



MINUTES

REGULAR MEETING OF THE ENVIRONMENTAL QUALITY COMMITTEE

Tuesday, May 11, 2010, 7:00 p.m.
El Cerrito City Hall – Council Chambers
10890 San Pablo Avenue

This Meeting Place Is Wheelchair Accessible

Chair Egberman called the meeting to order at 7:03 PM.

Roll Call

Present: Chair Egberman, Members Miner, Weinstein, and Dandridge, Rome, Krueger, Benjamin, Wong, Spitalnik, Brown-Lechner,

Absent: Benassini

Also Present: Garth Schultz (Environmental Services Analyst and Staff Liaison), Maria Sanders (Environmental Services Analyst), Melanie Mintz (Environmental Services Division Manager), Janet Abelson (Council Liaison)

1. Comments from the Public on non-Agenda Items

Environmental Services Division Staff member Maria Sanders announced the Climate Action Survey, available online at www.greenelcerrito.org.

El Cerrito resident Robin Mitchell announced ECHS Community Garden work days on May 23, from 9 a.m. to 4 p.m. June 6, 9 a.m. to 4 p.m., and gave other community garden updates.

2. Approval of Minutes

Motion to approve Weinstein/Wong. Unanimous approval.

3. Membership: Resignations and Recruitment

Chair Egberman recognized resigning EQC members Karineh Samkian and Mindy Brown-Lechner for their service on the Committee and to the City of El Cerrito.

Chair Egberman also detailed the recruitment process, reminding prospective members that they would need to attend at least three regular meetings prior to being considered for recommendation for Council appointment to the Committee. Interested members of the public should fill out and turn in an application to the City Clerk, and may also announce their interest during public comment at a Committee meeting. The Committee generally discussed recruitment process to fill vacancies.

4. Community Meeting on the Animals Ordinance

Chair Egberman introduced the topic, asked for a show of hands of who wants to speak to this public comment (approx ¾ of the audience, at least a dozen people). He discussed time limits for public comment and introduced Sean Moss from the Planning Division. Mr. Moss gave an overview of the proposed changes to the Animals Ordinance (see staff report). Chair Egberman stated that Mr. Moss

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would take questions from the Committee, and then hear Public Comment, and then the Committee would discuss.

Spitalnik asked for more details about Conditional Use Permits (CUP), and guidelines about how they work. Mr. Moss answered that the Conditional Use Permit is a tool to address issues/uses on a case by case basis. They are decided by the Planning Commission (PC), appealable to the City Council. Application entails details pertaining to the case/use. Planning staff reviews to make sure application is complete, and assesses whether an environmental review is necessary. If so, a hearing is schedule with the Planning Commission, including a presentation by staff and the applicant, public comment, discussion, etc., motion to approve, approve with conditions, deny, or postpone. There is another class of permit which is an Administrative Use Permit (AUP), which is where the Council and the PC is more comfortable with the use, i.e. if there was a classification of animal where staff is designated as the reviewer/approver (delegated by the Commission) including a series of findings and a memo documenting. There is a notification process wherein neighbors are notified of the Use Permit.

Public Comment

Kathy McKinley, was a planning Commissioner, was on the PC at the time they considered the original language in October or November. She handed out a memo to the Committee (see reports). She asked what the cost of the permit would be, and expressed an opinion that these costs should be made cheaper. Fees have to bear a rational relationship to the amount of work to be done, wants fees to be appropriate. Questions whether an AUP would be a better use, i.e. for chickens and other certain categories. She also had several comments on the chickens section, re: fencing, etc. only applicable to chickens, is a very burdensome requirement. Makes sense to confine, but doesn't think need to fence the entire yard. Questions the multi-family consent requirement. Are condos multifamily? She would have to get a CUP if they are. Thinks this provision needs to be rethought. Has other comments about the regulations on chickens as compared to goats and pigs, saying they are more of a problem than chickens. What is an enclosure? Need to be equitable across the categories, started in with bees.

