipal Code Title 17, prohibiting cannabis testing laboratories and delivery of cannabis. This ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment.

**Staff Recommendation:** Staff recommends that the Planning Commission consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, adopt Resolution 01-16, recommending City Council approval of an Ordinance banning cannabis delivery services and cannabis testing facilities or provide direction regarding the preparation of the Ordinance regulating cannabis delivery and testing laboratories regulations.

- 5.b. **UP-01-16, Use Permit, Sylvia Philis, 6064 Main Street (APN: 119-014-007).** Review and consideration of a Use Permit for massage therapy services (“Simple Health Massage and Wellness”) at the existing Frontier Beauty Salon in Clayton’s Town Center. Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301 – Existing Facilities, the project is categorically exempt from CEQA.

**Staff Recommendation:** Staff recommends that the Planning Commission receive and consider the staff report and all information provided and submitted to date, receive and consider any public testimony and, if determined to be appropriate, conditionally approve Use Permit UP-01-16.

**6. OLD BUSINESS**

None.

**7. NEW BUSINESS**

None.

**8. COMMUNICATIONS**

- 8.a. Staff.  
8.b. Commission.

**9. ADJOURNMENT**

- 9.a. The next regularly-scheduled meeting of the Planning Commission will be held on **Tuesday, February 23, 2016.**

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, January 26, 2016**

**1. CALL TO ORDER, ROLL CALL, PLEDGE TO THE FLAG**

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

Present:           Chair David Bruzzone  
                      Vice Chair Sandra Johnson  
                      Commissioner Dan Richardson  
                      Commissioner Gregg Manning  
                      Commissioner Tuija Catalano

Absent:           None

Staff:             Community Development Director Mindy Gentry  
                      Assistant Planner Milan Sikela, Jr.

**2. ADMINISTRATIVE**

2.a.    Review of agenda items.

2.b.    Declaration of Conflict of Interest.

Commissioner Manning indicated he would recuse himself from the meeting chambers during Item 5.a due to a conflict of interest.

2.c.    Commissioner Tuija Catalano to report at the City Council meeting of February 2, 2016.

**3. PUBLIC COMMENT**

None

**4. MINUTES**

4.a.    Approval of the minutes for the December 8, 2015 Planning Commission meeting.

**Commissioner Manning moved and Vice Chair Johnson seconded a motion to approve the minutes, as amended. The motion passed 4-0-1 (Commissioner Catalano abstained as she did not attend the December 8, 2015 Planning Commission meeting).**

## 5. PUBLIC HEARINGS

- 5.a. **CDD-02-16, SPR-01-16, Second Dwelling Unit Permit, Site Plan Review Permit, Vicki Sexton**, 1133 Easley Drive (APN: 119-542-013). Review and consideration of a Second Dwelling Unit Permit and Site Plan Review Permit to allow the construction of an 882-square-foot second-story attached second dwelling unit addition along with a 308-square-foot first-story gym addition and associated remodel work measuring a total of 1,190 square feet in area and 24 feet in height. Pursuant to California Environmental Quality Act (CEQA) Guideline 15303 – New Construction or Conversion of Small Structures, the project is categorically exempt from CEQA.

Commissioner Manning recused himself from the item and left the meeting chambers due to a conflict-of-interest.

Assistant Planner Sikela presented the staff report.

Commissioner Catalano inquired about the rationale behind the deed restriction that requires the property owner to live in the second dwelling unit, principal dwelling unit, or on the residential lot sharing side property lines as the subject property.

Assistant Planner Sikela responded that the reason this requirement was established was to ensure that the property owner would be able to keep an eye on the second dwelling unit in order to mitigate impacts caused by unruly tenants.

Chair Bruzzone asked if the 24-foot height proposed for the project was consistent with the height of other two-story residences in the surrounding neighborhood.

Assistant Planner indicated he observed that existing two-story residences in the neighborhood were comparable in height to the proposed project.

The public hearing was opened.

Max King, 607 Pinot Court, indicated that he had concerns the second-story second dwelling unit would impact the privacy of residential properties located on Pinot Court.

Assistant Planner Sikela indicated that he had conducted a site inspection and observed many two-story residences located in the same neighborhood (Easley Estates) as the subject property.

Joyce Kelly, 620 Pinot Court, indicated the following concerns:

- Approval of this project will set a precedent for two-story additions on other single-story residences in the neighborhood.
- The Monterey Pine which provides the most screening for the project is aging and will be removed someday.

Karen Shackleton, 615 Pinot Court, indicated the following:

- Request that the Planning Commission delay their decision until her husband can review the project.
- The sightlines affected by the project should be analyzed.
- Hope the Monterey Pine is there for a long time in order that screening is provided for the project in an ongoing fashion.

Commissioner Richardson asked Mrs. Shackleton what part of the subject residence can she currently see from her property.

Mrs. Shackleton responded that she can see the subject residence's roofline and roof-mounted solar panels.

Commissioner Richardson asked Mrs. Shackleton if her home was a single-story or two-story residence.

Mrs. Shackleton responded that her home is a two-story residence.

