

YUBA CITY PLANNING COMMISSION
MINUTES

Regular Meeting
March 24, 2010
City Hall Council Chambers

The meeting was called to order by Vice Chairman Didbal at 7:00 p.m. Members present were as follows:

PRESENT

Commissioner John Sanbrook
Commissioner Preet Didbal

Commissioner George Parker
Commissioner John Hager II

ABSENT

Chairman Craig Starkey (excused)

Commissioner Satwant Takhar (excused)
Jose Flores (unexcused)

Also present were Aaron Busch, Community Development Director, and Roberta Kyle, Recording Secretary.

The Pledge of Allegiance was led by Arianna Didbal.

There were no meeting minutes to approve at this meeting. The minutes for the March 10, 2010 meeting will be presented at the April 28, 2010 meeting.

Appearance of Interested Citizens: - None

Correspondence: - None

Commission Consideration:

- ZONING CODE AMENDMENT ZC 09-02: AMEND SECTION 4-9.816 UNLAWFUL PARKING PEDDLERS AND VENDORS; ADD SECTION 8-5.53 SPECIAL PROVISIONS FOR MOBILE AND OPEN AIR VENDING OPERATIONS TO THE YUBA CITY MUNICIPAL CODE; APPLICANT: CITY OF YUBA CITY.**

Aaron Busch, Community Development Director, presented a staff report. Mr. Busch stated that even though this is not a public hearing, the public will be allowed to speak on the matter.

Commissioner Sanbrook asked if the proprietor can have a table, chair or umbrella.

Mr. Busch the intent is to address the concerns that were brought up by the vendors to address the codes for mobile vending regarding covering the food so that it is safe and said they cannot have several tables and chairs or easy-ups for customers.

Commissioner Sanbrook said that no place in ordinance does it say they need a permit of any kind.

Mr. Busch said this is the same wording that went before the Planning Commission previously and everyone type of vendor has to have a permit.

Commissioner Sanbrook said that in no place in the ordinance does it say that a merchant needs to get any kind of clearance from the City or is subject to the permit process.

Mr. Busch stated that in the definition G. Mobile Vendors, it makes reference to all of those concerns.

Commissioner Sanbrook said it is confusing because of all the different definitions of different types of vendors such as peddler, solicitor, traveling merchant, etc.

Mr. Busch stated solicitors are different and do not need a permit since the definition is different than a food or product vendor.

Commissioner Sanbrook said as long as staff is satisfied that the ordinance covers that.

Mr. Busch said this subject was reviewed by the City Attorney's office at length and believes everything is good in that respect.

Commissioner Sanbrook asked if the three grandfathered vendors are site specific.

Mr. Busch stated they are.

Commissioner Sanbrook asked if the three grandfathered operations were the only ones that would have to sign an agreement.

Mr. Busch said as it is proposed now, that is correct.

Commissioner Sanbrook stated that the grandfathered operation cannot expand or modify the operation, and said the ordinance does not say what would constitute an expansion or modification of the business and said that could raise a problem.

Mr. Busch stated it potentially could, and said that is something that would be subject to the individual agreements, and that the intent is to ensure there is no expansion of the business that relates to the brick and mortar businesses.

Commissioner Sanbrook stated that in the staff report it talks about not having the ability to transfer non-conforming right, and wanted confirmation that they in fact do not have that right.

Mr. Busch said that is correct.

Commissioner Parker asked for an overview of the AD Hoc Committee.

Mr. Busch said that the AD Hoc Committee consists of two City Council Members, and the stakeholders group is comprised of four brick and mortar business owners, and three vending businesses that participated.

Commissioner Parker asked regarding item 8-5.5330 Parking/Stopping Instruction for the Mobile Vending, how did the removal of that from the ordinance come about.

Mr. Busch said that when the vendors made their presentation before the City Council, there was discussion about the ability to park in front of the schools, and said that in the school codes, there wasn't anything specific about keeping the vendors away from the school, which prompted removal of that section from the ordinance.

Commissioner Parker asked how the school got involved with the development of this ordinance.

Mr. Busch stated he and the vendors spoke with people from the school and when doing comparisons with other jurisdictions, it was a 50/50 split in terms that some had the requirement and some did not and they also checked school codes and checked with the State and found nothing.

Vice Chair Didbal opened the podium for public comment.

Candice Jeffries, 660 Taber Avenue, stated that she felt like she didn't get her point across to the City Council and feels that there is favoritism, and said there are only five active food vendors. Ms. Jeffries stated that the two who haven't complained and are currently active, are not being included, and requested that the Planning Commission not adopt the ordinance. Ms. Jeffries proceeded to read a statement and stated that she just wants to be treated with fairness and respect.

Commissioner Sanbrook asked Ms. Jeffries if it was her position that she should be grandfathered in with the other three vendors.

Ms. Jeffries stated she should at least be given the opportunity to do so.

Commissioner Sanbrook asked Ms. Jeffries how long she has been in business, and what the nature of her business is.