Martha Colburn brought the question about dogs in a yard and asked how many pit-bulls are allowed and shared the details of a situation where a person has a large number of dogs.

Libby Tipping, seconds Kathleen's comments about solid enclosure/fence being prohibitive. Does not feel it is necessary for chickens, maybe pigs.

Julian Kay, besides cutting some slack, compliments, this is great, wonderful work, huge process, concurs about the height of the fence, could be modified with respect to neighbors complaining.

Rachel McMullin, agrees with fencing comments made above and about multi-family requirement being restrictive. Wondering about bees, why is there no setback regarding a hive? Maybe there should be a setback considered. Pigs are extremely loud, nasty, digging, squealing, setbacks/pen should be considered.

Irwin Wong, property at 621 Elm Street, neighbors owned chickens, at first had no problem. As chickens grew up, got louder, disturbed tenants, 75% of tenants wanted to move out because of chicken noise, asked neighbor to control the chickens, who declined, so he contacted the City. Had information from the CDC regarding chicken health risks to kids and elders (see reports). Believes they should not be allowed in densely populated areas. Most of the folks supporting chickens seem to be very responsible...as long as they don't bother neighbors, ok, but if they do, the City needs to be able to do something about it.

Jenny Hammer, chickens should be legal. Should also allow honeybees. Agrees with fencing problems. Thinks that the 5000 square foot requirement is too large, can be smaller. Re: noise, during the day, clucking, less than BART or traffic. Dogs make noise, too. Not objectionable, but

louder than chickens. Concerning manure re: smell or health issues, is good fertilizer. Dog owners are supposed to pickup, manure is confined to yard, which house cats do not, maybe that should be in ordinance too. Also suggested a preamble, environmental etc. – also earth quake preparedness, going to get those chickens.

Michelle Kay, piggy back on issues with the fence being solid, open is fine, as long as they are confined. Story about chickens making noise at 4 a.m., don't make noise at night. Re: disease, see people with infections from cat bites, poop in playgrounds, killing birds, if we are to look with where infection is coming from (she works as a nurse)...has never seen chicken born diseases, and has seen cat born ones.

Carl Mason, thanks to the Committee, serves our community well, agrees with most comments. Suggests a preamble that states its purpose, perhaps with a link to the Climate Action Plan. Would like to comment on a strange disconnect between the way different animals are treated. Dogs makes sense, is functional. Chicken ordinance is specific or procedural, as compared to dogs which is more general. Best kind of ordinance that would say what a nuisance is, and not so prescriptive about space needs, etc. Has previously contacted the County and City, limit might be three, in the County Code.

Gunther Rohrer, all the comments are great. Congrats on the milestone. Lot size requirements to large, no lots in his neighborhood are 5000, all are 4000. Big hubbub on the CUP, the cost is too high (\$1,000), prohibitive. Ron, do we have any idea? Sean, well, this is up for discussion. Couple of scenarios, 1) as per Kathleen, a separate permit could be created, PC may or may not be the appropriate forum.

Steve Glazer, proud chicken owner, four chickens for the past year. Wonderful pets. Kathleen was spot on. His chickens don't make noise in the dark. One question, proposed permit fee for chickens, outside of a CUP. Would actually support a permit fee for pets, even dogs, including chickens, \$1,000 CUP is too high. Has this been discussed? Yes, was considered a barrier. But, could still be considered. Steve again, regarding dogs, surprised to hear that there are no restrictions on dogs, or cats, or other animals – should be limits. Dogs certainly could present a nuisance, more so than chickens.

Dan Schuleman, agrees with the concept of limiting dogs and other animals if chickens are limited, agree with more language on bees and pigs, not the greatest experience with bees. In terms of chicken noise, has lived near chickens, never heard them. Does like the idea of a requirement for distance on chickens. Prevent people from doing it responsibly, codified “responsibility”.