John Campbell, project architect, indicated the following:

- The reason Mrs. Shackleton can see the applicant's residence is because her residence is two stories.
- The project was designed so that the second dwelling unit would have minimal impacts to neighboring properties' privacy and visibility.

Vicki Sexton, the applicant, indicated the following:

- She gets up on her roof often and, from that height, she cannot see into the residences on neighboring properties.
- Sufficient landscaping exists on her property to screen the project.
- She wants to be a good neighbor and would be willing to have concerned neighbors come to her property, take a look at the property in order to address privacy and screening issues, and feel comfortable with the project.

There being no further public comment, the public hearing was closed.

Commissioner Catalano inquired about the distance from the rear edge of the second-story balcony to the rear property line.

Assistant Planner Sikela indicated that the existing subject residence is approximately 42 feet from the rear property line. The second-story balcony is proposed to be further away—approximately 45 to 47 feet—from the rear property line.

Commissioner Catalano asked if all the residences located in Easley Estates are subject to the same height and rear-yard setback regulations as the subject residence.

Assistant Planner Sikela responded that, yes, all residences are subject to the same 35-foot height limit and 15-foot rear-yard setback.

Commissioner Richardson indicated that, during a site inspection, he noticed that the sidewalk near the front left corner of the subject property was damaged by an existing tree on the applicant's lot and asked staff if the Planning Commission could include a condition of approval requiring the applicant to repair the sidewalk.

Assistant Planner Sikela indicated that a condition of approval could be added requiring the applicant to repair the sidewalk.

Vice Chair Johnson requested clarification regarding access to the exterior doorway for the second dwelling unit.

The applicant responded that there is a gate on the existing fence located to the left of the garage that she would use to gain access to the exterior doorway for the second dwelling unit.

Commissioner Richardson indicated the following:

- Given the increase in second-story windows proposed as part of the project, he understands the concerns over the existing on-site trees continuing to provide adequate screening since Monterey Pines are not native to this area and are subject to drought conditions and beetle infestations.
- He also understands the need for second dwelling units as people age and want to stay in their home and near their family.

Commissioner Catalano indicated the following:

- The City encourages the development of Code-compliant second dwelling units.
- The subject property is located in a zoning district that allows residential heights up to 35 feet, which is greater than the 24-foot height proposed for the project.
- The attached second dwelling unit has been appropriately located on the site, especially given the large lot sizes and greater distance of the addition from the rear property line.
- Whenever projects are approved by the Planning Commission, a precedent is not set as projects are considered on a case-by-case basis.

Vice Chair Johnson indicated that the standards were established because second dwelling units enable families to stay together and allow for increases in the number of residential units within the community.

Chair Bruzzone asked, since it appears that residences on the same side of Easley Drive as the subject residence are all single-story, are there conditions of approval established during approval of the Easley Estates subdivision that may have precluded the construction of two-story residences on the same side of the street as the subject residence.

Assistant Planner Sikela responded that staff would research the Easley Estates conditions of approval to see if there were restrictions on two-story residences or on single-story residence adding a second floor and then report back to the Planning Commission on this issue.

Chair Bruzzone indicated that he concurred with Vice Chair Johnson's comment regarding the impetus behind establishing second dwelling unit standards.

**Commissioner Richardson moved and Commissioner Catalano seconded a motion to approve Second Dwelling Unit Permit CDD-02-16 and Site Plan Review Permit SPR-01-15, with the findings of approval and conditions of approval recommended by staff, and with a condition of approval added addressing sidewalk repair in front of the subject residence. The motion passed 4-0.**

Commissioner Gregg Manning returned to the meeting chambers.

- 5.b. **ZOA-01-16, Zoning Ordinance Amendment, City of Clayton.** Review and consideration of a City-initiated Ordinance amending the Clayton Municipal Code Title 17, prohibiting cannabis testing laboratories and delivery of cannabis. This ordinance is not subject to California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) it can be seen with certainty that this activity will not have a significant effect or physical change to the environment.

Director Gentry recommended continuance of the item to the next regularly-scheduled Planning Commission meeting on February 9, 2016.

**Commissioner Catalano moved and Vice Chair Johnson seconded a motion to continue the item to the next regularly-scheduled Planning Commission meeting on February 9, 2016. The motion passed 5-0.**

**6. OLD BUSINESS**

None.

**7. NEW BUSINESS**

None.

**8. COMMUNICATIONS**

8.a. Staff – None.

8.b. Commission – None.

**9. ADJOURNMENT**

- 9.a. The meeting was adjourned at 7:50 p.m. to the regularly-scheduled meeting of the Planning Commission on February 9, 2016.

---

Submitted by  
Mindy Gentry  
Community Development Director


---

Approved by  
David Bruzzone  
Chair

# PLANNING COMMISSION STAFF REPORT

**Meeting Date:** February 9, 2016

**Item Number:** 5.a

**From:** Mindy Gentry   
Community Development Director

**Subject:** Ordinance Regulating Cannabis Delivery and Testing Labs (ZOA-01-16)

**Applicant:** City of Clayton

---

## REQUEST

The City of Clayton is requesting a public hearing to consider a City-initiated Ordinance amending the City of Clayton Municipal Code in order to ban cannabis delivery services and cannabis testing facilities or to provide direction to staff on this subject (ZOA-01-16).

