

PLANNING COMMISSION MEETING

Tuesday, October 29, 2019 7:00 p.m.
Community Recreation Center
10640 N Clubhouse Drive, Cedar Hills, Utah

Present: John Dredge, Vice Chair, Presiding
Commissioners: Jared Anderson, Eric Schloer, Steve Thomas
Absent/Excused: David Driggs, Jeff Dodge, LoriAnne Spear
Chandler Goodwin, City Manager/Planner
Jenny Peay, Planning Associate
Colleen Mulvey, City Recorder
Others: Mayor Jenney Rees

1. Call to order

Vice Chair John Dredge called the meeting to order at 7:02 p.m.

2. Public Comments

Vice Chair Dredge opened the floor for public comments. Seeing none, he closed the floor for public comments.

SCHEDULED ITEMS & PUBLIC HEARING

3. Review/Recommendation and Public Hearing on Amendments to the City Code Title 10, Chapter 5-39 related to Tobacco Specialty Businesses.

Chandler Goodwin gave an overview of the discussion. He said the current City adopted code prohibits tobacco specialty businesses, which were businesses that dedicated most of their resources to the distribution and sale of tobacco, THC, CBD, etc. There was one condition where a business could become classified as a tobacco specialty business if the products sold were self-serve. For example, a gas station could bring a display from the back counter to a customer, who could then serve themselves tobacco, so then that business could apply for the opportunity to be considered by state code to be a tobacco specialty business. The City does not allow this. In fact, these types of businesses were not allowed within 600 ft. of a residential zone. There were not really any areas in the City where a person or business could apply to be a tobacco specialty business based on this distance code. However, the Utah County Health Department issued a directive to all tobacco retailers on October 6th (not tobacco specialty businesses, but to any business with a tobacco license). These businesses were to remove all flavored vapor oils and vaping products from their shelves within five days of that notice. These businesses were no longer allowed to sell these vaping products due to the current health crisis popularized in the news.

The City notified Walmart and Hart's Gas Station, which were the only two tobacco retailers (not tobacco specialty businesses) in the area. But, to exclude anyone from this time or in the future from ever receiving a tobacco license and subsequently changing the way that they sell, the City proposed to modify the current code. It was a nuanced change just to clarify more details. In

section D of 10-5-39, the code mentions retail tobacco specialty businesses are not permitted. Currently the code reads “The City shall not issue tobacco sales businesses licenses for the operation of retail tobacco specialty businesses or weed shops.” Mr. Goodwin proposed to add a sentence stating, “No business with a tobacco sales business license shall convert, retrofit, or modify their business in order to seek or acquire a retail tobacco specialty business license.” This change was to clarify that a business could not retrofit, change, or modify their business practices in a way that would be assumed as a tobacco specialty shop and not just a tobacco retailer.

Vice Chair Dredge opened the public hearing. There were no comments offered, so he closed the public hearing.

Mr. Goodwin said none of the current City tobacco sales businesses with a tobacco license could retrofit anyway because all the businesses were too close to residential homes. This was measured from the entrance of a business to the property line of a given residential home. This change was just an effort to clearly state the City would not allow tobacco specialty retail businesses, nor allow current businesses to change the way they sold products.

C. Anderson asked if this was a proposal from another city. Mr. Goodwin said no. He had not seen a city yet use this tactic because it was such a new issue. He welcomed modifications to his proposal. C. Anderson said his main concern was putting a restriction on what a business could apply for. The language in this proposal restricted the business from applying for this license. Filing an application, he thought, was probably not an issue. Mr. Goodwin said that the City perhaps should modify language to not prevent a business from applying, but to state that the license shall not be issued directly. C. Anderson suggested adding something that prohibited the conversion of the businesses. This idea created a due process issue by restricting a business from filing an application. Mr. Goodwin said that to modify this, the City could write that no business with a tobacco sales business license shall convert, retrofit, or modify their business. Specifically, the City wanted to talk about the conversion from a tobacco retail business to a tobacco specialty shop.

C. Anderson said what if the City just wrote, “No business with a tobacco sales business license shall convert, retrofit, or modify their business in order to become a tobacco specialty business.” Mr. Goodwin added, “in order to qualify as a tobacco specialty business.” C. Thomas said he almost thought this modification was redundant.

