

PLANNING COMMISSION REGULAR MEETING MINUTES
January 17, 2023 – 6:00 P.M.

CALL TO ORDER

The regular meeting of the Planning Commission of the City of Highland was called to order at 6:00 p.m. by Chair Hamerly at the Donahue Council Chambers, 27215 Base Line, Highland, California.

Present:	Chair	Randall Hamerly
	Vice Chair	Chandra Thomas
	Commissioner	Edward Amaya
	Commissioner	Jarrold Miller
	Commissioner	Jessica Sutorus

Staff Present: Lawrence Mainez, Community Development Director
Kim Stater, Assistant Community Development Director
Joel Ramos, Code Enforcement Officer
Gary Chambers, Code Enforcement Officer
Barrie Owens, Code Enforcement Officer
Camille Goritz, Administrative Assistant III

The Pledge of Allegiance was led by Chair Hamerly.

COMMUNITY INPUT (ITEMS NOT ON THE AGENDA)

None.

CONSENT CALENDAR

1. Minutes from the January 3, 2023 Regular Meeting.

A MOTION was made by Vice Chair Thomas, seconded by Commissioner Amaya, to approve as amended. Motion carried, 5-0.

PUBLIC HEARING

2. A Public Hearing to Consider the Appeal of Administrative Citation No. 15897 issued due to Business License Regulations related to operating a Home-Based Business without having obtained a business license in accordance with Chapter 2.56 of Title 2, of the Highland Municipal Code, at the property generally located at 27178 Messina St, Highland, CA 92346. Tax Assessor's Parcel Number 1191-501-12. Cited: Joel A Deleon. {Continued from January 3, 2023}

Code Enforcement Officer Ramos presented the staff report.

Chair Hamerly opened the public hearing.

Vice Chair Thomas asked what is the cost for a Home Occupation Business License and are there additional inspection fees?

Community Development Director Mainez stated the fee is \$138, and the inspection fee is included in the Home Occupation Business License application.

Vice Chair Thomas asked are there also requirements for outdoor storage for the business that is taking place at the residence?

Code Enforcement Officer Ramos stated that is correct and that was stated on the violation.

Vice Chair Thomas asked if the owner was concerned about the outdoor storage or was it the fee?

Code Enforcement Officer Ramos stated I'm not able to answer.

Commissioner Miller asked what equipment was present?

Code Enforcement Officer Ramos stated when I first made the visit to the property, I was not able to confirm the equipment since a tree blocked my view.

Commissioner Miller asked were you able to identify equipment that was being used for business landscaping?

Code Enforcement Ramos stated I was not able to confirm the equipment, but the resident stated that Joel DeLeon was performing business in the city.

Chair Hamerly stated I know the exhibits were small, but what are they purporting to illustrate other than the display of the violation notices and documenting the address in the street? What I was looking for in particular were any outward signs that there was an occupation or home-based business on site, and I did not observe that in the photographs.

Code Enforcement Officer Ramos stated there were no signs that stated he had operated a business.

Vice Chair Thomas asked then what was the complaint in regard to exactly?

Code Enforcement Officer Ramos stated as you may be aware, we received complaints on a daily basis, the complaint came in as someone operating a business on that particular property. When I made the first contact with Mr. DeLeon and asked him about the business, he confirmed that he was operating a business.

Vice Chair Thomas asked does Mr. DeLeon speak English fluently or is there a language barrier? I also heard in your statement that he then later changed his statement stating he is doing minimal business for some family members.

Code Enforcement Officer Ramos stated I had a great conversation with Mr. DeLeon, I did not have any issues understanding him, so he's very fluent in English.

Vice Chair Thomas stated ok, the first thing he told you was he had a business and later when he came to the city he stated that he wasn't really operating a business and that it was only for his two family members, correct?

Code Enforcement Officer Ramos stated yes, that is correct.

Vice Chair Thomas stated ok, so his stipulation changed.

Code Enforcement Officer Ramos stated yes.

Commissioner Sutorus asked if there was any signage on his vehicle that said it was a landscape business?

Code Enforcement Officer Ramos stated I was not able to confirm signage.

Commissioner Amaya asked was the complaint received on March 3, 2022?

Code Enforcement Officer Ramos stated that is correct.

Commissioner Amaya asked if that was the only complaint received?

Code Enforcement Officer Ramos stated that is correct.