## PROJECT INFORMATION

**Location:** Citywide

**Environmental:** This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

**Public Notice:** On January 15, 2016, a public hearing notice was published in the Contra Costa Times and a public hearing notice was posted at designated locations in the City.

## BACKGROUND

The City's Municipal Code currently bans medical marijuana dispensaries, per Clayton Municipal Code ("CMC") 17.36.080. CMC Section 17.04.138 defines a medical marijuana dispensary to mean "a facility or location where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5." The City also prohibits the outdoor cultivation of medical marijuana and prohibits some indoor cultivation of medical marijuana. CMC Section 17.36.080(d) currently allows medical marijuana to be cultivated indoors "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." However, the current regulations are arguably not sufficient to apply to mobile medical marijuana delivery services and testing labs. As a result, and consistent with past City Council policy action and direction on this subject, Staff recommends the Planning Commission recommend to the City Council banning medical cannabis delivery services and testing laboratories or provide direction to staff on how and whether to regulate such.



The California Legislature recently adopted legislation identified as the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643)(MMRSA) to comprehensively regulate medical marijuana (medical cannabis). The MMRSA recognizes and preserves local control to regulate or ban medical cannabis cultivation, transportation, and distribution. The MMRSA confirms and clarifies that, in addition to the complete land use control over retail dispensaries recognized in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, municipalities have the power to regulate or ban the cultivation and distribution of medical marijuana (*Maral v. City of Live Oak* (2013) 221 Cal.App.4th 975).

Although the MMRSA allows municipalities to regulate or ban cultivation, manufacturing, transportation, and distribution of medical cannabis within their jurisdictions, it requires some local enabling legislation to accomplish certain aspects of this. If a city chooses to regulate these activities comprehensively, it must adopt an overlay of local regulatory standards that are at least as strict as the State's default regulations.

### **DISCUSSION**

The transportation and distribution of marijuana can create problems relating to public health and safety, crime, water and air quality, and energy consumption. Marijuana uses can create nuisance activity such as loitering and criminal activity in business and residential districts. Specifically, mobile delivery can create issues relating to responsibility and resources to monitor and enforce state law, questions of patient qualification, and risks relating to the high use of large sums of cash for mobile transactions.

Staff recommends the Planning Commission recommend to the City Council approval of the ordinance to ban marijuana transportation. Mobile delivery of products consistently creates issues for cities because of the inherent transitory nature of the activity. A quick search of weedmaps.com identifies at least ten cannabis delivery services that currently offer service in Clayton. These mobile delivery services are often attempts to avoid the effects of local dispensary bans. State law, which permits mobile dispensaries, will regulate the delivery of medical marijuana unless delivery is explicitly prohibited by local ordinance. There is no time limit for a city to adopt a local ordinance. In light of the foregoing, the City has the option to ban or regulate mobile delivery. Regulations could include hours of operation, amount of money or marijuana that can be carried at one time, and time spent at one location.

Staff recommends the Planning Commission recommend to the City Council approval of the ordinance to ban marijuana testing laboratories. Marijuana testing laboratories pose many of the same risks as dispensaries, delivery services, or cultivation, including strong odors, loitering, illegal sales, distribution of marijuana, trespassing, theft, violent crime such as robberies or attempted robberies, fire hazards, and problems associated with mold, fungus, and pests. Allowing testing laboratories in the City introduces many of the risks the City has hoped to avoid through its longstanding regulation of marijuana dispensaries and cultivation.

### **RECOMMENDATION**

Staff recommends that the Planning Commission consider all information provided and submitted, and take and consider all public testimony and, if determined to be appropriate, adopt Resolution 01-16, recommending City Council approval of an Ordinance banning cannabis delivery services and cannabis testing facilities (**Attachment A**) or provide direction regarding the preparation of the Ordinance regulating cannabis delivery and testing laboratories regulations.

### **ATTACHMENTS**

- A. Planning Commission Resolution 01-16, with attachment:
  - Exhibit A – Draft Ordinance Prohibiting Medical Cannabis Delivery and Testing Laboratories

# Attachment A

CITY OF CLAYTON  
PLANNING COMMISSION  
RESOLUTION NO. 01-16

---

**RECOMMENDING CITY COUNCIL APPROVAL OF AN ORDINANCE AMENDING MUNICIPAL CODE  
TITLE 17, PROHIBITING MEDICAL CANNABIS DELIVERY SERVICES AND CANNABIS TESTING  
LABORATORIES (ZOA-01-16)**

**WHEREAS**, this Ordinance will amend Title 17 of the Clayton Municipal Code, prohibiting medical cannabis delivery services and cannabis testing laboratories; and

**WHEREAS**, cannabis delivery and cannabis testing laboratories pose risks to the public health, safety, and welfare that must be mitigated by banning these uses within the City; and

**WHEREAS**, the Planning Commission has determined that, pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15060(c)(3), because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3 and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment; and

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

**WHEREAS**, on February 9, 2016, the Clayton Planning Commission held a duly-noticed public hearing on the matter, and received and considered testimony, both oral and documentary and recommended approval to the City Council of the proposed Ordinance to prohibit medical cannabis delivery services and cannabis testing laboratories; and

**WHEREAS**, the Planning Commission has determined that the proposed amendments to the Clayton Municipal Code do not conflict with and are in general conformance with the City of Clayton General Plan.