Ms. Jeffries stated she has been in business doing special events for two years and has a mobile coffee/espresso business and has all of her permits.

Commissioner Sanbrook asked what the problem is with parking and stopping section of the ordinance stating that a mobile vendor cannot go within 200 feet of another mobile vendor who has already stopped to do business.

Ms. Jeffries stated she feels the amount of the distance should be less so there is no favoritism, and suggested 175 feet.

Commissioner Sanbrook asked Mr. Busch how the AD Hoc Committee came up with the three vendors that were grandfathered in, and asked if Ms. Jeffries was given the opportunity to participate in the AD Hoc Committee.

Mr. Busch stated that the reason the three businesses were identified, was that they already had existing sites (pre-existing, non-conforming) and understands Ms. Jeffries point but said she does not have an existing site.

Commissioner Sanbrook asked why Ms. Jeffries does not qualify.

Mr. Busch stated that she does not have an existing site, and said that there may be many other businesses like Ms. Jeffries business that are going through the process to prepare to start something to comply with whatever ordinance is in effect at the time, but as it is now, Ms. Jeffries does not have a site, so she was not identified as pre-existing, non-conforming.

Commissioner Sanbrook asked if the 200 foot rule could be relaxed.

Mr. Busch explained the requirement of 200 feet is for mobile businesses, and does not apply to open air vendors.

Commissioner Sanbrook asked what the distinction is between a mobile vendor and an open air vendor.

Mr. Busch explained that if a business is at a spot for more than 30 minutes, they are considered an open air vendor and if less than 30 minutes, they are a mobile vendor.

Ms. Jeffries stated that this is the first she has heard that she could not be considered as one of the other three vendors, and said if she would have known she needed a fixed location, she would have done that, but still feels she is no different than those three vendors.

Mr. Busch said that for clarification purposes, the location needs to be pre-existing, and said those three vendors have been operating for more than 6 months.

Commissioner Parker asked Mr. Busch if for these permits, the vendors would have to go through the use permit processes before the Planning Commission.

Mr. Busch said the use permit process would only be for open air vendors, and a zoning clearance would be for the mobile vendors, and went on to explain that they all will have to have the same requirements such as insurance, state and county permits, city business license and said there will also be enforcement. Mr. Busch said a sticker will be issued that will be fixed to their business and will be proof of having the proper approvals, if they do not have the sticker, it will then be enforced.

Commissioner Parker asked if this might cause potential conflict.

Mr. Busch said there is the potential for that to happen, but said there are plenty of opportunities if everyone can get along.

Margaret Danna, owner of Has Beans, stated said that vendors would set up right in front of her brick and mortar business, and said she disagrees with the grandfathering for the same reasons that Ms. Jeffries has.

Tim McKenna, 668 Plumas Street, President of the Downtown Business Association, asked if only the ordinance and changes are before the Planning Commission tonight or if the grandfathering is also included.

Commissioner Sanbrook said everything is included.

Mr. Busch stated that the proposed ordinance and its changes, which were sent out to all of the stakeholders, includes in the last section which states that the applicability ordinance applies to everyone going forward except for the three pre-existing businesses which will have to require a separate agreement which specifies everything about their pre-existing in a separate agreement, and said the concept of identifying those three exceptions to the ordinance is included in the ordinance.

Mr. McKenna said this has been a very long process that has been going on for almost a year, and that there has been lots of time and effort put into this, and said when the group met last along with the AD Hoc Committee, agreements were reached to provide safety to the public in the products that are provided to them in making sure that the people providing those products are properly licensed and that they have the proper security and insurance required to do business on the street.

Mr. McKenna also stated that this needs to move forward and it is to the point where it is doable and that the final hurdle is to make sure the public can be assured that a mobile vendor has to follow the same rules as everyone else and that they are certified, licensed and that the City knows what they are doing.

Mr. McKenna asked the Planning Commission to pass on the revised ordinance to the City Council as written so it can move forward.

Commissioner Sanbrook asked Mr. McKenna if the AD Hoc Committee considered the grandfather clause that is in the ordinance.

Mr. McKenna said yes, it was and went on to explain that it was a reconciliation to get everyone into a final agreement to get this to pass, and explained that the grandfathering was based on the idea that the rules were not clear in the past and the vendors were operating thinking they were within the rules and found out they were not, and felt it was fair based on the investment and the time they had put in, and said everyone agreed to it.

Commissioner Sanbrook made the statement that if the vendors are grandfathered in, they don't have to follow the ordinance.

Mr. Busch said that is not the case.

Commissioner Sanbrook asked Mr. Busch to clarify.

Mr. Busch stated that the goal was to get as close as possible to making sure the brick and mortar businesses felt comfortable with friendly competition and that vendors were allowed an opportunity to open up and start a business within Yuba City, and said that although it's not 100% and not everyone is satisfied, it's probably as close as it can get.

Commissioner Sanbrook said the issue appears to be whether other vendors should also be grandfathered in and get the same treatment, and also why those three vendors only were identified to be grandfathered in, which is something they will have to take up with the City Council.