C. Dredge said it was pretty clear. It said the City shall not issue the license. C. Anderson said this was true unless the City ended up in fight over the issue. He liked adding the additional language in an attempt to prevent a business from trying to skirt the issue.

Mr. Goodwin said the thought behind this change was that for some retailers, specifically gas stations, this had become a large part of their business model. At the time, the State code had an incentive based on square footages and percentage of a retail business for tobacco products, and this code specifically said, “or if the product was self-service.” So then, a business could have a self-serve model and would then not have to meet a sales percentage requirement, and a customer could just bring the tobacco to the counter themselves. It was a pretty low bar to have to cross to become a tobacco specialty business based on the State code. When the Council got these

pronouncements from the Utah County Health Department saying that tobacco retailers could not sell vaping products such as oils or e-cigarettes unless they were classified as a tobacco specialty business, this gave tobacco retailers the incentive to then become a tobacco specialty business.

C. Thomas asked if can the City could prohibit the self-service clause instead. Mr. Goodwin said he did not know if the City could cherry pick something out of the code like that. He added that the State did allow the City to prohibit tobacco specialty businesses. So that was what the City had done. To dissuade current businesses from applying to become a tobacco specialty business was the reason they were looking to change the code.

C. Thomas asked if Hart’s was close enough to the high school property to prohibit it from applying for this title in general. Mr. Goodwin said yes, both tobacco retailers (the Walmart and Hart’s) were also too close to residences.

Mayor Rees added that this was the City’s attempt at being proactive because the State set this requirement. The State could change the distance or other requirements. The notification the City received said that the State anticipated some gas stations were going to attempt to qualify for retail specialty tobacco licenses.

Mr. Goodwin said this however did not preclude anyone from applying for the license. The Council had someone approach the City about putting a smoke/vape shop in town, but fortunately they were able to say the location was too close to residences and to schools.

C. Anderson said the State code ebbed and flowed all the time and he thought this was a good reason for additional language.

Mr. Goodwin said that Walmart on their own removed these types of products from their business model. So really, this business was not an issue. But that could change in the future. The way the modification was written then was, “No business with a tobacco sales business license shall convert, retrofit, or modify their business in order to qualify for a tobacco specialty business license.”

MOTION: C. Anderson—to recommend the proposed modification to Cedar Hills Code 10-5-39, subject to the change of adding to the language “no business with a tobacco sales business license shall convert retrofit or modify their business in order to qualify for a tobacco specialty business license.” Seconded by C. Schloer.

Yes	-	C. Anderson	
		C. Dredge	
		C. Schloer	
		C. Thomas	Motion passes.

4. Discussion on Landscaping and Watering Restrictions in Park Strips and in the SC-1 Commercial Zone.

Mr. Goodwin said this was another area the City Council and Mayor Rees had chosen to be proactive in terms of what they saw on a State-level in terms of legislation, but also as a great community.

Every city needed to have conversations about where to conserve water, where the City could encourage conservation of water, etc. One thing to discuss was park strips, at this time, park strips are required to be grass with trees. Mr. Goodwin thought the Council liked the idea of trees still going in the park strips, but also allowing for rocks and pavers.

The City wanted the Planning Commission to look at landscape requirements in the commercial zone. The City required 30% of the land to be open space. He knew in the past they had applications from developers where the City discussed community gathering areas, but in all reality, no land had been created in the commercial zone that created a public atmosphere. What the City wanted to look at was the 30% of open space, the landscaping requirements, and possibly allowing for other types of landscaping including encouraging “local-scaping” that used native plants with low water requirements. He suggested further reading at www.localscapes.com. This topic was just a discussion item for this meeting, and he wanted to start getting the Council to think of ways to amend the City code that balanced the aesthetic requirements vs the need for waterwise planning in commercial zones. Tree selection, resident requirements, water use, the 30% requirement, etc. were some issues to discuss.