**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 of the proposed Ordinance to amend the Clayton Municipal Code prohibiting medical cannabis delivery services and cannabis testing laboratories, attached hereto as Exhibit A and incorporated herein by this reference.

**PASSED AND ADOPTED** by the Planning Commission of the City of Clayton at a regular meeting on the 9<sup>th</sup> day of February, 2016.

Planning Commission  
Resolution No. 01-16

APPROVED:

ATTEST:

---

David Bruzzone  
Chair

---

Mindy Gentry  
Community Development Director

**ATTACHMENTS**

Exhibit A – Draft Ordinance Prohibiting Medical Cannabis Delivery Services and Cannabis Testing Laboratories

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING CLAYTON MUNICIPAL CODE  
TITLE 17, PROHIBITING MEDICAL CANNABIS DELIVERY AND CANNABIS  
TESTING LABORATORIES**

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

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

WHEREAS, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program ("MMP"), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the Penal Code; and

WHEREAS, neither the Compassionate Use Act ("CUA") nor the MMP require nor impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and

WHEREAS, in May 2013, the California Supreme Court issued its decision in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban outright medical marijuana land uses; and

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, on October 9, 2015, Governor Jerry Brown signed the "Medical Marijuana Regulation and Safety Act" ("Act") into law; and

WHEREAS, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder; and

WHEREAS, the Act contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the Act, unless local governments have "land use regulations or ordinances regulating or prohibiting the cultivation of marijuana..." (Health and Safety Code §11362.777(c)(4); and

WHEREAS, several California cities have reported negative impacts of marijuana cultivation, processing, and distribution uses, including offensive odors, illegal sales, and distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, the adverse effects of other marijuana uses also apply to the presence of cannabis testing laboratories, which also present the possibility of offensive odors, illegal sales, distribution of marijuana, trespassing, theft, violent robberies and robbery attempts, fire hazards, and problems associated with mold, fungus, and pests; and

WHEREAS, cannabis delivery and cannabis testing laboratories pose risks to the public health, safety, and welfare that must be mitigated by banning these uses within the City; and

WHEREAS, based on the findings above, the potential establishment of delivery of cannabis and cannabis testing facility uses in the City without regulation poses a current and immediate threat to the public health, safety and welfare in the City due to the negative land use and other impacts of such uses as described above; and

WHEREAS, the issuance or approval of business licenses, subdivisions, use permits, variances, building permits, or any other applicable entitlement for delivery of cannabis and cannabis testing facilities will result in the aforementioned threat to public health, safety, or welfare; 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 ORDAIN AS FOLLOWS:**

**Section 1. Incorporation of Recitals.**

The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

**Section 2. Amendment to Clayton Municipal Code Section 17.04.138.** Clayton Municipal Code Section 17.04.138 is hereby amended to read in its entirety as follows:

Medical cannabis uses.

For purposes of this code, the following definitions shall apply.

A. “Cannabis” means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from marijuana. “Cannabis” also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972.

B. “Cannabis dispensary” means a facility where cannabis, cannabis products, or devices for the use of cannabis or cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers cannabis and cannabis products as part of a retail sale.

C. “Cannabis manufacturer” means a person that conducts the production, preparation, propagation, or compounding of manufactured cannabis, or cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or cannabis products or labels or relabels its container.

D. “Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

E. “Delivery” means the commercial or noncommercial transfer of cannabis or cannabis products.

F. “Testing laboratory” means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state; and

(2) Registered with the State Department of Public Health.

**Section 5. Amendment to Clayton Municipal Code Section 17.36.080.** Clayton Municipal Code Section 17.36.080 is hereby amended to read in its entirety 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 cannabis dispensaries, as defined in Section 17.04.138;
- (c) Cultivation or production of medical cannabis, as defined in Section 17.04.138;
- (d) Cannabis manufacturers, and delivery of cannabis, as defined in Section 17.04.138;
- (e) Cannabis testing laboratories, as defined in Section 17.04.138, or other facilities that store or maintain marijuana as part of their operations, whether commercial or non-commercial; and

(f) 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.**

The City Council finds that this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

**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 public meeting of the City Council of the City of Clayton held on \_\_\_\_\_, 2016.

Passed, adopted, and ordered posted by the City Council of the City of Clayton at a regular meeting thereof held on \_\_\_\_\_, 2016, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

THE CITY COUNCIL OF CLAYTON, CA

\_\_\_\_\_  
Howard Geller, Mayor

ATTEST

\_\_\_\_\_  
Janet Brown, City Clerk

APPROVED AS TO FORM

APPROVED BY 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 \_\_\_\_\_, 2016, was duly adopted, passed, and ordered posted at a regular meeting of the City Council held on \_\_\_\_\_, 2016.