Mr. Busch said that was correct.

Vice Chair Didbal asked how much time is being allowed for the three vendors to complete the agreements or obtain appropriate permits so they are in conformance.

Mr. Busch said once the Planning Commission takes action, it will go back before the City Council for first reading which is expected in April, and then has to go back for second reading and then the ordinance will be in effect 30 days from that date. Mr. Busch said he is working with the City Attorney's office on draft language and that the intent is to get the draft agreement before the City Council by the first reading, but if not, hopefully by the second reading there will be a draft agreement in front of the City Council that identifies the terms of the agreement for those three vending businesses which will be entered into before the ordinance becomes effective city-wide so those agreements are in place.

Commissioner Didbal stated she is trying to understand the grandfathering, and sees an issue happening in the future with new vendors that come into the City.

Mr. Busch clarified that the individual agreements would be for the three vending businesses and the intent is to get those in place before the ordinance takes effect, and then go out and make contact with new vendors that come into the City and help them through the new permitting process so they will be in compliance with the new ordinance, and stated that everyone who is operating now will also have to go through the new permitting process

Commissioner Didbal asked if vendors are allowed to continue to operate their businesses while the ordinance is being decided upon.

Mr. Busch said that current businesses will be allowed to continue to operate until such time the ordinance is approved.

Donna Navarez, 101 Clark Avenue, stated her hope is that the temporary grant to operate the businesses would be final when the ordinance is adopted, and that everyone would have to comply with the new laws and rules. Ms. Navarez talked about how mobile vendors have affected her business, and asked that the Planning Commission do the right thing, and said the 30 minute rule is fair and hopes that once the ordinance is in place, everyone will have to abide by it, and follow the same rules. Ms. Navarez thanked Mr. Busch for the work he has done, and said she would do her part as a business professional.

Mr. Busch thanked the stakeholders for their participation, and said it is unfortunate that all of the vendors are not present at the meeting to represent themselves. Mr. Busch thanked Ms. Jeffries for her comments and concerns, and went on to summarize the goal of the ordinance.

Commissioner Sanbrook stated that Mr. Busch summarized the ordinance clearly and suggested that the City Council take a hard look at the how pre-existing businesses were identified and determined to be allowed to be grandfathered in which appears to be the main concern that has come forward before the Commission.

Commissioner Sanbrook moved that the Planning Commission recommend to the City Council that they introduce and adopt the ordinance.

Commissioner Parker feels the ordinance needs more work and should go back before the AD Hoc Committee, and said he would volunteer his time to sit on that committee.

Commissioner Sanbrook said that point is well taken, and said he was trying to get this to move forward.

Vice Chair Didbal asked Commissioner Hager if he had any comments, and he responded that he did not.

Vice Chair Didbal said she is not clear on all of this yet and that the grandfathering should be looked at and needs to go back to the City Council with the noted disagreements and comments, and said she would like to participate in any future meetings that may come about.

Mr. Busch thanked the Planning Commission for their comments and said what he is hearing is that there is concern regarding the need to allow grandfathering. Mr. Busch said if the desire is to move forward with an ordinance the is different than our current ordinance, and the biggest issue is the applicability of the ordinance and everyone having to play by the same rules, it is within the Planning Commission's ability to make a recommendation to the City Council that the clause for the pre-existing is not included.

Vice Chair Didbal stated that would work for her and said she feels everyone should be on the same page.

Mr. Busch said if the Planning Commissioners have concerns about any section in the ordinance, it is within their rights to make any recommended changes to the City Council.

Commissioner Parker moved to continue this item for further discussion.

Commissioner Hager seconded the motion.

Mr. Busch asked what the desired outcome is for the continuance.

Vice Chair Didbal said for more clarification on the grandfathering of the pre-existing.

Mr. Busch said the Planning Commission needs to make it clear on what is needed and what they are asking for.

Commissioner Sanbrook said the City Council needs to look at the grandfathering clause, and stated he feels all of his questions have been answered.

Vice Chair Didbal said it should be all or none regarding the grandfathering, and that everyone needs to be on the same page.

Commissioner Sanbrook said he could support the ordinance if the grandfather clause was eliminated entirely, or make it applicable to everyone.

Vice Chair Didbal said this needs to move on to get the ordinance in place because there will be future vendors that will be coming in to the City that will have to follow the rules of the ordinance.

Commissioner Hager withdrew his second, and the motion died.

Commissioner Hager moved to forward to the City Council the recommendation of taking out the grandfathering clause, and let the ordinance stand. The motion was seconded by Vice Chair Dibal, and passed by a vote of 4-0-3 (Chairman Starkey, Commissioner Takhar and Commissioner Flores were absent).

Public Hearing: - None

Commission Discussion: - None

Other Business:

Mr. Busch stated this item should go before the City Council at their meeting of April 20, 2010.

Report on Actions of the City Council: - None

Adjournment: There being no further business, the meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Roberta Kyle, Secretary
YUBA CITY PLANNING COMMISSION