Appellant Joel DeLeon stated I made a mistake expressing that landscaping is my job, it is only gardening. They write a check for gardener service; I only do three houses, and this only causes this problem because my neighbor is running a cleaning business and they spoke to this officer. They park their car everywhere and they block my mailbox. I know I made a mistake, nobody perfect.

Chair Hamerly asked was your neighbor who was blocking your mailbox?

Appellant Joel DeLeon stated yes, they are cleaning houses and those cars are their workers and they park everywhere on the street.

Chair Hamerly asked did you communicate to the Code Enforcement Officer Ramos that you were running a landscape business?

Appellant Joel DeLeon stated Code Enforcement Officer Ramos came over and asked me and I made a mistake stating I have a landscape business, but my job is a gardener, and I only work on three houses. Code Enforcement Officer Ramos took a picture of myself, is that allowed?

Chair Hamerly stated yes, he is documenting something based on a complaint, so he has to collect any evidence.

Commissioner Amaya asked if Mr. DeLeon had a business license with the City of Highland.

Appellant Joel DeLeon stated I do not have one.

Commissioner Miller asked do you get paid for the work you do?

Appellant Joel DeLeon stated yes, once a month.

Chair Hamerly asked are they family members?

Appellant Joel DeLeon stated yes, my aunt and next-door neighbor. The reason the neighbors complained is because I left a note on their car.

Chair Hamerly asked if gardening is your means of supporting yourself or are there other jobs that you do?

Appellant Joel DeLeon stated that's all I do because, my wife is the one making money. I'm retired, I'm 67 years old and I'm falling apart.

Wife of Joel DeLeon stated when the officer came to the house and asked my husband what he does for a living, he was thinking landscaping, but he's not in a landscaping business, he used to work landscaping for a company before. I told him you're not doing landscaping because the landscaping people are doing a lot of things more than what you're doing and that's not the word you are supposed to say. I explained it to Code Enforcement Officer Ramos, and he said he already spoke to my husband in a sarcastic way and kind of said we are done talking. That is all he said. So that's why I'm here, to help him out to understand that what he's doing is not really a landscaping. It's just a gardener helping his aunt and the neighbor. You're stalking him, taking pictures, and to me it's like a harassment also, we are not doing anything wrong to the neighbors, it is just because we put the note on the car and they didn't like that.

Niece of Joel DeLeon, Sheila Dillard stated the gardening services that he provides is also to my grandmother in Highland. This all started out with a complaint from one of his neighbors, my uncle called me and said I put a note on my neighbor's truck because he keeps parking in front of my mailbox. I need that parking space so when my son who goes to college comes home, he that parking space. I guess they got into a just a verbal altercation and the man who lives across the street filed the complaint hence that's how we started the whole he has a landscaping business. Clearly there might be a language barrier here, so he asked me to come and speak on his behalf. He's denied stating that he has a landscaping business, he is only providing domestic duty help for my grandmother.

Chair Hamerly asked did you say that the neighbor with the truck did have a landscaping business?

Sheila Dillard stated no sir, it is cleaning services. In regard to the citation itself, it says that he violated section 5.12 020, and that states the provisions of this section shall apply to all home occupations as denied defined in HMC. 5.12 010 which defines home occupations. Any occupation customarily conducted entirely within a dwelling by its inhabitants, the purpose being incidental to use of the dwelling for dwelling purposes and provided that no articles sold or offered for sale, except that produced by 7 inhabitants. By the own definition of the citation, it says that the occupation is customarily conducted entirely within the dwelling, and that clearly if he has a "landscaping business" that is not conducted entirely within the dwelling. So, in my opinion, the definition alone does not apply in his case because his gardening business is not conducted entirely within his dwelling. Alternatively, I did look up section HMC section 5.04100 which states although the following may be exempt from a city business license fee, they shall apply for and obtain a city by business license, however, please note that the citation did not offer this. The exemption applies to G domestic household health, the license provisions of this

chapter shall not be deemed to include or apply to domestic household health in the employee of an individual homeowner Ordinance 239, section 21998. It is only Dr. Daniels who pays my uncle, my grandma will give him food. She might give him \$20 here and there, or whatever amount that she feels you know is reasonable, but that's like me helping my grandma. She's in her 80s, she we just lost her husband, who is my grandfather, so we all feel bad for her. My aunt called me a week ago and said she was scared I don't want to go outside; I feel like somebody's always watching me. So, with this I conclude and request that the board deny the requirement to have a license. If not, please in the alternative, consider that he provides domestic help. Thank you.