Ann DeRosa, it's the roosters that make the noise, hens are not a nuisance. On bees, the way they fly out of their hives, the swoop and forage – you just don't want the entrance towards the neighbors house, shouldn't be a problem. They are everywhere, in everyone's yard, all the time. On all of these things, chickens, bees, what's better than chickens who provide food, manure, eat the weeds and snails, bee produce honey and pollinate the plants. Greater production of fruit – everyone benefits from the bees and the chickens, helps them understand more about their environment.

Scott Tipping, hopefully going to be a chicken owner, owns 4 inside cats. Comments on vicious dog, neighbor with barking dog, had difficulty with nuisance process. Animal Control doesn't seem to do much, not sure who to call. Dog attacking him on the front porch. No prior record (for the dog). Is there an easier way to deal with something like this going down the line. Karen Pinkos, Assistant City Manager responded – call the Police Department. Is there a decibel level where that applies? Sean – yes, there are some limits, but generally hard to measure. Spitalnik, how do we draft this in terms of functional, i.e. chicken/dog decibel, e.g. to be not subjective.

Mari Gilmore, disconnect on goats. In memo, would be allowed on lots for 10,000 square feet or larger. In the ordinance, AUP is stipulated. Seems like pigs should also have more stringent requirements.

David Clarity, the noise factor is real. Wife is very disturbed by being awake at 5:15 due to chicken noise. Fine to be in favor, but the noise concern is very real.

Point of clarification from a resident – Draft Ordinance disallows roosters the way it was written. Ron – seems to be agreement that no roosters is the way to go.

Emily Foreman, delighted to see the City moving in this direction. Is looking to get chickens, why 4 as a maximum, and why 5000 sf? Maybe instead of solid numbers or boundaries, how about describing nuisance behavior. Sam – wrote the recommendations, looked at other CA and US ordinances, studied them. Proscriptive vs. reactive to nuisance. Mindy – question of personal use vs. production use, 4 chickens for standard family, seems reasonable. It sounds like other stuff was reviewed – would like the City to go to the upper limits.

Linda Schneider, thanks for considering her proposal to change the Ordinance. The noise issue doesn't make sense. Boom box example, leaf blowers, car alarms...just doesn't make sense to her.

Howdy Goudy, one thing that hasn't been mentioned, re: 20 foot setback, makes it difficult on a 5000 square foot (sf) lot, too inflexible, only a 10 ft strip. Depends on layout and on the size of the house (4000 sf vs. 5000 sf).

Gunther Rohrer, nice that the set back was actually from dwelling units, it is flexible, makes sense.

Gillia Mason, chickens are usually very quiet, and noise is pleasant, and beneficial to the Community.

Chair Eggherman closed Public Comment and thanked everyone for their comments. Encouraged people to submit comments to Sean via email smoss@ci.el-cerrito.ca.us. Also, the issue of nuisance vs. appropriateness, proud that we didn't let the 1 or 2 bad experiences or fears dominate what could otherwise be good for the overall community. Also commented on how a voluntary registration (i.e. for chickens) could facilitate community building.

Comments from the Committee:

Frank Wong– with the bees, we did talk about a 10 ft tube for the entrance, to keep the bees flying high and away from people. No permits because not want to put economic barrier to that.

Sean clarifies a few points, 1) re: set back to dwelling units on adjacent properties 2) pigs, intent was pot-bellied pigs: other pigs would be covered under livestock. Kathy, a pig is a pig.

Natasha Benjamin, wanted to emphasize that the primary EQC focus here was to have something sustainable, encouraged to look at food sources. Much of this other stuff is out of our scope and focus from the Committees standpoint.

Mark Miner, is it 5000 and liberalize it, make it 4000 square feet. Ron, our role is fluid, learning more as we go through the process. Can be affected by the details. We ought to be open to talking about it and making recommendations, planning dept. will understand the source. Sean – goal at this point is to get feedback on any and all aspects at this point.

Mindy Brown-Lechner, as a member of the subcommittee who worked on it, appreciates everyone's involvement, glad to see the process play out.