\_\_\_\_\_  
Janet Brown, City Clerk


A7



**PLANNING COMMISSION  
STAFF REPORT**

**Meeting Date:** February 9, 2016

**Item Number:** 5.b.

**From:** Milan J. Sikela, Jr.   
Assistant Planner

**Subject:** Public Hearing to consider a Use Permit request for massage therapy services at an existing business in Clayton's Town Center (UP-01-16)

**Applicant:** Sylvia Nuzzo Philis

---

**REQUEST**

Sylvia Nuzzo Philis is requesting a public hearing for the consideration of a Use Permit for massage therapy services at the existing Frontier Beauty Salon in Clayton's Town Center.

**PROJECT INFORMATION**

**Location:** 6064 Main Street  
APN: 119-014-007

**General Plan Designation:** Town Center Commercial.

**Specific Plan Designation:** Town Center Specific Plan — Town Center Commercial.

**Zoning:** Limited Commercial (LC).

**Environmental Review:** Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15301 – Existing Facilities, the project is categorically exempt from CEQA. This section of CEQA exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination.

**Public Notice:** On January 29, 2016, a public hearing notice was posted at the notice boards and mailed to property owners within 300 feet of the project site.

Authority: Section 17.60.030.C.8 of the Clayton Municipal Code (CMC) authorizes the Planning Commission to approve a use permit for an establishment providing massages in accordance with the standards in Section 17.60.040 of the CMC.

### **DISCUSSION**

The applicant, Sylvia Nuzzo Philis, is requesting a public hearing for the consideration of a Use Permit for massage therapy services (“Simple Health Massage and Wellness”) at the existing Frontier Beauty Salon located at 6064 Main Street in Clayton’s Town Center (see **Attachment A** for the Vicinity Map and **Attachment B** for an enlarged image of the subject property). The proposed massage business would occupy a 105-square-foot interior space within the Frontier Beauty Salon building operating alongside the other existing personal services consisting of hair styling, nail care, and skin care (see **Attachment C** for the Frontier Beauty Salon floor plan).

According to Section 17.60.030.C.8 of the Clayton Municipal Code and the Town Center Specific Plan land use guidelines, massage services, when not part of a recognized medical office or clinic, are allowed with approval of a use permit. **Attachment D** is a narrative provided by the applicant describing the parameters of the proposed massage therapy services. A maximum of one client will receive massage therapy services at one time for an anticipated total of six clients per day. Days and hours of operation are proposed to be Monday through Friday from 9:30 a.m. to 8:30 p.m. and Saturday and Sunday from 10:00 a.m. to 7:00 p.m. The applicant’s massage therapy certificate issued by the California Massage Therapy Council (CAMTC) has been provided as **Attachment E**. The CAMTC was created to implement a Statewide certification process with clear standards of preparation and education, including, but not limited to, a certified massage therapist receiving a minimum of 500 hours of education from approved schools and having passed the CAMTC exam. The applicant has met the State requirements in order to be a certified massage therapist.

Staff analyzed impacts to off-street parking based on the off-street parking space requirements listed in the schedule provided in Section 17.37.030.A of the Clayton Municipal Code. Currently, two buildings exist on the 18,500-square-foot property for a total building area of 2,494 square feet. The Frontier Beauty Salon building is 1,356 square feet in area and the uses conducted are classified as “personal services” in our parking requirements. The other 1,138-square-foot building is occupied by TLC Pet Grooming which is classified as “animal services” in our parking requirements. Personal services are required to provide one space for every 250 square feet and animal services are required to provide one space for every 400 feet. Based on these regulations, Frontier Beauty Salon should provide five off-street parking spaces and TLC Pet Grooming should provide three off-street parking spaces, for a total minimum of eight off-street parking spaces for the entire lot. Fourteen off-street parking spaces, including one accessible parking space, exist on the subject property, which is well above the eight minimum off-street parking spaces required for the proposed massage therapy business and existing uses on the site.

As part of the massage therapy services, the applicant has indicated that new signage is being proposed. Staff has provided a condition of approval that any project-related signage shall require review and approval by the City in accordance with Clayton Municipal Code sign provisions, which includes the submittal of architectural renderings that show compliance with these sign provisions as well as with Town Center Specific Plan sign criteria.

The Chief of Police has reviewed the proposal. Based on the description of the proposal provided by the applicant and the recommended conditions of approval, all concerns were addressed.

### **CONCLUSION**

Staff has reviewed the proposal relative to the Use Permit standards of review in the Clayton Municipal Code as well as the Town Center Specific Plan guidelines and has determined that the proposal, as conditioned, is in conformance with the Clayton Municipal Code and Town Center Specific Plan. The proposed findings of approval listed below specifically address the Use Permit standards.

### **RECOMMENDATION**

Staff recommends that the Planning Commission receive and consider the staff report and all information provided and submitted to date, receive and consider any public testimony and, if determined to be appropriate, conditionally approve Use Permit UP-01-16 for massage therapy services (“Simple Health Massage and Wellness”) at the existing Frontier Beauty Salon located at 6064 Main Street in Clayton’s Town Center.