Chair Hamerly stated when I was first reading this before I even heard any testimony, instantly on mind goes to the IRS standard. Is there a profit intent and that is demonstrated over a course of years and if there is no profit intent then it can be considered a hobby and it is generally not accepted as a business for tax purposes. Providing domestic assistance even on an ongoing basis if it's not being done for a profit motive even if he's not conducting it on site and there is not a home office it really doesn't fit the standard of a home based business. I am wondering if there is another provision in there or if in the opinion of staff, if the exception rule applies because we're really talking about one individual here that is not directly related to the appellant.

Community Development Director Mainez stated first, going back to the complaint, that's irrelevant tonight, just for the record, we do not have evidence whether that person that the Appellant is mentioning filed the complaint. They're not here to defend themselves, we don't have that as part of the record tonight, it could be anybody. We need to sever that from the discussion and in terms of the information provided concerning the domestic help, that was not noted in their application to appeal, so it's very interesting and new information that staff didn't have time to evaluate. It is a good finding on their part. Going back to your question about if there's any relief, the definition for business in HMC is as stated shall mean any employment, occupation, profession, trade, calling and lawful gain, show exhibition event, venture fundraising activity, commercial enterprise, company, corporation, joint enterprise, place of business, partnership, or other activity, or enterprise engaged in for gain, profit, benefit, advantage, or livelihood whether or not a gain, profit benefit, advantage or livelihood is earned thereby. So, whether they earn money or not, if that activity is occurring, it's considered a business in Highland. I want to go back to my comment about the domestic help if that's something you wanted to be tonight that surely will help guide our future citations when it comes to somebody that's claiming that they're doing service for a family or friend whether it could be cleaning their house, grocery shopping, running them errands, and taking to the doctors, etc. I think anybody from the street were to come in and have a basic understanding what domestic help is they would describe what I just described. This gentleman I believe is very honest.

Chair Hamerly stated yes, and it builds on what I was going to follow up with because even Staff's report, it paints a picture of a story that is growing or changing, or there seems to be a discrepancy. One time he is saying, it is a landscape business on May 16, 2022, but when he comes into the city, he says here's what I'm doing and from that interaction there was more time to kind of flesh out what was actually occurring. The Appellant is asking the question, how do I handle this situation because this is what is happening, and it's not detailed in the staff report.

Community Development Director Mainez stated yes, this is unusual, when we issue a citation, you are deciding that violation occurred that day we issued a citation. Here we're getting into a little bit discussion about what is a business and what is a domestic help and I'm almost leaning towards domestic help at this point because he's hasn't put anything in the record that's indicated that this is a business that's going to grow and he's going to create a livelihood. He has identified one or two properties, if he puts in the record that this is all he's doing and he does not advertise then he could present that if you would like and state that in the record, that certainly will go a long way for us to conclude this as a domestic help.

Appellant Joel DeLeon stated I don't have any plans expanding my gardening service, I just need to help my wife.

Vice Chair Thomas stated I think a lot of misunderstanding happened and to no fault at all for our wonderful Code Enforcement Staff. Even taking photos, I know it can make someone feel a little unsafe I just want to reassure you all, I welcome the Code Enforcement Officer to come outside my house because I will feel safer with them there. So, they don't want you to feel ever afraid for a Code Enforcement Officer showing up at your location. I can guarantee you that you are safer if they are there representing the city and you would get a very fast response if emergency was happening at your home. Thank you for the clarification and Code Enforcement Officer for doing his job and it was just a misunderstanding.

Chair Hamerly closed the public hearing.

A MOTION was made by Vice Chair Thomas, seconded by Commissioner Miller, to declare that it is not applicable to uphold Administrative Citation No. 15897 with the new information that was presented is domestic help defined in Chapter 5.04 Section 5.04.100 Exemption Item G Domestic Household Help. A business license should not be deemed to include or apply to domestic household in the employ of an individual homeowner, and direct staff to bring this item back to the Appeals Board with a revised resolution and findings to uphold the appeal and void the citation. Motion carried, 5-0.

ANNOUNCEMENTS

The next regular meeting is scheduled February 2, 2023.

ADJOURN

There being no further business, Chair Hamerly declared the meeting adjourned at 7:10 p.m.

Submitted by:

Approved by:

Camille Goritz, Administrative Assistant III
Community Development Department

Randall Hamerly, Chair
Planning Commission