C. Dredge asked if he understood correctly, when Mr. Goodwin discussed the 30% requirement, he was talking about potentially reducing that amount. Mr. Goodwin said potentially reducing it yes, but also allowing for more possibilities. He went back to the storage facility example. There was a buffer around the property and on the one side the City said to put grass, but on the back side against a fence they put rock. Mr. Goodwin thought that was a wise choice to put rock there, because the grass was not going to be used, and would simply use more water. He really wanted to push developers of these projects to make these choices for themselves. At the time, the way the code was written encouraged grass, flowers, trees. It was water heavy. From the City standpoint, they could go back to the State with these modifications and say they were encouraging residents and developers to be more waterwise. The City was encouraging them by allowing different types of landscaping, and our code needed to reflect that. If the State were to really target water use, it would be in commercial and residential water uses. As a City they were looking at what they could be doing, and changing the code was just one area. Another area the City was looking at was the use of meters throughout the City, but this was a more expensive way to go about water conservation.

C. Thomas said there might have been some dust and erosion management concerns with some of these suggestions if the City were to allow more permeable surfaces. Water runoff may be a future issue.

C. Anderson asked if there was a mulch requirement. Mr. Goodwin said there was. The City did allow for a certain type and depth requirement. The City did allow a xeriscape in the SC-1

commercial zone, but it was only a third of the total landscape there. Too often people associated the xeriscape with, “leave it the way I found it.”

C. Dredge said he had one concern: he did not like entertaining the idea of going less than 30%. The 30% did not necessarily need to be grass. But if the City moved away from that percentage, they ran the risk of turning commercial zones into strip malls and packing too much concrete in too small of a space. He thought the City could keep it the same and still conserve water.

Mr. Goodwin asked how the City could make it aesthetically pleasing. C. Dredge said they could have paved areas, wind sculptures, trees that were low water, etc. He wanted it to be walkable and have places for people to sit between stores. That was his vision for the area.

Mr. Goodwin said he thought the City was making it difficult for developers. The commercial zone looked nice, but it had been slow coming because of the requirements. He thought there was some flex on the 30%. It was hidden well in many ways. The City could also add more specifics for this.

C. Thomas asked if any part of the 30% would go away; the answer was no.

Mayor Rees added that the City knew that the State eventually was going to mandate metered pressurized irrigation (PI). If a business or homeowner did not want to start paying a lot of money for their PI usage, the City wanted to find ways to reduce their water. She felt the best way the City could allow this was to change codes to not require all the elements that required a lot of water. The State was talking about mandating PI usage and tiered water rates based on usage.

Mr. Goodwin said the City had to do an annual report where they reported their own water usage. Incentives were going to matter at some point, so the 30% requirement may be an issue for businesses, but if the City was flexible in how that was fulfilled, they created an environment that was business friendly, so businesses did not move to somewhere else.

C. Anderson asked about the upkeep and maintenance cost. He stated that whatever people saw in SC-1 zone, they may try to duplicate at their private residence. This could be a good thing. Mr. Goodwin said there were more irons in the fire in terms of water conservation and it was going to take time to address all these issues. C. Thomas said this was more of an issue on the Wasatch front than in other places of development.

C. Anderson said water conservation was a huge issue in the St. George area. C. Thomas said those cities had xeriscaping and other allowances in their codes.

Mr. Goodwin said the City could do some more research with businesses. The City wanted to be able to tell Utah legislators what they were doing to conserve water.

C. Dredge said this could be very sensitive topic, but the City was putting in a wonderful new sports park that will use water constantly.

Mr. Goodwin responded by stating they have tried to design the park to be efficient in terms of water use. For instance, the splash pad took in water and regulated water use. It was sprayed onto the pad, was collected, and then sent to a vault and where it was recycled through irrigation.

The Planning Commission recognized we are a small community and what the City was trying to say to citizens was that they wanted people to be water conscious, but also provide places for kids to play in return for conservation in home landscapes. There were places for people to play that were not necessary in their front yard. The Planning Commission would look at what other cities were doing in terms of water conservation.

ADJOURNMENT

This meeting was adjourned at 7:43 p.m. on a motion by C. Thomas, seconded by C. Anderson, and unanimously approved.

Approved:
January 28, 2020

/s/ Colleen A. Mulvey, MMC
City Recorder