### **PROPOSED FINDINGS OF APPROVAL**

Based upon the evidence set forth in the staff report, which includes relevant information from the project application, as well as testimony at the public hearing, the Planning Commission makes the following findings that Use Permit UP-01-16, as conditioned:

1. Is in conformity the General Plan and any applicable Specific Plan.

The project is in conformity with the General Plan objectives, policies, and land use designation since the project is located within the Town Center Commercial land use designation and the General Plan states that uses allowed within this designation shall be consistent with the Town Center Specific Plan.

This project is in conformity with the Town Center Specific Plan goals, policies, and land use designations since massage therapy is an allowed use within the Town Center Specific Plan’s Town Center Commercial land use designation with review and approval of a use permit by the Planning Commission. The Town Center Specific Plan aims to have an appropriate balance and mixture of uses and the proposed use or size will not interfere with or overwhelm the pedestrian and retail orientation of the district.

2. Is in conformity with City-adopted standards.

The project is in conformity with the City-adopted standards in the Zoning Ordinance as related to Use Permit standards of review by:

- a. Providing sufficient off-street parking for vehicles and bicycles as well as safe and effective access for vehicles, pedestrians, and bicycles.
  - b. Not generating significant traffic congestion since the massage therapy business entails only one masseuse (the applicant) and one client at any one time, for a total increase of two additional people.
  - c. Being compatible with the Town Center Commercial land use designation by attracting and enhancing pedestrian activity, not occupying a tenant space visible from the street that would be better suited to a permitted use, complementing the intensity of existing use-permitted tenants, and not involving the relocation of an existing business in the Town Center.
  - d. Not generating intermittent or constant noise levels violating the General Plan Noise Element.
  - e. Not generating significant levels of toxic or non-toxic dust, airborne particulate, fumes, or smells.
  - f. Not generating exterior lighting or significant litter.
  - g. Not resulting in crime or negative influences on minors.
  - h. Not representing a concentration of an activity that would be a detriment to the health, safety, and welfare of nearby residents, businesses, property owners, or employees.
3. Shall not negatively affect the general safety (e.g., seismic, landslide, flooding, fire, traffic) of the City or surrounding area.

The project entails a massage business occupying an existing tenant space within an existing building which will not affect the general safety as it pertains to seismic activity, traffic impacts, landslides, flooding, or fires.

4. Shall not have significant negative impacts on the health or general welfare of residents, businesses, property owners, or employees in the City.

The project entails a massage business occupying an existing tenant space within an existing building which will not have significant negative impacts on the health or general welfare of residents, businesses, property owners, or employees in the City.

5. The permit will be in accord with the purpose of Use Permits as stated in Section 17.60.020 of the Clayton Municipal Code.

By implementing the objectives, goals, and policies of the General Plan and Town Center Specific Plan; not being detrimental to the health, safety, and welfare of residents, businesses, property owners, and employees in the City; and being conditioned to promote compatibility with adjacent uses that are permitted-by-right, the project complies with the purpose of Use Permits as stated in Section 17.60.020 of the Clayton Municipal Code.

The above-stated findings assume acceptance and approval of the proposed conditions of approval listed below.

#### **PROPOSED CONDITIONS OF APPROVAL**

These conditions of approval apply to the Sylvia Nuzzo Philis Use Permit (UP-01-16) for massage therapy services to be conducted out of an existing business, Frontier Beauty Salon, at 6064 Main Street (APN: 119-014-007) in Clayton's Town Center.

1. The applicant shall indemnify, protect, defend, and hold harmless the City and its elected and appointed officials, officers, employees, and agents from and against any and all liabilities, claims, actions, causes, proceedings, suits, damages, judgments, liens, levies, costs, and expenses of whatever nature, including, but not limited to, attorney's fees, costs, and disbursements arising out of or in any way relating to the issuance of this entitlement, any actions taken by the City relating to this entitlement, and any environmental review conducted under the California Environmental Quality Act for this entitlement and related actions.
2. The days and hours of operation shall be as follows:
  - a. Monday through Friday from 9:30 a.m. to 8:30 p.m.; and
  - b. Saturday and Sunday 10:00 a.m. to 7:00 p.m.
3. A maximum of one (1) client at a time is allowed to receive massage therapy services.
4. Any project-related signage shall require review and approval by the City in accordance with Town Center Specific Plan sign guidelines and Clayton Municipal Code sign provisions.
5. Any changes to the massage therapy use shall require Planning Commission review and approval.
6. No permits or approvals, whether discretionary or mandatory, shall be considered if the applicant is not current on fees, reimbursement payments, and any other payments that are due.

### **ADVISORY NOTES**

Advisory notes are provided to inform the applicant of: (a) Clayton Municipal Code requirements; and (b) requirements imposed by other agencies. The advisory notes state requirements that may be in addition to the conditions of approval.