Dave Weinstein – glad to not be on the Planning Commission, way too detailed for him. We ought to

pass along the idea that this should not be too restrictive that it prevents the original goal of more participation. The idea of having an informal organization as a support network to create responsible chicken rearing. Self-policing, so that we can head off problems before they start.

Sam Krueger – one question, if there is a nuisance issue, same provisions as dogs? Yes. What is the effectiveness and timeline? Sean – dogs are enforced by Animal Control. Most other animals would be handled directly by PD / Code Enforcement in El Cerrito, should be fairly quick. Would work with them for a good enforcement procedure. Sam – 30 second summary of procedure? Karen – PD and Code Enforcement, as a City would develop procedures. This is all iterative. Interdepartmentally need to get together.

Ellen Spitalnik - confused about “nuisance”. In some respects, a nuisance is different depending on who reports it. Believes it is important to flesh out the nuisance and CUP determinations. In her view, very important that all these environmental issues, really pay attention to the minority voice, as their issues are real. Her suggestion, working together to give guidance as per the nuisances, i.e. medical hardships, physical, mental, economic. Invasive species? Other names of things on the list? Questions the use of etc. with anything that deals with the law. When is it by right, when conditional, and other cases? Ron, trying to avoid giving a neighbor veto power, trying to have a majority. She feels we can craft something that does. Sean addresses the issue of nuisances, tried to clarify very clearly. Subjective vs. Objective. Kathleen, under CA law, nuisance questions are determined objectively. Fact finder considers the facts, reasonable person.

Chair Egberman closed the discussion, and asked whether the next planned community meeting on this topic had been set. Per Mr. Moss, it had not, but the plan is to send a city wide mailer when it is.

5. Climate Action Challenge

In the interest of time, the Chair postponed this item to the next meeting.

6. SmartSolar & PACE Financing

Rachel DiFranco with SmartSolar, gave a presentation about this free program (see report). SmartSolar has expanded free services to El Cerrito to help people work through energy efficiency and solar contracting processes. She answered questions from the Committee.

Maria Sanders gave an update on “property assessed clean energy” or PACE financing and answered questions from the Committee. The Committee requested that an item be placed on the June agenda to get a more detailed presentation with the opportunity to recommend that the Council pass a resolution to join the PACE program.

Alan Hanger, EC resident, runs Alameda Power’s solar rebate program. The time and the effort, there will be very few people who take up the solar. Let the County do it.

Rachel, if you are thinking about a larger home retrofit, possibly a good way to look at both.

7. Awards for the Green Champions Winners

Victoria Rome announced the results of the residential recognition program, and gave thanks to Mark Miner and Frank Wong who scored the responses. Their subcommittee identified 12 standout green champions, and plan to recognize them as such with a letter from the Mayor thanking them. They asked for authorization to purchase awards (\$20 gift certificated to the Cerrito Theater). Motion to approve \$240 for the prizes (Victoria/Weinstein). All ayes except one (Krueger abstained). Motion passes.

8. Committee and Liaison announcements and future agenda items

Mayor Abelson gave a Council and budget update, generally bad news about the economy and service cuts to things like public transit.

Garth Schultz announced that the Council passed updates to the Solid Waste Ordinance; he gave an update on the July 1 implementation of the new Food Scrap collection program; he reported on the great success at Earth Day, and thanked the Committee for its involvement and participation, and: he reported that the Environmental Services Division had issued a Request for Qualifications for the new recycling center.

Maria Sanders updated the Committee on the City staff no car challenge.

9. Adjournment

Chair Eggherman adjourned the meeting at 9:15 p.m.

Any writings or documents provided to a majority of the Environmental Quality Committee regarding any item on this agenda will be made available for public inspection at the El Cerrito Recycling Center Offices at 7501 Schmidt Ln., El Cerrito, Monday – Thursday from 9 a.m. to 12 p.m. and 1 p.m. to 5 p.m.