1. The applicant shall comply with all applicable State, County, and City codes, regulations and adopted standards including, but not limited to, Contra Costa County Environmental Health requirements, as well as pay all associated fees and charges.
2. This Use Permit shall be used, exercised, or established within twelve months after the granting of the Permit, or a time extension must be obtained from the Planning Commission, otherwise the Permit shall be null and void (Clayton Municipal Code Sections 17.64.010-17.64.030).
3. All construction and other work shall occur only between 7:00 a.m. and 5:00 p.m. Monday through Friday. Any such work beyond these hours and days is strictly prohibited unless specifically authorized in writing by the City Engineer (Clayton Municipal Code Section 15.01.101) located at 5375 Clayton Road, Concord, 925-363-7433.
4. The applicant shall obtain the necessary building permits from the Contra Costa County Building Inspection Department. All construction shall conform to the California Building Code.
5. Additional requirements may be imposed by the Contra Costa County Fire Protection District. Before proceeding with the project, it is advisable to check with the Fire District located at 2010 Geary Road, Pleasant Hill, 925-930-5500.

### **ATTACHMENTS**

- A. Vicinity Map
- B. Google Maps image of subject property, provided by staff on February 5, 2016
- C. Frontier Beauty Salon Floor Plan, provided by the applicant, date stamped January 20, 2016
- D. Use Permit Description, provided by the applicant, date stamped January 20, 2016
- E. California Massage Therapy Council Certified Massage Therapist Certificate, provided by the applicant, date stamped January 20, 2016
- F. Site Photos, provided by the applicant, date stamped January 20, 2016



**VICINITY MAP**

	<p><b>Sylvia Nuzzo Philis Massage Therapy Frontier Beauty Salon Use Permit UP-01-16 6064 Main Street APN: 119-014-007</b></p>	 <p><b>(Not to Scale)</b></p>
---	---	--

**ATTACHMENT A**

Google Maps 6064 Main St

**PROTECT SITE**



**ATTACHMENT B**

**FRONTIER BEAUTY SALON**

Imagery ©2016 Google, Map data ©2016 Google 20 ft



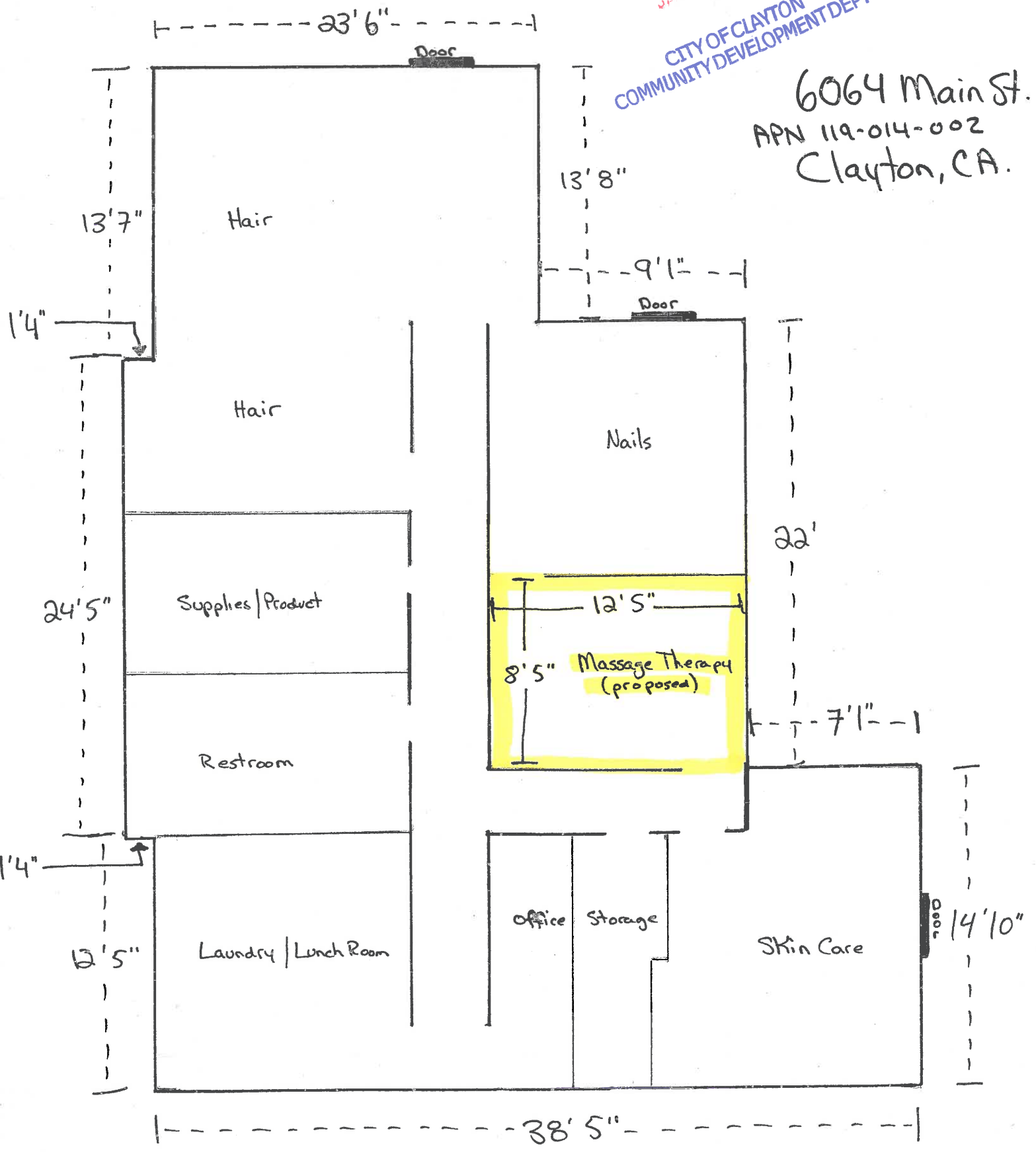
Main Street

RECEIVED  
JAN 20 2016

W  $\frac{N}{S}$  E

CITY OF CLAYTON  
COMMUNITY DEVELOPMENT DEPT

6064 Main St.  
APN 119-014-002  
Clayton, CA.



Center Street

ATTACHMENT C

RECEIVED

JAN 20 2016

CITY OF CLAYTON  
COMMUNITY DEVELOPMENT DEPT

## Use Permit Application

Narratives and responses.

### #3 Project Description

Simple Health Massage and Wellness proposes to lease a room of approximately 105 sq.ft. within the existing long-time Clayton business of The Frontier Beauty Salon. The Frontier salon currently provides services that align with the nature of the beauty industry to include hair styling, nail care, and skin care. Providing massage therapy and wellness services within the umbrella business of The Frontier Beauty Salon will create a full-service salon environment for existing customers to benefit from as well as generating new customers to Simple Health and, in turn, increasing commerce to the Town Center of Clayton. This historical building at 6064 Main Street is owned by Bloching family descendant, Barbara M. Carney and the long-standing business at the location (The Frontier Beauty Salon) is under the new ownership of Shelley E. Baker. Both Ms. Carney and Ms. Baker are in support of enhancing the business with my professional massage therapy business.

Simple Health Massage and Wellness will be the newly formed business of Sylvia Nuzzo Philis who is a State Certified massage therapist (#7732 - copy of certificate provided). She has been a qualified massage therapist since 1992 and has worked in world-class day spas as well as proprietorship of Mind/Body Conservation Massage Therapy Services from 1992 – 2001 in her native country of Canada prior to relocating to the Bay Area.

### Proposed Signs:

Proposed signage will be in alignment with already existing signage to include: a small signboard hanging from the building nearby to the area of the building where my room will exist, a small signboard hanging from each of the existing front and rear posts. Size details are reliant on what is agreeable with the lessor, and has aesthetic continuity within the existing signage.

### Statement of Operation:

- 1) Type of Activity  
Professional Massage Therapy modalities and spa wellness services
- 2) Days/Hours of Operation  
By appt: days and hours may vary within Mon – Fri 9:30am-8:30pm, Sat/Sun 10am-7pm
- 3) One practitioner in the room with one client per appointment.  
Maximum full occupancy would be between 4-6 clients per day.

# CALIFORNIA MASSAGE THERAPY COUNCIL

By authority of the State of California Code B&P Section 4600,  
the California Massage Therapy Council hereby awards to

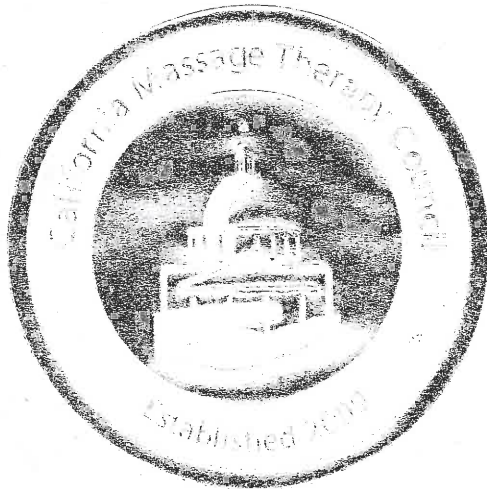
## Sylvia Nuzzo Philis

the designation of

### CERTIFIED MASSAGE THERAPIST

Let it be known by all that, having met the standards set forth by the California Massage Therapy Council and having demonstrated knowledge of applicable disciplines related to the practice of massage therapy, Sylvia Nuzzo Philis is recognized as a CMT in good standing, including all the rights and privileges pertaining thereto, as witnessed by the signature below.

Given at Sacramento, California, Tuesday, February 10, 2015.



The validity and authenticity of this certificate may be verified online  
by entering the name and certificate number at: [www.camtc.org](http://www.camtc.org)

Mark Dixon, Chairman of the Board  
California Massage Therapy Council  
CAMTC, One Capitol Mall, Suite 320, Sacramento, CA 95814

CERTIFICATE # 7732  
EXPIRES: 3/25/2016  
CERTIFIED SINCE: 3/25/2010

RECEIVED

JAN 20 2016

CITY OF CLAYTON  
COMMUNITY DEVELOPMENT DEPT

ATTACHMENT E

# ATTACHMENT F

**RECEIVED**

JAN 20 2016

CITY OF CLAYTON  
COMMUNITY DEVELOPMENT DEPT







